

Legislative Analysis



MICHIGAN SENTENCING COMMISSION

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<http://www.house.mi.gov/hfa>

House Bill 4173 (proposed substitute H-2)
Sponsor: Rep. Abraham Aiyash

Analysis available at
<http://www.legislature.mi.gov>

House Bill 4384 (proposed substitute H-2)
Sponsor: Rep. Luke Meerman

Committee: Criminal Justice
Complete to 6-5-23

SUMMARY:

House Bills 4173 and 4384 would amend the Code of Criminal Procedure to create the Michigan Sentencing Commission in the Legislative Council and prescribe its membership, procedures, and duties. Among other things, the commission would analyze corrections-related data and develop modifications to the sentencing guidelines.

House Bill 4173 would create the commission in the Legislative Council. The commission would consist of the following members, appointed (if applicable) before January 1, 2024:

- One individual appointed by the governor, with the advice and consent of the Senate, to serve as **chair** of the commission. The individual would have to have a professional background in criminal law. The chair would be a **nonvoting** member and would serve a four-year term.
- The **attorney general**, or the attorney general's designee, who would serve as a **nonvoting** member.
- The **director of the Department of Corrections**, or the director's designee, who would serve as a **nonvoting** member.
- Two **members of the Senate**, one from each caucus appointed by the leader of that caucus, who would serve two-year terms.
- Two **members of the House of Representatives**, one from each caucus appointed by the leader of that caucus, who would serve two-year terms.
- Two **circuit judges**, one serving in a county with a population of less than 800,000 and the other serving in a county with a population of more than 800,000, selected from a list of six names (three for each commission position) submitted by the Michigan Judges Association. The Speaker of the House would appoint one of these commission members, and the House minority leader the other.
- One individual representing **law enforcement**, appointed from a list of three names submitted by the Michigan Sheriff's Association, and one individual representing **prosecuting attorneys**, appointed from a list of three names submitted by the Prosecuting Attorneys Association of Michigan. The individuals on each list could not all be affiliated with the same political party. The Senate majority leader would appoint one of these commission members, and the Senate minority leader the other.
- One individual who is an attorney in good standing practicing **criminal defense law** and a member of the Criminal Defense Attorneys of Michigan, and one individual who is a member of a nongovernmental nonprofit that serves victims and represents **victim service providers**. These commission members would have to attest as to which of the

two largest political parties they affiliate with, or that they do not affiliate with either of those parties. These members would be appointed by the governor from lists of names submitted by legislative leaders. For the initial appointments, the Senate majority leader would submit a list of three names for one of these commission members, and the Senate minority leader would submit a list of three names for the other. After the terms of those members expire, the Speaker of the House would submit a list of three names for one of these commission members, and the House minority leader would submit a list of three names for the other. And back again, and so on.

- One individual who was **previously incarcerated** and one individual who works in the **mental or behavioral health** field, who would serve as **nonvoting** members. These commission members would have to attest as to which of the two largest political parties they affiliate with, or that they do not affiliate with either of those parties. These members would be jointly appointed by the Speaker of the House and the Senate majority leader, but if they cannot agree on an appointment, the commission chair would appoint a member from among the individuals who are the expressed choices of the Speaker of the House and the Senate majority leader. If neither of these legislative leaders expresses a choice within 30 days of a commission vacancy, the commission chair would appoint the member.

At least one of the members appointed to the commission (apart from the chair) would have to have a political party affiliation that differs from that of the other appointed members (apart from the chair).

Except for commission members who are members of the legislature, appointed commission members would serve for terms of four years. However, the initial members would serve staggered (one-, two-, three-, or four-year) terms. Vacancies would be filled in the same manner as the original appointment. A member appointed to fill a vacancy caused by a resignation or death would be appointed for the balance of the unexpired term.

Except for the commission chair, commission members could not receive a salary but would have to be reimbursed for reasonable, actual, and necessary expenses.

The commission would have to conduct its business in accordance with the Open Meetings Act and make written documents used in official commission business available in compliance with the Freedom of Information Act. A quorum would consist of a majority of members, and no commission business could be conducted by less than a quorum.

The commission could establish subcommittees that may consist of individuals who are not members of the commission, such as experts in matters of interest to the commission. However, subcommittee members who are not members of the commission could not vote on any commission recommendation and could not receive a salary for service on a subcommittee.

The Legislative Council would have to provide the commission with suitable office space, staff, and necessary equipment.

