

## CONTROLLED SUBSTANCES: PAROLE, PROBATION, & HABITUAL OFFENDER REVISIONS FOR VIOLATIONS

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**House Bill 4918 as introduced**  
**Sponsor: Rep. Rick Jones**

**House Bill 4920 as introduced**  
**Sponsor: Rep. Bert Johnson**

**House Bill 4919 as introduced**  
**Sponsor: Rep. Dan Scripps**

**House Bill 4921 as introduced**  
**Sponsor: Rep. Eileen Kowall**

**Committee: Judiciary**

**First Analysis (5-19-09)**

**BRIEF SUMMARY:** The legislation would amend various acts to revise provisions that currently treat certain drug 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.

**FISCAL IMPACT:** The Department of Corrections (MDOC) could experience cost savings under the bills, the amount of which would depend on the numbers of prisoners paroled under the legislation and how long their lengths of stay otherwise would have been. More detailed information is available later in the analysis.

### **THE APPARENT PROBLEM:**

The history of how Michigan has dealt with drug offenses is long and convoluted. The short version is that at one time, what became known as the "650 drug-lifer law" mandated a sentence of life in prison for a person convicted of manufacturing, delivering, or possessing with intent to deliver 650 grams or more of certain controlled substances (mainly, Schedule 1 and 2 drugs, such as heroin and cocaine). Legislation passed in 1998 revised the law to instead require life or any term of years but not less than 20 years, as well as added new standards regarding the parole of those sentenced to life in prison under the 650 drug-lifer law.

As the years went on, it was clear that the legislation was not capturing the people it was intended to—high level drug traffickers—but was instead incarcerating, for long periods, low level drug dealers and addicts. In 2002, legislation was enacted that, among other things, eliminated the mandatory minimum sentences for violations involving Schedule 1 and 2 narcotics and cocaine; revised the weight threshold for the various offenses (i.e., the top threshold was increased from 650 grams or more to 1,000 grams or more); allowed, rather than required, consecutive sentences for multiple felony violations arising from the same transaction; eliminated probation for life for offenses involving less than

50 grams (persons serving that probation were then allowed to petition a court to be discharged from the life probation); and provided earlier parole eligibility for people previously convicted and sentenced to the mandatory minimum terms of imprisonment.

Since those changes took effect, other problems have surfaced that need to be addressed. For instance, though the 2002 legislation shortened the amount of time an offender has to serve in prison before being eligible for parole, the shortened time period only pertains to those drug offenders whose convictions were handed down before the March 2003 effective date of the 2002 legislation and to new crimes committed after that date. Persons who committed a crime before the laws were revised, but whose cases were still in the process of being adjudicated, are not eligible for the earlier parole eligibility. Instead, these "pipeline cases," as they have become known, are subject to the general parole provisions. In general, a prisoner must serve his or her minimum sentence before being eligible for parole.

In addition, other anomalies, inconsistencies, and duplicative provisions in the drug laws exist. Legislation is being offered to "clean up" these inconsistent provisions and to remove the disparity that exists for the pipeline offenders.

### ***THE CONTENT OF THE BILLS:***

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.

#### ***BACKGROUND INFORMATION:***

An identical package of bills was passed by the House of Representatives last session. The bills were reported by the Senate Judiciary Committee at the end of the legislative cycle but did not receive Senate floor action.

#### ***FISCAL INFORMATION:***

The Department of Corrections (MDOC) could experience cost savings under the bills, the amount of which would depend on the numbers of prisoners paroled under the legislation and how long their lengths of stay otherwise would have been. Based on September 2008 data and analysis provided by MDOC, it appears that roughly 80 to 140 prisoners could be immediately eligible for parole consideration by the parole board, with "roughly one to two dozen additional prisoners becoming parole eligible each year in the years 2009 through 2018, followed by smaller numbers yearly" for the next two decades or more. The department estimated that eventually 344 to 411 prisoners could experience earlier parole eligibility under the legislation.

The average appropriated cost of prison incarceration is about \$33,000 per prisoner per year, a figure that includes various fixed administrative and operational costs. The incremental cost of housing a single prisoner is roughly \$10,000 to \$15,000 annually, depending on health care needs and security level. If the number of paroles were sufficient to enable the department to close one or more housing units, savings could be higher than would otherwise be the case. Savings in the costs of incarceration would be offset to some extent by costs of parole supervision and associated services. Parole and probation supervision averages about \$1,200 per supervised offender annually, exclusive of any electronic monitoring; the cost of services and programs varies.

The parole approval rate for drug offenders was 80.6 percent in 2008. Assuming that 80 to 140 prisoners became immediately eligible for parole and that 80-90% of them were approved for parole, savings in the first full year of the bill's impact could be roughly \$1.0 million, depending on the number paroled and the cost of any post-release supervision and services. Savings would not begin to accrue until affected prisoners were released, which would depend not only on how quickly their cases were reviewed by the parole board, but also on the duration of any pre-parole planning and programming under the Michigan Prisoner Re-Entry Initiative (MPRI). Pre-parole MPRI placement typically lasts about two months.

### ***ARGUMENTS:***

#### ***For:***

The bill package would only apply to those offenders whose drug-related crimes occurred before - but who were convicted after - the 2002 reform legislation took effect. The proposed bills would simply put these prisoners—who were in the "pipeline" when the changes took effect—on the same footing as all other drug offenders regarding parole eligibility. Statistics show that people paroled for drug crimes reoffend at a much lower rate—17 percent recidivism as opposed to an average rate of 50 percent for other crimes. The bills therefore have the potential to save the state money otherwise spent on incarceration without placing the public's safety in jeopardy. Plus, offenders on parole who obtain employment can support their families, pay child support, pay taxes, and support their local economy.

Parole would not be guaranteed to any affected prisoners, nor would the bills change a prisoner's sentence. The bill package would just require the parole board to review the appropriateness of parole for a pipeline prisoner earlier than is allowed now, but on the same time schedule that currently applies to drug offenders whose crimes and convictions occurred either before or after March 1, 2003 (the date the 2002 reform legislation took effect). Further, the bills would make numerous changes of a technical nature to conform the various acts to each other and eliminate redundant provisions.

#### ***Against:***

House Bill 4919 would repeal a section of the Public Health Code that provides harsher enhanced penalties for repeat drug offenders than that currently allowable under the habitual offender penalties contained in the sentencing guidelines, which would become the default statute under which those with multiple drug offenses would be sentenced. Therefore, it would appear that this bill is softening the penalties for those who commit multiple drug crimes.

#### ***Response:***

Reportedly, many judges have been unaware of this provision and have instead been sentencing repeat drug offenders under the habitual offender provisions of the sentencing guidelines. Eliminating Section 7413 of the health code would allow judges to treat all offenders the same, not carve out harsher penalties just for drug crimes. Besides, with advances in treatment, most of these people could be rehabilitated and, if paroled sooner under the sentencing guidelines, go on to be successful members of their communities.

***POSITIONS:***

The Michigan Department of Corrections indicated support for the bills. (5-13-09)

A representative of Families Against Mandatory Minimums (FAMM) testified in support of the bills. (5-13-09)

The Michigan Catholic Conference indicated support for the bills. (5-13-09)

The Prosecuting Attorneys Association of Michigan indicated a position of neutrality. (5-13-09)

Last session, the following organizations indicated support for an identical package of bills:

The Michigan Association of Drug Court Professionals  
Michigan's Children  
NAACP – Detroit Chapter  
Citizens Alliance on Prisons and Public Spending (CAPPS)

Legislative Analyst: Susan Stutzky  
Fiscal Analyst: Marilyn Peterson

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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.