

Legislative Analysis



PAROLE DECISIONS: ALLOW AG TO APPEAL

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Senate Bill 1214 with House committee amendment

Sponsor: Sen. Rick Jones

House Committee: Judiciary

Senate Committee: Judiciary

Complete to 12-10-12

A SUMMARY OF SENATE BILL 1214 AS REPORTED BY HOUSE COMMITTEE

The bill would allow the attorney general to appeal an action of the Parole Board granting a parole and would require a review of a parole decision to be under an "abuse of discretion" standard.

Currently, release on parole is not mandatory, but up to the Parole Board's discretion. The decision to parole a prisoner is appealable by the prosecutor of the county from which the victim was from or from which the prisoner was committed to prison.

Senate Bill 1214 would amend the Corrections Code (MCL 791.234) to also allow the state attorney general to appeal a parole decision—if the Department of Attorney General had prosecuted the case. The bill would also require a review of the decision to release a prisoner on parole to be under an abuse of discretion standard. The standard would have to consider whether the Parole Board's determination fell outside of a principled range of outcomes.

FISCAL IMPACT:

The bill could increase state costs by an indeterminate amount to the extent that the Attorney General's Office elects to utilize the rights to appeal Parole Board decisions as authorized by the bill. The Attorney General's Office could incur direct staffing costs in evaluating and preparing appeals, although these could be met out of existing resources. The Department of Corrections would incur costs in defending against any appeals of Parole Board decisions. In addition, new appeals would increase the length of prison stays for affected prisoners, particularly for those where appeals are successful at overturning parole grants. This would increase state prison costs.

BACKGROUND INFORMATION:

Currently, the state attorney general has no standing to appeal a Parole Board's grant of parole. As passed by the Senate, the bill would have granted the ability to appeal any parole decision, whether the county prosecutor wished to do so or not. According to committee testimony, an appeal by the attorney general could be spurred by a case of first impression (in which a legal question comes before a court that is new or for which there

is no controlling precedent). However, the bill did not limit or restrict the Office's authority to such cases.

The committee adopted an amendment that would restrict the authority of the attorney general to appeal a parole decision only to those cases in which the Office of Attorney General had been a party to the prosecution. The amendment recognizes that the decision to appeal a grant of parole is best left to those who prosecuted the case. The amendment also recognizes that though it was stated that the current attorney general would rarely avail himself of the right to file an appeal, it is unclear how future attorneys general would act. Thus, the amendment would grant the same right to appeal a parole decision to the attorney general as is currently available to any county prosecutor. In addition, since the attorney general represents the Parole Board in appeals, the amended bill limits the potential for conflicts of interest due to representing both sides in an appeal.

POSITIONS:

A representative of the Office of Attorney General testified in support of the bill as it passed the Senate. (12-6-10)

The Citizens Alliance on Prisons and Public Spending (CAPPS) indicated a neutral position on the bill. (12-6-12)

The Criminal Defense Attorneys of Michigan (CDAM) indicated a neutral position on the bill. (12-6-12)

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