

# **The Problems of Mandatory Sentencing:**

The troubling legacy of  
Michigan's felony firearm law

**Safe & Just**  
Michigan

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An Issue Brief by  
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# Executive Summary

Michigan's felony firearm law, which imposes a mandatory prison sentence for possession of a gun during commission of a felony, is a major driver of Michigan's prison population and the racial disparities within it. Ten thousand people in Michigan prisons had at least one sentence for a felony firearm offense as of 2018, and the vast majority of those convicted of felony firearm are Black men.

To quantify the impact and cost of the felony firearm law, which was passed in 1976, Safe & Just Michigan obtained a dataset from the Michigan Department of Corrections (MDOC) in October 2018 through the Freedom of Information Act (FOIA) that included all data in the department's Offender Tracking Information System (OTIS). OTIS contains detailed information on all people in MDOC custody or under MDOC supervision, such as active and inactive sentences and parole eligibility dates.

From the OTIS data, we created a dataset that included only people who were incarcerated in the state on the date that the data was collected (October 2018), and isolated incarcerated persons who had felony firearm sentences. We then examined several key characteristics within this group, such as age, race, sex, the county where they were convicted, and any other sentences they may have been serving time for.

Findings reveal several important things in relation to an ongoing discussion about reforming the felony firearm statute:

- **Black males are overwhelmingly the people sentenced for felony firearm offenses.**
- **Courts in Wayne County convicted more than half the people incarcerated for felony firearm offenses.**
- **Nearly 400 people incarcerated for a felony firearm conviction in Michigan in October 2018 were in prison *only* on a felony firearm charge.**
- **More than three-quarters of respondents polled support the repeal of mandatory sentencing, according to research conducted for Safe & Just Michigan.**



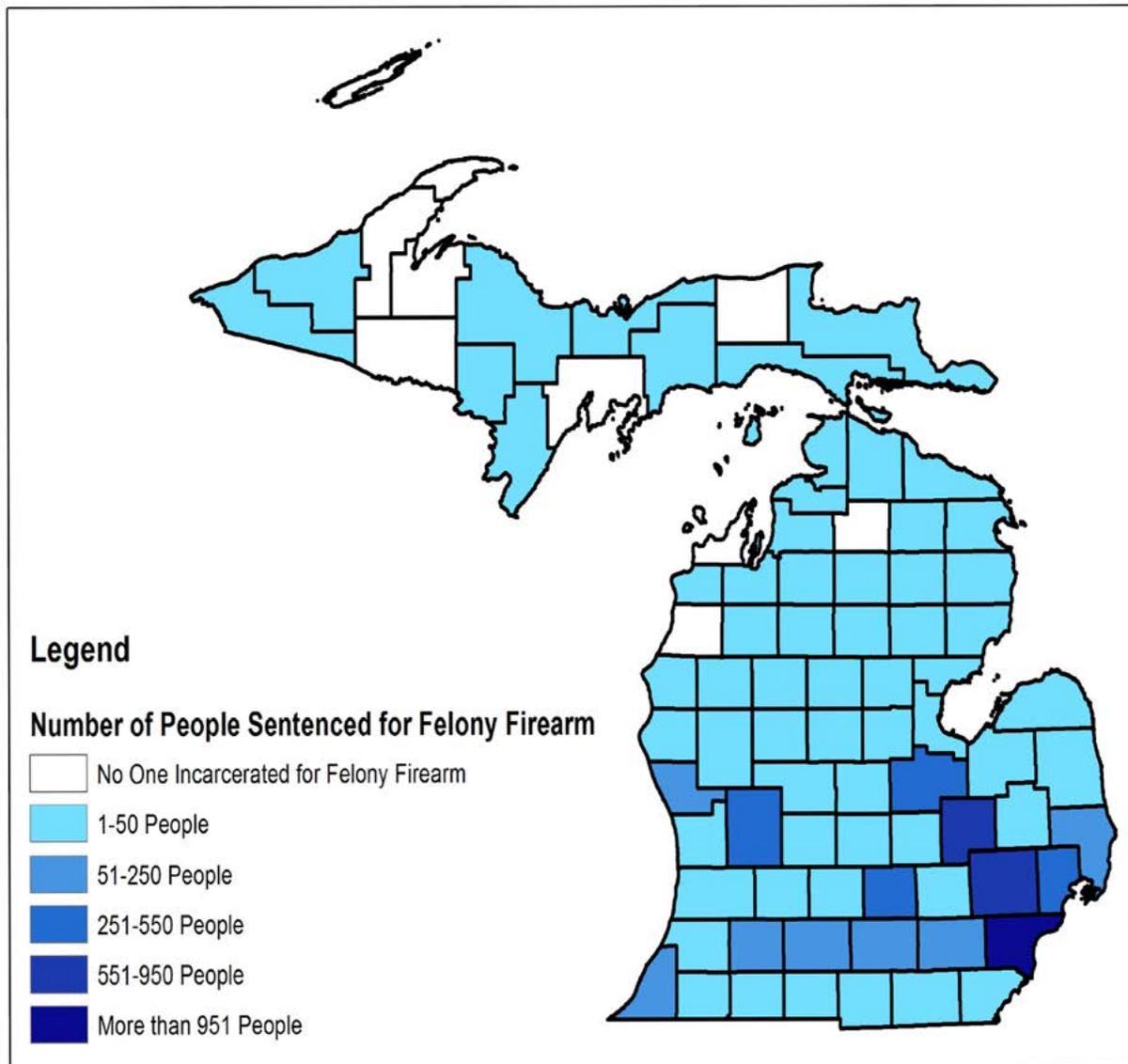
*In 2018, Michigan incarcerated more than 10,000 people on felony firearm charges. The law isn't used uniformly across the state. Some counties apply felony firearm charges far more frequently than others. Wayne County accounts for more than half of all felony firearm sentences, and Black men are disproportionately affected.*

Recently introduced House Bills 5993-94 are a step in the right direction to end the issues caused by the felony firearm statute. The proposed changes to the statute could save millions of dollars annually, according to estimates. However, these bills won't go far enough toward reversing the explosive growth Michigan has seen in prison growth and corrections spending. We need further changes than the ones proposed in these bills.

