



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL



ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986

House Bill 4138 (Substitute H-4 as passed by the House)
Sponsor: Representative Kurt Heise
House Committee: Criminal Justice
Senate Committee: Government Operations

Date Completed: 10-13-15

CONTENT

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

- **Create a presumption that a prisoner would not be a menace to society or public safety, and would have to be released upon serving his or her minimum sentence, if the prisoner scored a high probability of parole on the parole guidelines developed by the Department of Corrections (DOC).**
- **State that there would be no entitlement to parole.**
- **Specify substantial and compelling reasons for a departure from the parole guidelines for a prisoner with a high probability of parole.**
- **Allow the parole board to defer a prisoner's release for up to four months after the prisoner otherwise would be released under the bill, to allow him or her to complete a treatment program necessary to reduce the risk to public safety.**
- **Require the parole board to conduct at least an annual or biennial review of a prisoner who had been denied release, depending his or her probability of release score.**
- **Require a prisoner's parole eligibility report to include the result of any validated risk assessment instrument.**
- **Require the DOC to report annually to legislative standing committees and the Criminal Justice Policy Commission regarding prisoners who were subject to the parole presumption.**
- **Require the DOC to advise the legislative committees and the Commission of any changes made to the scoring of the parole guidelines.**

The provisions concerning the presumption and release requirements would apply only to prisoners whose controlling offense was committed on or after the bill's effective date. Those provisions would not apply to a prisoner serving a life sentence, regardless of the date of his or her controlling offense.

The bill would take effect 90 days after its enactment.

Presumption; Release Requirement

The Code establishes the parole board within the DOC, and requires the Department to develop parole guidelines to govern the board's discretion as to the release of prisoners. The DOC must consider specified factors in developing the guidelines and promulgate administrative rules that prescribe the guidelines. For substantial and compelling reasons, the parole board may depart from the 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.

The bill specifies that, in order to facilitate the efficient administration of the Department and not to create a liberty interest in or expectation of parole, it would be presumed that a prisoner who scored a high probability of parole on the guidelines, except for a prisoner serving a life sentence, would not be a menace to society or the public safety and would have to be released upon serving the minimum sentence imposed by the court.

Substantial and compelling reasons for a departure from the parole guidelines for such a prisoner would be limited to the following:

- The prisoner had an institutional conduct score lower than -1 on the guidelines.
- There was objective and verified evidence of substantial harm to a victim that could not have been available for consideration at the time of sentencing, or the prisoner had threatened to harm another person if released.
- The prisoner had a pending felony charge or detainer.
- There was objective and verified evidence of postsentencing conduct, not already scored in the parole guidelines, that demonstrated that the prisoner would present a high risk to public safety if released.
- The prisoner had been identified in the Federal Combined DNA Index System (CODIS) and linked to an unsolved criminal violation.
- The release was otherwise barred by law.

With respect to a prisoner identified in CODIS, the parole board could deny release beyond the prisoner's minimum sentence for not more than 18 months from the date the prisoner was identified through CODIS.

When a prisoner subject to the presumption had served his or her minimum sentence, the parole board would be allowed to defer release 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 parole board would be required to conduct a review of a prisoner, except for one serving a life sentence, who had been denied release as follows:

- If the prisoner scored a high or average probability of release, at least annually.
- If the prisoner scored a low probability of release, at least every two years until a score of high or average probability was attained.

Parole Eligibility Report

The Code requires the appropriate institutional staff to prepare a parole eligibility report at least 90 days before the expiration of a prisoner's minimum sentence, or the expiration of a 12-month continuance. The report is considered pertinent information that the parole board member conducting the prisoner's interview must review.

The report must include information specified in the Code, such as a statement of all major misconduct charges of which the prisoner was found guilty and the punishment served, as well as the prisoner's work and educational record during confinement. The bill would require the report also to include the result on any validated risk assessment instrument.

DOC Reports

The bill would require the Department, by March 1 of each year, to report all of the following information to the standing committees of the Senate and the House of Representatives

having jurisdiction of corrections issues and to the Criminal Justice Policy Commission, with respect to prisoners subject to the proposed presumption:

- The number who were granted parole during the preceding calendar year.
- The number for whom parole was deferred to complete necessary programming during the preceding calendar year.
- The number who were incarcerated at least four months past their first parole eligibility date as of December 31 of the preceding calendar year.
- The number who were denied parole for one or more of the substantial and compelling reasons listed above, broken down by the denials for each of the reasons.

The report also would have to include the number of prisoners subject to the presumption who were denied parole, whose controlling offense was in each of the following groups: homicide; a sexual offense; an assaultive offense other than homicide or a sexual offense; a nonassaultive offense; and a controlled substance offense.

Of the number of prisoners who were denied parole, the report would have to include the number who were subject to the presumption for the following time periods:

- Less than one year.
- One year or more but less than two years.
- Two years or more but less than three years.
- Three years or more but less than four years.
- Four or more years.

Guidelines & Scoring Revisions

The Code requires the DOC, at least once every two years, to review the correlation between the implementation of the parole guidelines and the recidivism rate of paroled prisoners, and submit any proposed administrative rules revisions to the Joint Committee on Administrative Rules. The bill also would require the Department to submit the proposed revisions to the Criminal Justice Policy Commission.

