

Legislative Analysis



CONTROLLED SUBSTANCE: PAROLE, PROBATION, & HABITUAL OFFENDER REVISIONS FOR VIOLATIONS

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House Bill 4918
Sponsor: Rep. Rick Jones

House Bill 4920
Sponsor: Rep. Bert Johnson

House Bill 4919
Sponsor: Rep. Dan Scripps

House Bill 4921
Sponsor: Rep. Eileen Kowall

Committee: Judiciary

Complete to 5-13-09

A SUMMARY OF HOUSE BILLS 4918-4921 AS INTRODUCED 5-12-09

This package of bills applies to certain offenders whose drug-related crimes occurred *before* 2002 sentencing reform legislation took effect but who were convicted *after* the effective date of that legislation. The proposed bills would put these "pipeline" prisoners on the same footing as all other drug offenders regarding parole eligibility; otherwise these prisoners would be at an unintended disadvantage.

In 2002, legislation was enacted that eliminated the mandatory minimum sentences for drug offenses involving the manufacture/delivery/possession of controlled substances, revised the penalties for various drug crimes, revised the weight thresholds for the various offenses, eliminated the sentence of life probation for violations involving less than 50 grams of a Schedule 1 or 2 narcotic or cocaine, and provided parole for people previously convicted and sentenced to mandatory minimum terms of imprisonment for drug offenses prior to the effective date of the revisions, which was March 1, 2003.

As a package, the legislation would close loopholes that treat "pipeline offenders" differently from others convicted for controlled substances violations, apply current penalties to attempting to commit a violation, allow life probation for low-level drug offenses to continue for persons convicted prior to 2002 revisions, and repeal a provision in the health code mandating enhanced penalties for certain controlled substances violations. The bills are tie-barred to each other. A detailed explanation of the bills follows.

House Bill 4918

House Bill 4918 would amend the Code of Criminal Procedure (MCL 771.2). Public Act 666 of 2002 deleted Section 1(4) of Chapter XI, which allowed for life probation for offenses involving less than 50 grams of a Schedule 1 or 2 narcotic or cocaine. However, the act specifies in Section 2(3) that a defendant who had been placed on life probation

under Section 1(4) prior to the act's effective date (March 1, 2003) would still be subject to the conditions of probation specified in the code.

The bill would clarify that Section 2(3) applies to a defendant placed on life probation under Section 1(4) as it existed before March 1, 2003 for an offense committed before March 1, 2003.

House Bill 4919

House Bill 4919 would amend the Public Health Code (MCL 333.7401 and 333.7403) to repeal Section 333.7413. The bill would also revise two provisions regarding lifetime probation to specify that the provisions would pertain to an individual sentenced to lifetime probation under Section 7401(2)(a)(iv)—manufacture, delivery, or possession with intent to deliver—or Section 7403(2)(a)(iv)—possession—as those sections existed before March 1, 2003. Both provisions pertain to violations involving a Schedule 1 or 2 narcotics or cocaine in an amount less than 50 grams.

The section to be repealed provides the following:

- Life sentence without the possibility of parole for second or subsequent conviction for the manufacture/delivery/possession, or conspiracy to commit the same, involving Schedule 1 or 2 narcotics or cocaine of 50 to 999 grams (50 grams but less than 650 grams prior to March 1, 2003).
- Enhanced sentence for second or subsequent conviction of any other offense involving any controlled substance, including convictions under any federal or other state statute.
- Enhanced penalties for violations involving delivery or distribution of Schedule 1 or 2 narcotics or cocaine to a minor less than three years younger than the offender and delivery to anyone within 1,000 feet of a school or public library. Further, the court may depart from the enhanced penalty if it finds on the record substantial and compelling reasons to do so.

House Bill 4920

House Bill 4920 would amend the Corrections Code (MCL 791.234). Among other things, Public Act 670 of 2002 shortened the minimum time a person has to serve before being eligible for parole for persons convicted of violating the Public Health Code's prohibition on the manufacture/delivery/possession of Schedule 1 and 2 narcotics and cocaine before the act's effective date (March 1, 2003). As written, a person who committed an offense before the revisions took effect, but was convicted after the revisions took effect, was sentenced under the old provisions but not eligible for parole under the revised criteria and is therefore subject to the general parole provisions. In general, a prisoner is eligible for parole after serving his or her minimum sentence.

