

# Legislative Analysis



## PRODUCTIVITY CREDITS

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<http://www.house.mi.gov/hfa>

**House Bill 4670 as introduced**  
**Sponsor: Rep. Bronna Kahle**

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

**House Bill 4671 as introduced**  
**Sponsor: Rep. Tyrone Carter**

**House Bill 4672 as introduced**  
**Sponsor: Rep. Bryan Posthumus**

**House Bill 4673 as introduced**  
**Sponsor: Rep. Julie Calley**

**Committee: Rules and Competitiveness**  
**Complete to 9-28-21**

## SUMMARY:

House Bill 4670 would amend 1893 PA 118, known as the prison code, to allow certain prisoners to earn productivity credits toward time that must be deducted from the prisoner's sentence in determining his or her parole eligibility date and discharge date. Productivity credits would be awarded for participation in and completion of educational programs, vocational programs, or other programs recommended or approved by the Department of Corrections (DOC) as well as for the successful completion of a high school diploma, high school equivalency certificate, or higher education degree. House Bills 4671, 4672, and 4673 would respectively amend the Corrections Code, the Code of Criminal Procedure, and the William Van Regenmorter Crime Victim's Rights Act to accommodate the new credits in those acts.

**House Bill 4670** would amend the prison code to provide that certain prisoners are eligible to earn productivity credits. Accumulated productivity credits would have to be deducted from a prisoner's sentence (both the minimum and the maximum) to determine his or her parole eligibility and discharge dates.

### Eligibility to earn productivity credits

Except as noted below, the bill would apply to prisoners who are sentenced on or after the bill's effective date to an indeterminate term of imprisonment (one expressed as a range of minimum and maximum terms) for a crime committed on or after December 15, 2000, or for specified crimes committed on or after December 15, 1998.<sup>1</sup>

The bill would not apply to a prisoner sentenced to imprisonment for life without parole (i.e., a determinate life sentence). Under Michigan law, a person must be sentenced to imprisonment

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<sup>1</sup> See the act's definition of *prisoner subject to disciplinary time*: <http://legislature.mi.gov/doc.aspx?mcl-800-34>  
Under the prison code, disciplinary time is given to a prisoner for each major misconduct for which he or she is found guilty under departmental rules. Disciplinary time can be reduced by the DOC for exemplary good conduct and restored if the prisoner is subsequently found guilty of a major misconduct. Accumulated disciplinary time is submitted to the parole board for its consideration at the prisoner's parole review or interview.

for life without eligibility for parole for violation of the following sections if conditions specific to each are met:

- Section 316 of the Michigan Penal Code (first degree murder).
- Section 16(5) of the Michigan Penal Code (knowingly or recklessly adulterating or misbranding a drug, or selling an adulterated or misbranded drug, with intent to kill or cause serious impairment of more than one person, resulting in death).
- Section 18(7) of the Michigan Penal Code (knowingly or recklessly mixing a drug to the detriment of its quality or potency, or selling such a drug, with intent to kill or cause serious impairment of more than one person, resulting in death).
- The following sections of Chapter XXXIII (Explosives and Bombs, and Harmful Devices) of the Michigan Penal Code:
  - Section 200i(2)(e) (making, possessing, transporting, placing, or using a harmful electrical, biological, chemical, or radioactive device or substance, resulting in death).
  - Section 204(2)(e) (sending explosive with intent to frighten, injure, or kill another person or destroy property, causing death).
  - Section 207(2)(e) (placing explosive with intent to frighten, injure, or kill another person or destroy property, causing death).
  - Section 209(1)(e) (placing offensive or injurious substance with intent to injure or coerce another person or injure or interfere with property, causing death).
  - Section 210(2)(e) (carrying or possessing an explosive or combustible substance, or a substance that will become explosive or combustible when combined with another substance, with intent to frighten, injure, or kill another person or destroy property, causing death).
  - Section 211a(2)(f) (making or possessing a Molotov cocktail or making or possessing a highly incendiary device or a device designed to explode upon impact with the intent to frighten, injure, or kill another person or destroy property, causing death).
- Section 436(2)(e) of the Michigan Penal Code (willfully putting poison in food, drink, medicine, drug, or water supply, causing death).
- Section 520b(2)(c) of the Michigan Penal Code (criminal sexual conduct in the first degree committed by an individual 18 years old or older against an individual less than 13 years old with certain prior convictions).
- Section 543f(2) of the Michigan Penal Code (knowingly and with premeditation committing an act of terrorism, causing death).
- Section 17764(7) of the Public Health Code (knowingly or recklessly adulterating, misbranding, or substituting a drug or device, or selling an adulterated or misbranded drug, with intent to kill or cause serious impairment of more than one person, resulting in death).

