

Legislative Analysis



DEVELOP NEW PAROLE GUIDELINES

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House Bill 4548

Sponsor: Rep. Paul Condino

Committee: Judiciary

Complete to 4-17-07

A REVISED SUMMARY OF HOUSE BILL 4548 AS INTRODUCED 3-29-07

The bill would amend the Corrections Code (MCL 791.233e, et al.) to direct the Department of Corrections to develop new parole guidelines as follows:

Stated purpose. The stated purpose of the parole guidelines would be to help the parole board make release decisions that "implement the intent of the sentencing judge, consistent with the public safety," instead of simply to "enhance public safety."

Requirements. The parole guidelines would now be required to do all of the following:

- Protect the public.
- Reflect a prisoner's actual current risk for reoffending.
- Encourage good behavior in prison and participation in prison programs.
- Apply to both (1) all prisoners eligible for parole and (2) prisoners ineligible for parole but within the parole board's jurisdiction for reprieves, commutations, or pardons.

Factors to be considered and separately validated. In developing parole guidelines, the department is *currently* required to consider, at a minimum, each of the following factors:

- The offense for which the prisoner is incarcerated.
- The prisoner's institutional program performance.
- The prisoner's institutional conduct.
- The prisoner's prior criminal record.
- Other relevant factors that predict the risk of reoffending, if not otherwise prohibited by law.

The bill would delete from consideration a prisoner's institutional program performance and instead require consideration of the prisoner's current age. In addition, each of the factors considered in a parole determination would have to be both considered and separately validated.

Weighting of factors. Each of the factors to be considered would have to be weighted according to "its actual ability to predict the risk of reoffending."

Additional factors that must be considered. Currently, in developing parole guidelines, the department may consider the prisoner's statistical risk screening and/or age. The bill would delete this current provision and instead require the department to consider all of the following factors:

- The prisoner's institutional program performance.

- The prisoner's physical health.
- The prisoner's mental health.
- The prisoner's probation or parole history.

Prohibited factors and factors accorded positive weight. Currently, the department must ensure that parole guidelines do not create disparities in release decisions based on race, color, national origin, gender, religion, or disability. This requirement would be retained but the department would also be allowed to develop guidelines giving "positive weight" to the following factors:

- The length of time that the prisoner has served.
- The availability of family and community support.
- The probability that the prisoner will be deported or released into the custody of another jurisdiction if paroled.

However, the department could not accord any weight to the fact that a prisoner eligible for parole is serving "a long indeterminate or life sentence."

Departure from parole guidelines. Under current law, the parole board may depart from its parole guidelines for substantial and compelling reasons stated in writing. The parole board may depart from the guidelines either by denying parole to a prisoner who might be expected to be released under the guidelines or by granting parole to a prisoner who might not be expected to receive parole. The parole board must not, however, use a prisoner's gender, race, ethnicity, alienage, national origin, or religion to depart from the guidelines. Under the bill, the parole board would also not be allowed to depart from the guidelines because of "a factor already taken into account by either the sentencing guidelines or the parole guidelines" unless it found from facts in the record that the particular factor had been given too much or too little weight.

Appeals of parole denial. The bill would allow a prisoner to appeal a denial of parole by leave to the circuit court that imposed the prisoner's sentence only for one or more of the following grounds:

- The parole board departed from its guidelines without substantial and compelling reasons.
- The parole board's denial resulted from a material mistake in the parole guidelines scoring that it failed to reconsider after receiving notice from the prisoner.
- The parole board relied on inaccurate or incomplete information that it failed to reconsider after receiving notice from the prisoner.

Written notices of parole denial. Written notices of parole denial would have to include all of the following:

- A statement of the prisoner's right to appeal by leave to circuit court to the extent allowed.
- A statement of applicable filing deadlines for an appeal.
- A statement that the prisoner has no right to appointed counsel at public expense for an appeal.

Public hearing required only before granting parole to prisoner sentenced to life imprisonment. Section 34 specifies which prisoners sentenced to life imprisonment are not eligible for parole (and can only be released by means of a reprieve, commutation, or

pardon), and sets forth the conditions under which a prisoner sentenced to life imprisonment (other than those who are ineligible for parole) may be released. Section 34(8)(c) currently requires that the parole board hold a public hearing (in the manner prescribed for pardons and commutations) before making a decision to "grant or deny" parole to a prisoner sentenced to life imprisonment (other than those ineligible for parole). The bill would amend this section to require a public hearing only before a decision to grant parole. Presumably, this means that the department could deny parole to prisoners sentenced to life imprisonment without a public hearing.

Recording interviews of prisoners with a high probability of release. Currently, the parole board may grant parole without interviewing a prisoner if the prisoner is assessed as having a high probability of release under the guidelines and the board intends to grant parole. However, the parole board cannot deny parole to a prisoner without an interview unless the prisoner scores "low probability of being paroled" under the guidelines.

The bill would require that the department record (by audiotape, videotape, or equivalent means) the interview of a prisoner who scores "high probability of release." The record would have to be stored until (1) it is replaced after a subsequent interview, or (2) if the prisoner is released, until the prisoner is discharged from custody. If a parole decision is appealed, the interview would have to be transcribed and made part of the record.

Reconsider parole denials of prisoners with a high probability of release within 12 months. If the parole board denies the release of a prisoner who scores high probability of release, the board must reconsider that prisoner for release within 12 months. (This section does not apply to prisoners who are not eligible for parole under Section 34(6) but who may get reprieves, commutations, or pardons under Section 44.)

FISCAL IMPACT:

The bill would have an indeterminate fiscal impact on the Department of Corrections. There are no data to indicate the degree to which the bill might affect the number of prisoners approved for parole, nor are there data on the potential recordkeeping costs to the Department. To the extent that additional prisoners were approved for parole or were paroled sooner than might have occurred otherwise, the Department of Corrections could experience cost savings. The average appropriated GF/GP cost per prisoner is currently \$31,030 annually, but this figure includes allocated portions of various fixed and central office costs. Actual savings would depend on the numbers of prisoners affected and their security levels. Any departmental savings would be offset to an unknown degree by increased costs associated with requirements to record and store recordings of certain parole interviews.

The bills would have an indeterminate fiscal impact on the judiciary; any fiscal impact would be related to increased caseload which would depend on the number of prisoner appeals for denial of parole filed.

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