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NO PAROLE WITHOUT G.E.D.

House Bill 4515 as enrolled Public Act 320 of 1998 Third Analysis (1-25-99)

Sponsor: Rep. John Freeman
House Committee: Corrections
Senate Committee: Judiciary

THE APPARENT PROBLEM:

A common characteristic of prisoners in the state correctional system is low educational achievement. According to the Department of Corrections, the average prisoner functions at a sixth- or seventh-grade level. (See BACKGROUND INFORMATION.) Some people believe that if prison inmates are to have a chance of succeeding once back in society, the inmates need to raise their educational levels while incarcerated. The argument is that if prisoners are able to attain a high school diploma or a general education development (GED) certificate, they are less likely to return to prison. Legislation was introduced last session that would have prevented prisoners from being paroled without having gained such credentials, with a few exceptions. (That legislation, House Bill 4206, passed the House but died in Senate committee.) Similar legislation has been reintroduced.

THE CONTENT OF THE BILL:

The bill would amend the Department of Corrections act (Public Act 232 of 1953), to make a high school diploma or a general education development (GED) certificate a condition of parole for a prisoner serving a minimum term of at least two years. The requirements would apply only to prisoners sentenced for crimes committed after December 15, 1998 (the effective date of the bill), and the bill would give priority to prisoners sentenced for crimes committed on or before that date in the department's provision of educational programs leading to a high school degree or GED certificate.

Exemptions. The director of the Department of Corrections (DOC) could waive the GED requirement for prisoners who were older than 65 or who were gainfully employed immediately before committing the crime for which they had been incarcerated. The

department further could waive the requirement for any prisoner who had a learning disability, who did not have the necessary proficiency in English, or who for some other reason through no fault of his or her own was unable to successfully complete the educational requirements.

Effective date. If enacted, the bill would take effect of December 15, 1998.

Tie-bar. The bill could not take effect unless the following assortment of other bills were enacted: Senate Bill 826 (truth-in-sentencing, disciplinary time and parole), House Bills 5419 (sentencing guidelines) and 5398 (truth-in-sentencing, disciplinary time), House Bill 4065 (date rape, drug "lifer" sentencing), House Bills 4444, 4445, and 4446 (threshold amounts for criminal fines), and House Bill 5876 (the legislative corrections ombudsman).

MCL 791.233

BACKGROUND INFORMATION:

Michigan inmates and prison education programs. According to the Department of Corrections, as of August 30, 1998, there were 45,216 people in prison, 43,227 men and 1,989 women. Approximately two-thirds of the prison population has not graduated from high school and do not have a General Educational Development (GED) certificate (66.7 percent of the men and 56.6 percent of the women inmates); 48 percent of the men and 40.5 percent of the women inmates had not completed tenth grade at the time they were imprisoned. The department further believes that the functioning level in verbal and basic math skills is between the fifth and seventh grades at the time of incarceration.

House Bill 4515 (1-25-99)

According to the department, "The vast majority of prisoners need to increase their basic reading and math skills if they are going to have a chance for job placement when they are released to the community under parole supervision." This is borne out by the fact that, at the time of arrest, 90 percent of the men and 82 percent of the women either were unemployed or were employed in unskilled jobs. The department has a stated mission of offering prisoners "the opportunity to gain academic, vocational, social and work skills to become a productive citizen while in prison and when released to the community," and states as a "guiding principle" that "[n]o offender, if they are capable, should leave the supervision of the department without attaining **at least** [emphasis in original] the General Educational Development (GED) certificate level of education skills." In May 1995, the department adopted a plan to assure that prisoners are offered the opportunity to participate in academic and vocational programs. The plan included establishing the above-stated education mission and goals; the provision of modern and up-to-date computer-based curriculums; designation of the Newberry Correctional Facility as a specialized education prison where new education approaches could be tried and the maximum number of prisoners could complete education programs by arranging daily prison activities around educational contact times rather than other activities; requiring schools to schedule a minimum of 32 hours a week of student-teacher contact time for each teacher and vocational instructor; establishing classroom capacities and having 100 percent enrollment levels as a goal; allowing flexible prisoner scheduling to allow students to go to school more than Monday through Friday from 8:00 a.m. to 3:00 p.m.; and including social skills development programs to prepare prisoners for work after release from prison. The department also has established incentives for prisoners to complete minimum education competencies by imposing the certain conditions on prisoners who do not have basic education skills and who refuse to participate in education or vocational courses. Such prisoners (1) are not eligible to receive disciplinary credits (which otherwise would reduce their minimum sentences), to participate in recreational programs, or be placed in a Lower Peninsula camp; (2) receive job assignments with a maximum pay of 74 cents a day, which is equivalent to that for going to school full-time; and (3) are required to complete minimum education courses before being assigned to more sought-after and better-paying institution and prison industries jobs.

