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SFA BILL ANALYSIS

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Senate Bills 278 through 281 (as introduced 3-5-97)
Sponsor: Senator William Van Regenmorter (Senate Bills 278-280)
Senator Mike Rogers (Senate Bill 281)
Committee: Judiciary

Date Completed: 10-6-97

CONTENT

Senate Bills 278 and 279 would amend the Department of Corrections (DOC) law and the prison code, respectively, to provide for the effectiveness of provisions commonly referred to as "truth-in-sentencing" that were enacted in 1994 but whose effective date is tied to the enactment of sentencing guidelines. The bills also would make all prisoners sentenced to the DOC's jurisdiction, rather than specified offenders, subject to disciplinary time under those provisions.

Senate Bills 280 and 281 would amend the Public Health Code and the DOC law, respectively, to provide for parole eligibility for certain drug offenders sentenced to imprisonment for life, and specify criteria for a sentencing court's departure from mandatory minimum sentences for other drug offenders.

Senate Bills 278, 279, and 280 all are tie-barred to each other and to Senate Bill 281. Senate Bill 281 is tie-barred to Senate Bill 280.

Senate Bill 278

The DOC law specifies that provisions regarding prisoners subject to disciplinary time will take effect beginning on the effective date of Public Act 217 of 1994, as prescribed in Enacting Section 2 of that Act. The bill would delete the language delaying the effectiveness of the DOC law's disciplinary time provisions.

Public Act 217 amended the DOC law to revise parole provisions by denying good time and disciplinary credits, which *reduce* a prisoner's sentence, to certain offenders; those offenders, instead, will be subject to disciplinary time, which will *increase* a prisoner's minimum sentence. Public Act 217 has not taken effect, however, because it specifies that it will take effect on the date that sentencing guidelines are enacted into law after the Michigan Sentencing Commission submits its report to the Legislature, pursuant to Public Act 445 of 1994. (Sentencing guidelines have not yet been enacted, and the Commission's report has not yet been submitted to the Legislature.)

Senate Bill 279

Under provisions of the prison code enacted by Public Act 218 of 1994, specified offenders who are sentenced to prison on or after the effective date of Public Act 218 will be subject to disciplinary time. The bill would delete the list of offenses for which prisoners will be subject to disciplinary time; the bill specifies, instead, that all prisoners sentenced to the DOC's jurisdiction on or after that date would be subject to disciplinary time.

The bill also would repeal Enacting Section 2 of both Public Acts 217 and 218 of 1994. Those enacting sections provide that the Acts' disciplinary time provisions will take effect on the date that sentencing guidelines are enacted into law after the Michigan Sentencing Commission submits its report to the Legislature, pursuant to Public Act 445 of 1994.

Under the provisions of the code that the bill would delete, only prisoners convicted of the following offenses will be subject to disciplinary time once sentencing guidelines are enacted:

-- Drunk driving or drunk boating that caused a death or long-term incapacitating injury (MCL 257.625(4), 257.625(5), 324.80176(4), and 324.80176(5)).
-- Burning a dwelling house or other real property (MCL 750.72 and 750.73).
-- Setting fire to mines and mining materials (MCL 750.80).
-- Felonious assault; assault with intent to murder; assault with intent to do great bodily

harm, less than murder; assault with intent to maim; assault with intent to commit a felony; and armed or unarmed assault with intent to rob or steal (MCL 750.82, 750.83, 750.84, 750.86, 750.87, 750.88, and 750.89).

-- Sexual intercourse under pretext of treatment (MCL 750.90).
-- First-degree home invasion (MCL 750.110a(2).
-- First-degree child abuse and involvement in child sexually abusive activity or material (MCL 750.136b(2) and 750.145c).
-- Burglary with explosives; sending explosives with intent to injure; sending a device represented as explosive; placing explosives with intent to destroy; aiding and abetting in the placing of explosives; possessing bombs, with unlawful intent; and manufacturing explosives with unlawful intent (MCL 750.112, 750.204, 750.204a, 750.205, 750.205a, 750.206, 750.207, 750.208, 750.209, and 750.211).
-- Making or possessing a device designed to explode upon impact or with the application of heat or a flame (MCL 750.211a).
-- Malicious threats to extort money (MCL 750.213).
-- First- or second-degree murder; causing a death as a result of fighting a duel; manslaughter; willful killing of an unborn quick child; causing a death due to explosives; and causing a death when a firearm was pointed intentionally, though without malice (MCL 750.316, 750.317, 750.319, 750.321, 750.322, 750.327, 750.328, and 750.329).
-- Kidnapping; a prisoner taking another as a hostage; and kidnapping a child under 14 years of age (MCL 750.349, 750.349a, and 750.350).
-- Mayhem (MCL 750.397).
-- Aggravated stalking (MCL 750.411i).
-- Disarming a peace officer (MCL 750.479b).
-- First-, second-, third-, or fourth-degree criminal sexual conduct (CSC) and assault with intent to commit CSC (MCL 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g).
-- Armed robbery; unarmed robbery; and robbery of a bank, safe, or vault (MCL 750.529, 750.530, and 750.531).
-- Carjacking (MCL 750.529a).
-- Felonious driving (MCL 752.191).
-- Riot; incitement to riot; rioting in a State correctional facility; and unlawful assembly (MCL 752.541, 752.542, 752.542a, and 752.543).
-- Any offense not listed above that is punishable by imprisonment for life (which includes, for instance, attempted murder, a second CSC offense, some conspiracy violations, and certain habitual offender violations).
-- An attempt, conspiracy, or solicitation to commit an offense listed above or a life-maximum offense.

