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House Bill 5931 (Substitute H-2 as passed by the House)
Sponsor: Representative Joe Haveman
House Committee: Appropriations
Senate Committee: Judiciary

Date Completed: 12-9-14

CONTENT

The bill would amend the Corrections Code to do the following:

- **Specify that there would be no entitlement to parole.**
- **Create a presumption that certain prisoners were not a menace to society or the public safety and would be released on parole upon serving their minimum sentence.**
- **Identify substantial and compelling reasons for departure from that presumption.**
- **Require a prisoner denied release upon first eligibility for parole to be reviewed annually if he or she scored high or average probability of release, and every two years if he or she scored low probability of release.**
- **Specify that the presumption and required period of review would not apply to prisoners in the custody of the Department of Corrections and serving any sentence before the bill's effective date.**
- **Specify that those provisions would apply to prisoners transferred to the DOC's custody on or after the bill's effective date, except for prisoners serving a life sentence or a sentence for certain violations.**
- **Require the DOC to submit its biennial review of the parole guidelines' correlation on recidivism rates to a proposed Criminal Justice Policy Commission.**

The Code requires the DOC to develop parole guidelines to govern the exercise of the Parole Board's discretion as to the release of prisoners on parole. The Code specifies that the purpose of the parole guidelines is to assist the Parole Board in making release decisions that enhance the public safety. The Code also provides that the release of a prisoner on parole is granted solely upon the initiative of the Parole Board. The bill would add, "There is no entitlement to parole."

The Code allows the Parole Board to depart from the parole guidelines by denying parole to a prisoner who has a high probability of parole, or by granting parole to a prisoner who has a low probability of parole, as determined under the guidelines. A departure must be for substantial and compelling reasons.

Under the bill, in order to facilitate the efficient administration of the DOC, and not to create a liberty interest or expectation of parole, it would be presumed that a prisoner who either scored high probability of release on the parole guidelines, or a prisoner under the DOC's custody and serving a sentence for a controlled substance offense or nonassaultive offense

who scored high or medium probability of release, would not be a menace to society or the public safety and would be released upon service of the minimum sentence.

The bill provides that substantial and compelling reasons for departure would include, but not be limited to, the following:

- The prisoner had an institutional misconduct score lower than -1.
- There was objective evidence of harm to a victim that was not available for consideration at the time of sentencing, or that the prisoner had threatened to harm another person if released.
- The prisoner had a pending felony charge or detainer.
- The prisoner was identified in the Combined DNA Index System (CODIS) and linked to an adjudicated criminal violation.
- The prisoner's release would otherwise be barred by law.

A prisoner linked to an adjudicated criminal violation through CODIS would have to be notified that he or she could request additional DNA testing to confirm or refute a CODIS match.

In deciding whether to release a prisoner who scored average probability of release on the parole guidelines, the Parole Board would have to consider the absence or presence of the circumstances listed above as substantial and compelling reasons for departure from the bill's presumption.

A prisoner who was denied release upon first eligibility would have to be reviewed subsequently as follows:

- If the prisoner scored high or average probability of release, subsequent reviews would have to be conducted annually.
- If the prisoner scored low probability of release, subsequent reviews would have to be conducted every two years until a score of average probability was attained.

The Parole Board could defer a release upon the prisoner's service of his or her minimum sentence for up to four months to allow the prisoner to complete a treatment program that was reasonably necessary to reduce the risk to public safety from his or her release.

The provisions added by the bill would not apply to prisoners in the DOC's custody and serving any sentence before the bill's effective date. Those provisions would apply to prisoners transferred to the DOC's custody on or after the bill's effective date, except for prisoners serving a life sentence or a sentence for the following violations:

- Assault with intent to do any of the following: commit murder, do great bodily harm, maim, or rob and steal.
- First-, second-, or third-degree home invasion.
- First-, second-, third-, or fourth-degree vulnerable adult abuse.
- Second-degree murder or manslaughter.
- Kidnapping, or kidnaping a child under 14 years of age.
- The taking of a person as hostage by a prisoner.
- Mayhem.
- Subjecting another person to forced labor or service.
- First-, second-, or third-degree criminal sexual conduct (CSC), or assault with intent to commit CSC.
- Unlawful use or possession of a dangerous weapon.
- Carjacking.

At least once every two years, the DOC must review the correlation between the implementation of the parole guidelines and the recidivism rate of paroled prisoners, and submit to the Joint Committee on Administrative Rules any proposed revisions to the rules that the DOC considers appropriate after conducting the review. The bill would require the DOC also to submit the report to the Criminal Justice Policy Commission (proposed by House Bill 5928).

MCL 791.233e & 791.235

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill could result in fiscal savings to State government and would have no fiscal impact on local government.

According to the Michigan Department of Corrections, there were approximately 8,100 prisoners who were past their earliest release date as of March 1, 2014. Though not all of the prisoners past their earliest release date would be eligible for parole, as in fact some already have been paroled but returned due to parole violation, of those prisoners who were past their earliest release date, approximately 5,200 were security Level I, approximately 1,100 were security Level II, approximately 1,200 were security Level IV, and approximately 600 were security Level V. Though not perfectly analogous, the security levels generally correspond to risk level of the prisoner, which means there would be a potential for parole for a nontrivial number of prisoners. One caveat to this is that several offense categories would be excluded from the presumption or certainty of parole. Several violent offense categories as well as criminal sexual conduct offenses would not be affected by the bill. Many criminal sexual conduct offenders are represented in the past-earliest release date group and also could be categorized as a security Level I or II.

The potential savings for the State under this bill would result from the difference between parole supervision costs and prison incarceration costs. For felony convictions, in the short term, the marginal cost of imprisonment to the State is approximately \$4,100 per prisoner per year. Over the long term, the marginal cost to the State is approximately \$31,100 per prisoner per year. The cost for parole supervision is approximately \$3,600 on average. The Parole Board would continue to have the discretion to decide parole for any individual offender, which makes the overall fiscal impact on the State uncertain.

Fiscal Analyst: John Maxwell

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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.