



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



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

House Bill 4243 (as passed by the House)
House Bill 4244 (as passed by the House)
House Bill 4245 (as passed by the House)
Sponsor: Representative Julie Alexander (H.B. 4243)
Representative Sarah Anthony (H.B. 4244)
Representative David LaGrand (H.B. 4245)
House Committee: Rules and Competitiveness
Senate Committee: Judiciary and Public Safety

Date Completed: 4-13-22

CONTENT

House Bill 4243 would amend the Public Health Code to do the following:

- **Revise the terms of imprisonment for felony violations involving the manufacture, creation, delivery, or possession with intent to manufacture, create, or deliver certain Schedule 1 or 2 controlled substances.**
- **Prescribe felony penalties for violations involving the manufacture, creation, delivery, or possession with intent to manufacture, create, or deliver heroin, fentanyl, carfentanil, and certain opiates.**

House Bill 4244 would amend the sentencing guidelines in the Code of Criminal Procedure to revise the statutory maximum sentences for the delivery or manufacture of certain Schedule 1 or 2 controlled substances and to include the new felonies prescribed in House Bill 4243.

House Bill 4245 would amend Chapter 11 (Probation) of the Code of Criminal Procedure to allow a court to order probation for certain offenses described in House Bill 4243.

House Bills 4243 and 4244 are tie-barred. House Bill 4245 is tie-barred to House Bill 4243. Each bill would take effect 90 days after its enactment.

House Bill 4243

The Public Health Code prohibits a person from manufacturing, creating, delivering, or possessing with intent to manufacture, create, or deliver certain controlled substances. Penalties for a violation vary, depending on the substance and/or the amount of the substance.

Under Section 7401(2)(a), a violation involving a controlled substance classified in Schedule 1 or 2 that is a narcotic drug or a drug described in Section 7215(a)(iv) (which pertains to coca leaves and any salt, compound, derivative, or preparation of coca leaves that is chemically equivalent to or identical with any of these substances, except that the substances do not include decocainized coca leaves or extraction of coca leaves that extractions do not

contain cocaine or ecgogine) is a felony punishable as follows, based on the amount of the drug involved:

- 1,000 or more grams, imprisonment for life or a maximum fine of \$1.0 million, or both.
- 450 or more but less than 1,000 grams, up to 30 years' imprisonment or a maximum fine of \$500,000, or both.
- 50 or more but less than 450 grams, up to 20 years' imprisonment or a maximum fine of \$250,000, or both.
- Less than 50 grams, up to 20 years' imprisonment or a maximum fine of \$25,000, or both.

(Section 7107 defines "narcotic drug" as one or more of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

- Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.
- Any salt, compound, isomer, derivative, or preparation of it which is chemically equivalent or identical with any of the substances referred to above, but not including the isoquinoline alkaloids of opium.

"Opiate" means a substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under Section 7212, the dextrorotatory isomer of 3-methoxy-n-methyl-morphinan and its salts (dextromethorphan). The term also does include its racemic and levorotatory forms.)

The bill would modify the penalties as follows:

- 1,000 or more grams, up to 30 years' imprisonment or a maximum fine of \$1.0 million, or both.
- 450 or more but less than 1,000 grams, up to 20 years' imprisonment or a maximum fine of \$500,000, or both.
- 50 or more but less than 450 grams, up to 20 years' imprisonment or a maximum fine of \$250,000, or both.
- Less than 50 grams, up to 10 years' imprisonment or a maximum fine of \$25,000, or both.

The Code also specifies that a violation involving any other controlled substance classified in Schedules 1, 2, or 3, except marihuana or a substance listed in Section 7212(1)(d) (which applies to synthetic equivalents of the substances contained in the plant, or in the resinous extractives of cannabis and synthetic substances, derivatives, and their isomers with similar chemical structure or pharmacological activity, or both) is a felony punishable by up to seven years' imprisonment or a maximum fine of \$10,000, or both.

Under the bill, the penalties for the controlled substances violations described above would not apply to the Schedule 1 or 2 controlled substances described below.

