House
Legislative
Analysis
Section

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TRUTH-IN-SENTENCING

House Bill 5439 as enrolled
Public Act 322 of 1994
Sponsor: Rep. Michael E. Nye

Senate Bill 40 as enrolled
Public Act 217 of 1994

Senate Bill 41 as enrolled
Public Act 218 of 1994
Sponsor: Sen. William Van Regenmorter

Second Analysis (2-23-95)
House Committee: Judiciary
Senate Committee : Judiciary

THE APPARENT PROBLEM:

Public concern about crime is widespread, and appears to be at its highest level in decades. All too frequently, headlines appear over accounts of yet another slaying or violent crime committed by someone with a prior criminal record--sometimes even someone whose minimum sentence for a previous crime had not yet expired. This last group of criminals -- those who are released on parole after serving a sentence reduced by "good time" or disciplinary credits, and who then commit more crime while on parole -- provoke especially strong outrage. Anecdotes abound of lives lost or ruined by acts committed by violent criminals who would have still been behind bars if they had been kept locked up until the expiration of their minimum terms. (For a brief explanation of sentencing in Michigan, see Background Information.)

The answer, say many, is "truth in sentencing," a concept under which offenders would have to serve their minimum sentences.

THE CONTENT OF THE BILLS:

The bills constitute a package of legislation that would require defendants convicted of certain crimes to serve their full minimum sentences; for these prisoners, disciplinary credits, which are used to reduce a minimum term for good behavior, would be replaced with disciplinary time, which would be imposed to increase a minimum term for bad behavior. The bills would apply to people convicted of the specified crimes on or after the bills took effect. The bills are tie-barred to each other and to House Bill 4782, which would provide for legislative sentencing guidelines (House Bill 4782 was enacted as Public Act 445 of 1994). The bills would take effect on the date that sentencing guidelines were enacted into law under procedures set forth by House Bill 4782. A more detailed explanation follows.

Senate Bill 40 would amend the Department of Corrections Act (Public Act 232 of 1953; MCL 791.233 et al.) to bar parole for a prisoner subject to disciplinary time until after he or she had served his or her minimum term plus any disciplinary time that had been imposed; this would not apply, however, to someone who successfully completed special alternative incarceration (boot camp). For a prisoner subject to disciplinary time who had been sentenced to consecutive terms, parole could not be granted until the prisoner had served the total time of the sum of the minimum terms, plus any disciplinary time. Also for such prisoners, the maximum terms would be added to compute the new maximum term, and discharge without parole (that is, "maxing out") would happen only after the total of the maximum sentences had been served.

As with prisoners eligible for good time and disciplinary credits, a prisoner subject to disciplinary time would have a parole board interview at least one month before his or her parole eligibility date, and a parole eligibility report would be prepared at least 90 days before the parole eligibility date. The

parole board's order of parole for a prisoner subject to disciplinary time would have to contain a condition requiring the parolee to be housed in a community corrections center or a community residential home for the first 30 to 180 days of his or her parole.

A prisoner subject to disciplinary time would have to be confined in a secure correctional facility for the duration of his or her minimum sentence plus disciplinary time, except for periods when the prisoner was away from the facility while being supervised by a department employee for one of the following purposes: visiting a critically ill relative, attending the funeral of a relative, obtaining medical services not otherwise available at the facility, or participating in a work detail. A "secure correctional facility" would be one that was enclosed by a locked fence or wall, was patrolled by correctional officers, and in which prisoners were restricted to the area inside the fence or wall and in which prisoners were under guard by correctional officers 24 hours a day, seven days a week.

Existing law that allows the "limits of confinement" to be extended to enable a prisoner to, among other things, visit a sick relative, look for or work at a job, or obtain job training or education, would not apply to a prisoner subject to disciplinary time unless that prisoner had served the minimum sentence plus any disciplinary time.

The bill would specify that the hearings division of the Department of Corrections would be responsible for each prisoner hearing that might result in the accumulation of disciplinary time.

Senate Bill 41 would amend the prison code (Public Act 118 of 1893; MCL 800.33 et al.) to bar prisoners subject to disciplinary time from receiving disciplinary credits or good time, to specify the offenses that would make a prisoner subject to disciplinary time, and to require disciplinary time to be added for each major misconduct for which he or she was found guilty as prescribed by rules promulgated under the bill. Those rules would prescribe the amount of disciplinary time to be imposed for each type of major misconduct.

A prisoner's minimum sentence plus disciplinary time could not exceed his or her maximum sentence. A prisoner subject to disciplinary time could have any or all of his accumulated disciplinary time reduced by the department if he or she demonstrated exemplary good conduct during the term of imprisonment. Disciplinary time so deducted could be restored if the prisoner was found guilty of a major misconduct.

