

Legislative Analysis



PRODUCTIVITY CREDITS

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

Senate Bill 861 as passed by the Senate
Sponsor: Sen. Jeff Irwin

Analysis available at
<http://www.legislature.mi.gov>

Senate Bill 862 as passed by the Senate
Sponsor: Rep. Roger Victory

Senate Bill 863 as passed by the Senate
Sponsor: Rep. Erika Geiss

Senate Bill 864 (S-1) as passed by the Senate
Sponsor: Rep. Edward W. McBroom

House Committee: [Pending]

Senate Committee: Civil Rights, Judiciary, and Public Safety
Complete to 12-17-24

SUMMARY:

Senate Bill 861 would amend 1893 PA 118, known as the prison code, to allow certain prisoners to earn productivity credits toward time that must be deducted from the prisoner's sentence in determining their parole eligibility date and discharge date. Productivity credits would be awarded for participation in and completion of educational programs, vocational programs, or other programs recommended or approved by the Department of Corrections (DOC) as well as for the successful completion of a high school diploma, high school equivalency certificate, or higher education degree.

Senate Bills 863, 864, and 862 would respectively amend the William Van Regenmorter Crime Victim's Rights Act, the Code of Criminal Procedure, and the Corrections Code to accommodate the new credits in those acts.

Senate Bill 861 would amend the prison code to provide that certain prisoners under the jurisdiction of DOC for the commission of a felony offense are eligible to earn productivity credits. Accumulated productivity credits would have to be deducted from a prisoner's sentence (both the minimum and the maximum) to determine their parole eligibility and discharge dates.

Eligibility to earn productivity credits

Except as noted below, the bill would apply to prisoners who are sentenced on or after the bill's effective date to an indeterminate term of imprisonment (one expressed as a range of minimum and maximum terms) for specified assaultive crimes committed on or after December 15, 1998, and for any crime committed on or after December 15, 2000.¹

The bill would not apply to any of the following prisoners:

- A prisoner sentenced to imprisonment for life without parole.

¹ See the act's definition of *prisoner subject to disciplinary time*: <http://legislature.mi.gov/doc.aspx?mcl-800-34>
Under the prison code, disciplinary time is given to a prisoner for each major misconduct they are found guilty of under departmental rules. Disciplinary time can be reduced by the DOC for exemplary good conduct and restored if the prisoner is subsequently found guilty of a major misconduct. Accumulated disciplinary time is submitted to the parole board for its consideration at the prisoner's parole review or interview.

- A prisoner sentenced for a conviction under section 81(5), 81a(3), 316, 317, 411h(2)(b), 411i, 462b, 462c, 462d, or 462e(b) of the Michigan Penal Code.²
- A prisoner sentenced for a conviction that is a listed offense under the Sex Offenders Registration Act.³

Awarding productivity credits

Under the bill, DOC would have to award productivity credits to a prisoner who is eligible to earn them as follows:

- 20 days of productivity credits for each month the prisoner maintains enrollment in a program recommended by DOC or an educational or vocational program, up to a maximum total of 100 days. (However, DOC could not award a prisoner productivity credits for enrollment during a month in which the prisoner is found guilty of having committed a major misconduct. The credits not awarded could not exceed those that would have been earned for that month.)
- 90 days of productivity credits upon the prisoner's successful completion of a program recommended by DOC or an educational or vocational program that does not result in a high school diploma, high school equivalency certificate, or higher education degree.
- 120 days of productivity credits upon the prisoner's earning a high school diploma, high school equivalency certificate, or higher education degree.

In addition, if research and evidence were to indicate that the program improves rehabilitation, behavioral, or post-release prisoner outcomes, DOC could approve additional programs for a prisoner to earn productivity credits and assign and award those credits as follows:

- 10, 15, or 20 days of productivity credits, as determined by DOC for the applicable program, for each month the prisoner maintains voluntary enrollment in the DOC-approved program, up to a maximum total of 100 days. (However, DOC could not award a prisoner productivity credits for enrollment during a month in which the prisoner is found guilty of having committed a major misconduct. The amount of credits not awarded would be limited to those that would have been earned for the month in which the misconduct occurred.)
- Up to 90 days of productivity credits, as determined by DOC, upon the prisoner's successful completion of the DOC-approved program.