Proposed MCL 769.34a

House Bill 4384 would require the commission to do all of the following:

- Collect, prepare, analyze, and disseminate information regarding state and local sentencing and release policies.
- In cooperation with the Department of Corrections, collect, analyze, and compile data and make projections regarding the populations and capacities of state correctional facilities; the impact of the sentencing guidelines; and the effectiveness of efforts to reduce recidivism. Measurement of recidivism would have to include, as applicable, analysis of both of the following:
 - Resentence rates and return-to-prison rates.
 - One-, two-, and three-year intervals after exiting prison or jail and after entering probation.
- Conduct ongoing research regarding the effectiveness of the sentencing guidelines in achieving the following purposes:
 - Providing for the protection of the public.
 - Considering offenses involving violence against a person or serious and substantial pecuniary loss as more severe than other offenses.
 - Being proportionate to the seriousness of the offense and the offender's prior criminal record.
 - Reducing sentencing disparities based on factors other than offense characteristics and offender characteristics and ensuring that offenders with similar offense characteristics receive substantially similar sentences.
 - Specifying the circumstances under which a term of imprisonment is proper and the circumstances under which intermediate sanctions are proper.
 - Establishing sentence ranges for imprisonment that the commission considers appropriate and that are permitted by law.
 - Considering the necessity for local corrections system capacity and maintaining funding to ensure that capacity.
- Develop recommended modifications to the sentencing guidelines that accomplish all of the purposes described above.
- Consider the suitability and impact of offense variable scoring with regard to victims and victims' families and victim input and advice regarding sentences.

Commission recommendations and modifications

In developing recommendations, the commission would have to submit to the legislature issue a prison and jail impact report relating to any modifications to the sentencing guidelines. The report would have to include the projected impact on total capacity of state and local correctional facilities.

Modifications to the sentencing guidelines would have to include recommended intermediate sanctions for each case in which the upper limit of the recommended minimum sentence range is 18 months or less.

The commission could recommend modifications to any law that affects sentencing or the use and length of incarceration. However, the commission could not make recommendations that would change the body of enumerated criminal offenses as defined by the legislature and could not make a recommendation for any policy implementing any behavioral or programming credits. The commission could not make a recommendation that would retroactively change

existing sentences already imposed on an individual. The recommendations would have to reflect all of the following policies:

- To render sentences in all cases within a range of severity proportionate to the gravity of offenses, victim input, and the blameworthiness of an offender.
- When reasonably feasible, to achieve offender rehabilitation, general deterrence, incapacitation of dangerous offenders, restoration of crime victims and communities, and reintegration of offenders into the law-abiding community.
- To render sentences no more severe than necessary to achieve the applicable purposes described above.
- To preserve judicial discretion to individualize sentences within a framework of law.
- To produce uniform sentencing in accordance with commission duties.
- To eliminate inequities in sentencing and length of incarceration across population groups.
- To promote research on sentencing policy and practices, including assessments of the effectiveness of criminal sanctions as measured against their purposes.

Any recommended modifications to the sentencing guidelines or to other laws would have to be submitted to the Senate majority leader, the Speaker of the House, and the governor.

Annual report

By December of each year, the commission would have to submit to the legislature, governor, and the Michigan Supreme Court a report on the implementation of legislative policies adopted in the current (2023-24) legislative session affecting the criminal justice system. The report would have to include at least all of the following:

- Education of practitioners on changes in legislative policy, including changes in criminal statutes and an analysis of the expected impact of those changes on prison and jail populations and the average length of sentences imposed.
- The length of probation supervision terms imposed.
- The number of noncompliance, risk, and major risk sanctions imposed on the probation population.

Proposed MCL 769.34b

Neither bill could take effect unless both bills were enacted.

BACKGROUND:

The Michigan Sentencing Commission existed from 1994 to 2002. In addition, 2014 PA 465 created a nearly identical Criminal Justice Policy Commission that served from 2015 to 2019 but was disbanded when its enabling statute expired.

FISCAL IMPACT:

The bills would increase costs for the Legislative Council by an indeterminate amount and would have no fiscal impact on local units of government. Any increased costs would result from staff salaries, benefits, office space, office supplies, necessary equipment, and any other operating costs that might be incurred by the commission. According to the Legislative Council, in 2018 the annual cost for the operations of the Criminal Justice Policy Commission

was approximately \$150,000. In addition, a one-time appropriation of \$500,000 GF/GP was appropriated in 2016 PA 268 for a Criminal Justice Policy Commission study concerning the costs of redirecting 17-year-olds from the adult court and correctional systems into the family court and juvenile justice systems.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.