The bill would amend the code to do the following:

- Apply the provisions to a conviction for attempting to commit a violation (currently, the provisions specify a conviction for violating or conspiring to violate the prohibitions regarding controlled substances).
- Apply the revised parole criteria for convictions for manufacturing/delivery/possession with intent to deliver involving up to 999 grams of prohibited substances (25 grams to 999 grams for simple possession) to persons whose offense occurred before March 1, 2003, but who were sentenced according to those sections of the Public Health Code as they existed before March 1, 2003 (for manufacturing/delivery/intent to possess - any amount to less than 650 grams, for simple possession - 25 grams to less than 650 grams). This would apply regardless of the date of the conviction.
- Extend parole eligibility to a prisoner who has served 15 years of a life sentence for violating, or attempting or conspiring to violate, the prohibition on manufacturing/delivery/possession with intent to deliver and simple possession involving Schedule 1 or 2 narcotics or cocaine of 50 grams to 999 grams, or (prior to March 1, 2003 50 grams to less than 650 grams), regardless of when the crime had been committed.
- Allow a person convicted of violating, or attempting or conspiring to violate, provisions of the Public Health Code involving amounts of Schedule 1 and 2 narcotics and cocaine of 1,000 grams or more (or, prior to March 1, 2003, 650 grams or more), but whose offense occurred before March 1, 2003 and who was sentenced to serve a term of years, to be eligible for parole after serving 20 years if he or she had another serious crime, or 17½ years if he or she did not have another conviction for a serious crime, or after serving the minimum sentence, whichever was less.

Further, an individual sentenced to consecutive terms for two or more convictions for an offense involving Schedule 1 or 2 narcotics or cocaine, in any amount, whose offenses occurred before March 1, 2003, and who had been sentenced according to those sections of the Public Health Code as they existed before that date, would be eligible for parole when he or she had served the longest period required for parole eligibility for any of the sentences, as determined under the act. This provision would apply to all sentences imposed for violations or attempted violations involving controlled substances, *that arose from a single incident*. It also would apply to sentences imposed for conspiring to manufacture/deliver/possess with intent to deliver or simple possession of a Schedule 1 or 2 narcotics or cocaine.

Sentences arising from a single incident would include, but not be limited to: an arrest and related search of property associated with the individual; contemporaneous offenses involving more than one controlled substance or more than one quantity of the same controlled substance; and violations involving the manufacture/delivery/possession with

intent to deliver and simple possession of any controlled substance that had been prosecuted in more than one county and involved the same controlled substance.

House Bill 4921

Under provisions of the Code of Criminal Procedure, enhanced sentences can be given if an offender commits subsequent felony offenses. Currently, a subsequent conviction of a major controlled substance offense (offenses involving the manufacturer, delivery, and possession of Schedule 1 and 2 narcotics and cocaine) is not subject to the enhanced penalties; instead, they are punished as provided under provisions of the Public Health Code.

House Bill 4921 would amend the Code of Criminal Procedure (MCL 769.10 et al.) to remove references to subsequent felonies involving a major controlled substance offense. The bill would also exempt various drug-related offenses from a provision pertaining to parole eligibility; for those offenses, parole eligibility would be determined under provisions of the Correction Code.

FISCAL IMPACT:

A fiscal analysis of the legislation is in process. However, the HFA analyzed a similar package of bills in the 2007-08 legislative session, and said the following:

Based on data collected by the Department of Corrections in 2006 with regard to similar legislation, it appears that there may be about 200 to 400 prisoners who might be affected by the bills, with most of those affected being made eligible for parole immediately and relatively few becoming eligible in coming years. If all of the prisoners who were made eligible were paroled, full-year incremental savings would be conservatively about \$2.1 million to \$4.1 million per year, based on costs of about \$10,300 per bed, which is the cost of 8th bunks being added to seven-bunk open-bay housing. If the number of paroles were sufficient to enable the department to close a housing unit or, in conjunction with other efforts, to close a facility, then the annual savings would be considerably more.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.