



Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

House Bills 4918 through 4921 (as passed by the House)

Sponsor: Representative Rick Jones (H.B. 4918)  
Representative Dan Scripps (H.B. 4919)  
Representative Bert Johnson (H.B. 4920)  
Representative Eileen Kowall (H.B. 4921)

House Committee: Judiciary  
Senate Committee: Judiciary

Date Completed: 12-8-09

### **CONTENT**

**House Bill 4920** would amend the Corrections Code to extend sentencing and parole eligibility provisions that currently apply to certain drug offenders convicted before March 1, 2003, to individuals convicted of an offense that occurred before that date and sentenced under previous penalty provisions for the offense.

**House Bills 4918 and 4921** would amend the Code of Criminal Procedure to do the following:

- Extend probation reforms for offenders placed on lifetime probation before March 1, 2003, to individuals placed on lifetime probation for an offense committed before that date under a previous penalty provision.
- Delete a requirement that a person be punished as provided under the Public Health Code, rather than the Code of Criminal Procedure's habitual offender provisions, if the subsequent felony is a major controlled substance offense.

**House Bill 4919** would amend the Public Health Code to do the following:

- Extend a provision relating to the discharge of lifetime probation for a person sentenced before March 1, 2003, to a person sentenced to lifetime probation under a previous penalty provision.
- Repeal a section of the Code providing for enhanced sentencing for a second or subsequent controlled substance offense.

All of the bills are tie-barred to each other.

### **House Bill 4920**

Public Act 670 of 2002, which took effect on March 1, 2003, amended the Code of Criminal Procedure to provide for parole eligibility for people who were convicted, before that date, of manufacturing, creating, delivering, possessing with intent, or possessing less than 650 grams of a Schedule 1 or 2 narcotic or cocaine.

An individual convicted of an offense involving 225 grams or more, but less than 650, before March 1, 2003, is eligible for parole after serving the minimum of each sentence imposed for that violation or 10 years of each sentence, whichever is less. An individual convicted of an offense involving 50 grams or more, but less than 225, before March 1, 2003, is eligible for parole after serving the minimum of each sentence imposed for that violation or five years of each sentence, whichever is less. Under the bill, both provisions would apply to an individual who was convicted of an offense that occurred before March 1, 2003, and who was sentenced under previous penalty provisions for those drug offenses. (Public Act 665 of 2002, which also took effect on March 1, 2003, eliminated mandatory minimum sentences and removed parole prohibitions for the offenses described above.)

Also, under the bill, an individual convicted of manufacturing, creating, delivering, possessing, or possessing with intent to deliver 650 grams or more of a Schedule 1 or 2 narcotic or cocaine whose offense occurred before March 1, 2003, and who was sentenced to a term of years, would be eligible for parole after serving 20 years if he or she had another serious crime or after serving 17.5 years if he or she did not have another conviction for a serious crime, or after serving the minimum sentence imposed for the violation, whichever was less.

Under the Code as amended by Public Act 670, an individual convicted of an offense involving manufacturing, creating, delivering, or possessing with intent to deliver less than 50 grams, or of an offense involving possession of 25 grams or more but less than 50, before March 1, 2003, who is sentenced to a term of imprisonment that is consecutive to a term imposed for a violation involving any amount of Schedule 1 or 2 narcotic or cocaine, is eligible for parole after serving half of the minimum sentence imposed for each violation. Under the bill, this provision would apply to an individual whose offense occurred before March 1, 2003, and who was sentenced to consecutive terms according to the penalties for the offenses as they existed before that date. Also, this provision would apply only for violations involving less than 50 grams. For violations involving other amounts, an individual sentenced to consecutive terms for two or more convictions, for offenses that occurred before March 1, 2003, and who was sentenced according to penalties for those offenses as they existed before March 1, 2003, would be subject to the parole board's jurisdiction and could be released on parole when he or she served the longest period required for parole eligibility for any of the sentences.

In addition, under the bill, a prisoner sentenced to imprisonment for life would be subject to the parole board's jurisdiction and could be placed on parole if he or she had served 15 years of a life sentence for manufacturing, creating, delivering, possessing, or possessing with intent to deliver at least 50 but less than 650 grams of a Schedule 1 or 2 narcotic or cocaine (if the violation occurred before March 1, 2003), or at least 50 but less than 1,000 grams (if the violation occurred on or after March 1, 2003), regardless of when the crime was committed.