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# The unequal application of Michigan's felony firearm law



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*People incarcerated for felony firearm by county sentenced, October 2018. Michigan's county prosecutors decide when to add felony firearm charges to someone's case. As a result, the application of felony firearm charges differs widely from one county to another, resulting in some counties sending hundreds of people to prison on felony firearm charges while other counties send none at all. These differences do not necessarily match the differences in size of county populations. See "County Differences in Use," Page 11, for detailed information.*

# An Introduction to the Felony Firearm Law

In Michigan, MCL 750.227b makes it a crime for a person to possess a firearm during the commission of a felony. This crime is commonly referred to as “felony firearm.” **Michigan’s felony firearm law is one of few offenses in our state carrying a “mandatory sentence”** — that is, one that eliminates a judge’s discretion to tailor a sentence to the offense and the person convicted of it according to legislatively enacted sentencing guidelines.<sup>1</sup> The felony firearm law imposes a mandatory sentence of two years for possessing a firearm when committing or attempting to commit a felony for a first offense, and five- or 10-years for subsequent offenses. The sentence must be served consecutive to — and before — time served for any other sentence can begin. Usually, concurrent sentences — multiple sentences served at the same time — are the norm.

The mandatory sentence for felony firearm gives prosecutors a tremendous amount of power:

- *First*, the law itself is very broad in application. **It can be charged in connection with any felony if the person has a gun in their possession,**<sup>2</sup> even if the gun is legally owned or plays no part in the offense.
- *Second*, **the threat of a felony firearm charge gives prosecutors great leverage in plea bargaining**, which is how more than 95 percent of criminal cases are resolved. That is because a felony firearm conviction automatically results in prison time even if the judge gives a person probation for the underlying offense.



*Felony firearm, enacted in 1976, resulted in thousands of lives incarcerated at the expense of hundreds of millions of dollars. This statute has disproportionately affected Black men and Wayne County families.*

For example, a person convicted of a felony drug possession and a felony firearm charge at the same time would be required to serve two years in prison for the felony firearm charge — even if the judge sentenced them to probation for drug possession. That would not necessarily be the case if the person had a knife instead a firearm during the commission of the offense, and it does not matter whether or not the person used the gun to commit the underlying felony.

<sup>1</sup> *Mandatory minimum sentences, which prescribe a minimum but give the judge discretion as to the maximum, are more frequently discussed; however, here we use the term “mandatory sentence” because the judge is required to impose the specific term of years prescribed by the statute.*

<sup>2</sup> *The felony firearm statute bars few weapon offenses from being the underlying felony for which felony firearm can be charged. The exclusions include MCL 750.223 (unlawful selling of firearms and ammunition), MCL 750.227 (carrying a concealed weapon), MCL 750.227a (unlawful possession of a pistol by a licensee), or MCL 750.230 (removal of a firearms serial number and identification).*

# Purpose of the Felony Firearm Statute: Deterrence

Felony firearm was enacted in 1976 in response to high rates of gun crimes in Detroit. The rationale for the felony firearm law was that the two-year mandatory prison sentence would deter people from committing crimes using guns, and thereby increase public safety in Detroit. As the state representative that introduced the bill proclaimed to the Detroit News on Dec. 1, 1976 (as cited in Loftin & McDowall, 1981, p. 151):

*By Jan. 30, (1977) every violent felon in the state will realize that if he is convicted of committing or attempting to commit a crime with a gun he will be behind bars for at least two years without hope of parole or suspension of that sentence.*

Similarly, a publicity campaign related to the law bought billboard ads throughout the Detroit area stating, “One with a gun gets you two.” The Wayne County prosecutor at the time, William Calahan, applauded the law and committed that his office would enforce the law strictly and not offer defendants the opportunity to plead out of felony firearm charges. Calahan was quoted in a different article in the Detroit News on Dec. 1, 1976, as saying (as cited in Heumann & Loftin, 1979, p. 397):

*Leave the gun at home if you set out to commit a felony after December 31 (1976), or count on at least two years in prison if you’re caught and convicted. There will be no plea bargaining under a new law, no probation, and no parole.*

The public declarations of support were consistent with the priorities set in his office. Shortly before the felony firearm law went into effect, he sent a memo to his assistant prosecutors outlining the charging of the offense, and (as cited in Heumann & Loftin, 1979, p. 398):

*At the pretrial, no reduced plea will be accepted on the count of possession of a firearm during the commission or attempt to commit a felony. Pretrial prosecutors should exercise care, however, so that the underlying felony or attempt to commit a felony is not reduced to a crime which would not support the second count (of felony firearm).*

This set the tone for the use of the felony firearm law going forward — particularly in Detroit.

The idea of deterring violent crime was questionable from the outset:

- *First*, the evidence that increasing criminal penalties deters crime is weak, and does not account for ignorance of the law, or for crimes of passion, recklessness, intoxication, and the like (Wright, 2010).
- *Second*, even assuming it had some deterrent value, the most serious assaultive offenses punishable under state law — including second-degree murder, assault with intent to murder, armed robbery, carjacking, and first-degree criminal sexual conduct — carry a maximum sentence of life or any term of years the court selects. Thus, someone committing one of those offenses already risks the possibility of a long time in prison, and the additional felony firearm sentence would have at best only a marginal deterrent effect.
- *Third*, the use of a firearm factors into charging and sentencing in many other ways, such as numerous other existing firearm charges and enhancements, and the use of a firearm increases a person’s sentencing guidelines recommendation as well. It is unclear what deterrent effect a mandatory minimum term under the felony firearm adds to these other potential penalties.

## Forty Years of Felony Firearm

1975: Michigan’s felony firearm law passes

1976: Felony firearm law takes effect

1990: Felony firearm law amended to exclude law enforcement officers in the line of duty

1991: Michigan’s crime rate tops out

2006: Michigan’s prison population tops out at 51,515

2015: Felony firearm law amended to include pneumatic guns; bill to repeal mandatory minimum for first offense introduced

2020: House Bills 5993-5994 introduced — similar to bills from 2015.

It did not take long for these concerns to be confirmed and documented. Research conducted in Detroit following the implementation of the law found there was no reduction in serious violent crimes that could be credited to the new gun law (Loftin & McDowall, 1981, p.152). Further, in the 40 years since the statute has been implemented, there has been a significant decline in the belief of deterrence in the prevention of crime. Decades of research have failed to show that mandatory sentences for gun crimes impact crime rates (Abrams 2012, Marvell & Moody 1995).

