

## **ELIMINATE MANDATORY LIFE WITHOUT PAROLE FOR JUVENILE OFFENDERS**

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### **House Bills 4806 & 4809**

**Sponsor: Rep. Joe Haveman**

### **House Bill 4807**

**Sponsor: Rep. Al Pscholka**

### **House Bill 4808**

**Sponsor: Rep. Margaret E. O'Brien**

**Committee: Criminal Justice**

**Complete to 8-26-13**

## **A SUMMARY OF HOUSE BILLS 4806-4809 AS INTRODUCED 6-6-13**

Briefly, the bill package would amend various statutes to do the following:

- Eliminate the mandatory sentence of life without parole for certain crimes if committed by a person less than 18 years of age.
- For juveniles who previously had been sentenced to life imprisonment without parole, create a mechanism by which a prosecutor could seek resentencing to impose a sentence of life without the possibility of parole and an eligible prisoner could seek resentencing to impose a sentence of life with the possibility of parole or for any term of years.
- Allow juvenile lifers who were resentenced to the possibility of parole or any term of years to be eligible for parole after serving 15 years.
- Eliminate "file reviews" of all lifers and instead require interviews every two years after reaching parole eligibility.
- Allow parole interviews with lifers to be conducted via two-way interactive video.
- Eliminate the ability of a successor judge to automatically veto a parole for a lifer.
- Require the parole board to consider certain factors, such as potential for rehabilitation, when making a parole decision regarding a juvenile lifer.

The bills are explained in additional detail below.

### **House Bill 4806**

The bill would add Section 33 to Chapter IX (Judgment and Sentence) of the Code of Criminal Procedure to allow either the prosecuting attorney or the prisoner to file a motion for resentencing at any time after January 1, 2014. This would apply to a person confined to prison under a mandatory sentence of imprisonment for life without the possibility of parole for a felony committed before that person had reached 18 years of age if the mandatory sentence was imposed before January 1, 2014, and if Section 32 did not apply.

(Section 32 would be added by **Senate Bill 319** and applies to convictions for first-degree murder. That section would allow, beginning January 1, 2014, a prosecuting attorney to petition a court to request that a defendant convicted of first-degree murder while under the age of 18 years old be sentenced to life without the possibility of parole and allow the defendant to file a response requesting life with parole eligibility after 45 years; if the prosecutor failed to make a timely request for a sentence of life without parole, the court would have to impose of a sentence of life imprisonment with parole eligibility after 45 years.)

Under House Bill 4806, a prosecutor could file a motion to seek imposition of a sentence of imprisonment for life without the possibility of parole and a prisoner could seek a sentence of imprisonment for life with the possibility of parole or for any term of years. After a motion for resentencing is filed, the other party (prosecutor or prisoner) could file a response within 28 days after receipt of the motion. The response would have to specify the basis for seeking the requested sentence. However, if the prosecutor did not file a response to a prisoner's request for resentencing, the court would be required to resentence the prisoner to imprisonment for life with the possibility of parole or for any term of years.

If the prosecutor files a motion for resentencing (whether or not the prisoner files a response) or contests the prisoner's motion for resentencing, the court is required to conduct a hearing to consider several factors as specified in the bill. A hearing under this provision would constitute a sentencing hearing under Michigan Rule of Evidence 1101. The court could consider evidence presented at trial and additional evidence presented at the sentencing hearing by the prosecution or defense. The court would have to specify on the record the aggravating and mitigating circumstances it considered and its reasons supporting the sentence imposed.

The factors that a court must consider in reaching a determination on the prosecutor's motion seeking imposition of a sentence of life imprisonment without the possibility of parole include the following:

- The person's (prisoner's) character and record.
- The circumstances of the offense, including the extent of participation in the crime for which the person was sentenced and whether familial or peer pressure may have affected the person.
- Chronological age at the time of the crime's commission.
- The person's background, mental and emotional development, and family and home at the time the crime was committed.
- Whether the person might have been charged and convicted of a lesser offense if not for incompetency associated with youth.
- The potential for rehabilitation.
- Any other aggravating or mitigating circumstances bearing upon the person's culpability or potential for rehabilitation.