The bill also provides that it would not apply to a prisoner sentenced for a violation of any of the following sections of the Michigan Penal Code:

- Section 316 (first degree murder).
- Section 317 (second degree murder).
- Section 462b (knowingly obtaining an individual for forced labor or services).
- Section 462c (knowingly obtaining an individual to hold in debt bondage).

- Section 462d (knowingly obtaining an individual to be subjected to forced labor or services or debt bondage or knowingly benefiting from participation in a human trafficking enterprise).
- Section 462e (obtaining a minor for commercial sexual activity or forced labor or services).
- Section 520b (criminal sexual conduct in the first degree).
- Section 520c (criminal sexual conduct in the second degree).
- Section 520d (criminal sexual conduct in the third degree).
- Section 520e (criminal sexual conduct in the fourth degree).
- Section 520g (assault with intent to commit criminal sexual conduct in the first, second, or third degree).

#### Awarding productivity credits

Under the bill, DOC would have to award productivity credits to a prisoner who is eligible to earn them as follows:

- 20 days of productivity credits for each month the prisoner maintains enrollment in a program recommended by DOC or an educational or vocational program, up to a maximum total of 100 days. (However, DOC could not award a prisoner productivity credits for enrollment during a month in which the prisoner is found guilty of having committed a major misconduct. The credits not awarded could not exceed those that would have been earned for that month.)
- 90 days of productivity credits upon the prisoner's successful completion of a program recommended by DOC or an educational or vocational program that does not result in a high school diploma, high school equivalency certificate, or higher education degree.
- 120 days of productivity credits upon the prisoner's earning a high school diploma, high school equivalency certificate, or higher education degree.

In addition, if research and evidence were to indicate that the program improves rehabilitation, behavioral, or post-release prisoner outcomes, DOC could approve additional programs for a prisoner to earn productivity credits and assign and award those credits as follows:

- 10, 15, or 20 days of productivity credits, as determined by DOC, for each month the prisoner maintains voluntary enrollment in the DOC-approved program, up to a maximum total of 100 days. (However, DOC could not award a prisoner productivity credits for enrollment during a month in which the prisoner is found guilty of having committed a major misconduct. The amount of credits not awarded would be limited to those that would have been earned for the month in which the misconduct occurred.)
- Up to 90 days of productivity credits, as determined by DOC, upon the prisoner's successful completion of the DOC-approved program.

#### Further limitations on awarding productivity credits

DOC could not award a prisoner productivity credits for any period during which the prisoner meets either of the following:

- He or she has received a score of very high risk on his or her most recent validated risk and needs assessment.
- He or she is assigned to a housing unit having a security classification of V or VI (as described in section 42 of the prison code).

DOC also could not award productivity credits in an amount that exceeds either two years or 20% of the prisoner's minimum sentence, whichever is less. (The cap for prisoners with a minimum sentence of 10 years or less would be 20% of the minimum sentence, and the cap for those with a minimum sentence of 10 years or more would be two years.)

#### Concurrent and consecutive sentences and commutations

For a prisoner who was sentenced concurrently for separate convictions, the prisoner's productivity credits would be computed on the basis of the longest of the concurrent sentences.

For a prisoner who is serving consecutive sentences for separate convictions, the prisoner's productivity credits would be computed and accumulated on each sentence individually.

The bill would not allow productivity credits for a commuted sentence unless the executive order commuting the sentence stipulated to the credit.

#### Rules

DOC would have to promulgate rules prescribing minimum standards for earning productivity credits and the procedure for awarding them.

Proposed MCL 800.33a

**House Bill 4671** would amend the Corrections Code to allow *prisoners subject to disciplinary time* (as defined in the prison code) who are sentenced on or after the bill's effective date to be paroled before they have served their minimum sentence if they have earned productivity credits to allow for a reduction of that minimum. These prisoners also could have their maximum sentences reduced by productivity credits.

A prisoner subject to disciplinary time who was sentenced before the bill's effective date would not be eligible for parole until he or she had served the minimum sentence fixed at sentencing and would not be eligible for a reduction in his or her maximum sentence.

The bill would refer to the latter prisoners (those ineligible for sentence reduction) as "limited prisoners subject to disciplinary time," to distinguish them from those sentenced on or after the effective date of the bill, who as noted are referred to as "prisoners subject to disciplinary time" in the bill.

MCL 791.233 et seq.