Since 1976, the felony firearm law has changed little. It has only been amended twice, one of which was recently, 2015, and simply added pneumatic guns to its scope.<sup>3</sup> The application of the law has also changed minimally. Felony firearm has remained in wide use by prosecutors across the state. This is particularly so in Wayne County, where prosecutors have continued to pursue felony firearm charges whenever able, even if the underlying felony does not result in prison time.

## Impacts of the Statute

Since the felony firearm statute was enacted, much has changed. Crime rates fell sharply after rising in the late 1980s and peaking in 1991. Michigan’s prison population rose 316.4 percent from 12,369 in 1976 to a highpoint of 51,515 people in 2006 (See Fig. 1) before falling to fewer than 38,500 people in 2018 (MDOC, 1981; 2019).

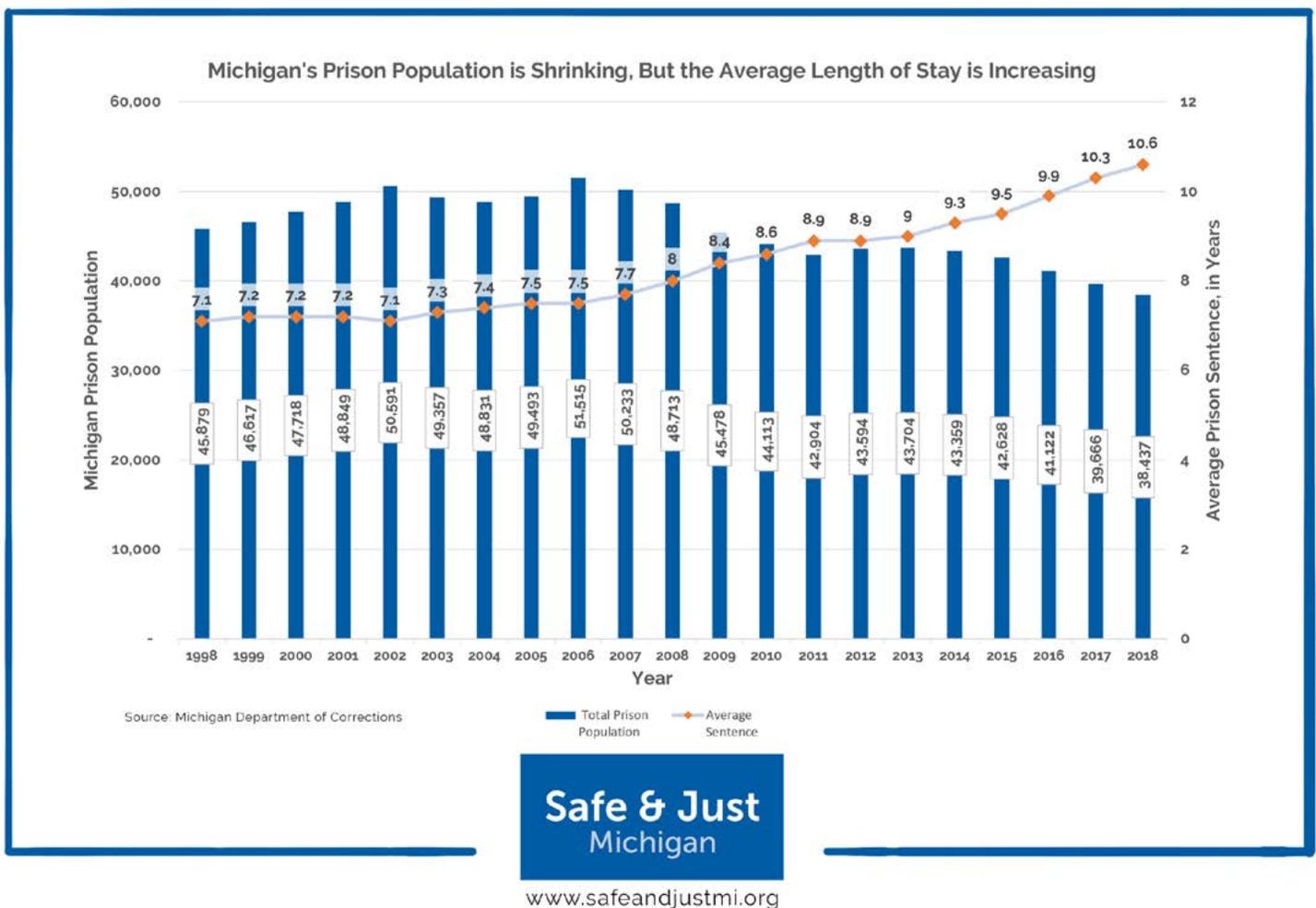


Fig. 1: Michigan’s prison population has fallen significantly since 2006, when it reached a high of 51,515. In 2018, the last year for which we have statistics, the population stood at 38,437 — a decrease of 25.3 percent. However, at the same time, the average length of stay is increasing. In 1998, the average sentence length was 7.1 years. In 2018, the average length of stay had grown 49.3 percent to 10.6 years, one of the longest average sentence lengths in the nation. As felony firearm sentences must be served consecutively rather than concurrently, these sentences contribute to the growing average length of stay in Michigan.

<sup>3</sup> The other amendment to the statute occurred in 1990 and added the subsection that excludes law enforcement officers performing their duty and defines the term law enforcement officer.

Over the same time, our understanding of punishment and deterrence has grown. Substantial research has shown that the length of stay in prison has no relationship to a person’s likelihood of re-offending (Pew, 2012), and as noted above, the evidence on the deterrent effect of longer sentences is weak. Therefore, it’s clear that just making sentences longer has questionable value for public safety. After 40 years of experience, there is no evidence that employing the felony firearm statute to lengthen sentences has had any effect on the possession or use of guns. However, the felony firearm statute has had several other significant consequences.

## Increasing the Prison Population & Length of Stay

There is no doubt that the felony firearm statute has contributed to the growth of the prison population. Of the approximately 38,500 people incarcerated in October 2018 (when we collected the data used for this research), more than 10,300 people had at least one sentence for felony firearm. This represents almost 27 percent



Fig. 2: A total of 10,307 people were serving felony firearm sentences in 2018 (some people were serving multiple felony firearm sentences). Of these, nearly 400 were serving time for felony firearm alone.