Further limitations on awarding productivity credits

DOC could not award a prisoner productivity credits for any period during which the prisoner meets either of the following:

- The prisoner has received a score of very high risk on their most recent validated risk and needs assessment.
- The prisoner is assigned to a housing unit having a security classification of V or VI (as described in section 42 of the prison code).

² These sections respectively pertain to domestic/pregnant individual assault with two or more convictions, aggravated domestic assault with a previous conviction, first degree murder, second degree murder, stalking of a minor, aggravated stalking, and the following human trafficking-relating crimes: knowingly obtaining an individual for forced labor or services, knowingly obtaining an individual to hold in debt bondage, knowingly obtaining an individual to be subjected to forced labor or services or debt bondage or knowingly benefiting from participation in a human trafficking enterprise, and obtaining a minor for forced labor or services.

³ See the definition in <https://www.legislature.mi.gov/documents/mcl/pdf/mcl-28-722.pdf>

DOC also could not award productivity credits in an amount that exceeds 20% of the prisoner's minimum sentence.

Concurrent and consecutive sentences and commutations

The productivity credits of a prisoner who was sentenced concurrently for separate convictions would be computed on the basis of the longest of the concurrent sentences.

The productivity credits of a prisoner who is serving consecutive sentences for separate convictions would be computed and accumulated on each sentence individually.

The bill would not allow productivity credits for a commuted sentence unless the executive order commuting the sentence stipulated to the credit.

Rules

DOC would have to promulgate rules prescribing minimum standards for earning productivity credits and the procedure for awarding them.

Proposed MCL 800.33a

Senate Bill 862 would amend the William Van Regenmorter Crime Victim's Rights Act to require the prosecuting attorney, if requested by the victim of a crime, to give the victim notice as to whether the defendant may be eligible to earn productivity credits under SB 861 that could reduce a sentence of imprisonment. For a crime committed by a juvenile, the prosecuting attorney, or the court in certain circumstances, would have to give the victim notice, upon request, as to whether the juvenile may be eligible to earn productivity credits under SB 861 that could reduce a sentence of imprisonment.

This information would be in addition to other notice the victim may now request to receive, such as notice of the offenses for which the defendant was convicted or the juvenile was adjudicated or convicted and notice regarding the victim's right to make an impact statement at sentencing or (for a juvenile) at the disposition hearing.

MCL 780.763 and 780.791

Senate Bill 863 would amend the Code of Criminal Procedure to change requirements concerning certain prisoners' eligibility for parole. Currently under the act, a prisoner whose sentence has been enhanced because of three or more prior felony convictions and whose enhanced sentence is for an offense other than a major controlled substance offense⁴ is not eligible for parole until the expiration of either of the following:

- For a prisoner who is not a *prisoner subject to disciplinary time* as defined in the prison code,⁵ the minimum term fixed by the sentencing judge—unless the judge or a successor gives written approval for parole at an earlier date allowed by law.
- For a prisoner who is a prisoner subject to disciplinary time as defined in the prison code, the minimum term fixed by the sentencing judge.

⁴ See the act's definition of *major controlled substance offense*: <http://legislature.mi.gov/doc.aspx?mcl-761-2>

⁵ See <http://legislature.mi.gov/doc.aspx?mcl-800-34>

The bill would amend the above provision so that the second category (prisoners not eligible for parole before serving their minimum sentence) would include only prisoners subject to disciplinary time who were sentenced before the effective date of the bill.

MCL 769.12

Senate Bill 864 would amend the Corrections Code to allow *prisoners subject to disciplinary time* (as defined in the prison code) who are sentenced on or after the bill's effective date to be paroled before they have served their minimum sentence if they have earned productivity credits to allow for a reduction of that minimum. These prisoners also could have their maximum sentences reduced by productivity credits.

Not retroactive

A prisoner subject to disciplinary time who was sentenced before the bill's effective date would not be eligible for parole until they had served the minimum sentence fixed at sentencing and would not be eligible for a reduction in their maximum sentence.

