

Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

SFA

BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

House Bills 4238 and 4239 (as passed by the House)
Sponsor: Representative Tony Stamas
House Committee: Criminal Law and Corrections
Senate Committee: Judiciary

Date Completed: 5-3-00

CONTENT

House Bills 4238 and 4239 would amend the Code of Criminal Procedure and the Department of Corrections (DOC) law, respectively, to do all of the following:

- Require that a judgment of sentence committing a person to the DOC's jurisdiction specify whether the sentence was to run consecutively to or concurrently with any other sentence.
- Allow the prosecuting attorney or defendant to file an objection to the judgment of sentence and require the court promptly to hold a hearing on the objection.
- Require the DOC to compute the length of a prisoner's sentence, for use by the classification committee, based upon a certified copy of the judgment of sentence.
- Provide that, if a sentence did not specify whether it was to be served consecutively or concurrently, the sentence would have to be served concurrently unless the conviction was for escape, felony-firearm, or a prisoner taking a hostage; and require the DOC to notify the prisoner within three days if the sentence had to be served consecutively.

The bills are tie-barred.

House Bill 4238

The bill would require that a judgment of sentence committing a person to the DOC's jurisdiction specify whether the sentence was to run consecutively to or concurrently with any other sentence the defendant was or would be serving, as provided by law. Upon sentencing a defendant, the court would have to provide a copy of the judgment of sentence to the prosecuting attorney, the defendant, and the defendant's counsel.

The prosecuting attorney or the defendant's counsel, or the defendant if he or she were not represented by counsel, could file an objection to the judgment of sentence within 14 days after receiving it. The court promptly would have to hold a hearing on any objection that was filed. The procedure for reviewing a judgment of sentence would be in addition to any other review procedure authorized by statute or court rule.

Currently, under the Code, if the sentencing judge changes a sentence, the clerk of the court must provide written notice of the change to the prosecuting attorney, who may oppose the change by filing an application, within five days after receiving the notice, to be heard in open court upon the merits of the change. The bill provides, instead, that if the court changed any sentence, the court clerk would have to give written notice of the change to the prosecuting attorney, the defendant, and the defendant's counsel. Any of those parties could file an objection to the change within 14 days after receiving the notice. The court promptly would have to hold a hearing on any objection filed.

The bill specifies that waiver of counsel at the trial, plea-taking, or prior sentencing hearing would not be a waiver of counsel for purposes of a hearing on an objection to a change in a sentence.

House Bill 4239

The DOC law requires that the assistant director of the Bureau of Correctional Facilities classify the prisoners in correctional facilities. The assistant director must appoint a classification committee from the staff of each facility; the committee performs services that the assistant director requires. Each classification committee must obtain and file complete information with regard to each prisoner when the prisoner is received in a correctional facility. The clerk of the court and all probation officers and other officials must send information in their possession or control to each classification committee when requested to do so. When all the existing available records have been assembled, each classification committee must determine whether any further investigation is necessary and, if so, make that investigation. The information also must be filed with the parole board so that it is readily available when the prisoner is considered for parole.

The bill would require that the length of a prisoner's sentence be computed by the record office of the correctional facility, for use by the classification committee, based on the certified copy of the judgment of sentence delivered with the prisoner. If the judgment of sentence did not specify whether the sentence had to run consecutively to or concurrently with any other sentence that the prisoner was serving, the sentence would have to be computed as if it were to be served concurrently unless the conviction was for any of the following:

- Breaking prison and escaping, breaking prison though not actually escaping, escaping from prison, leaving prison without being discharged by due process of law, attempting to break prison, or attempting to escape from prison (MCL 750.193).
- Breaking jail and escaping, breaking jail though not actually escaping, escaping from jail, leaving jail without being discharged by due process of law, or attempting to escape from jail by a person lawfully imprisoned in a jail for a felony (MCL 750.195(2)).
- Breaking jail or a place of confinement and escaping, breaking jail though not actually escaping, escaping from jail or a place of confinement, leaving the jail or place of confinement without being discharged by due process of law, breaking or escaping while in or being transferred to or from a courtroom or court house or other place where court is held, or attempting to break or escape from jail or a place of confinement by a person lawfully imprisoned in a jail or place of confinement awaiting examination, trial, arraignment, or sentence for a felony (MCL 750.197(2)).
- Carrying or possessing a firearm when committing or attempting to commit a felony (MCL 750.227b).
- A prisoner taking a person as a hostage (MCL 750.349a).

If the conviction were for one of those offenses, the sentence would have to be computed as if it were to be served consecutively. The DOC would have to notify the affected prisoner of that fact within three days after the sentence was computed.

MCL 769.27 et al. (H.B. 4238)
791.264 (H.B. 4239)

Legislative Analyst: P. Affholter

FISCAL IMPACT

House Bills 4238 and 4239 would have an indeterminate fiscal impact on State and local government.

According to the Department of Corrections, each year there are on average 200 letters sent to judges to determine whether a sentence should be served consecutively or concurrently. In calendar year 1999, there were 8,811 prisoners committed to State prisons with new sentences. Assuming that 1999 intake is typical and that the annual average is applied to 1999, then 2.3% of all intake requires letters to be sent. To the extent that most prisoners are received by the Department with a judgment of sentence indicating whether two sentences are to be served consecutively or concurrently, there would be no change in costs. Given that some offenders arrive at a correctional facility without the information needed to calculate the minimum release date and the Department must correspond with the sentencing court to obtain the information, costs for the Department would decrease.

Fiscal Analyst: K. Firestone

S9900\4238sa

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.