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BILL ANALYSIS



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Senate Bill 1196 (as introduced 3-28-06)
Sponsor: Senator Alan Sanborn
Committee: Judiciary

Date Completed: 4-17-06

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 (468 Mich 646)

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 (DOC) 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 with 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".

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.