The bill would refer to the latter prisoners (those ineligible for sentence reduction) as "limited prisoners subject to disciplinary time," to distinguish them from those sentenced on or after the effective date of the bill, who as noted are referred to as "prisoners subject to disciplinary time" in the bill.

Initiated law

Section 33 of the code, included in the bill, was amended in 1978 by an initiated law (Proposal B), which means that a vote of three-fourths of the members elected to and serving in each house of the legislature is needed to amend or repeal it.⁶ (With regard to prisoners sentenced for certain specified crimes, Proposal B ended the practice of awarding good time credits for good behavior and instead adopted what is commonly called "Truth in Sentencing," in which a prisoner eligible for parole must serve their entire minimum sentence before being considered for parole.⁷)

MCL 791.233 et seq.

The bills would take effect January 1, 2026.

Senate Bill 861 is tie-barred to SB 864, and Senate Bills 863, 864, and 862 are each tie-barred to SB 861. A bill cannot take effect unless each bill it is tie-barred to is also enacted.

⁶ This attorney general opinion holds that a three-fourths vote is required to amend or repeal section 33, whether directly or through a new codification: <https://www.ag.state.mi.us/opinion/datafiles/1980s/op05627.htm>. (In accordance with section 25 of Article IV of the state constitution, voters reenacted the whole of section 33 as amended, and not the amendments alone, in approving the 1978 initiative.) Some have argued that this three-fourths requirement would not apply to SB 864. The attorney general has been formally asked for an opinion on the question. See <https://www.detroitnews.com/story/news/politics/2023/09/11/lawmaker-asks-ag-to-weigh-in-on-benchmark-for-productivity-credit-passage/70824701007/>.

⁷ See <https://cremich.org/PUBLICAT/1970s/1978/cc0903.pdf>

FISCAL IMPACT:

Senate Bills 861, 863, and 864 would have an indeterminate fiscal impact on the state. Under the bills, prisoners convicted of qualifying offenses who participate in core, educational, vocational, or specific behavioral programming during their incarceration would receive productivity credits and bonus productivity credits for program participation and successful completion. It is anticipated that this would result in a reduced prison population and a subsequent savings for the state. The amount of actual savings would depend on several factors, including the number of prisoners that participate in programming, the number of prisoners that successfully complete programming, the number of productivity and bonus productivity credits earned, how the number of credits earned affects prisoners' overall lengths of stay, and the number of prisoner beds that ultimately could be closed. It is not possible to estimate these specific figures. Program availability and length of stay would be primary factors in a prisoner's ability to earn productivity and bonus productivity credits.

According to the 2019 Michigan Department of Corrections Statistical Report, roughly 1,400 prisoners received a GED that year and 16,000 completed a vocational program or employment readiness certificate. Roughly 60% of the prison population would be eligible for programming based on convictions of qualifying offenses. The average minimum length of stay in prison is 4.43 years. It is estimated that if every prisoner participated in and successfully completed one program during their incarceration, anywhere between 1,500 and 2,000 beds could be reduced. If the prison population were reduced by 1,800 beds, which is about the number of beds in a Level 1 facility, savings to the state would be roughly \$40.0 million. Under language providing that the bills would apply only to those prisoners who are sentenced after the effective date of the bills, savings would not be realized immediately and likely would take four to five years to be realized. New admissions and activities would take time to have an impact on time served.

Although a reduction in the prison population would result in a savings to the state, the bills would most likely lead to initial costs for the Department of Corrections for prisoner programming. Although the department currently makes available these types of programming, (e.g., core programming, educational programming, vocational programming, and behavioral programming), it could be assumed that additional funding would be needed for the additional programming that would be offered to the additional number of prisoners who would be eligible for programming under provisions of the bills.

Senate Bill 862, which requires a prosecuting attorney to notify a victim of whether a defendant may be eligible to earn productivity credits under SB 861, in addition to existing notifications, would have no fiscal impact on county prosecuting attorney offices or the Department of the Attorney General.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.