

Legislative Analysis



ELIMINATE MANDATORY MINIMUM SENTENCES

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5844 as reported from committee
Sponsor: Rep. Joseph N. Bellino, Jr.

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

House Bill 5854 (H-1) as reported
Sponsor: Rep. Tim Sneller

House Bill 5856 (H-1) as reported
Sponsor: Rep. Steven Johnson

House Bill 5855 as reported
Sponsor: Rep. Tommy Brann

House Bill 5857 as reported
Sponsor: Rep. Jack O'Malley

Committee: Judiciary
Complete to 9-23-20

SUMMARY:

In general, the bills would amend different acts to eliminate mandatory minimum terms of imprisonment for numerous misdemeanor offenses and also to allow suspending sentences for certain offenses relating to drunk or drugged operation of a vehicle or sportscraft if the defendant agrees to go, and successfully completes, a specialty court program. Removal of mandatory minimum sentences would mean that a court could impose any term of imprisonment, up to the statutory maximum specified for an offense, or none at all. Current maximum terms of imprisonment would not be affected, and criminal fines would remain the same.

House Bill 5844 would amend the Public Health Code to eliminate a mandatory minimum sentence of 60 days for using a title regulated by the code without a registration or under a suspended, revoked, or fraudulently obtained registration.

In addition, a mandatory minimum sentence of 90 days for a repeat offense of violating Article 15 (Occupations), or aiding and abetting another to violate Article 15, would be eliminated. This penalty would not apply to a violation of Article 15 for which another criminal penalty is specifically prescribed.

MCL 333.16296 and 333.16299

House Bill 5854 would amend the Michigan Vehicle Code to eliminate mandatory minimum sentences for misdemeanor offenses for a number of violations. In addition, for the affected provisions, the bill would eliminate language providing that at least 48 hours of the mandatory term of imprisonment must be served consecutively and that the mandatory term of imprisonment cannot be suspended. Mandatory terms of imprisonment required to be imposed for a second violation within seven years of a prior conviction that is misdemeanor offense or subsequent violations that are felony offenses (three or more convictions within any term of years) would not be affected. The bill would eliminate the mandatory minimum terms of imprisonment for the offenses described below.

Section 625: Penalties for drunk or drugged driving

- Operating a motor vehicle while impaired (OWI), visibly impaired, or under a controlled substance, or doing so and causing death or serious impairment, while a person less than 16 years of age is in the vehicle.

In addition, the bill would prohibit a court from suspending the mandatory term of imprisonment for a repeat offense that is a felony unless the defendant agrees to participate in a *specialty court program* and successfully completes the program.

Specialty court program would mean a program under any of the following:

- A drug treatment court, as defined in section 1060 of the Revised Judicature Act (RJA), in which the participant is an adult.
- A DWI/sobriety court, as defined in section 1084 of the RJA.
- A hybrid of the above two programs.
- A mental health court, as defined in section 1090 of the RJA.
- A veterans treatment court, as defined in section 1200 of the RJA.

In addition, the bill would prohibit a court from suspending a sentence unless the defendant agrees to participate in a specialty court program and successfully completes the program for the following violations:

- Operating a vehicle if less than 21 years of age having any bodily alcohol content while a person less than 16 years of age also occupies the vehicle (second violation within seven years or third or subsequent violation).
- Operating a vehicle with any amount of a Schedule 1 controlled substance or cocaine or alcohol-related offenses (second violation within seven years or third or subsequent violation).
- Operating while visibly impaired (second violation within seven years or third or subsequent violation).

Section 904: Vehicle group designation

Operating a commercial motor vehicle on a suspended or revoked vehicle group designation, or having never applied for a designation, or when the application had been denied.

Section 904a: Unlicensed driver

Operating a motor vehicle unable to show issuance of a driver license by any state or foreign country within the last three years before operating the vehicle (second offense). The bill would also specify that the second conviction would be a misdemeanor.

Section 905: Driving on suspended or revoked license

Operating a vehicle while driver's or chauffeur's license or registration card is suspended or revoked pending proof of financial responsibility or knowingly permitting another to operate the vehicle except as permitted. The bill would specify that a violation would be a misdemeanor offense. (MCL 257.905)

Repealer:

The bill would repeal the section 905 of the code added by 1980 PA 518 (MCL 257.905[1]). (The Vehicle Code has two sections 905, which are virtually identical.)

MCL 257.625 et al.