### **House Bill 4807**

The bill would amend Chapter XIA within the Probate Code, entitled "Jurisdiction, Procedure, and Disposition Involving Minors" (MCL 712A.18). Under the code, if a juvenile is tried as an adult and subsequently convicted, the court may impose any sentence upon the juvenile that could be imposed upon an adult convicted of the same offense. House Bill 4807 would specify that the authority of the court to impose any adult sentence on the juvenile would be subject to the exceptions created in Sections 32 and 33 of Chapter IX of the Code of Criminal Procedure as described above (to be added by Senate Bill 319 and House Bill 4806, respectively). House Bill 4807 is tie-barred to House Bill 4808.

### **House Bill 4808**

The bill would amend the Michigan Penal Code (MCL 750.16 et al.) to specify that various crimes for which the maximum term of imprisonment is life without the possibility of parole (generally speaking, crimes involving the death of another person) would be subject to the provisions of Sections 32 and 33 of Chapter IX of the Code of Criminal Procedure (to be added by Senate Bill 319 and House Bill 4806, respectively). Therefore, the bill would eliminate the mandatory application of life without parole for defendants who were under 18 years of age at the time the offense had been committed.

In addition, currently a conviction of first degree criminal sexual conduct (CSC) committed by a person 17 years of age or older against an individual less than 13 years of age is punishable by a mandatory sentence of life imprisonment without the possibility of parole if the person had been previously convicted of 2nd, 3rd, or 4th degree CSC or assault with intent to commit 1st-3rd degree CSC. The bill would instead apply this provision to a defendant who is 18 years of age or older at the time of the violation.

The bill is tie-barred to House Bill 4806 and Senate Bill 319.

### **House Bill 4809**

The bill would amend the Corrections Code (MCL 791.234 et al.) to do the following:

- Require a prisoner who was resentenced under the provisions of House Bill 4806 to life with the possibility of parole or any terms of years to be eligible for parole consideration after serving 15 years of his or her term of imprisonment, including any time served as part of the original sentence.
- Require the same criteria and assessment tools used for non-lifers to also be used when considering parole for a prisoner sentenced to imprisonment for life but eligible for parole.
- Make several changes to the process of granting parole for lifers eligible for parole as follows:
  - Require one member of the parole board to interview a prisoner when he or she initially becomes eligible for parole and every two years thereafter until the prisoner is paroled, discharged, or deceased. The interview could

be conducted via a two-way interactive video technology system if the system allowed the board member and prisoner to see, hear, and communicate with each other simultaneously. This provision would replace the current requirement, which would be eliminated, that one parole board member interview the prisoner after the prisoner served 10 years of the sentence and thereafter as determined by the parole board.

- Eliminate the process known as a "file review" in which the prisoner's file is reviewed after serving 15 years of the sentence and every five years thereafter. Instead, the bill would specify that a decision not to proceed to public hearing (known as a "no interest decision") constitutes a decision to deny parole.
- Remove a successor judge's ability to veto a parole consideration. The successor judge (the judge currently sitting on the bench in the place of the judge who originally sentenced the prisoner) could still file written objections to paroling the prisoner, but those objections, though being considered, would not automatically prevent parole being granted, as is the situation currently. The parole board would retain jurisdiction over the prisoner regardless of the written objections.
- Require the parole board to consider certain factors when deciding whether to grant or deny parole to any prisoner who was under 18 years of age at the time the offense for which he or she is imprisoned had been committed. These factors include the prisoner's character and criminal and institutional records; circumstances of the offense such as peer pressure and the extent of participation in the offense; age at the time of the offense; background, mental and emotional development, and family and home environment at the time of the offense; whether the prisoner could have been charged and convicted of a lesser offense if not for incompetency associated with youth; and the prisoner's potential for rehabilitation.

The bill is tie-barred to House Bill 4806.

**FISCAL IMPACT:**

A fiscal analysis is in process.

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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.