The offenses to which the bills would apply (that is, the offenses that would make a convicted defendant a "prisoner subject to disciplinary time") would be:

-- drunk driving or drunk boating that caused a death or long-term incapacitating injury (MCL 257.625[4], 257.625[5], 281.1171[4], and 281.1171[5]);

-- burning a dwelling house or other real property (MCL 750.72 and 750.73);

-- wilfully setting fire to mines and mining materials (MCL 750.80);

-- felonious assault; assault with intent to murder; assault with intent to do great bodily harm other than murder; assault with intent to maim; assault with intent to commit a felony; and armed or unarmed assault with intent to rob or steal (MCL 750.82, 750.83, 750.84, 750.86, 750.87, 750.88, and 750.89);

-- sexual intercourse under pretext of treatment (MCL 750.90);

-- first-degree home invasion (MCL 750.110a[2]);

-- first-degree child abuse or involvement in child pornography (MCL 750.136b[2] and 750.145c);

-- burglary with explosives; sending explosives with intent to injure; sending a device represented as explosive; placing explosives with intent to destroy, although with no resulting damage; intimidation or harassment by a device represented as explosive; placing explosives with intent to destroy and causing damage to property or injury to any person; aiding and abetting in placing explosives; possessing a bomb with unlawful intent; manufacture of explosives with intent to use unlawfully; and making or possessing an incendiary device or device designed to explode upon impact (MCL 750.112, 750.204, 750.204a, 750.205, 750.205a, 750.206, 750.207, 750.208, 750.210, 750.211, and 750.211a);

-- malicious threats to extort money (MCL 750.213);

-- first- or second-degree murder; inflicting a fatal wound in a duel; manslaughter; willful killing of an

unborn quick child; causing a death due to explosives; and causing a death with a firearm pointed intentionally but without malice (MCL 750.316, 750.317, 750.319, 750.321, 750.322, 750.327, 750.328, and 750.329);

-- kidnapping; hostage-taking by a prisoner; and kidnapping a child under age 14 (MCL 750.349, 750.349a, and 750.350);

-- larceny from a person (750.357);

-- mayhem (MCL 750.397);

-- aggravated stalking (MCL 750.411i);

-- disarming a police officer (MCL 750.497b, effective 6-1-94);

-- first-, second-, third-, or fourth-degree criminal sexual conduct (CSC) and assault with intent to commit CSC (MCL 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g);

-- armed robbery; unarmed robbery, and robbery of a bank, safe, or vault (MCL 750.529, 750.530, and 750.531);

-- carjacking (MCL 750.529a);

-- felonious driving (MCL 752.191);

-- riot; incitement to riot; and prison riot (MCL 752.541, 752.542, and 752.542a);

-- any offense not otherwise listed that was punishable by life imprisonment; and

-- any attempt, conspiracy, or solicitation to commit any of the listed offenses.

House Bill 5439 would amend the Code of Criminal Procedure (MCL 800.34) to require the sentencing judge to notify a defendant convicted of one of the specified crimes that his or her minimum term may be extended by the imposition of disciplinary time.

BACKGROUND INFORMATION:

Under Michigan's indeterminate sentencing system, a sentencing judge sets minimum and maximum terms to be served. The maximum term is limited to the maximum set by statute, while, typically, the minimum term is chosen from a range suggested by the use of supreme court sentencing guidelines, which weight various factors regarding the facts of the case and the criminal history of the offender; a judge may depart from guidelines, however, and order a minimum term greater or lesser than those suggested by guidelines, but must state his or her reasons on the record. Case law is determining what constitutes acceptable reasons for departing from guidelines. In any event, under a controlling 1972 opinion of the Michigan Supreme Court, the minimum sentence cannot be more than two-thirds the maximum established by statute (People v. Tanner, 387 Mich 683).

The actual time that an offender serves in prison or some other correctional facility is a function of the minimum sentence and several other factors. Under Michigan statute, a minimum sentence may be reduced by the accumulation of "disciplinary credits" awarded by the Department of Corrections to prisoners. A prisoner is eligible to earn a disciplinary credit of five days per month for each month served without a major misconduct violation, plus an additional two days per month of "special disciplinary credits" awarded for good institutional conduct. A prisoner is eligible for parole upon serving his or her minimum sentence less any accumulated disciplinary credits. (While this explanation describes the disciplinary credit system for new prison intakes, it should be noted that offenders currently within the jurisdiction of the corrections system may be subject to alternate calculations of "good time" [which was eliminated by Proposal B of 1978 for certain serious offenders], or some combination of good time and disciplinary credits.)

