



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

BILL ANALYSIS



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

House Bill 5377 (Substitute H-1 as passed by the House)
Sponsor: Representative Klint Kesto
House Committee: Law and Justice
Senate Committee: Judiciary

Date Completed: 9-4-18

CONTENT

The bill would amend the Corrections Code to do the following:

- **Specify that the purpose of parole guidelines would be to assist the Michigan Parole Board in making objective, evidence based release decisions that would enhance the public safety.**
- **Require the Department of Corrections (MDOC) to state in writing the substantial and compelling objective reasons for a departure from the parole guidelines, instead of substantial and compelling reasons.**
- **Specify that substantial and compelling objective reasons for a departure from the guidelines would be limited to certain circumstances.**
- **Require the Parole Board to conduct a review of a prisoner who had been denied parole.**
- **Require the MDOC to submit to the Legislature and the Criminal Justice Policy Commission (CJPC) an annual report containing certain information about the number of prisoners who were granted parole during the preceding calendar year.**
- **Require the MDOC to immediately advise the Legislature and the CJPC of any changes made to the scoring of the guidelines.**
- **Specify that there would be no entitlement to parole.**

The bill would take effect 90 days after its enactment.

Departure From Parole Guidelines

The Corrections Code requires the Department of Corrections to develop parole guidelines to govern the exercise of the Michigan Parole Board's discretion as to the release of prisoners on parole. The purpose of the guidelines is to assist the Parole Board in making release decision that enhance the public safety. Under the bill, the purpose of the guidelines would be to assist the Parole Board in making *objective, evidence-based* release decisions that would enhance the public safety.

The Code also requires the MDOC to promulgate rules that prescribe the parole guidelines. The Parole Board may depart from the guidelines by denying parole to a prisoner who has a high probability of parole as determined under the guidelines, or by granting parole to a prisoner who has a low probability of parole as determined under the guidelines. A departure from the guidelines must be for substantial and compelling reasons stated in writing. Under

the bill, a departure from the guidelines would have to be for substantial and compelling *objective* reasons stated in writing.

Under the bill, substantial and compelling objective reasons for a departure from the parole guidelines for a prisoner with high probability of parole would be limited to the following circumstances:

- The prisoner exhibited a pattern of ongoing behavior while incarcerated indicating that he or she would be a substantial risk to public safety, including major misconducts or additional criminal convictions.
- The prisoner refused to participate in programming ordered by the MDOC to reduce his or her risk; however, a prisoner would not be considered to have refused programming if unable to complete programming due to factors beyond his or her control.
- There was verified objective evidence of substantial harm to a victim that could not have been available for consideration at the time of sentencing.
- The prisoner had threatened harm to another person if released.
- There was objective evidence of post-sentencing conduct, not already scored under the parole guidelines, that the prisoner would present a high risk to public safety if paroled.
- The prisoner was a suspect in an unsolved criminal case that was being actively investigated.
- The prisoner had a pending felony charge or was subject to a detainer request from another jurisdiction.
- The prisoner had not yet completed programming ordered by the MDOC to reduce his or her risk, and the programming was not available in the community and the risk could not be adequately managed in the community before completion.
- The prisoner's release was otherwise barred by law.
- The prisoner had received a psychological evaluation in the past three years indicating that he or she would present a high risk to public safety if paroled.
- If the prisoner failed to present a sufficient parole plan adequately addressing his or her identified risks and needs to ensure that he or she would not present a risk to public safety if released.

If a prisoner were denied parole for failure to present a sufficient parole plan, the Parole Board would have to provide the prisoner a detailed explanation of the deficiencies in the plan so that the prisoner could address the deficiencies before his or her next review.

The Parole Board could deny parole for up to one year to a prisoner who was denied parole because he or she had not yet completed programming ordered by the MDOC to allow for the completion of the programming. A prisoner who was denied parole for this reason would have to receive parole consideration within 30 days after the completion of the programming.

These provisions would apply only to prisoners whose controlling offense was committed on or after the effective date of the bill. The substantial and compelling objective reasons for parole would not apply to a prisoner serving a life sentence, regardless of the date of his or her controlling offense.

Parole Board Review

Under the bill, the Parole Board would have to conduct a review of a prisoner, except for a prisoner serving a life sentence, who had been parole as follows:

- If the prisoner scored high or average probability of parole, at least annually.
- If the prisoner scored low probability of parole, at least every two years until a score of high or average probability was attained.

Parole Eligibility Report

Under the Code, at least 90 days before a prisoner's minimum sentence expired, less applicable good time and disciplinary credits for a prisoner eligible for good time or disciplinary credits, expired, or at least 90 days before a prisoner's sentence, subject to disciplinary time, or the expiration of a 12-month continuance for any prisoner, the appropriate institutional staff must prepare a parole eligibility report that contains certain information specified in the Code.

The bill also would require the report to include the result of any validated risk assessment instrument.

Report to Legislature & CJPC

The bill would require the MDOC, by March 1 of each year, to report to the Senate and House of Representatives standing committees having jurisdiction of corrections issues, and the CJPC, all of the following information:

- The number of prisoners who scored high probability of parole and were granted parole during the preceding calendar year.
- The number of prisoners who scored high probability of parole and for whom parole was deferred to complete necessary programming during the preceding calendar year.
- The number of prisoner who scored high probability of parole and were incarcerated at least six months past their first parole eligibility date as of December 31 of the preceding calendar year.
- The number of prisoners who scored high probability of parole and were denied parole for a substantial and compelling reason, or reasons, during the preceding calendar year, included with a breakdown of parole denials for each of the substantial and compelling objective reasons.
- The number of prisoners who scored high probability of parole and were denied parole whose controlling offense was in each of the following groups: homicide, sexual offense, an assault offense other than a homicide or sexual offense, a nonassaultive offense, and a controlled substance offense.

The MDOC also would have to report, of the total number of prisoners who were denied parole for a substantial or compelling objective reason who scored a high probability of parole and were denied parole, the number who served the following amount of time after completing their minimum sentence: a) less than one year; b) one year or more, but less than two years; c) two years or more, but less than three years; d) three years or more, but less than four years; and e) four or more years.

Parole Guidelines Scoring Changes

The bill would require the MDOC to immediately advise the House and Senate standing committees having jurisdiction of correction issues, and the CJPC, of any changes made to the scoring of the parole guidelines after the bill's effective date, including a change in the number of points that defined "high probability of parole".

MCL 791.233e et al.

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

The bill would result in savings for the State over time and would have an indeterminate impact on local governments. Savings would not be realized immediately because the bill would not apply to prisoners who are currently in custody; however, the average length of stay for future prisoners could be reduced. A reduction in the average length of stay in prison for future prisoners would result in a reduced prison population and a decrease in the number of prison beds required. The Department of Corrections anticipates the continuation of a projected 1,800 bed decline over the next five years as a result of the bill.

The bill could lead to an increase in the number of offenders on parole, which could lead to an increased need for parole supervision services and prisoner reentry services. State costs for parole supervision averaged \$3,603 per supervised offender in fiscal year 2017.

Although it is unlikely provisions of the bill would lead to more parolees reoffending, if there were more arrests, it could increase costs to local court systems, law enforcement, and jails. Shortening the average length of stay for prisoners could increase the chance that some individuals who otherwise would have been in prison will reoffend, but there is no compelling evidence that longer prison stays reduce recidivism rates.

Fiscal Analyst: Abbey Frazier

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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.