House Bill 5855 would amend the Revised School Code. The bill would eliminate the mandatory minimum sentence for a parent or other person in parental relation who fails to comply with Part 24 (Compulsory School Attendance). The bill would also eliminate the mandatory minimum jail sentences for the second or subsequent offense of using or attempting to use a teaching certificate, school administrator's certificate, or state board approval knowing it is surrendered, suspended, revoked, nullified, fraudulently obtained, altered, or forged; or using or attempting to use a teaching certificate that was issued to another person. In addition, the mandatory minimum sentence would be eliminated for the second or subsequent offense of using or attempting to use a college or university transcript or a certificate or other credential knowing that is fraudulently obtained, altered, or forged, or using or attempting to use a transcript or credential knowing that it is another person's.

MCL 380.1599 and 380.1809

House Bill 5856 would amend the Natural Resources and Environmental Protection Act (NREPA) to eliminate mandatory minimum sentences for various misdemeanor hunting violations. Criminal fines and maximum terms of imprisonment, and certain mandatory minimum terms of imprisonment (for misdemeanor violations pertaining to the operation of motorboats, ORVs, and snowmobiles while under the influence of alcohol, a controlled substance, or a combination of alcohol and a controlled substance and for felony convictions) would not be revised. The bill would eliminate the mandatory minimum sentences for the offenses described below.

Section 40118: Violations regarding the possession or taking of game

- Possession or taking of deer, bear, wild turkey, or wolf.
- Possession or taking of elk or moose.
- Failure to stop vehicle from which lights are used to locate game upon request of uniformed peace officer or marked vehicle with flashing lights or siren.
- Two prior convictions of Part 401 (Wildlife Conservation) within five years preceding current conviction.

Section 41105: Part 411

Taking or killing any fish, game, fur-bearing animal, or game bird contrary to an order issued or rule promulgated under Part 411 (Protection and Preservation of Fish, Game, and Birds) or a violation of Part 411.

Section 47327: Part 473 Commercial Fishing

Violation charged as a second or subsequent offense in the complaint. In addition, the bill would delete a provision that currently requires, if a fine with costs is imposed, the court to sentence the offender to be confined in the county jail until the fine and costs are paid, not to exceed the maximum penalty for the offense.

Section 48738: Part 487 Sport Fishing

Taking or possessing sturgeon in violation of Part 487.

Motorboats, ORVs, and Snowmobiles: Drunk or drugged operation

The bill would amend provisions regarding violations pertaining to the operation of motorboats, ORVs, and snowmobiles while under the influence of alcohol, a controlled

substance, or a combination of alcohol and a controlled substance. The mandatory minimum sentences for repeat violations that are misdemeanor or felony offenses would be retained. However, NREPA currently prohibits a court from suspending sentences of imprisonment for various offenses, primarily for the repeat offenses for which a minimum term of imprisonment is required. The bill would prohibit suspended sentences unless the defendant agrees to participate in a specialty court program. The bill would add a definition of *specialty court program* to each of the parts pertaining to motorboats, ORVs, and snowmobiles that is identical to that term as defined in House Bill 5854. The applicable sections include the following:

Sections 80104, 80177, and 80178b: Part 801 Marine Safety

- Conviction of operating a motorboat while under the influence of alcohol or any amount of a Schedule 1 controlled substance or cocaine occurring within seven years of a prior conviction. Operating a motorboat while under the influence of alcohol or any amount of a Schedule 1 controlled substance or cocaine with a person less than 16 on board.
- A person under 21 operating a motorboat with any bodily alcohol content with a person less than 16 on board.

Section 81134: Part 811 ORVs

- Operating an ORV under the influence of alcohol, a controlled substance, or combination of the two or with a 0.08 BAC or more, or doing so with a person less than 16 years occupying the ORV.
- Person less than 21 years of age operating ORV with another person who is less than 16 occupying the ORV while under the influence of alcohol, a controlled substance, or a combination (for subsequent violations).

Sections 82128, 82129b: Part 821 Snowmobiles

- Operating a snowmobile under the influence of alcohol, a controlled substance, or combination of the two or with a 0.08 BAC or more within seven years of a prior conviction.
- Operating a snowmobile while under the influence with a person less than 16 years of age occupying the snowmobile or person under 21 years of age operating a snowmobile while under the influence with a person under 16 occupying the snowmobile (second offense within seven years or two or more prior convictions).

MCL 324.40118 et al.