In our data, we identified almost 9,470 sentences for a first-offense felony firearm with a combined total of almost 19,000 years to be served. For second-offense felony firearm, there were almost 800 sentences to be served with an estimated 3,980 years to be served, and we found 42 third-offense charges, with approximately 420 years to be served (See Fig. 2)<sup>4</sup>.

Further, almost 4 percent (390 people) of those with a sentence for felony firearm are serving time for **only** felony firearm. That means the underlying felony did not result in a prison sentence, but their conviction on a felony firearm charge required them to be sentenced to prison for at least two years. This includes people with first-, second- and third-offense convictions, and people with multiple felony firearm sentences. Added together, these 390 people are serving more than 1,170 years for felony firearm sentences that the underlying felony did not result in a prison sentence.

It bears noting that these results were anticipated. The growth of the prison population was predicted in 1976 when the statute was proposed and was used as an argument against the proposed bill. The analysis prepared before the adoption of this statute in 1976 estimated an additional 1,700 people would be incarcerated each year with the implementation of the statute, requiring several new prisons to be built with a price tag over \$100 million (House Legislative Analysis, 1976).

<sup>4</sup> Notice of correction: This report’s initial release on Oct. 8, 2020, included an error in the calculations for fig. 2 and the discussion of the number of years to be served for felony firearm sentences. The figures and discussion that were in error were calculated on the premise that felony firearm sentences must be served consecutively in addition to the sentence for the underlying felony. That was incorrect. Updated information calculates the felony firearm sentences as concurrent to each other.

## Cost

We discuss potential cost savings from changing the felony firearm law in more detail below, but there is little doubt that the felony firearm law costs Michigan taxpayers tens of millions of dollars annually. The average cost to incarcerate a person in a Michigan prison is \$39,390.08 a year. In 2015, the Michigan Department of Corrections (MDOC) estimated that eliminating the need for 160 beds permits the closing of a housing unit, which would save approximately \$2.6 million annually. Further, the elimination of 1,300 beds would allow for the closing of an entire facility at a cost savings of more than \$33 million a year (Levine, 2015). Legislative analysis of a 2015 bill to give judges discretion on what sentence to impose for a felony firearm conviction estimated that as many as 2,500 prison beds — roughly equivalent to two prisons — could be saved if the bill passed (House Legislative Analysis, 2015).

## Disparities in Race, Age and Sex

We discuss racial disparities in the application of the felony firearm law in more detail below, but it is clear that one impact of the law has been to send more Black men to prison, and to incarcerate them for longer sentences.

The racial disparity in Michigan's prison population is well documented. About 14 percent of Michigan's residents are Black, but the prison population is 53 percent Black.

However, the disparity is even more extreme for felony firearm sentences: 82 percent of people with felony firearm sentences are identified as Black. Michigan's prison population is dominantly male, at 94.6 percent male and 98 percent male for those serving felony firearm sentences. Lastly, those serving time for a felony firearm sentence were younger at the time of the offense than those who do not have a sentence for that crime. The average age at offense is for someone who does not have a felony firearm sentence is 31.9 years, but for those with a felony firearm sentence, the average age at offense is 27 years old.



*Fig. 3: The felony firearm law doesn't affect Michigan's population proportionately. While Black people comprise about 14 percent of the state's population, they make up a little more than half of the people incarcerated for felony firearm. While roughly half of the state's population is male, 98 percent of the people incarcerated on a felony firearm charge are male. Finally, while the average age at offense for a person incarcerated in Michigan is 31.9, it is 27 for someone incarcerated for felony firearm.*

## Failure to Deter

The felony firearm statute was based on the premise of deterrence, that the mandatory two-year sentence would make people who were considering committing a felony offense think twice. As mentioned above, research on the deterrent effect of the statute found no evidence of a deterrent effect, and there is a growing literature demonstrating the shortcomings of deterrence theory of punishment. Beyond this, analysis of what offenses are most commonly the underlying felony for felony firearm further highlight the failure to deter.

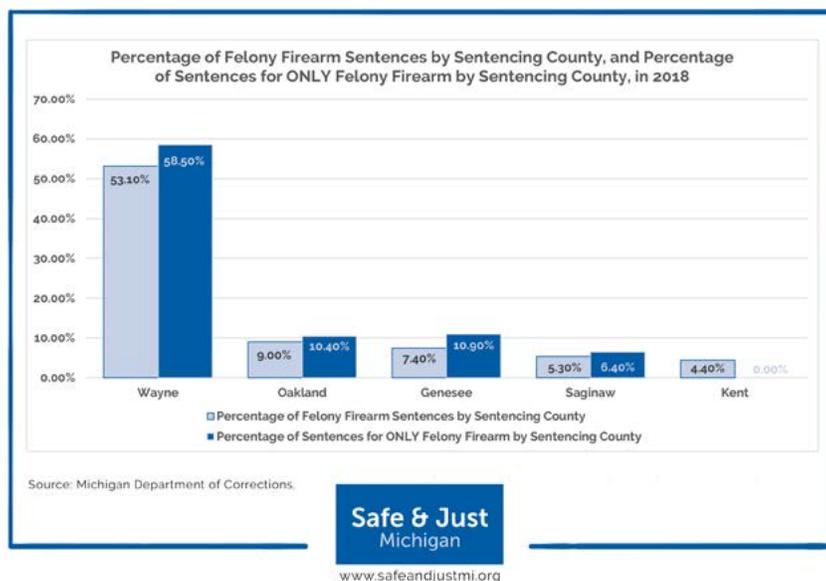
Looking at the offenses associated with felony firearm, more than 50 percent are serving sentences for first- or second-degree murder, armed robbery, or assault with intent to murder. This is an important distinction because of the length of

the sentences associated with these offenses.

First-degree murder is sentenced by life without parole (LWOP). For the 18 percent of those people convicted of first-degree murder who also received a felony firearm charge, the mandatory felony firearm sentence on top of a LWOP sentence is futile. The remaining three crimes are life max sentences, meaning they can be sentenced to “life or any term of years.” When looking at long sentences, adding a mandatory two-, five- or 10-year sentence to this long of a sentence has a questionable effect.

At the other extreme are those who are serving a sentence only for felony firearm. Of the 390 people who were incarcerated for only a felony firearm sentence, 72 percent had never been in prison before. Further examination of this subgroup shows that 49 percent had no previous involvement with the MDOC prior to the felony firearm sentence, while the remaining 51 percent had prior probation sentences. This subgroup is especially important, as there is consistent research that “short” prison sentences are criminogenic compared to non-custodial sanctions such as probation (Mears et al., 2016).