The bill also would include an attempted violation of manufacturing, creating, delivering, or possessing with intent to deliver a Schedule 1 or 2 narcotic or cocaine in provisions pertaining to parole eligibility for those offenses.

### **House Bill 4918**

Before the effective date of Public Act 666 of 2002 (March 1, 2003), the Code provided for lifetime probation for the drug offenders subject to the sentencing described above. Public Act 666 amended the Code to delete that provision and provided that a defendant who was placed on life probation under that provision before March 1, 2003, is subject to conditions of probation specified in the Code. Under the bill, those probationary conditions would apply to a defendant placed on life probation under the provision of the Code deleted by

Public Act 666 as it existed before March 1, 2003, for an offense committed before that date.

### **House Bill 4921**

The Code prescribes enhanced sentencing for habitual offenders and requires that a person be punished as provided under Part 74 of the Public Health Code, which deals with controlled substance offenses and penalties, if the subsequent felony is a major controlled substance offense. The bill would delete that requirement.

### **House Bill 4919**

#### **Discharge of Lifetime Probation**

Before the effective date of Public Act 665 of 2002 (March 1, 2003), probation for life was one of the possible penalties for manufacturing, creating, delivering, or possessing with intent to deliver less than 50 grams of a Schedule 1 or 2 narcotic or cocaine and for possessing 25 grams or more but less than 50. Public Act 665 amended the Public Health Code to eliminate that penalty and provide that, if an individual was sentenced to lifetime probation for any of those offenses before March 1, 2003, and has served five or more years of that probationary period, the person's probation officer may recommend that the court discharge him or her from probation.

Under the bill, this would apply to anyone sentenced to lifetime probation for the offense under the provision "as it existed" before March 1, 2003.

#### **Repeal**

The bill would repeal Section 7413 of the Public Health Code, which requires a sentence of imprisonment for life without eligibility for probation, suspension of sentence, or parole during that mandatory term for a second or subsequent violation of manufacturing, creating, delivering, possessing with intent to deliver, or possessing 450 grams or more but less than 1,000 grams, or 50 grams or more but less than 450 grams, of a Schedule 1 or 2 narcotic or cocaine.

In addition, under Section 7413, an individual convicted of a second or subsequent offense under Article 7 (Controlled Substances) of the Code may be imprisoned for a term of up to twice the term otherwise authorized and/or fined an amount of up to twice that otherwise authorized.

Also, an individual 18 years of age or older who is convicted of a second or subsequent offense of delivering, or possessing with intent to deliver, less than 50 grams of a Schedule 1 or 2 narcotic or cocaine within 1,000 feet of school property or a library is subject to enhanced penalties, including a mandatory minimum term of imprisonment. A person sentenced under this provision is not eligible for probation or suspension of sentence during the term of imprisonment. The court, however, may depart from the minimum term of imprisonment if it finds on the record that there are substantial and compelling reasons to do so.

MCL 771.2 (H.B. 4918)  
333.7401 & 333.7403 (H.B. 4919)  
791.234 (H.B. 4920)  
769.10 et al. (H.B. 4921)

Legislative Analyst: Patrick Affholter

## **FISCAL IMPACT**

The bills would have an indeterminate fiscal impact on State government. To the extent that offenders who were convicted of offenses occurring before March 1, 2003, and sentenced under the previous penalties would be paroled earlier than they otherwise will be, the State would incur decreased costs of incarceration in a State facility at an average annual saving of \$34,000. The Parole Board would decide whether to release parole-eligible prisoners to parole supervision. According to the Michigan Department of Corrections, 99 to 158 additional prisoners would become eligible for parole this year under the bills, 16 to 23 would become eligible in 2010, and 22 to 24 would become eligible in 2011. Roughly, a dozen additional prisoners would become eligible every year until 2018, followed by smaller numbers annually for the next couple of decades. Eventually, approximately 344 to 411 prisoners would receive earlier parole eligibility under the bills.

To the extent that offenders would be discharged from lifetime probation under the bills, the State would incur decreased costs of felony probation at annual average saving of \$2,000.

There are no data to indicate how many offenders will be sentenced under Section 7413. To the extent that the bills would decrease incarceration time, the State would incur decreased costs of incarceration in a State facility at an average annual saving of \$34,000.

Fiscal Analyst: Matthew Grabowski

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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.