House Bill 5857 would amend the Railroad Code to eliminate the mandatory minimum sentence for the following crimes:

- Throwing a stone, brick, or other missile at a train or track vehicle.
- Destroying, removing, changing, extinguishing, or tampering with any light or banner attached to or connected with any switch or derailing device maintained by a railroad company (unless authorized to do so by a railroad company).

MCL 462.257 and 462.267

FISCAL IMPACT:

House Bill 5844 would eliminate mandatory jail minimums, included in the Public Health Code, for second offense of unauthorized use of a health professional title and for second offense of health occupation rule violations. Eliminating required minimum jail times would give judges more discretion to sentence offenders to any amount of jail time that is less than the maximum, or to sentence offenders to no jail time at all. Judges would have discretion to impose fines, community service, or other alternative sanctions instead. This would free up jail resources. Depending on the number of offenders that would receive less jail time or no jail time at all, and an alternative sentence instead, the bill would result in a decrease in costs for local units of government. Costs of local incarceration in county jails vary by jurisdiction, so the savings to local units is indeterminate. The fiscal impact on local court systems would depend on how provisions of the bill affected caseloads and related administrative costs. Also, if fines were imposed as an alternative to jail time, there would be an increase in penal fine revenue for public and county law libraries, which are the constitutionally designated recipients of those revenues.

House Bill 5855 would eliminate mandatory jail minimums, included in The Revised School Code, for the following: truancy; second offenses of invalid use of teaching certificate; second offense of invalid use of school administrator certificate; second offense of invalid use of state school board approval; and second offense of invalid use of college credentials. Eliminating required minimum jail times would give judges more discretion to sentence offenders to any amount of jail time that is less than the maximum, or to sentence offenders to no jail time at all. Judges would have discretion to impose fines, community service, or other alternative sanctions instead. This would free up jail resources. Depending on the number of offenders that would receive less jail time or no jail time at all, and an alternative sentence instead, the bill would result in a decrease in costs for local units of government. Costs of local incarceration in county jails vary by jurisdiction, so the savings to local units is indeterminate. The fiscal impact on local court systems would depend on how provisions of the bill affected caseloads and related administrative costs. Also, if fines were imposed as an alternative to jail time, there would be an increase in penal fine revenue for public and county law libraries, which are the constitutionally designated recipients of those revenues.

House Bill 5857 would eliminate mandatory jail minimums, included in the Railroad Code of 1993, for throwing projectile at a train and for removing or tampering with railroad switches or derauling devices. Eliminating required minimum jail times would give judges more discretion to sentence offenders to any amount of jail time that is less than the maximum, or to sentence offenders to no jail time at all. Judges would have discretion to impose fines, community service, or other alternative sanctions instead. This would free up jail resources. Depending on the number of offenders that would receive less jail time or no jail time at all, and an alternative sentence instead, the bill would result in a decrease in costs for local units of government. Costs of local incarceration in county jails vary by jurisdiction, so the savings to local units is indeterminate. The fiscal impact on local court systems would depend on how provisions of the bill affected caseloads and related administrative costs. Also, if fines were imposed as an alternative to jail time, there would be an increase in penal fine revenue for public and county law libraries, which are the constitutionally designated recipients of those revenues.

A fiscal analysis of House Bills 5854 and 5856 is in progress.

POSITIONS:

A representative of Americans for Prosperity testified in support of the bills. (9-9-20)

The following entities indicated support for the bills:

- State Court Administrator (9-9-20)
- Michigan Association of Chiefs of Police (9-22-20)
- Safe & Just Michigan (9-9-20)
- National Association of Social Workers (9-9-20)
- Prison Fellowship (9-9-20)
- Michigan Sheriffs' Association (9-9-20)
- Prosecuting Attorneys Association of Michigan (9-9-20)
- City of Grand Rapids (9-9-20)
- ACLU of Michigan (9-9-20)
- Mackinac Center for Public Policy (9-9-20)
- Grand Rapids Chamber (9-9-20)
- Michigan Catholic Conference (9-9-20)
- Michigan League for Public Policy (9-9-20)
- Michigan Association of Counties (9-9-20)
- Criminal Defense Attorneys of Michigan (9-16-20)

Wayne State University indicated support for HBs 5844, 5854, 5855, and 5856. (9-22-20)

The Michigan Association of Treatment Court Professionals indicated support for HB 5854. (9-9-20)

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Robin Risko

■ 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.