## County Differences in Use



*Fig. 4: County prosecutors decide whether to apply felony firearm charges. Five counties — Wayne, Oakland, Genesee, Saginaw and Kent — account for nearly 80 percent of all felony firearm sentences being served in Michigan as of 2018. The same pattern holds for people serving sentences for only felony firearm.*

a class by itself, and has been from the start: Wayne County has consistently comprised at least half of all felony firearm sentences since the law’s enactment in 1976. In October 2018, of the more than 10,000 people serving time for a felony firearm sentence, 53.1 percent were convicted in Wayne County, though the county comprises just 17.5 percent of the state’s overall population. And only five counties — Wayne, Oakland, Genesee, Saginaw, and Kent — account for nearly 80 percent of felony firearm sentences of those incarcerated in October 2018 (see Fig. 4).

A similar pattern is evident for those who were sentenced only to felony firearm charges: the five counties that account for the most felony firearm sentences account for 86 percent of felony firearm-only sentences. Looking at the county application differently, people in prison with a felony firearm sentence in 2018 came from 75 of Michigan’s 83 counties. However, of those in prison for a felony firearm sentence alone came from just 20 different counties.

The difference in county application is closely tied to another impact of the statute, which has been racial disparities.

Charging practices for felony firearm vary greatly by county. We lack data about how these charges are used in plea bargaining in various counties, but it is clear from sentencing data that some counties use felony firearm charges much more frequently than others, and none more so than Wayne County.

Since the statute was enacted in the 1976, every county has sentenced someone for felony firearm at least twice. There are six counties in the state that have handed down five or fewer felony firearm sentences in the last 40 years, and an additional 13 counties that have handed down fewer than 10 felony firearm sentences in that time. Conversely, Genesee, Kent, Oakland, Saginaw, and Wayne counties each sentenced hundreds of people to incarceration on at least one felony firearm offense in 2018.

While several counties routinely file felony firearm charges, Wayne County is really in a

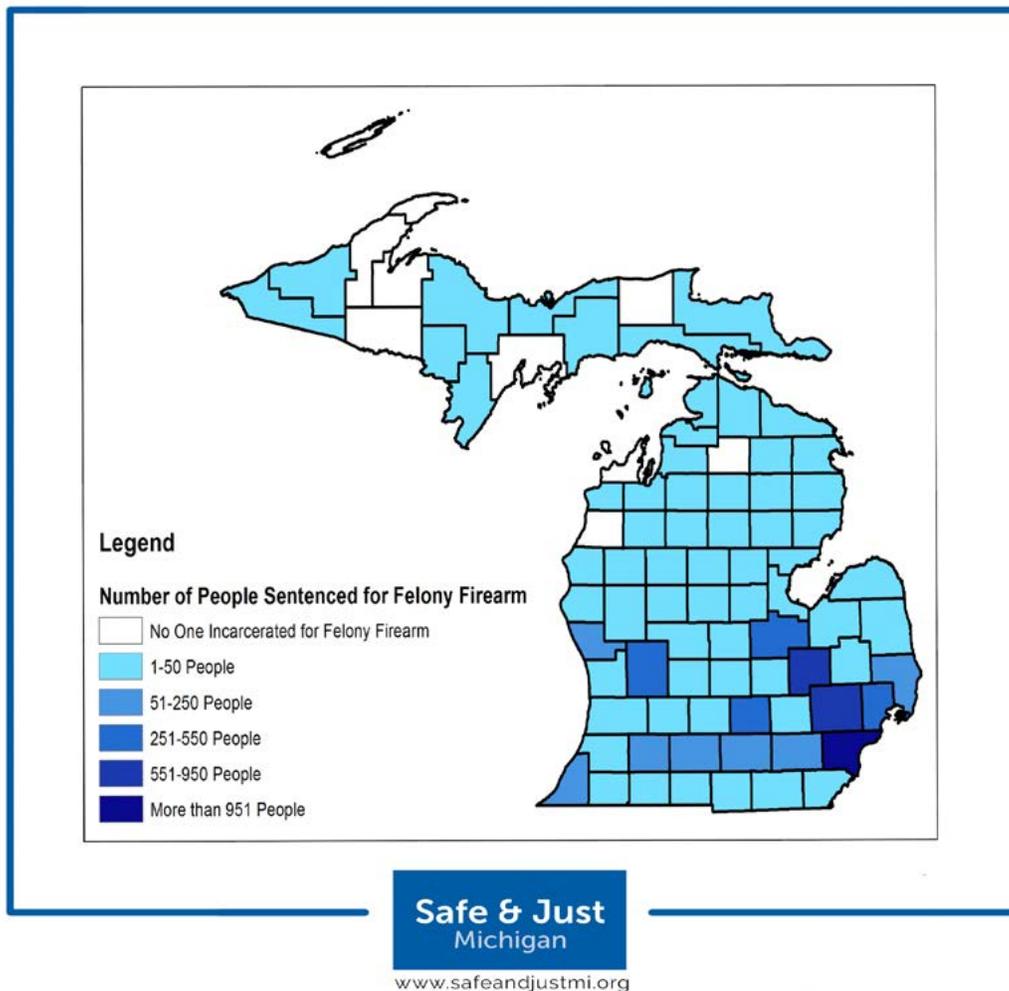


Fig.5: Number of people sentenced to Michigan prisons for at least one felony firearm charge and incarcerated in October 2018. To see a larger version, please refer to page 5).

## Racial Disparities in Felony Firearm Application

Another major consequence of the current law is its racial impact. In October 2018, Black males constituted 53.1 percent of the total prison population, but they constituted 82.3 percent of those with at least one felony-firearm sentence. Whether intended or not, the effect of the felony-firearm statute has been to send more Black men to prison for longer periods of time.

This racial disparity is not simply a function of Wayne County’s charging practices. Wayne County, which has the largest African American population in the state, accounts for 53.1 percent of all the incarcerated people serving for felony firearm, as mentioned above. Among the 10 counties that accounted for 90 percent of all people sentenced to prison on a felony firearm charge as of October 2018, a striking racial disparity emerges.