A violation involving heroin, fentanyl, or carfentanil, any derivative of heroin, fentanyl, or carfentanil, a mixture of heroin, fentanyl, or carfentanil, or a mixture of any derivative of heroin, fentanyl, or carfentanil would be a felony punishable as follows, based on the amount of the drug involved:

- 1,000 or more grams, imprisonment for life or a maximum fine of \$1.0 million, or both.
- 450 or more but less than 1,000 grams, up to 30 years' imprisonment or a maximum fine of \$500,000, or both.

- 50 or more but less than 450 grams, up to 20 years' imprisonment or a maximum fine of \$250,000, or both.
- Less than 50 grams, up to 20 years' imprisonment or a maximum fine of \$25,000, or both.

A violation involving a Schedule 1 or 2 opiate, or derivative of an opiate, other than one involving heroin, fentanyl, or carfentanil as described above, would be a felony punishable as follows, based on the amount of drug involved:

- 1,000 or more grams, imprisonment for life or a maximum fine of \$1.0 million, or both.
- 450 or more but less than 1,000 grams, up to 30 years' imprisonment or a maximum fine of \$500,000, or both.
- 50 or more but less than 450 grams, up to 20 years' imprisonment or a maximum fine of \$250,000, or both.
- Less than 50 grams, up to 10 years' imprisonment or a maximum fine of \$25,000, or both.

A term of imprisonment for a violation under the bill could be imposed to run consecutively with any term of imprisonment imposed for the commission of another felony.

House Bill 4244

Under the Code of Criminal Procedure, violations involving a controlled substance classified in Schedule 1 or 2 that is a narcotic drug or a drug described in Section 7215(a)(iv) are listed in the sentencing guidelines as shown in Table 1.

Table 1

| Offense | Felony Class & Category | Statutory Max. Sentence |
|---|------------------------------------|--------------------------------|
| Delivery or manufacture of 1,000 or more grams. | A - controlled substance | Life |
| Delivery or manufacture of 450 or more but less than 1,000 grams. | A - controlled substance | 30 years |
| Delivery or manufacture of 50 or more but less than 450 grams. | B - controlled substance | 20 years |
| Delivery or manufacture of less than 50 grams. | D - controlled substance | 20 years |

Instead, under the bill, the specified violations involving a controlled substance classified in Schedule 1 or 2 that is a narcotic drug or a drug described in Section 7215(a)(iv) would be listed in the sentencing guidelines as shown in Table 2.

Table 2

| Offense | Felony Class & Category | Statutory Max. Sentence |
|---|------------------------------------|--------------------------------|
| Delivery or manufacture of 1,000 or more grams. | B - controlled substance | 30 years |
| Delivery or manufacture of 450 or more but less than 1,000 grams. | B - controlled substance | 20 years |
| Delivery or manufacture of 50 or more but less than 450 grams. | C - controlled substance | 20 years |
| Delivery or manufacture of less than 50 grams. | D - controlled substance | 10 years |

Violations involving the delivery or manufacture of heroin, fentanyl, carfentanil or mixture of those would be listed in the sentencing guidelines as shown in Table 3.

Table 3

| Offense | Felony Class & Category | Statutory Max. Sentence |
|---|------------------------------------|--------------------------------|
| Delivery or manufacture of 1,000 or more grams. | A - controlled substance | Life |
| Delivery or manufacture of 450 or more but less than 1,000 grams. | A - controlled substance | 30 years |
| Delivery or manufacture of 50 or more but less than 450 grams. | A - controlled substance | 20 years |
| Delivery or manufacture of less than 50 grams. | B - controlled substance | 20 years |

Violations involving the delivery or manufacture of certain opiates would be listed in the sentencing guidelines as shown in Table 4.