The department offers a variety of educational and vocational programs:

** special education;

** Adult Basic Education (ABE), a "pre-GED" program for grades 0-8 which is offered in all prisons and six camps;

** General Educational Development (GED), which indicates a high-school completion equivalency and which also is offered in all prisons and six camps; "core" vocational education programs, 83 of which are offered in 31 men's prisons and 10 of which are offered in 2 women's prisons;

** "cell study" programs for prisoners who are restricted to their cells (those housed in maximum security specialized facilities and administrative segregation), in order to allow these prisoners to continue their ABE or GED programs; and

** certain court-ordered college programs which are offered at the Egeler, Scott, and Crane Correctional Facilities, though the department is petitioning the affected federal courts to remove the requirement to offer these programs with state appropriations and indicates that it would prefer to use the \$1.4 million spent on these college programs instead to eliminate the waiting lists for basic academic and vocational programs.

According to the department, at the end of September 1998, there were 10,764 male prisoners (27 percent of the total male prisoner population) and 1,086 female prisoners (62 percent of the total female prisoner population) participating in academic and vocational programs as follows:

** 82 men (in ten facilities) and 4 women (at the Florence Crane Facility) in special education;

** 5,654 men and 479 women in ABE programs;

** 2,318 men and 58 women in GED programs;

** 1,987 men and 124 women in vocational programs; and

** 204 men (at the Egeler Facility) and 312 women (at the Scott and Crane Facilities) in court-ordered college courses.

The department reports that there are 1,299 prisoners (1,266 men and 33 women) waiting to enroll in ABE or GED programs and 834 prisoners (810 men and 24 women) waiting to enroll in vocational programs. (The department further notes that the waiting list for vocational programs has been reduced by over 40 percent since last September.)

The department cites a lack of extensive background and previous history as one possible reason for the low numbers of special education prison students. However, other general estimates of prison populations set a much higher percentage of prison populations in general as needing special education, with some estimates suggesting that as much as 60 to 70 percent of prison inmates have one or more learning disabilities, diagnosed or not.

Prison building. According to an August 1997 *Governing* magazine article ("The End of the Prison Boom") "In the first half of the 1990s, states added nearly 400,000 prison beds, spent nearly \$15 billion constructing them and put aside increasing amounts of operating funds to run them. Where correction accounted for 5 percent of general-fund spending a decade ago, today it's closer to 7 percent and climbing. All totaled, state prison systems have grown big enough to house, feed and guard a record-setting 1 million inmates -- a number built on prison-population increases that have been averaging close to 8 percent a year for the past 10 years. But as the century comes to a close, there will be fewer and fewer groundbreakings for prisons anywhere. The simplest reason is that the leaders of the boom -- states such as California, Texas, North Carolina, Florida and Virginia -- have spent their allotted capital and are finishing up their five- and, in some cases, 10-year building programs. . . . But there is more to the fall-off than completion of an allotted task. Even states that never really bought into the prison-building boom seem reluctant to commit to much new construction now. . . . [T]he unanimity of will, the almost automatic 'yes' to prison construction that has existed among many lawmakers in recent years, is no longer a given. . . . For all the continued national concern about crime and punishment, incarceration is clearly not the consensus issue that it was in the days when Willie Horton dominated a presidential campaign. Moreover, many of the factors that drove prison

building in the early 1990s have either eased off or proved to have been miscalculations in the first place. Many of the states that entered into the prison-building business in a big way during the 1990s were pressured