Averaging the counties together, 86.2 percent of incarcerated persons serving time for felony firearm offenses were identified as Black.<sup>5</sup> However, the range between counties is small, with all counties having at least two-thirds of those convicted for this offense identified as Black. The patterns hold for people who are sent to prison only for a felony firearm sentence.

<sup>5</sup> The MDOC is not consistent in how it categorizes and counts incarcerated people by their race or ethnic background. Complicating matters, this data is not self-reported by the incarcerated people themselves but is estimated by MDOC employees. There’s no way to be certain how accurate it may be. The data used for this research is from MDOC’s OTIS database.

If we compare the percentage of people sentenced to prison for felony firearm offenses who are Black compared to their proportion of the population, the disparity is even more striking. Consider the following:

- Among the 10 counties with the largest number of felony firearm charges, Macomb County showed the smallest percent of Black people convicted of felony firearm charges, at 69.9 percent. However, according to the 2019 population estimates from the U.S. Census, Macomb County’s Black population comprises less than 13 percent of the county’s population.
- For Wayne County, with a population that is 38.7 percent Black, 91.5 percent of the 5,470 people serving a felony firearm sentence as of 2018 were Black.

To get a more complete picture of the racial disparity in the felony firearm application, the list of the top 10 counties for felony firearm convictions is listed in *Fig. 6* below, along with the percentage of people who are Black convicted for the offense in each of those counties, and the percentage of the county’s population that is Black.

### Race Disparities in Felony Firearm Sentencing, by County, as of 2018

County	Population	% Black County Population	# People Serving FFA Sentence	% Black as portion of those serving FFA sentence	# People Incarcerated for ONLY an FFA Sentence	% Black as portion of those serving ONLY an FFA Sentence
Genesee	406,688	20.3%	766	82.6%	43	79.1%
Ingham	291,612	12.4%	269	79.6%	11	90.9%
Kalamazoo	264,680	11.8%	223	77.6%	12	83.3%
Kent	653,350	10.6%	456	76.8%	-	0.0%
Macomb	872,795	12.6%	279	69.9%	4	50.0%
Muskegon	173,599	14.0%	223	79.0%	3	100.0%
Oakland	1,257,000	13.9%	924	75.8%	41	68.3%
Saginaw	190,791	19.3%	546	81.1%	22	77.0%
Washtenaw	369,483	12.3%	180	86.1%	4	100.0%
Wayne	1,754,000	38.7%	5,470	91.5%	208	90.4%
<b>Total</b>	<b>6,233,998</b>	<b>16.6%</b>	<b>9,336</b>	<b>86.2%</b>	<b>351</b>	<b>90.0%</b>

Source: Michigan Department of Corrections



*Fig. 6: Ten counties in Michigan account for 9,336 of the 10,307 of the people, or 90.6 percent, convicted and serving a sentence for felony firearm in Michigan in 2018. Of those people, 86.2 percent were Black — far greater than Michigan’s overall Black population of about 14 percent. The same pattern holds true of people serving sentences for only felony firearm, where 10 counties accounted for 351 of the 390 people incarcerated only for felony firearm, and 90 percent of those people were Black.*

## A Case Study in the Application of Felony Firearm: Siwatu-Salama Ra

The highly publicized case of a Detroit mother, Siwatu-Salama Ra,<sup>6</sup> who was charged and served time for felony firearm, exemplifies the failure of the felony firearm statute. In the summer of 2017, Ra held a legally owned, unloaded gun to defend herself during an altercation with another woman who drove up on Ra in her own driveway. More than a month later, in response to a police report filed by the other woman, Ra was arrested and charged with two counts of felonious assault: one against the woman and the second against the woman's daughter, who was in the car. When Ra refused to plead guilty to the



*Siwatu-Salama Ra*

two felonious assault charges, the prosecutor added a felony firearm charge. Ra went to trial, and the jury found her guilty of one count of felonious assault and the felony firearm charge. The judge sentenced Ra to probation for the assault. But because of Michigan's felony firearm law, he was required to sentence Ra — then pregnant — to two years in prison for the felony firearm conviction (Baldas, 2019).

Ra ultimately was sent to prison to serve a two-year sentence. The jury's verdict was later overturned by the Court of Appeals due to an inaccurate jury instruction, and Ra subsequently plead guilty to a misdemeanor (Samilton, 2020). However, Ra served nine months in prison, during which time she gave birth to her second child, and her case illustrates the breadth of the felony firearm statute, the power it gives to prosecutors, and the injustice it can cause in an individual case. Without the mandatory minimum sentence, it is very unlikely Ra would have been sent to prison in the first place, but the judge had no discretion to impose anything less than two years.

<sup>6</sup> See, e.g. <https://reason.com/2018/05/02/black-gun-owner-will-give-birth-in-priso/>  
<https://www.vox.com/2018/5/4/17311452/gun-rights-black-lives-matter-michigan-siwatu-salama-ra>  
<https://www.michiganradio.org/post/pregnant-activist-prison-defending-herself-and-her-family>  
<https://atlantablackstar.com/2019/08/23/detroit-activist-siwatu-salama-ra-who-was-sentenced-to-prison-while-pregnant-after-defending-her-family-has-convictions-overturned/>  
<https://www.newyorker.com/news/our-columnists/the-injustice-of-siwatu-ras-imprisonment-and-the-relentless-logic-of-mass-incarceration>

# Public Support to End Mandatory Minimums

Mandatory sentences like felony firearm, were once popular, but they are falling out of favor due to the unjust results they often produce. Mandatory minimums have undergone substantial reform across the United States, in the federal system, and in Michigan — particularly those relating to drug offenses, which were repealed in 1998 and 2003.

It is clear the public supports these reforms, and Safe & Just Michigan has commissioned polling to document this.