Senate Bill 280

Parole Criteria

The bill would establish conditions under which a person convicted of manufacturing, creating, delivering, possessing with intent to deliver, or possessing 650 grams or more of a mixture containing a Schedule 1 or 2 narcotic or cocaine could become eligible for parole. Currently, a person convicted of any of those violations must be sentenced to imprisonment for life and is not eligible for parole, except that a juvenile tried and convicted as an adult may be sentenced to imprisonment for any term of years, but not less than 25 years. (The Michigan Supreme Court has overturned the "no-parole" feature of the possession offense, however.)

Under the bill, a person convicted of an offense involving 650 grams or more would be eligible for parole upon the expiration of 15 years of his or her sentence if all of the following circumstances existed:

-- The prosecuting attorney or the prosecutor's successor certified to the court, in writing, that the person cooperated with law enforcement authorities in prosecuting the violation or another felony, and the court forwarded a copy of the certification to the DOC with the judgment of sentence.
-- The court certified to the DOC in the judgment of sentence that it had determined 1) that the person had not previously been convicted of a violation subject to disciplinary time under the prison code, a felony violation of the Public Health Code's controlled substance provisions, or a violation of a substantially corresponding law of another state, a political subdivision of another state, or of the United States; and 2) that the person had never organized, maintained, or profited from an entity that, in violation of the Public Health Code, manufactured, created, delivered, or possessed with intent to manufacture, create, or deliver five

kilograms or more of a controlled substance.
-- If a person sentenced on or after the bill's effective date were to be released under its parole provisions, the sentencing judge or his or her successor had certified to the DOC that he or she did not object to the person's release on parole.

For a person sentenced before the bill's effective date, upon the motion of the prosecuting attorney, the court could certify to the DOC that the person was eligible for parole under the bill's criteria. For a person sentenced on or after the bill's effective date, upon the motion of the prosecuting attorney made within one year after sentencing, the court could certify to the DOC that the person was eligible for parole under the bill's criteria. Upon motion of the prosecuting attorney made one year or more after sentencing, the court could certify to the DOC that the person was eligible for parole under the bill's criteria only if the prosecution cooperation involved information or evidence not known by that person until one year or more after sentencing.

Departure From Minimum Sentences

The Public Health Code establishes minimum mandatory prison sentences for violations involving less than 650 grams of a mixture containing a Schedule 1 or 2 narcotic or cocaine. The sentencing court may depart from the minimum term of imprisonment if it finds, on the record, that there are substantial and compelling reasons to do so.

Under the bill, the sentencing court could depart from the mandatory minimum sentences for violations involving less than 650 grams either if it found, on the record, that there were substantial and compelling reasons to do so, or if the person met the same criteria proposed by the bill for parole from a sentence of life imprisonment for a violation involving 650 grams or more (i.e., regarding cooperation with law enforcement authorities, the absence of prior violations, and the judge's lack of objection). If the court departed from a mandatory minimum sentence under the proposed criteria, the court would have to sentence the individual as follows:

-- Not less than 10 years' or more than 30 years' imprisonment, for a violation involving manufacturing, creating, delivering, possessing with intent to deliver, or possessing 225 grams or more, but less than 650 grams. (The current penalty is not less than 20 years' or more than 30 years' imprisonment.)
-- Not less than five years' or more than 20 years' imprisonment, for a violation involving manufacturing, creating, delivering, possessing with intent to deliver, or possessing 50 grams or more, but less than 225 grams. (The current penalty is not less than 10 years' or more than 20 years' imprisonment.)
-- Up to 20 years' imprisonment, for a violation involving manufacturing, creating, delivering, or possessing with intent to deliver less than 50 grams. (The current penalty is imprisonment for not less than one year or more than 20 years and a maximum fine of up to $25,000, or probation for life.)
-- Up to four years' imprisonment, for a violation involving possessing 25 grams or more, but less than 50 grams. (The current penalty is imprisonment for not less than one year or more than four years and a maximum fine of up to $25,000, or probation for life.)
-- Up to two years' imprisonment, for a violation involving possessing less than 25 grams. (The current penalty is up to four years' imprisonment and/or a maximum fine of $25,000.)

