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BILL ANALYSIS

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Senate Bill 709 (Substitute S-3)
Senate Bills 717 and 718 (as introduced 8-31-05)
Sponsor: Senator Tony Stamas (S.B. 709)
 Senator Laura M. Toy (S.B. 717)
 Senator Jud Gilbert, II (S.B. 718)
Committee: Judiciary

Date Completed: 3-21-06

CONTENT

Senate Bills 709 (S-3), 717, and 718 would amend the Michigan Penal Code, the Code of Criminal Procedure, and the Corrections Code, respectively, to do all of the following:

- **Require a sentence of life imprisonment without parole for some first-degree criminal sexual conduct (CSC) involving a victim under 13 years old and a repeat offender at least 17 years old.**
- **Exclude prisoners sentenced to life without parole from the sentencing guidelines classification for first-degree CSC.**
- **Exclude prisoners sentenced to life without parole for first-degree CSC from provisions under which a prisoner serving a life sentence is subject to the jurisdiction of the parole board after a certain number of years.**

Senate Bills 709 and 718 are tie-barred to each other. Senate Bill 717 is tie-barred to Senate Bill 709.

Senate Bill 709 (S-3)

Under the Penal Code, first-degree CSC is a felony punishable by imprisonment for life or any term of years. Under the bill, the penalty would be imprisonment for life without parole eligibility if all of the following applied:

- The victim was under 13 years of age.
- The offender was at least 17 years old.
- The offender previously was convicted of first-, second-, third-, or fourth-degree CSC or assault with attempt to commit CSC, or a substantially conforming law of the United States, another state, or a political subdivision of another state, when he or she was at least 17 and the victim was under 13.

Under the Penal Code, a person is guilty of first-degree CSC if he or she engages in sexual penetration with another person and if any of the following circumstances exists:

- The other person is under 13 years of age.
- The other person is at least 13, but less than 16, and any of the following apply: the offender is a member of the same household as the victim; the offender is related to the

victim by blood or affinity to the fourth degree; the offender is in a position of authority over the victim and used that authority to coerce the victim to submit; or the offender is a teacher, substitute teacher, or administrator of the public or nonpublic school in which the victim is enrolled.

- Sexual penetration occurs under circumstances involving the commission of any other felony.
- The offender is aided or abetted by one or more other people and either of the following circumstances exists: the offender knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless; or the offender uses force or coercion to accomplish the sexual penetration.
- The offender is armed with a weapon or any article used or fashioned in a manner to lead the victim reasonably to believe it to be a weapon.
- The offender causes personal injury to the victim and force or coercion is used to accomplish sexual penetration.
- The offender causes personal injury to the victim, and knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.
- The victim is mentally incapable, mentally disabled, mentally incapacitated, or physically helpless and the offender is related to the victim by blood or affinity to the fourth degree; or the offender is in a position of authority over the victim and used that authority to coerce the victim to submit.

Senate Bill 717

Under the sentencing guidelines, first-degree CSC is a Class A felony against a person with a statutory maximum sentence of imprisonment for life. Under the bill, that would be the sentencing guidelines classification for first-degree CSC, except for a violation punishable by imprisonment for life without parole eligibility under Senate Bill 709 (S-3). (Offenses for which the penalty is life in prison without possibility of parole are not included in the sentencing guidelines.)

Senate Bill 718

Under the Corrections Code, a prisoner sentenced to life imprisonment is subject to the jurisdiction of the parole board after a certain number of years. Generally, a prisoner is subject to the board's jurisdiction after he or she has served 10 calendar years of a life sentence, in the case of a prisoner sentenced for a crime committed before October 1, 1992, or 15 calendar years of the sentence, in the case of a prisoner sentenced for a crime committed on or after that date. (Longer periods apply to prisoners sentenced for manufacturing, creating, delivering, or possessing with intent to deliver large amounts of any mixture containing a Schedule 1 or 2 narcotic or cocaine.)

The provision for parole board jurisdiction, however, excludes a prisoner sentenced for life for any of the following (each of which is punishable by life imprisonment without parole):

- First-degree murder (MCL 750.316).
- Knowingly or recklessly adulterating, misbranding, removing, or substituting a drug or medicine, or being involved with the sale of such a drug or medicine, if the violation results in death (MCL 750.16(5)).
- Knowingly or recklessly mixing, coloring, staining, or powdering a drug or medicine with an ingredient or material, injuriously affecting the quality or potency of the drug or medicine, or being involved with the sale of such a drug or medicine, if the violation results in death (MCL 750.18(7)).
- Violating Chapter 33 (Explosives, Bombs, and Harmful Devices) of the Michigan Penal Code (MCL 750.200-750.212a).

- Knowingly or recklessly adulterating, misbranding, removing, or substituting a drug or device knowing or intending that it be used, or being involved with the sale of such a drug or device (MCL 333.17764(7)).

In addition, parole may not be granted in the case of a prisoner who is otherwise prohibited by law from parole consideration. In such cases, the interview procedure in Section 44 of the Corrections Code (described below) must be followed.

The bill would delete language excluding the offenders described above from the provision placing prisoners sentenced for life under the parole board's jurisdiction. The bill, instead, states that a prisoner sentenced to imprisonment for life for any of the following would not be eligible for parole and would be subject to Section 44 of the Corrections Code:

- First-degree murder.
- Knowingly or recklessly adulterating, misbranding, removing, or substituting a drug or medicine, or being involved with the sale of such a drug or medicine, if the violation results in death.
- Knowingly or recklessly mixing, coloring, staining, or powdering a drug or medicine with an ingredient or material, injuriously affecting the quality or potency of the drug or medicine, or being involved with the sale of such a drug or medicine, if the violation results in death.
- Violating Chapter 33 of the Michigan Penal Code.
- First-degree CSC punishable by imprisonment for life without parole eligibility (as provided under Senate Bill 709 (S-3)).
- Any other violation for which parole eligibility is expressly denied under State law.

(Under Section 44 of the Corrections Code, subject to the constitutional authority of the Governor to grant reprieves, commutations, and pardons, one member of the parole board must interview a prisoner serving a sentence for first-degree murder, or any sentence of imprisonment for life without parole, at the conclusion of 10 calendar years and subsequently as determined appropriate by the parole board. This provision applies until the prisoner is granted a reprieve, commutation, or pardon by the Governor, or is deceased. Section 44 also specifies a schedule for the parole board to review a prisoner's case upon its own initiation of, or upon receiving any application for, a reprieve, commutation, or pardon.)

MCL 750.520b (S.B. 709)
777.16y (S.B. 717)
791.234 (S.B. 718)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bills would have an indeterminate fiscal impact on State government. There are no data to indicate how many offenders would be convicted of criminal sexual conduct in the first degree involving the factors described in Senate Bill 709 (S-3). To the extent that fewer offenders would be paroled or serve less than a life term under the bills, the State would incur increased incarceration costs at an average annual cost of \$30,000. Depending on the age at incarceration, and assuming a life expectancy of 78 years, the total cost of incarceration for each offender sentenced to life without parole could reach \$1.8 million.

Fiscal Analyst: Lindsay Hollander

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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.