Prior to parole, however, a prisoner who meets various eligibility criteria set by the department and statute may be placed in a community corrections facility; by law, however, assaultive offenders may not receive community placement prior to 180 days before the expiration of their minimum terms.

FISCAL IMPLICATIONS:

The House Fiscal Agency (HFA), Senate Fiscal Agency (SFA), and Department of Corrections (DOC) have pointed out that the bills would increase correctional costs several ways: through the elimination of disciplinary credits for offenders convicted of any of the specified offenses, through the imposition of disciplinary time for those offenders, through the requirement that minimum

sentences be served in secure confinement, and through the requirement for newly-paroled prisoners subject to disciplinary time to spend 30 to 180 days in community residential program facilities. Estimates on the costs of the bills have been hampered by the existence of several major unknown factors: how legislatively-established sentencing guidelines might change sentence lengths, how disciplinary time will be calculated, and how new prison commitments may be mixed between prisoners affected and those not affected by the bills. Estimates of the bills' minimum annual costs are further complicated by the length of time it will take for the bills' full impact to be felt on prison populations -- 37 years, according to the House Fiscal Agency.

All three fiscal analyses quoted in this analysis (HFA, issued 5-5-94; SFA, issued 7-6-94; and DOC, issued 4-25-94) have assumed that sentencing guidelines would not appreciably change the average sentence length.

Annual operating costs as of two years after the bills took effect have been estimated at $7.2 million (DOC), and $7.3 million (HFA). Estimates on annual operating costs after five years are $19.8 million (DOC) and $18.4 million (HFA); at ten years, $40.8 million (DOC) or $37.8 million (HFA) annually. None of these estimates include additional costs expected to be presented by the imposition of disciplinary time.

Annual operating costs once the full impact of the bills was felt on the prison system have been estimated at $73.7 million (HFA, which does not include estimates on costs of time added as disciplinary time) to $84.7 million (SFA, which assumes that length of disciplinary time added would equal length of disciplinary credits now subtracted from sentences).

In addition to annual operating costs, the bills are expected to present costs of new prison construction. The DOC has estimated that at least 892 new beds will be needed after two years (perhaps more due to the imposition of disciplinary time), 1,645 beds after 5 years, and 2,953 beds after 10 years. HFA estimates on prison construction costs assume that new regional prisons will be built, with construction costs as follows (figures are in millions of dollars):

Bunk Type	2 Yrs.	5 Yrs.	10 Yrs.	Full Impact
Single	$57.6	$110.7	$203.1	$374.7
Double	$28.8	$55.4	$101.5	$187.3

(The two-year figure is somewhat theoretical, as it is unclear whether new prisons could be built that quickly, Although additional beds would have to be developed somehow. Double-bunking figures may be somewhat understated, as additional single-bunked cells likely would be needed to house certain prisoners with high security classifications.)

Finally, the SFA has estimated that annual community residential program costs could increase $4.8 million to $28.7 million annually, depending on the length of stay for the 4,555 parolees annually expected to be affected by the bills.

ARGUMENTS:

For:

Truth in sentencing is essential to improve public confidence in the criminal justice system, but, more importantly, it is essential to protect the public. All too often, heinous crimes have been committed by felons who would have still been in prison, had they been required to served their minimum sentences in secure confinement. By incapacitating a dangerous offender for at least the duration of his or her minimum sentence, truth in sentencing would assure protection to that offender's potential victims, and it would extend to past victims the peace of mind that can come from knowing the criminal was securely behind bars.

The bills would prevent crime not only by more effectively incapacitating criminals: the deterrent value of criminal sanctions would be enhanced by the bills' assurances of meaningful punishment. Although correctional costs would increase under the bill, those costs are small compared to the societal costs of crime -- crime that the bills would both prevent and appropriately punish. The bills would help to restore integrity, credibility and accountability to the criminal justice system, and help to fulfill the system's most important objective: the protection of the public.

House Bill 5439 and Senate Bills 40 and 41 (7-25-95)

Response:

Problems with some offenders serving too little time often have more to do with charging and sentencing than with defects of the disciplinary credit system. It is prosecutors who decide what charges to bring, but plea bargaining sometimes results in charges that are lower than those suggested by the offense. Further, prosecutors have the discretion to seek habitual offender status for anyone with a prior felony conviction; someone sentenced as an habitual offender must serve his or her minimum term and is subject to substantially higher maximum terms (up to twice the maximum that otherwise would apply). Moreover, any problems with overly lenient sentencing practices are curable through the creation of the comprehensive, prescriptive sentencing guidelines developed under recently-enacted sentencing guidelines legislation (Public Act 445 of 1994).