Departure from minimum sentences under the bill would apply to sentences imposed on or after the bill's effective date. The court could not reduce a sentence under the bill's departure provisions after the sentence was lawfully imposed.

Senate Bill 281

Under the DOC law, a prisoner under sentence for life or for a term of years, other than a prisoner sentenced for life for first-degree murder or sentenced for life or for a minimum term of imprisonment for a major controlled substance offense, is subject to the parole board's jurisdiction after having served either 10 or 15 years, depending on the date of the crime for which the prisoner was convicted. The bill would remove the exclusion of first-degree murderers and major controlled substance offenders from that provision; the bill specifies, instead, that the following prisoners could not be released on parole:

-- A prisoner sentenced to imprisonment for life for first-degree murder.
-- A prisoner sentenced to a minimum term of imprisonment for a major controlled substance offense.
-- A prisoner sentenced to imprisonment for life for a major controlled substance offense who was not eligible for parole under Senate Bill 280.

The bill also provides that, if a prisoner sentenced to imprisonment for life for a major controlled substance violation were eligible for parole under Senate Bill 280 and released on parole, he or she would have to be placed on parole for life. If the prisoner committed an "assaultive crime" or a controlled substance violation of the Public Health Code during his or her release, the parole would have to be revoked and he or she could not again be considered for release on parole. The person's parole order would have to contain a notice of those conditions. ("Assaultive crime" would mean a violation of Chapter XI of the Michigan Penal Code, which deals with assaults.)

MCL 791.234 & 791.234a (S.B. 278)
800.34 (S.B. 279)
333.7401 & 333.7403 (S.B. 280)
791.234 & 791.236 (S.B. 281)

Legislative Analyst: P. Affholter

FISCAL IMPACT

Senate Bills 278 and 279

The bills would increase costs for the Department of Corrections as the result of two major changes to current law. First, the provisions of "truth-in-sentencing" (the elimination of disciplinary credits and the inclusion of disciplinary time) would be extended to all prisoners, instead of primarily those offenders convicted of a violent crime as will be the case under current law. Second, the implementation of truth-in-sentencing would occur immediately rather than after new sentencing guidelines are enacted by the Legislature.

Eligible prisoners are currently able to reduce their minimum sentences by accumulating disciplinary credits at the rate of seven days' credit for every 30 days served. After adjusting for partial months, and considering that credit is not earned until the time is served, and other factors affecting credit calculation, the potential effect of disciplinary credits is to reduce average sentence lengths by approximately 18%. In practice, however, given that not all prisoners earn all of their potential credits, actual time reduced, on average, is approximately 12%. Stated differently, on average, prisoners currently serve approximately 88% of their sentence before reaching their earliest parole eligibility date. Eliminating the ability to accumulate disciplinary credits, therefore, would have the effect of adding 12% to average sentence lengths.

While the cost of this policy change would be negligible in the first few years, costs would increase significantly in the future as prisoners who otherwise would be leaving the system, instead continued to serve their sentence as the effect of added sentence length was realized. In 1995, there were approximately 9,500 new prison commitments with an average minimum sentence of 3.7 years, meaning that actual time served will approximate 3.3 years (88% of 3.7 years). Eliminating disciplinary credits, therefore, would result in 0.4 year of sentence added to the average prisoner's time served.

The Department of Corrections has proposed administrative rules for disciplinary time, and the rules were forwarded to the Joint Committee on Administrative Rules (JCAR), but later withdrawn. The rules were found to increase an average sentence served by about 22% or 0.7 years, based on the misconduct "tickets" issued in 1995. The Sentencing Commission has used an average sentence increase of 13% or roughly 0.4 year to prepare its analyses. The Department has reviewed the proposed administrative rules in light of this information, but it has not submitted these or any other rules to JCAR. Until rules are promulgated, estimates of the increase in average sentence served are unknown, but might be expected to range from 0.0 to 0.7 year.

