



**House
Legislative
Analysis
Section**

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HEINOUS CRIMES: LIFE WITHOUT PAROLE

House Bill 4689 (Substitute H-6)
Sponsor: Rep. Sal Rocca

House Bill 4690 (Substitute H-2)
Sponsor: Rep. David M. Gubow

First Analysis (11-30-89)
Committee: Judiciary

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H.B. 4689 & 4690 (11-30-89)

THE APPARENT PROBLEM:

There are occasionally criminals whose acts warrant the strongest penalty available. In Michigan, that penalty is life in prison without parole, which is the penalty mandated for first degree murder and large-quantity controlled substance offenses. For other crimes, however, life imprisonment without parole is not an option. Indeed, a person is eligible for parole after serving only ten years of a life sentence, although someone serving a life sentence rarely is paroled until a significantly longer period has been served. Until recently, a judge could ensure that a particularly dangerous individual remained incarcerated for life by sentencing that person to a very long minimum term, such as 100 years. However, in *People v. Moore*, decided May 9, 1989, the Michigan Supreme Court outlawed the use of such long sentences, holding that when a statute allowed a sentence of "life, or any term of years," a "term of years" must be an indeterminate sentence less than life. It must be something that is reasonably possible for a defendant actually to serve." To ensure that someone who had committed heinous crimes could be imprisoned for something approximating life in prison, statutory amendments are needed.

THE CONTENT OF THE BILLS:

House Bill 4689 would amend the Code of Criminal Procedure to provide for sentences of "life without parole;" someone so sentenced could be released only if the parole board granted parole after the person served at least 40 years, or if the governor granted a reprieve, commutation, or pardon. In order for the sentence of life without parole to be imposed, the prosecutor would have to give notice at or before the arraignment on the information of an intention to request the sentence. The notice, which would be served on the court, the defendant, and the defendant's attorney, would have to state with specificity the aggravating circumstances that justified the request for the sentence.

Subsequently, but prior to the sentencing, the prosecutor could request a hearing to determine whether life without parole should be imposed. The prosecutor could request the hearing if all of the following applied: the defendant was convicted of armed robbery, first degree criminal sexual conduct, second degree murder, or hostage taking by a prisoner; the defendant was at least 17 years old at the time the crime was committed; and, the prosecutor had consulted with the victim, unless there was no surviving victim or the victim could not be found. The court could not sentence to life without parole unless at least one of the aggravating circumstances specified by the bill was found to exist.

Hearing. The court would decide whether to impose the sentence of life without parole after holding a hearing,

weighing any aggravating or mitigating circumstances, and taking into account the best interests of the public, as specified by the bill. The hearing would be held prior to the preparation of the presentence investigation report. It would be a formal hearing at which the Michigan rules of evidence would apply. At the hearing, the prosecution and the defense could call witnesses and would present arguments for or against a sentence of imprisonment for life without parole.

Determinations. After hearing the evidence and the arguments, the court would determine: whether the defendant's conduct shocked the conscience of the court and whether any of the specified aggravating circumstances existed; whether any mitigating circumstances outweighed any aggravating circumstances, and whether the best interests of the public would be served by sentencing the defendant to life without parole. Based on these considerations, the court would decide whether to sentence the defendant to life without parole. The court could not sentence to life without parole unless it found that at least one of the specified aggravating circumstances existed. The court would state on the record the reasons for its decision on whether to impose life without parole. A transcript of the hearing would be provided to the defendant as part of the record of sentencing.

Aggravating circumstances. Aggravating circumstances would be: that the crime resulted in a death and any of the following specified crippling or disfiguring injuries occurred prior to death; the crime involved torture or sadism that resulted in permanent disfigurement or serious impairment of a body function; the defendant's conduct resulted in the loss of a hand or foot, the permanent loss of sight of one eye, or the permanent and complete paralysis of a leg or an arm; the defendant at the time of the crime had at least one prior conviction for one of the four crimes to which the bill would apply, and that prior conviction involved one of the foregoing aggravating circumstances.

Mitigating circumstances. Mitigating circumstances would be: that the defendant had no significant history of criminal activity involving violence against another person; that the defendant's mental capacity was significantly impaired, or the defendant was mentally disturbed, at the time the crime was committed (but not to the point of being a defense to prosecution); that the defendant was under unusual and substantial duress or under the domination of another person (but not to the point of being a defense to prosecution); that the defendant was an accomplice to the crime, but his or her participation was relatively minor; that the victim was a participant in the defendant's conduct or consented to the act.

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Best interests of the public. In determining whether the best interests of the public would be served by sentencing a defendant to life without parole, the court would consider both of the following: the prior record and character of the defendant, including his or her mental condition and maturity; and, whether there was any reasonable hope that the defendant could be rehabilitated.