Against:

As relatively few criminals are caught and punished, the bills would have little effect on crime; the deterrent value of the prospect of punishment depends on the certainty of that punishment. The bills merely would worsen problems with prison overcrowding and the corrections budget, draining more money from the educational, economic, and rehabilitative programs that offer the best chance of ultimately lowering the crime rate.

Response:

Any positive effects of long-term anti-crime programs such as education cannot be felt for many years, perhaps generations. The bills, however, would provide reforms now.

Against:

The full costs of the bills are not only unknown, but unknowable. Without knowing what form legislative sentencing guidelines would take, and without knowing how disciplinary time would be calculated and imposed, the costs of the bills cannot be determined. Particularly troubling are doubts about how the corrections department might structure disciplinary time and concerns about whether the department might be susceptible to reducing accumulated disciplinary time during periods of severe overcrowding. To enact the bills would be to act prematurely; any legislation such as the bills should at least await development of legislative sentencing guidelines, which not only would help to answer unanswered questions about potential costs, but could obviate any need for these bills. As the bills could not take effect until guidelines took effect, the question arises as to whether now is the proper time to enact this legislation.

Against:

Many have assumed that the bills would have little effect on actual time served, because judges and proposed guidelines would adjust sentencing downward to accommodate "truth in sentencing," just as sentences presumably are adjusted upward now, to account for disciplinary credits. Under such circumstances, the bills would not represent truth in sentencing; rather, they would mislead crime victims and the public into believing that real change would ensue.

For:

By not simply eliminating disciplinary credits for certain offenders, but by instead replacing disciplinary credits with disciplinary time, the bills would preserve -- and even improve -- the corrections system's ability to manage prisoners and maintain prison discipline. Critics charge that disciplinary credits do not work; cynics might say that the disciplinary credit system is employed not so much as a system to induce and reward good behavior as a system to reduce correctional costs. Part of the problem is that the award of disciplinary credits is automatic; bad behavior works to reduce credits already awarded, and even lost credits can be and frequently are restored. Disciplinary time as proposed by the bills would be psychologically more effective: bad behavior would be promptly punished by the imposition of disciplinary time, while subsequent exemplary behavior could be rewarded by reducing accumulated disciplinary time. At the least, the use of disciplinary time as an alternative prison management technique is worth a try. Any constitutional concerns would be met by provisions ensuring that disciplinary time could not cause a person's period of incarceration to exceed the maximum set by statute for his or her crime.

Response:

Just as disciplinary credits seem to fail to work for some offenders, the use of disciplinary time would fail to work for some. The most recalcitrant prisoners probably would be little affected by whether "good time" or "bad time" systems prevailed.

Rebuttal:

Similarly, there probably would be a large number of offenders for whom either computation method would work. It may be that disciplinary time as envisioned by the bills would be most effective for a group that fell somewhere in the middle.

Experience would tell whether disciplinary time proved to be a prison management tool superior to disciplinary credits.

Against:

By allowing the corrections department to increase sentences through the imposition of department-determined disciplinary time, the bills would usurp judicial sentencing authority. A person's minimum term would in effect be determined not by the sentencing judge but by the Department of Corrections: minimum sentences would increase for acts that would not be punishable outside of prison walls, but that rather were violations of prison policy directives regarding behavior and possessions; a "major misconduct" can be something as minor as insolence or possession of any money other than 50 pennies.

Response:

Major misconducts are directly related to the need to maintain prison discipline, including the need to prevent violence, drug abuse, gambling, and escapes. The corrections department can now in effect lengthen a prisoner's sentence by withdrawing disciplinary credits; it does not seem so different to allow the department to impose disciplinary time for the same behavior for which credits can now be withdrawn.

Against:

By mandating incarceration for prison infractions, the bills could unconstitutionally deprive a person of liberty without basic due process protections: although there would be a disciplinary hearing at which a prisoner could respond to the charge and present evidence, there is no right to counsel, and guilt need not be proved beyond a reasonable doubt.

For:

The current disciplinary credit system is both confusing and misleading. The bills would replace this system with a simple promise: that a convicted offender will serve, at a minimum, the minimum sentence imposed by the judge.

Against:

By superimposing a layer of disciplinary time calculations on the good time and disciplinary credit systems that already exist, the bills would increase the complexity of parole eligibility calculations. The current system of disciplinary time for offenders sentenced after April 1, 1987 is simple and straightforward: five to seven days of disciplinary credits for each month of incarceration. If the concern is to keep things simple and ensure that victims, the press, and the public understand when an offender could be paroled, then the answer can be found in announcing the earliest parole eligibility date at the time of sentencing.