Table 4

| Offense | Felony Class & Category | Statutory Max. Sentence |
|---|------------------------------------|--------------------------------|
| Delivery or manufacture of 1,000 or more grams. | A - controlled substance | Life |
| Delivery or manufacture of 450 or more but less than 1,000 grams. | A - controlled substance | 30 years |
| Delivery or manufacture of 50 or more but less than 450 grams. | B - controlled substance | 20 years |
| Delivery or manufacture of less than 50 grams. | D - controlled substance | 10 years |

House Bill 4245

The Code specifies that in all prosecutions for felonies, misdemeanors, or ordinance violations other than murder, treason, first- or third-degree criminal sexual conduct, armed robbery, or major controlled substance offenses, if the defendant has been found guilty upon verdict or plea and the court determines that the defendant is not likely again to engage in an offensive or criminal course of conduct and that the public good does not require that the defendant suffer the penalty imposed by law, the court may place the defendant on probation under the charge and supervision of a probation officer. (Section 2 of the Code of Criminal Procedure defines "major controlled substance offense" as either or both of the following:

- A violation of Section 7401(2)(a) of the Public Health Code.
- A violation of Section 7403(2)(a)(i) to (iv) of the Public Health Code (i.e., possession of a Schedule 1 or Schedule 2 narcotic drug).
- Conspiracy to commit an offense listed above.)

Under the bill, a defendant could be sentenced to probation for manufacturing, creating, delivering, or possessing a Schedule 1 or 2 controlled substance that was narcotic drug or an opiate other than heroin, fentanyl, or carfentanil in an amount less than 50 grams.

MCL 333.7401 (H.B. 4243)
 777.13m (H.B. 4244)
 771.1 (H.B. 4245)

Legislative Analyst: Stephen P. Jackson

FISCAL IMPACT

House Bill 4243

The bill could have an indeterminate fiscal impact on State and local government. The bill could result in the reduction of maximum sentences due to a change in the classification and scheduling of narcotic drugs and opiates. The changes in classification and scheduling of these drugs could result in a savings to the State as the amount of time offenders serve in a State correctional facility could be decreased under the bill's provisions. The latest figures for the Department of Corrections (MDOC) estimate the average cost to house a prisoner in a State facility is \$42,500, which includes administrative and operational costs for the Department. The average State costs for parole and probation supervision averaged roughly \$4,400 per supervised offender. These costs are paid with State General Fund/General Purpose (GF/GP) revenue. Additionally, local governments could be affected as a result of reduced court caseloads and the associated administrative costs. Any change in penal fine revenue would affect the funding for local libraries, the constitutionally designated recipients of that revenue. The potential costs savings to the State and local units of government are indeterminate and would depend on the actual number of cases affected by the proposed changes.

House Bill 4244

The bill could have an indeterminate fiscal impact on local governments and the State, in light of the Michigan Supreme Court's July 2015 opinion in *People v. Lockridge*, in which the Court ruled that the sentencing guidelines are advisory for all cases. This means that the addition to the guidelines under the bill would not be compulsory for the sentencing judge. As penalties for felony convictions vary, the fiscal impact of any given felony conviction depends on judicial decisions.

The bill could increase costs for the State if the changes resulted in more people being sentenced to a State facility instead of local jail or other alternative placements and, conversely, costs would be lower for local units of government if they did not have to house those prisoners. The latest figures for the MDOC estimate the average cost to house a prisoner in a State facility is \$42,500, which includes administrative and operational costs for the Department. The estimated savings for a local government for not having to house a prisoner is indeterminate and would vary by jurisdiction.

House Bill 4245

The bill could have an indeterminate fiscal impact on State and local governments, as the bill specifies that certain offenses that currently are ineligible for probation would become eligible. The result would be fewer prisoners in State correctional facilities and/or local jails, which would reduce the costs for the State or local governments. The potential savings for the State would be based on the latest figures for the MDOC, which estimates the average cost to house a prisoner in a State facility at \$42,500 per year, which includes administrative and operational costs for the Department. Probation supervision costs could increase as more people were sentenced to probation instead, with the average State costs for parole and probation supervision averaging roughly \$4,400 per supervised offender. These costs are paid with State GF/GP revenue. Additionally, local governments could be affected because of reduced jail housing costs. The estimated savings would vary by jurisdiction. Any change in penal fine revenue would affect the funding for local libraries, the constitutionally designated

recipients of that revenue. The potential costs savings to the State and local units of government are indeterminate and would depend on the actual number of cases affected by the proposed changes.

Fiscal Analyst: Joe Carrasco, Jr.

SAS\S2122\s4243sa

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.