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BILL ANALYSIS



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Senate Bill 1196 (as enrolled)  
House Bill 5967 (as enrolled)  
Sponsor: Senator Alan Sanborn (S.B. 1196)  
Representative Richard Ball (H.B. 5967)  
Senate Committee: Judiciary  
House Committee: Judiciary

**PUBLIC ACT 315 of 2006**  
**PUBLIC ACT 316 of 2006**

Date Completed: 1-11-07

### **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. Until recently, the Code did not address whether a parolee was to be released if he or she did 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 about a one-year period during 2005 and 2006, 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, was charged with and eventually pleaded guilty to 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.

It was suggested that the Corrections Code 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.)

In addition, the Code called for parole to be "rescinded" for certain violations committed while a prisoner was on parole. Under DOC policy, however, rescission of a parole order occurs after parole has been granted but before the prisoner is released on parole. Parole is "revoked" for violations of parole. It was suggested that the Code should provide for parole revocation, rather than rescission, for these violations.

### **CONTENT**

**The bills amended the Corrections Code to do all of the following:**

- **Require that the DOC Director, or a designated deputy director, be notified if a preliminary parole violation hearing or fact-finding hearing is not held in the required time period for that proceeding, and**

require the hearing to be held as soon as possible.

- Prohibit the release of a parolee held in custody pending disposition of a preliminary parole violation hearing or a fact-finding hearing.
- Specify that a parole order may be rescinded for cause before a prisoner is released on parole and that, after a prisoner is paroled, his or her parole order is subject to revocation.
- Require revocation, rather than rescission, of parole under certain circumstances.

The bills were tie-barred and took effect on July 20, 2006.

### **Senate Bill 1196**

Under Section 40a of the Code, within 45 days after a paroled prisoner has been returned or is available for return to a State correctional facility because of an alleged parole violation other than a criminal conviction punishable by imprisonment, the prisoner is entitled to a fact-finding hearing on the charges before a member of the parole board or an attorney hearings officer designated by the chairperson of the board. Under Section 39a, within 10 days after an arrest for an alleged parole violation, a parolee is entitled either to a preliminary hearing to determine whether there is probable cause to believe that the conditions of parole have been violated or to a fact-finding hearing held pursuant to Section 40a.

A preliminary hearing may be postponed beyond the 10-day time limit on the written request of the parolee, but may not be postponed by the DOC. A fact-finding hearing may be postponed for cause beyond the 45-day time limit, on the written request of the parolee or his or her attorney or, if a postponement of the preliminary hearing has been granted beyond the 10-day time limit, by the parole board.

The bill specifies that the DOC Director, or a deputy director designated by the Director, must be notified in writing if the fact-finding hearing is not conducted within the 45-day time limit, and the hearing is to be conducted as soon as possible. A parolee held in custody may not be released pending disposition of the fact-finding hearing.

### **House Bill 5967**

#### Preliminary Hearing Delay

The bill requires the DOC Director, or a deputy director designated by the Director, to be notified in writing if the preliminary parole violation hearing required under Section 39a is not conducted within the 10-day time limit (described above). The hearing must be conducted as soon as possible. A parolee held in custody may not be released pending disposition of the hearing.

#### Parole Order Amendment, Rescission, or Revocation

Previously, the Code provided that a parole order could be amended or rescinded at the discretion of the parole board for cause. The bill specifies that a parole order may be rescinded at the board's discretion for cause before the prisoner is released on parole. A parole order still may be amended at the discretion of the parole board for cause.

Under the bill, if a paroled prisoner who is required to register under the Sex Offenders Registration Act willfully violates that Act, the parole board must revoke the parole. Parole also must be revoked if a prisoner convicted of violating or conspiring to violate certain controlled substances prohibitions is released on parole and violates or conspires to violate Article 7 of the Public Health Code (which contains controlled substances prohibitions) and the violation is punishable by at least four years' imprisonment, or commits a violent felony during his or her release on parole. Previously, parole in those instances had to be rescinded, rather than revoked.

The bill specifies that, after a prisoner is released on parole, his or her parole order is subject to revocation at the discretion of the parole board for cause, as provided in Section 40a.

MCL 791.240a (S.B. 1196)  
791.236 & 791.240a (H.B. 5967)

#### **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 bills essentially codified case law established in the Supreme Court's *Jones* decision and made 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 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 was to be returned to parole if he or she did not receive a hearing within 45 days apparently led to the improper release on parole of numerous prisoners after 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 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, 2005, Selepak apparently 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 subsequently murdered three people, including one who was pregnant. They also 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 bills amended the Corrections Code to specify that such prisoners are not to be released for that reason.

### **Supporting Argument**

House Bill 5967 addressed an inconsistency in the use of terminology regarding parole status. By specifying that a prisoner's parole may be revoked after a prisoner is released on parole, at the parole board's discretion and for cause, and requiring parole revocation rather than rescission for certain crimes committed while serving on parole, the bill made the Code consistent with the terminology used in DOC policy.

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

The bills will have no fiscal impact on the Department of Corrections. The bills put into statute policies 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.