

FAMM's guide to the Michigan sentencing reforms

Former Governor John Engler signed the reforms of mandatory minimums, Public Acts 665, 666 and 670 of 2002, into law on Christmas Day, 2002. The new laws take effect March 1, 2003.

For individuals sentenced after March 1, 2003, these new laws will:

1. Eliminate mandatory minimum sentences for controlled substance violations and allow judges to consider individual factors in each case such as prior offenses or use of a weapon.
2. Revise the amount of drugs involved in those violations and establish a new schedule of sentencing guidelines.
3. Eliminate the sentence of lifetime probation.
4. Change the mandatory consecutive sentencing for drug offenses to permissive consecutive sentencing.

For those individuals sentenced before March 1, 2003:

1. Those persons currently serving mandatory drug sentences, including mandatory consecutive sentences, under the applicable statutes (MCL 333.7401 (2)(A) ii, iii, iv and MCL 333.7401 (2)(A) ii, iii, iv), will be eligible for earlier parole consideration.
2. The new laws replace lifetime probation with a maximum five-year probation. Beginning March 1, probation agents will be able to recommend to the judge that a probationer be discharged if he or she has served five years. Individuals can also apply to the sentencing court for discharge after serving five years.

Reforms to save taxpayers millions

The Detroit News reports that up to 700 individuals may be eligible for early parole consideration by September 2003, with more to follow (see below for details of the parole eligibility statute.)

Currently 6,864 people are sentenced to lifetime probation and nearly half, 3,281, have been under supervision for more than five years and will be potentially eligible for early release. These reforms are expected to save the state of Michigan at least \$41 million in 2003. Many more millions will be saved as drug offenders are sentenced under guidelines that allow judges to impose sentences that take into account all the facts in a case.

New penalties effective March 1, 2003:

Under Public Acts 665 and 666, the new major controlled substance offenses and maximum penalties are:

- ▶ 1000 grams or more punishable by imprisonment for life or any term of years or a fine of not more than \$1 million, or both; 450 grams or more, but less than 1000 grams, punishable by imprisonment for not more than 30 years or a fine of not more than \$500,000, or both;
- ▶ 50 grams or more, but less than 450 grams, punishable by imprisonment for not more than 20 years or a fine of not more than \$250,000, or both; Less than 50 grams punishable by imprisonment for not more than 20 years or a fine of not more than \$25,000, or both;
- ▶ 25 grams or more but less than 50 grams punishable by imprisonment for not more than four years, or a fine of not more than \$25,000, or both.

Sentencing guidelines increase judges' discretion

Minimum sentences for each offense are now imposed by judges using the new sentencing guidelines. Judges select the minimum sentence within a range that is based on a grid that reflects the seriousness of the crime and by points assigned to a number of factors for each

offense. Drug weight is an important factor in sentencing, but not the only factor used to determine a sentence.

For example, individuals with no prior criminal history would fall in a lower sentencing range than an individual with an extensive criminal history, even if they were convicted of possessing an identical amount of drugs.

Judges can also depart below or above the sentencing guidelines for "substantial and compelling reasons." Under the new guidelines, a first-time offender with no criminal history could get a minimum sentence far below the old mandatory minimums. However, someone with an extensive criminal history and additional points for factors such as using a weapon in the offense, could get a minimum sentence even higher than the old mandatory minimum sentence for a similar offense.

Important note: Please consult the statutory language for the actual guideline grids and points for each offense.

Parole eligibility details

Public Act 670 only affects parole eligibility. It does not change the minimum sentence ordered by the Court. According to the Michigan Department of Corrections, prisoners affected by this amendment will continue to have their minimum release dates calculated as set forth in PD 03.01.100 "Good Time Credits" and PD 03.01.101 "Disciplinary Credits/Drug Law Credits," as applicable, based on the minimum sentence imposed by the Court. The Michigan Department of Corrections is currently determining which prisoners are eligible for an earlier parole date and which will be released on March 1, 2003. The parole board, as always, determines the date any individual prisoner is paroled. Prisoners are not required to seek resentencing under this statute. The parole eligibility date for a drug offense may be affected by other sentences for which the prisoner is serving.

Statutory language for parole eligibility:

► From PA 670 (also House Bill 6510 of 2002):

(11) An individual convicted of violating or conspiring to violate section 7401(2)(a)(ii) or 7403(2)(a)(ii) of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403, before the effective date of the amendatory act that added this subsection is eligible for parole after serving the minimum of each sentence imposed for that violation or 10 years of each sentence imposed for that violation, whichever is less.

(12) An individual convicted of violating or conspiring to violate section 7401(2)(a)(iii) or 7403(2)(a)(iii) of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403, before the effective date of the amendatory act that added this subsection is eligible for parole after serving the minimum of each sentence imposed for that violation or 5 years of each sentence imposed for that violation, whichever is less.

(13) An individual convicted of violating or conspiring to violate section 7401(2)(a)(iv) or 7403(2)(a)(iv) of the public health code, 1978 PA 368, MCL 333.7401 and 333.7403, before the effective date of the amendatory act that added this subsection who is sentenced to a term of imprisonment that is consecutive to a term of imprisonment imposed for any other violation of section 7401(2)(a)(i) to (iv) or section 7403(2)(a)(i) to (iv) is eligible for parole after serving 1/2 of the minimum sentence imposed for each violation of section 7401(2)(a)(iv) or 7403(2)(a)(iv).

This subsection does not apply if the sentence was imposed for a conviction for a new offense committed while the individual is on probation or parole.

(14) The parole board shall provide notice to the prosecuting attorney of the county in which the individual was convicted before granting parole to the individual under subsection (11), (12), or (13).

Statutory language for discharge from lifetime probation:

▶ PA 665 (also House Bill 5394 of 2002)

(3) If an individual was sentenced to lifetime probation under subsection (2)(a)(iv) before the effective date of the amendatory act that added this subsection and the individual has served 5 or more years of that probationary period, the probation officer for that individual may recommend to the court that the court discharge the individual from probation. If an individual's probation officer does not recommend discharge as provided in this subsection, with notice to the prosecutor, the individual may petition the court seeking resentencing under the court rules. The court may discharge an individual from probation as provided in this subsection. An individual may file more than 1 motion seeking resentencing under this subsection.

▶ For the full bill language, go to www.michiganlegislature.org, go to "Bills," and select the 2001-2002 legislative session. Put in the number of the bill you wish to review: House bill 5394 eliminated the mandatory minimums and lifetime probation; 5395 established the new sentencing guidelines; 6510 established early parole eligibility.

FAMM to address remaining "650 Lifers," other issues

Some individuals received very long minimum sentences between 1998 and 2002 for offenses committed under MCL 333.7401 (2)(A) i and are not eligible for parole as early as "650 Lifers" sentenced prior to 1998. In addition, the 1998 statute contained a number of parole barriers that need to be reviewed and updated. In the next legislative session, FAMM will address the issue of parole eligibility for the remaining "650 Lifers," as well as a number of other important concerns.

For more information on Michigan's sentencing reforms, case examples and contacts, please call FAMM at (202) 822-6700.