In addition, the bill would require the DOC immediately to advise the standing committees of the Senate and House with jurisdiction of corrections issues and the Commission of any changes made to the scoring of the parole guidelines after the bill's effective date, including a change in the number of points that define "high probability of parole".

High School Equivalency

The bill would require a prisoner transferred to another state's institution under the Interstate Corrections Compact to receive high school equivalency training and certification.

The bill also would replace several references to the GED program or certificate with references to high school equivalency certification. The bill would make this change in provisions concerning the youth correctional facility and conditions for granting parole.

MCL 791.211a et al.

BACKGROUND

Michigan Administrative Rules 791.7715 through 791.7750 govern the granting or denial of parole, the use of parole guidelines, conditions of parole, and parole revocation. Rules that pertain to the granting or denial of parole and the guidelines are described briefly below.

Except as provided in Section 34a of the Corrections Code (which deals with the Special Alternative Incarceration program, or "boot camp"), a prisoner may not be released on parole until the parole board has considered all relevant facts and circumstances, including the prisoner's probability of parole as determined by the parole guidelines, and any crime victim's statement.

The rules list specific factors that the parole board may consider in determining whether parole is in the best interests of society and the public interest. These factors include, among others, the prisoner's criminal behavior; institutional adjustment; readiness for release (as shown by acquisition of a vocational skill or educational degree, job performance in the institution or on work-pass, and development of a suitable and realistic parole plan); the prisoner's personal history and growth; and the prisoner's physical and mental health. The rules also list factors that the parole board may not consider, such as a juvenile record that a court has ordered the Department of Corrections to expunge.

The rules require parole guidelines that do not create disparities in release decisions based on race, color, national origin, gender, religion, or disability to be used to assist the parole board in making release decisions that enhance the public safety.

At least once every two years, the DOC is required to publish a numeric score for factors set forth in the rules and establish parole guideline score ranges that, to the extent possible based on current validity research, ensure that prisoners who score in the high probability of parole range do not exceed an assaultive felony recidivism rate of 5%.

A parole guidelines score must be based on a combination of the length of time the prisoner has been incarcerated for the offense for which parole is being considered and each of the following factors:

- The nature of the offense or offenses for which the prisoner is incarcerated at the time of parole consideration, as reflected by all of the aggravating and mitigating circumstances listed in the rules (e.g., use of a weapon, physical or psychological injury to a victim, property damage of more than \$5,000, excessive violence or cruelty to a victim, multiple victims, unusually vulnerable victim, that the act was a situational crime with low probability of reoccurrence, and that the prisoner's role was minor or peripheral).
- The prisoner's prior criminal record, as reflected by all of the factors listed in the rules (e.g., assaultive misdemeanor convictions that occurred after the prisoner's 17th birthday, the number of felony convictions, the number of convictions for assaultive felonies or sex offenses, and the number of probation, delayed sentence, and parole failures).
- The prisoner's conduct during confinement, as reflected by factors listed in the rules.
- The prisoner's placement on the assaultive and property risk screening scales.
- The prisoner's age at the time of parole eligibility.
- The prisoner's performance in institution programs and community programs during the period between the date of initial confinement on the sentence for which parole is available and parole eligibility.
- The prisoner's mental health, as reflected by factors listed in the rules.

A prisoner may challenge his or her parole guideline category by filing a written objection with the parole board.

The parole board may depart from the parole guideline by not granting 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. A departure must be for substantial and compelling reasons stated in writing.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would result in savings for the State and have an indeterminate, though likely small, fiscal impact on local government. Savings would not be realized immediately because the bill would not apply to prisoners who are currently in custody. Since the bill would reduce the average length of stay for future prisoners, the Department believes that prison growth would decline over time and savings would be realized due to a decrease in the number of prison beds used. According to the Department, it would be reasonable to assume a reduction of 3,600 beds by 2026, resulting in savings of \$82.0 million per year. The savings estimate is based on a combination of the marginal cost of a bed, the cost savings of closing a housing unit, and the cost savings of closing a facility.

By increasing the number of offenders on parole, the bill would lead to an increasing need for parole supervision services and prisoner reentry services. State costs for parole supervision are approximately \$3,760 per supervised offender.

There is no way to tell whether the provisions of the bill would lead to more or fewer parolees reoffending; however, if there were more arrests, it could increase costs to local court systems, law enforcement, jails, and prisons. Prisoners who score a high probability of release on the parole guidelines are determined to have a low probability of reoffending, so the impact would likely be low. Shortening the average length of stay for prisoners could increase the chance that some individuals who would otherwise have been in prison could reoffend, but there is no compelling evidence that longer prison stays reduce recidivism rates. Also, when a prisoner is kept until his or her maximum sentence, that person is released with no parole supervision or reentry services, which could increase the likelihood of recidivism. Presumptive parole could reduce the number of prisoners held until their maximum sentence, and thus reduce their rate of recidivism.

Fiscal Analyst: Ryan Bergan

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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.