**House Bill 4672** would amend the Code of Criminal Procedure to change requirements concerning certain prisoners' eligibility for parole. Currently under the act, a prisoner whose sentence has been enhanced because of three or more prior felony convictions and whose enhanced sentence is for an offense other than a major controlled substance offense<sup>2</sup> is not eligible for parole until the expiration of either of the following:

- For a prisoner who is not a *prisoner subject to disciplinary time* as defined in the prison code,<sup>3</sup> the minimum term fixed by the sentencing judge—unless the judge or a successor gives written approval for parole at an earlier date allowed by law.

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<sup>2</sup> See the act's definition of *major controlled substance offense*: <http://legislature.mi.gov/doc.aspx?mcl-761-2>

<sup>3</sup> See <http://legislature.mi.gov/doc.aspx?mcl-800-34>

- For a prisoner who is a prisoner subject to disciplinary time as defined in the prison code, the minimum term fixed by the sentencing judge.

The bill would amend the above provision so that the second category (prisoners not eligible for parole before serving their minimum sentence) would include only prisoners subject to disciplinary time who were sentenced before the effective date of the bill.

MCL 769.12

**House Bill 4673** would amend the William Van Regenmorter Crime Victim's Rights Act to require the prosecuting attorney, if requested by the victim of a crime, to give the victim notice as to whether the defendant may be eligible to earn productivity credits under HB 4670 that could reduce a sentence of imprisonment. For a crime committed by a juvenile, the prosecuting attorney, or the court in certain circumstances, would have to give the victim notice, upon request, as to whether the juvenile may be eligible to earn productivity credits under HB 4670 that could reduce a sentence of imprisonment.

This information would be in addition to other notice the victim may now request to receive, such as notice of the offenses for which the defendant was convicted or the juvenile was adjudicated or convicted and notice regarding the victim's right to make an impact statement at sentencing or (for a juvenile) at the disposition hearing.

MCL 780.763 and 780.791

House Bills 4671, 4672, and 4673 are tie-barred to HB 4670, which means that they could not take effect unless HB 4670 were also enacted.

#### **FISCAL IMPACT:**

**House Bills 4670 through 4672** would have an indeterminate fiscal impact on the state. Under the bills, prisoners convicted of qualifying offenses who participate in core, educational, vocational, and/or specific behavioral programming during their incarceration would receive productivity credits and bonus productivity credits for program participation and successful completion. It is anticipated that this would result in a reduced prison population and a subsequent savings for the state. The amount of actual savings would depend on a number of factors, including the number of prisoners that participate in programming, the number of prisoners that successfully complete programming, the number of productivity and bonus productivity credits earned, how the number of credits earned affects prisoners' overall lengths of stay, and the number of prisoner beds that ultimately could be closed. It is not possible to estimate these specific figures. Program availability and length of stay would be primary factors in a prisoner's ability to earn productivity and bonus productivity credits.

According to the 2019 Michigan Department of Corrections Statistical Report, roughly 1,400 prisoners received a GED that year and almost 16,000 completed a vocational program or employment readiness certificate. Roughly 60% of the prison population would be eligible for programming based on convictions of qualifying offenses. The average minimum length of stay in prison is 4.2 years. Almost 50% of the current prison population would qualify for the core program completion bonus, and a little over 4% of the current population would qualify

for the educational completion bonus. It is estimated that if every prisoner participated in and successfully completed one program during their incarceration, anywhere between 1,500 and 2,200 beds could be reduced. In fiscal year 2020, the average cost of prison incarceration in a state facility was roughly \$42,200 per prisoner, a figure that includes various fixed administrative and operational costs. If the prison population were reduced by 2,000 beds, savings to the state would be roughly \$84.4 million in various fixed and administrative and operational costs, or roughly \$70.0 million in marginal costs. Under provisions that the bills would apply only to those prisoners who are sentenced after the effective date of the bills, savings would not be realized immediately and likely would take four to five years to be realized. New admissions and activities would take time to have an impact on time served.

Although a reduction in the prison population would result in a savings to the state, the bills would most likely lead to initial costs for the Department of Corrections for prisoner programming. Though the department currently makes available all of these types of programming, (i.e., core programming, educational programming, vocational programming, and behavioral programming), it could be assumed that additional funding would be needed for the additional programming that would be offered to the additional number of prisoners who would be eligible for programming under provisions of the bills.

The requirement in **House Bill 4673** for a prosecuting attorney to notify a victim of whether a defendant may be eligible to earn productivity credits under HB 4670, in addition to existing notifications, would have no fiscal impact on county prosecuting attorney offices or the Department of Attorney General.

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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.