Sentencing. Whether the court decided for or against life without parole, the defendant would be sentenced at a sentencing proceeding conducted as provided by law.

Report. Each year the Department of Corrections would file a report with the governor, the House of Representatives, and the Senate specifying the number of individuals sentenced to life without parole, along with the facts and circumstances of the crimes for which they were sentenced.

Effective date, repeal. House Bill 4689 would take effect June 1, 1990, providing House Bill 4690 also was enacted. The provisions of House Bill 4689 would be repealed effective January 1, 1993.

MCL 769.15 and 769.15a

House Bill 4690 would amend the Department of Corrections act to make provisions for parole consistent with House Bill 4689. It could not take effect unless House Bill 4689 was enacted.

MCL 791.234 and 791.244

FISCAL IMPLICATIONS:

Information on the fiscal impact of the bill is not available. (11-29-89)

ARGUMENTS:

For:

Other than the death penalty, which Michigan wisely bars, the only effective way to protect the public from some predatory and violent criminals is to put those criminals behind bars for virtually the rest of their lives. However, life in prison without parole is not possible unless the criminal's conviction was for first degree murder or a major controlled substance offense. Thus, someone who presents just as much of a danger to society may one day be released from prison to prey again on innocent people. Sentencing to mere "life" is inadequate; someone sentenced to simple life is eligible for parole in only ten years. The bills would provide the statutory mechanism for sentencing someone who has committed heinous crimes to virtually life in prison without parole. That mechanism, however, is balanced with a sensible provision to allow parole after forty years; that way, the state would not necessarily be obliged to maintain geriatric programs for prisoners whose age suggests that they would be unlikely to present a threat to the public.

While some may argue that the bills offer undue discretion to prosecutors and judges, they in fact establish proper roles for each. The impetus for life without parole would come at the motion of the prosecutor, who early on is aware of the circumstances of a crime. Judicial discretion to consider individual circumstances would be preserved, but with requirements for various findings on the record that would discourage those who might be overly lenient.

Against:

If they are to have an effect, the bills should be stronger. To be a serious agent for change, House Bill 4689 should require that life without parole be imposed when certain

criteria of violence and criminal history are met. As it stands, the sentence is at the combined discretion of the prosecutor and the judge. Further, the "aggravating circumstances" that would have to be present are so limited that they could greatly restrict the opportunity to seek or impose the sentence. "Life without parole" should be just that, but what the bill proposes is a minimum term of 40 years, which is something that can be imposed now. Under the Moore decision, a sentence simply need be of a term that can be expected to be served within the prisoner's lifetime. With the many procedural hurdles that the bills would raise, it could be that few prosecutors would invoke them. With the degree of discretion to be granted judges, it could be that the bills would have little effect on sentencing.

Against:

The bills are premature, at best. A great deal of legislation affecting sentencing has recently been enacted, including laws that gave prosecutors the right to appeal sentences and victims the right to make pre-sentencing statements. It would be prudent to assess the effects of those and other recent changes in the criminal law before rushing to enact another major change with unforeseeable consequences. In fact, an ad-hoc committee of the House is conducting just such a study of the criminal justice system. Action on the bills should be postponed at least until that committee completes its work and issues its recommendations, expected early in 1990. To enact the bills now would be to risk unnecessarily burdening an already strained criminal justice system with additional hearings, appeals, and costs of incarceration.

Against:

There is no clear need for the bills. For one thing, the state already has special provisions for habitual offenders. More importantly, someone who has committed heinous crimes can in effect be sentenced to life without parole if the court sentences him or her to a long minimum term that meets the demands of the Moore decision, namely that it can be expected to be served within the criminal's lifetime. If the problem is judges whose sentences are too light, then there are more appropriate and effective ways to address it than through a mechanism in which the court's discretion figures so prominently. Stronger sentencing guidelines could thwart undue leniency, and public opinion could remove lenient judges from the bench.

Against:

While the bills might effectively incapacitate certain individuals, it would be a mistake to assume that they would have any effect on crime or criminal behavior. Socio-economic factors and the certainty of punishment have much more of an effect on crime than does the severity of a possible penalty.

Against:

As the procedures to impose life without parole could be initiated only by the prosecutor prior to (or at) the arraignment on the information, the bills could easily be used simply as a plea-bargaining tool.

POSITIONS:

The Office of Criminal Justice supports the bills. (11-29-89)

The Prosecuting Attorneys Association of Michigan supports the concept of the bills, but does not have a formal position on them at this time. (11-28-89)

The Michigan Judges Association is reviewing the latest substitutes and has no formal position at this time. (11-28-89)

The Michigan Council on Crime and Delinquency opposes the bills. (11-29-89)

The State Appellate Defender's Office opposes the bills. (11-29-89)