



Senate Fiscal Agency  
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## BILL ANALYSIS



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Senate Bill 72 (Substitute S-1 as passed by the Senate)  
Senate Bill 73 (Substitute S-1 as passed by the Senate)  
Senate Bill 220 (as passed by the Senate)  
Sponsor: Senator Steven Bieda  
Committee: Judiciary

Date Completed: 10-6-17

### **RATIONALE**

During the late 1960s and early '70s, many Americans were growing increasingly concerned about the apparent rise in illicit drug use. In response, many states, including Michigan, adopted tougher sentencing laws for manufacturing, delivering, and possessing illegal drugs. Michigan's "650-lifer" law imposed mandatory sentences of life imprisonment for manufacturing, delivering, or possessing 650 grams or more of a mixture containing a Schedule 1 or 2 narcotic or cocaine, and imposed other mandatory minimum sentences for lesser amounts of drugs. During the 1980s and '90s, however, many began advocating for less severe prison sentences for drug-related crimes, which led Michigan to modify the 650-lifer law to allow parole eligibility for some people who were sentenced to mandatory life without parole for drug offenses. Many now have suggested that second and subsequent offenders also should be granted the opportunity for parole.

### **CONTENT**

**Senate Bill 73 (S-1) would amend Article 7 (Controlled Substances) of the Public Health Code to delete a provision that requires imprisonment for life and prohibits eligibility for probation or parole for a repeat violation of specific controlled substance violations.**

**Senate Bill 72 (S-1) would amend the Corrections Code to provide that a prisoner who had been sentenced to life without parole for a violation listed in Senate Bill 73 (S-1) would be eligible for parole after serving five years of each sentence imposed for that violation. The bill also would require the parole board, before granting parole to such a prisoner, to notify the prosecuting attorney of the county in which the prisoner had been convicted.**

**Senate Bill 220 would amend the sentencing guidelines in the Code of Criminal Procedure to change a citation to the Michigan Compiled Laws section that Senate Bill 73 (S-1) would amend.**

Each bill would take effect 90 days after its enactment. Senate Bills 72 (S-1) and 73 (S-1) are tie-barred. Senate Bill 220 is tie-barred to Senate Bill 73.

Senate Bill 73 (S-1) is described in more detail below.

Under Section 7413(1) of the Public Health Code, a person who has previously been convicted of any of the following offenses and then is convicted of a second or subsequent violation of any of those offenses must be imprisoned for life and is not eligible for probation, suspension of sentence, or parole during the mandatory term:

- Manufacturing, creating, delivering, or possessing with intent to manufacture, create, or deliver 450 grams or more, but less than 1,000 grams, of a mixture containing a Schedule 1 or 2 controlled substance or cocaine.
- Manufacturing, creating, delivering, or possessing with intent to manufacture, create, or deliver 50 grams or more, but less than 450 grams, of a mixture containing a Schedule 1 or 2 controlled substance or cocaine.
- Knowingly and intentionally possessing 450 grams or more, but less than 1,000 grams, of a mixture containing a Schedule 1 or 2 controlled substance or cocaine.
- Knowingly and intentionally possessing 50 grams or more, but less than 450 grams, of a mixture containing a Schedule 1 or 2 controlled substance or cocaine.
- A conspiracy to commit any of the offenses described above.

The bill would delete that provision.

Currently, except as provided for the offenses listed above (and certain other controlled substance violations), an individual convicted of a second or subsequent offense under Article 7 may be imprisoned for a term of up to twice the term otherwise authorized or fined up to twice the amount otherwise authorized, or both. Under the bill, this also would apply to the offenses listed above.

MCL 791.234 (S.B. 72)  
333.7413 (S.B. 73)  
777.18 (S.B. 220)

## **BACKGROUND**

A mandatory minimum sentence is one that requires a judge to sentence a defendant who is convicted of certain crimes to a fixed minimum sentence. Michigan's 650-lifer law was enacted by Public Act 147 of 1978, which amended the former Controlled Substances Act of 1971 to impose a mandatory sentence of life imprisonment for manufacturing, delivering, possessing with intent to manufacture or deliver, or possessing 650 grams or more of a mixture containing a Schedule 1 or 2 narcotic or cocaine. (These provisions were incorporated into the Public Health Code when it was enacted later in 1978.)

Throughout the early-1990s, the constitutionality of the 650-lifer law was challenged in both Federal and State courts. In 1991, the United States Supreme Court held that although severe mandatory penalties might be cruel, they were not unusual, and therefore, did not constitute "cruel and unusual" punishment under the Eighth Amendment to the U.S. Constitution (*Harmelin v Michigan*, 501 US 957). The following year, however, the Michigan Supreme Court ruled that mandatory life imprisonment, without the possibility of parole, for possession of 30 pounds (approximately 13,600 grams) of cocaine constituted "cruel or unusual" punishment, which is prohibited under the Michigan Constitution (*People v Bullock*, 440 Mich 15). In a separate case during 1992, the Michigan Court of Appeals ruled that mandatory life imprisonment, without the possibility of parole, for delivering 650 or more grams of cocaine was unconstitutional under the same reasoning as the Michigan Supreme Court used in *Bullock* (*People v Fluker*, 197 Mich App 225). However, the Michigan Supreme Court later overruled the Court of Appeals and reinstated the mandatory life imprisonment sentence for the delivery of 650 or more grams of a mixture of containing heroin or cocaine, finding that the delivery offense was "significantly more serious than mere possession" (442 Mich 891).

In the 1990s, many people called for reforms to mandatory minimums and strict sentencing laws. In 1998, Public Acts 314 and 319 amended Michigan's 650-lifer law to provide for a life sentence or at least 20 years' imprisonment, rather than a mandatory life sentence, for a violation involving manufacturing, creating, delivering, or possessing with intent at least 650 grams of a Schedule 1 or 2 narcotic or cocaine, and provided parole eligibility for people previously sentenced to life without the possibility of parole for that offense. The 650-lifer law was again amended by Public Acts 665, 666, and 670 of 2002, which eliminated mandatory minimum sentences for

manufacturing, creating, delivering, possessing with intent, or possessing a Schedule 1 or 2 narcotic or cocaine.

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

Mandatory sentences of life imprisonment do not deter drug trafficking, drug abuse, or crime in general, and these strict sentencing laws have not been successful at imprisoning drug kingpins, as they were designed to do. Additionally, this type of sentencing for nonviolent drug crimes wastes resources on unnecessary incarceration instead of making the resources available for more effective crime deterrents, such as hiring additional law enforcement officers and prosecutors. Reforming Michigan's one-size-fits-all sentencing laws would restore proportionality of punishment, judicial discretion, and consistency in drug sentencing in the State.

In 2002, Michigan took a step toward making its drug sentencing laws more effective by eliminating mandatory life sentences for manufacturing, creating, delivering, possessing with intent, or possessing Schedule 1 or 2 narcotics and cocaine. However, Michigan law still subjects second and subsequent offenders to the same types of sentences as those that were previously repealed. The bills would allow these offenders the same opportunity for parole that has already been granted to other offenders. The actual decision to grant or deny parole would remain up to the parole board.

Legislative Analyst: Stephen Jackson

## **FISCAL IMPACT**

### **Senate Bills 72 (S-1) and 73 (S-1)**

The bills could have a positive fiscal impact on the State and would have no fiscal impact on local government. The proposed changes could reduce the length of sentences for prisoners convicted of the relevant offenses. For any reduction in time served, in the short term, the marginal savings to State government would be approximately \$3,764 per prisoner per year.

### **Senate Bill 220**

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Ryan Bergan

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.