

PAROLE REVISIONS

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House Bill 4138 (Proposed Substitute H-2)

Sponsor: Rep. Kurt Heise

Committee: Criminal Justice

Complete to 6-1-15

Analysis available at
<http://www.legislature.mi.gov>

BRIEF SUMMARY:

House Bill 4138 makes revisions to the parole process to:

- Specify there is no entitlement to parole.
- Presume, absent substantial and compelling reasons to do otherwise, that a prisoner with a "high probability of release" score will not be a menace to society and will be released upon serving the minimum sentence (presumptive parole).
- Apply presumptive parole only to prisoners transferred to the custody of the DOC on or after the bill's effective date, except for those serving a life sentence.
- Require the parole eligibility report to include the result on any validated risk assessment instrument.
- Defer a prisoner's parole to allow time to finish a treatment program reasonably necessary to reduce the risk to public safety upon release.

Under Michigan's system of indeterminate sentencing for felony sentences, a person convicted of a felony that does not carry a mandatory life sentence is given a range of months or years, with the lowest number being the mandatory minimum term of incarceration and the highest number being the maximum. The range is determined by use of grids that score points for the type of crime that was committed (e.g., against property or against a person) and for various elements of the crime (e.g., if a person was harmed or if a weapon was used). A higher score usually results in a higher minimum sentence as the maximum sentence is set in statute. Depending on the score and the resulting range, some offenders may be placed on probation and/or serve a term of incarceration in a county jail. For those sent to prison, the person must serve at least the minimum sentence before being eligible to be considered for parole by the Michigan Parole Board.

Parole supervision is provided by the Field Operations Administration (FOA) of the Department of Corrections, and an offender is typically supervised for a period of one to four years. To maintain parole status, parolees must meet certain conditions; failure to do so can result in the imposition of additional conditions or in having the parole status revoked and the individual being returned to prison. A prisoner who is not released on parole is released directly back to the community, without supervision by the DOC, upon completing the maximum term of the sentence (referred to as "maxing out").

DETAILED SUMMARY:

House Bill 4138 amends the Corrections Code. Currently, the DOC develops parole guidelines consistent with statutory requirements, with the purpose of the guidelines being

to assist the parole board in making release decisions that enhance the public safety. The parole board is granted discretionary authority to depart from the guidelines; for instance, by denying parole to a prisoner who has a high probability of parole as determined under the parole guidelines, or by granting parole to a prisoner who has a low probability of parole. However, a departure must be for substantial and compelling reasons and be in writing.

The bill does not change the above provisions, but adds that in order to facilitate the efficient administration of the DOC and not to create a liberty interest in or expectation of parole, it is presumed that a prisoner who scores "high probability of release" on the parole guidelines will not be a menace to society or the public safety and will be released upon serving the minimum sentence.

This would not be automatic, as the parole board would retain discretion to depart from presumptive parole for substantial and compelling reasons. Further, the bill specifies that *substantial and compelling reasons for departure* include, but are not limited to, the following circumstances:

- The prisoner has an institutional misconduct score lower than -1.
- There is objective evidence of harm to a victim that was not available for consideration at the time of sentencing, or that the prisoner has threatened to harm another person if released.
- The prisoner has a pending felony charge or detainer.
- The release would otherwise be barred by law.

If a prisoner were denied for any of the above conditions, the parole board would have to conduct a review at least annually for a prisoner scoring high or average probability of release. If the prisoner scored low probability of release, the review would have to be conducted not less than every two years until a score of high or average probability were attained.

Parole could be deferred upon the completion of a prisoner's minimum sentence for not more than four months to allow completion of a treatment program reasonably necessary to reduce the risk to public safety from the prisoner's release.

The above provisions would only apply to prisoners transferred to the custody of the DOC on or after the bill's effective date, except for prisoners serving a life sentence. The provisions would not apply to prisoners in the custody of the DOC and serving any sentence before the bill's effective date.

Miscellaneous provisions

- The bill would specify that there is no entitlement to parole.
- A parole eligibility report would, in addition to current requirements, include the result of any validated assessment instrument.
- A biennial report by the DOC on the correlation between the implementation of the parole guidelines and the recidivism rate of parolees, which is currently submitted to the Joint Committee on Administrative Rules, would have to be given also to the Criminal Justice Policy Commission.

- The bill replaces references to a "GED certificate" with "high school equivalency certification."
- Under the bill, if prisoners are transferred to a prison in another state, the institution would be required to provide the prisoner with high school equivalency training and certification.
- The bill would take effect 90 days after enactment.

MCL 791.211a et al.

FISCAL IMPACT:

Under current law, a prisoner is not eligible for parole until he or she has served 100 percent of the minimum sentence imposed by the court. Even then, a prisoner cannot be released on parole until the Michigan Parole Board "has reasonable assurance, after consideration of all of the facts and circumstances, including the prisoner's mental and social attitude, that the prisoner will not become a menace to society or to the public safety." Currently, Michigan's prisoners serve, on average, approximately 127 percent of their minimum sentences.

HB 4138 would result in a savings to the state, eventually. Savings would not be realized immediately because the bill does not apply to prisoners who are currently in the custody of the Department of Corrections. Because the bill would increase the certainty of time spent in prison by implementing presumptive parole, it is expected that prison population growth would decline over time and savings to the state's corrections system would occur due to a decrease in the number of prison beds used. It is anticipated the Department of Corrections would be able to close housing units in the near future (years 2017 to 2018) and close full facilities in the near distant future (years 2018 to 2019). According to the department, it is reasonable to assume that taking 1,300 prison beds offline, via facility closure, yields the state's corrections system a savings of roughly \$30.0 million a year.

Given that more offenders would be on parole under HB 4138, there would be a corresponding increase in the need for parole supervision services. State costs for parole supervision averaged about \$3,760 per supervised offender in fiscal year 2014. Also, the state could see an increase in costs for prisoner reentry services.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.