by a combinations of physical and political realities. The war on drugs accelerated a climb in prison population. With overcrowding came lawsuits challenging the conditions of imprisonment. Initially, states tried paroling prisoners early in order to make room for the new crop of inmates. In some states, even violent offenders were let out before they'd served a third of their sentences. Governors and legislators reacted with calls for and enactment of stricter sentencing policies and limits on parole. About a quarter of the states passed laws stipulating that violent felons serve 85 percent of their sentences before becoming eligible for parole. And then, in the widely publicized wave of 'three strikes' legislation that started in 1993, 24 states enacted laws requiring life sentences without the possibility of parole for third-time offenders who commit violent crimes. . . . There is no question that the sentencing changes have had an impact on incarceration rates, which went from 292 per 100,000 U.S. residents in 1990 to 427 in 1996 -- a 46 percent increase. . . . But despite all the forecasts of increased inmate population due to tougher sentencing, prison admissions nationally are falling off. Although inmate growth had been averaging 8 percent a year earlier in the decade, it was down around 5 percent last year. . . . [I]t's becoming clear that forecasters in many places were a bit off target in guessing how state criminal justice systems would react to new sentencing laws. California, which in 1994 predicted a 250,000-inmate system by the year 2000, is now looking at something closer to 182,000. The reason for the lowered forecast is the three-strikes law: The state overestimated how many felons would be affected. Not only have prosecutors and judges retained more discretion in charging and sentencing than was originally expected, but last summer the California Supreme Court ruled that judges have the power to spare defendants lengthy sentences by overlooking prior convictions. Other state where voters have experienced similar outcomes. . . . And those revisions, in turn, are taking building projects off the drawing boards. They are the crucial reason why states overall added less than half as many prison beds last year as the year before, and why they seem certain to stay on that track for the rest of the century."

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, because the Department of Corrections could waive, for any of several reasons, the restriction on parole for inmates who had not completed a high school education, the

bill would not necessarily increase state costs. (1-25-99)

ARGUMENTS:

For:

Education is one of the keys to former prisoners' successfully reentering society and finding employment. Studies also have shown that prison schooling also keeps prisoners occupied and more orderly, thereby enhancing institutional control. Classes, like religious activities and recreation, also can make prison life more "normal," thereby easing the eventual transition of prisoners back into society upon their release. A study by an analyst with the Federal Bureau of Prisons found that the recidivism rate for inmates who successfully completed at least one course a year while imprisoned was about ten percent less than inmates who successfully completed no courses in prison (38.5 percent versus 45.7 percent).

The bill will work to ensure that prisoners in the state correctional system are more orderly while in prison, better equipped educationally to become productive members of society once they are released, and less likely to return to prison, not only making the streets safer but also saving money for the state's law enforcement agencies, courts, and correctional system. The bill is consistent with current Department of Corrections goals, and putting this policy into statute makes it clear that it should remain a priority for the department. Making parole contingent on educational effort and achievement will provide a powerful incentive for prisoners to become better educated. The bill also provides some sensible waivers, such as for prisoners who, for whatever reason, do not have the ability or opportunity to meet the requirements, or whose elderly age makes future employment unlikely. And if a prisoner wasn't proficient in English, the DOC would be required to provide him or her with English language training necessary for working toward completion of a GED. Furthermore, the bill would apply only to new prisoners, and not to prisoners currently awaiting parole.

Against:

A number of objections can be raised against the bill. Some people argue that, as important as education may be to the rehabilitation of inmates, the bill could restrict the ability of the parole board to offer early release to prisoners with otherwise good prison records, thereby contributing to the perennial problem of prison overcrowding and resulting in an inefficient use of

expensive prison space. The scarcity of expensive prison beds, coupled with the fact that there already is a waiting list of prisoners who wish to obtain their GED certificates, means that the bill could exacerbate prison overcrowding and could result in nonviolent prisoners without GEDs, who might otherwise qualify for parole, being kept in prison beds needed for violent offenders. Some people further argue that a better approach to promoting education and preventing crime should begin long before a person becomes a resident of the prison system. In addition, programs that encourage the hiring of former prisoners also should be promoted, since former inmates already have a difficult time getting jobs once they've been released, whether or not they have a high school diploma or GED certificate. Finally, other people argue that incarceration should not be an excuse for taxpayer-funded education. Many law-abiding people don't have high school diplomas or general education development certificates, while many prison inmates have not only high school diplomas but also college degrees, so it does not follow that the lack of a high school diploma or a certificate leads people to commit crimes.

Response:

While many people might agree that preventive programs -- including ensuring that all of the state's residents are adequately educated, housed, fed, and clothed -- might be the least expensive and most desirable approaches to educating citizens and preventing crime, the fact remains that it often is difficult to persuade people to support such preventive programs instead of paying for more expensive prison programs. Although there does seem to be a slowing of the decade-long prison boom, fueled in large part by the so-called war on drugs and by harsher sentencing laws (see BACKGROUND INFORMATION), the general consensus in recent years that traditional welfare and education programs need to be abolished or radically changed also means that there is a great deal of uncertainty about what will replace these programs and what effect these new programs will have on prison populations, among

other things. Finally, those arguing for the bill do not argue that there is any simple causal relationship between the lack of an education and crime. Rather, they argue that the beneficial effects of education, including the process itself, can help some people become productive members of society and avoid returning to prison, goals which surely everyone can endorse.

Analyst: S. Ekstrom

■ 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.