In the beginning of 2020, a representative sample of more than 1,000 Michigan voters were surveyed for their opinions on a variety of proposed criminal justice reforms. Among other things, respondents were asked if they would support or oppose “End(ing) mandatory minimum sentences and instead allow(ing) judges to consider the individual circumstances of a crime when handing down sentences?” More than three-quarters of respondents said they would support ending of mandatory minimum sentencing like the felony firearm law. Significantly, given political polarization, support for reform is strong across political ideologies (see Fig. 7, above):

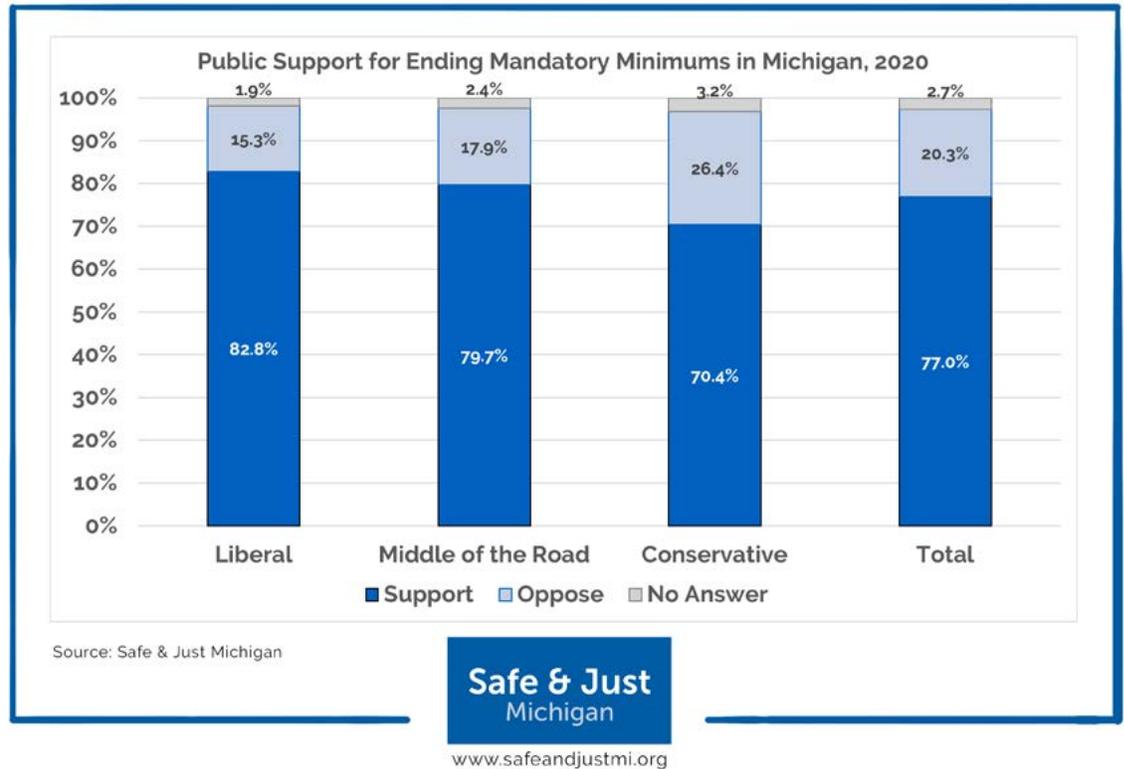


Fig. 7: Research from Safe & Just Michigan shows strong support from across the political spectrum for criminal justice reforms, including the elimination of mandatory minimum sentencing, such as the sentencing for felony firearm convictions.

- Of the respondents who identified as liberal, almost 83 percent support the end of mandatory minimums;
- Almost 80 percent of those who identified as middle-of-the-road support reforms, and
- 70 percent of those who identified as conservative support reforms.

## House Bills 5993 & 5994

Recently, a pair of bills to reform the felony firearm law — House Bills 5993-94 — were introduced to the Michigan Legislature. These bills are essentially a reintroduction of similar bills introduced during the 2015-16 legislative session and would amend the felony firearm statute for a person’s first offense. HB 5994 would eliminate the mandatory two-year sentence, instead giving judges the discretion to consider relevant facts of the case. Further, although the common practice for most sentences in Michigan is to be served concurrently, judges will reserve the discretion to have the sentence for felony firearm to be served consecutively, as the current law requires. HB 5993 adds felony firearm to the

sentences guidelines, placing it on F grid with a maximum sentence of three years.<sup>7</sup> The felony firearm statute was enacted before the Michigan sentencing guidelines, which includes the use of a firearm in the calculation of offense variables to recommend sentence length. The pair of bills would not amend the mandatory sentences for second and third felony firearm offenses.

Using analyses conducted for the bills introduced in the 2015-16 session, we can estimate of the impact the passing of the current bills could have. When these bills were proposed the MDOC estimated that there could be a reduction of zero to 2,500 beds a year, depending on how judges utilized their discretion.

## ESTIMATED IMPACT

Using cost savings figures the MDOC provided to Safe & Just Michigan’s predecessor, CAPPS, in 2015, we estimated the potential cost savings of passing HBs 5993-94 (see Fig. 8).

In 2015, the MDOC estimated that eliminating the need for 160 beds permits the closing of a housing unit, which would save approximately \$2.6 million. Further, the elimination of 1,300 beds would allow for the closing of an entire facility at a cost savings of more than \$33 million (Levine, 2015). Based on this, we estimate that even if the projected bed savings of zero to 2,500 beds for the change in the felony firearm statute was only 7 percent realized, it would be enough to close a housing unit and save \$2.6 million annually. An entire prison could be closed, for an annual savings of over \$33 million, if 52 percent of the estimate (1,300 beds) were realized.

<sup>7</sup> This is because of the “Tanner Rule,” under which, according to Michigan’s indeterminate sentencing law, the minimum sentence cannot exceed two-thirds of the maximum sentence.

