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BILL ANALYSIS

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Senate Bill 1196 (as reported without amendment)  
Sponsor: Senator Alan Sanborn  
Committee: Judiciary

Date Completed: 4-20-06

### **RATIONALE**

Under the Corrections Code, a parolee charged with a parole violation must be given a hearing on the charge within 45 days of his or her return or availability for return to a State correctional facility. The Code does not address whether a parolee is to be released if he or she does not receive a hearing within the 45-day period, but the Michigan Supreme Court ruled in 2003 that a parolee who does not receive a hearing in that time frame is not entitled to be released for return to parole status (*Jones v Department of Corrections*, 468 Mich 646).

Before the 2003 Supreme Court ruling, Department of Corrections (DOC) policy apparently stated that a parolee who did not receive a hearing within 45 days was to be released, but, according to the DOC Director, that was not the Department's practice. After the Court upheld the Department's practice of not returning a person to parole because of failure to receive a parole violation hearing within 45 days, the conflicting written policy was deleted. Within approximately the past year, however, 41 people accused of parole violations apparently were released from DOC detention and returned to parole when their hearings were not held within 45 days. In a widely publicized case, one of those 41, Patrick Selepak, has been charged with multiple crimes including first-degree murder, kidnapping, home invasion, and use of a firearm in committing a felony. After his arrest, the DOC amended its policy to specify that a parolee accused of violating his or her parole conditions may not be released without a hearing, even if 45 days have passed.

Some people believe that the Corrections Code should be made consistent with case law and DOC policy and specifically prohibit a person's return to parole merely because he or she did not receive a hearing on a parole violation charge within the required 45-day period. (Please see **BACKGROUND** for further information on the 2003 Supreme Court case and DOC policy.)

### **CONTENT**

The bill would amend the Corrections Code to specify that a parolee accused of a parole violation could not be released merely because a fact-finding hearing was not held within 45 days.

The Code provides that, within 45 days after a paroled prisoner who has been returned or is available for return to a State correctional facility under accusation of a parole violation, other than a conviction punishable by imprisonment, the prisoner is entitled to a fact-finding hearing on the charge before one member of the parole board or an attorney hearings officer designated by the parole board chairperson. Under the bill, if the parolee were in custody, he or she could not be released from custody merely because the fact-finding hearing was not held within the 45-day time limit.

MCL 791.240a

### **BACKGROUND**

#### *Jones v Department of Corrections*

In this case, decided in July 2003, the Michigan Supreme Court held that the plaintiff parolee was not properly discharged

from prison when the Department of Corrections failed to conduct a parole violation fact-finding hearing within 45 days, as required by the Corrections Code (MCL 791.240a).

On allegations of parole violations for cocaine use, failure to report to his parole officer, and fleeing and eluding police, James Jones waived his right to a preliminary hearing and admitted to the first two allegations. He denied the fleeing and eluding charge, however, and asked to present evidence in mitigation of the parole violations. At the subsequent fact-finding hearing, the administrative law examiner dismissed the fleeing and eluding count for failure to hold a hearing within 45 days, but determined that Jones was in violation of the conditions of his parole on the first two counts. The examiner ruled that Jones's admission to those violations amounted to a preponderance of the evidence and recommended revocation of his parole. The parole board adopted that recommendation.

Jones then filed a complaint for a writ of habeas corpus in the circuit court, contending that he should be discharged from prison because the parole violation fact-finding hearing was held 66 days after his availability for return to prison. The circuit court denied the request and Jones appealed. The Court of Appeals entered an order of habeas corpus discharging Jones from prison and returning him to the parole board's jurisdiction. The Attorney General appealed to the Supreme Court, which stayed the Court of Appeals decision and granted leave to appeal. (A writ of habeas corpus is an order to bring a person before a court, most frequently to ensure that the party's imprisonment or detention is not illegal.)

The Supreme Court overruled the Court of Appeals decision because "nothing in the text of MCL 791.240a or the remainder of the statutory scheme governing paroles indicates a legislative intent that a violation of the forty-five-day time limit...requires the discharge of a prisoner". In addition, the Supreme Court held that the proper remedy for a parolee who did not receive his or her hearing within the prescribed period is an order of mandamus, not a writ of habeas corpus. (A writ of mandamus is an order issued by a court to compel a lower court or a governmental official to perform

mandatory or purely ministerial duties correctly.)

#### Department of Corrections Policy Directive

Department of Corrections policy directive 06.06.100 governs the parole violation process. The policy directive requires that a parole violation hearing be held within 45 calendar days after the date the parolee became available for return to prison.

Under an amendment that took effect on February 28, 2006, policy directive 06.06.100 specifies that, if a hearing is not conducted within 45 days as required, the Field Operations Administration Deputy Director must be notified in writing, the hearing must be conducted as soon as possible, and "the parolee shall not be released pending disposition of the hearing".

#### **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

#### **Supporting Argument**

The bill would codify case law established in the Supreme Court's *Jones* decision and make the Corrections Code consistent with DOC policy directive 06.06.100. Since the Court has established that a person accused of violating his or her parole does not have to be returned to parole simply because of the DOC's failure to hold his or her hearing within the prescribed time, and the DOC policy was recently amended to prohibit release under those circumstances, the statutory provision should incorporate that restriction as well. As pointed out in *Jones*, a parolee who does not receive a violations hearing within 45 days still has available the legal remedy of pursuing an order of mandamus to compel the DOC to hold a hearing.

#### **Supporting Argument**

Confusion among DOC staff as to whether a parole violator is to be returned to parole if he or she does not receive a hearing within 45 days apparently has led to the improper release on parole of numerous prisoners since the *Jones* decision. According to testimony before the Senate Judiciary Committee by the DOC Director on April 18, 2006, an internal investigation revealed 41 such releases within the year before the

Selepak arrest. As of the date of the Senate Committee hearing, 25 of the 41 offenders improperly returned to parole were back in custody, seven continued on parole after a review of their files, seven had been discharged from parole supervision, one had died, and one was on absconder status, meaning his whereabouts were unknown.

As evidenced by the widely publicized case of Patrick Selepak, release of a prisoner without a hearing on his or her alleged parole violation can have grave consequences. Selepak had been serving a prison sentence for armed robbery and another for escape from prison. He reportedly was denied parole four times by the parole board before being paroled in June 2005. On October 27, Selepak allegedly attacked a female companion and, on November 8, he was arrested by parole staff and returned to prison for parole violation charges related to that assault. While being held by the DOC on the parole violation charge, Selepak reportedly pleaded guilty to misdemeanor domestic violence charges and was sentenced to time served. A parole violation hearing was not held within 45 days, and Selepak was released from the correctional facility and reinstated on parole on January 10, 2006. Selepak and a female companion are believed to have murdered three people, including one who was pregnant, after he was released. They also allegedly tortured one victim by injecting him with bleach and severely beating him before killing him. The third victim was a man who befriended the pair and took them in, only to discover they were wanted for the first two murders.

In order to avoid future situations in which dangerous, violent criminals are improperly returned to parole for failure to be given a parole violations hearing within 45 days, the Corrections Code should specify that such prisoners are not to be released for that reason.

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

The bill would have no fiscal impact on the Department of Corrections. The bill would put into statute a policy already adopted by the DOC.

Fiscal Analyst: Lindsay Hollander

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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.