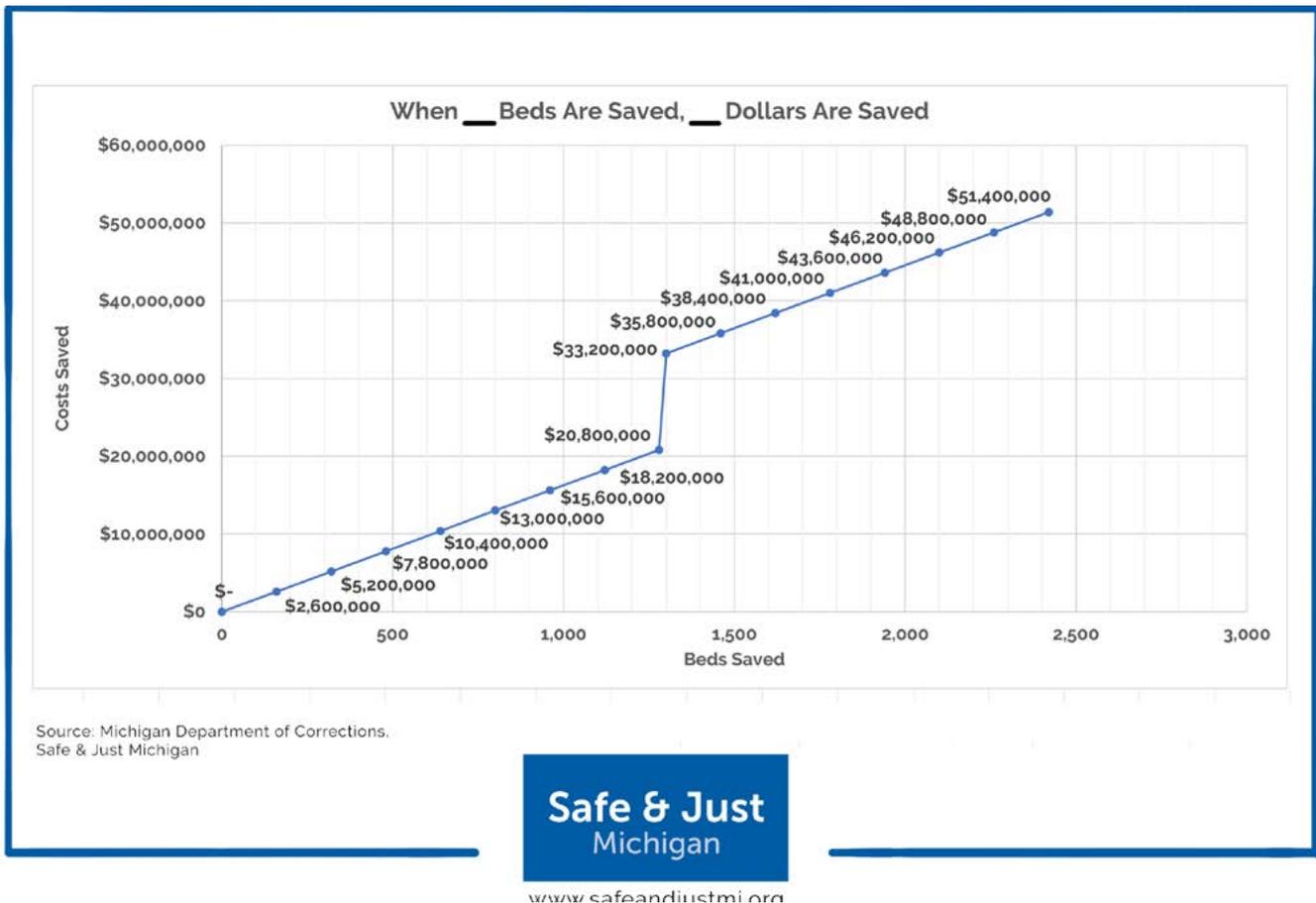


Fig. 8: The more beds that are eliminated from prisons because of the reform of felony firearm laws, the more taxpayer dollars are saved. This becomes even more apparent once 1,300 beds are saved, which allows for the closing of an entire facility and the saving of more than \$33 million.

# Conclusion

Michigan's experiment with the felony firearm law has been an ineffective, costly disaster. There's no evidence it has deterred gun carrying or use, but its use by prosecutors — particularly in Wayne County — has sent thousands to prison for underlying offenses that did not result in a prison term. It has exacerbated racial disparities in Michigan's prison system. It has resulted in an untold number of coerced plea bargains, at a total cost of billions of dollars since 1976, and tens of millions of dollars annually.

The proposed bills are an important first step, but further changes are required. Safe & Just Michigan believes that all mandatory sentences need to be repealed, especially the second and third offense penalties for felony firearm. The public support is substantial to eliminate mandatory sentences, and Michigan has already gotten rid of many regarding drug offenses.

Other penalties for firearm possession and use in Michigan law are more than sufficient to meet the goals of the criminal justice system. Reforming the felony firearm law to give judges the discretion to impose a proportional punishment is long overdue. Michigan cannot afford to wait any longer; the Legislature can and should pass HB 5993-94.



*Criminal justice reform advocates, such as the Siwatu Freedom Team, have been instrumental in advancing many of the advances in Michigan in recent years. Safe & Just Michigan is grateful for the dedication, passion and innovation of these advocates, and we are honored to be able to work in partnership with them. (Photo courtesy the Siwatu Freedom Team.)*

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# Appendix

## Michigan's Felony Firearm Law

### **750.227b Carrying or possessing firearm when committing or attempting to commit felony; carrying or possessing pneumatic gun; exception; “law enforcement officer” defined.**

Sec. 227b.

(1) A person who carries or has in his or her possession a firearm when he or she commits or attempts to commit a felony, except a violation of section 223, 227, 227a, or 230, is guilty of a felony and shall be punished by imprisonment for 2 years. Upon a second conviction under this subsection, the person shall be punished by imprisonment for 5 years. Upon a third or subsequent conviction under this subsection, the person shall be punished by imprisonment for 10 years.

(2) A person who carries or has in his or her possession a pneumatic gun and uses that pneumatic gun in furtherance of committing or attempting to commit a felony, except a violation of section 223, 227, 227a, or 230, is guilty of a felony and shall be punished by imprisonment for 2 years. Upon a second conviction under this subsection, the person shall be punished by imprisonment for 5 years. Upon a third or subsequent conviction under this subsection, the person shall be punished by imprisonment for 10 years.

(3) A term of imprisonment prescribed by this section is in addition to the sentence imposed for the conviction of the felony or the attempt to commit the felony and shall be served consecutively with and preceding any term of imprisonment imposed for the conviction of the felony or attempt to commit the felony.

(4) A term of imprisonment imposed under this section shall not be suspended. The person subject to the sentence mandated by this section is not eligible for parole or probation during the mandatory term imposed under subsection (1) or (2).

(5) This section does not apply to a law enforcement officer who is authorized to carry a firearm while in the official performance of his or her duties and who is in the performance of those duties. As used in this subsection, “law enforcement officer” means a person who is regularly employed as a member of a duly authorized police agency or other organization of the United States, this state, or a city, county, township, or village of this state and who is responsible for the prevention and detection of crime and the enforcement of the general criminal laws of this state.

**History:** Add. 1976, Act 6, Eff. Jan. 1, 1977 ;-- Am. 1990, Act 321, Eff. Mar. 28, 1991 ;-- Am. 2015, Act 26, Eff. July 1, 2015

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An Issue Brief by  
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