Assuming that the average sentence served would increase 22% or 0.7 year (based on the Department's analysis and the last proposed set of rules), extending truth-in-sentencing to all prisoners and adding disciplinary time could increase time served by 1.1 years. Assuming 9,500 annual commitments subject to truth-in-sentencing each year, and an average annual operating cost of $18,000 per inmate, increased annual costs in the long term could approach $198.4 million, requiring an additional 11,000 beds to accommodate truth-in-sentencing under the existing law and under the bills. This cost does not include the capital outlay costs associated with constructing the 11 or so new prisons that eventually would be required.

In addition, under the bills, all prisoners would be required to spend their entire sentence in a secure facility, meaning that the approximately 2,200 prisoners who are currently, and assumed to be in the future, on community status, would instead be required to stay in prison for their entire sentence. The effect of this change would be to require an additional 2,200 prison beds in the long term for all prisoners subject to truth-in-sentencing.

Given that current law regarding truth-in-sentencing applies only to those offenders convicted of violent offenses (approximately 4,500 annual commitments with an average minimum sentence of six years, requiring an additional $94.0 million and 5,200 beds) the net effect of the bills' extension

of truth-in-sentencing provisions to all prisoners would be to increase costs by approximately $104.4 million and 8,000 beds in the long term. The Department of Corrections has projected the impact of the bills out to the year 2001 and has calculated an increase of 5,109 additional beds, on top of the 2,159 beds projected to be needed under the existing truth-in-sentencing structure.

Senate Bills 280 and 281

The bills would have an indeterminate, yet potential cost-saving, fiscal impact on State government.

To the extent that the new conditions in the bill would either increase the likelihood of parole for those individuals convicted of delivering 650 or more grams of a narcotic, or reduce minimum sentences for those individuals convicted of lesser quantities, costs for the Department of Corrections could decrease.

Current law requires life without parole for individuals convicted of delivering more than 650 grams of narcotics. If the conditions described in the bills were met, individuals could become eligible for parole after 15 years. There are currently approximately 150 individuals serving a life sentence for delivery of 650 grams. In addition, in 1995, there were 10 new commitments for delivery of 650 grams. If one assumed that 15% of those convictions would meet the eligibility criteria for parole after 15 years, and that the parole board would in fact grant parole for these individuals (although parole board data indicate that very few individuals with life sentences are ever paroled), costs after 15 years would begin to decrease, and in the long term, could be reduced by approximately $1.0 million annually, assuming a life sentence equals 50 years.

For the lesser quantity offenses, given that under current law, judges already may depart from the minimum sentence when compelling and substantial reasons exist, it is difficult to estimate what added effect the conditions of cooperating with the prosecutor, receiving the judge's approval, and having no prior felony convictions might have on a judge's decision to depart from the prescribed mandatory minimum sentences. Furthermore, according to 1995 dispositions data (Table I), over half of the convictions for delivery of less than 50 grams, and nearly 75% of possession of 25-50 grams received nonprison sentences, indicating that in many cases judges are apparently finding substantial and compelling reasons on the record in order to depart from the one-year mandatory sentence for these offenses. The average minimum term for those individuals who do receive a prison sentence is nearly two years, suggesting that there may be aggravating circumstances (probation violations, gun law offenses, multiple sentences, etc.) involved in the cases that do go to prison that might warrant a sentence greater than the prescribed minimum. In those cases, it seems difficult to presume that judges would be willing to depart from the minimum if the conditions described in the bills were met to a degree that would have a significant impact on prison commitments.

For those cases involving quantities greater than 50 grams, but less than 650 for either possession or delivery, for which the bills would reduce the presumptive mandatory minimum sentences from either 20 years to 10 years, or from 10 years to five years depending on the quantity involved, if the offenders met the conditions outlined in the bills, the Department of Corrections could realize savings to the extent that judges reduced average minimum sentences. If one assumed that 15% of the 30 prison commitments in 1995 for delivery or possession of 225-649 grams, and 15% of the 100 prison commitments for delivery or possession of 50-224 grams received sentences of 10 and five years (instead of 20 and 10 years), respectively, and that these trends would

continue into the future, annual costs in the long term could be reduced by approximately $2.0 million.

In total, therefore, assuming the assumptions used above are correct, the new provisions in the bills could result in long-term annual savings to the Department of Corrections of approximately $3.0 million.

Table 1

Amount	Type	Current Minimum/ Maximum	Proposed Minimum	1995 Dispositions Prison	Probation	Jail	Other	Total
650	Delivery	Life, no parole	Life, eligible for parole after 15 if conditions are met	10	1			11
650	Possession	Life, parole after 15	Life, eligible for parol after 15 if conditions are met	1				1
225-649	Delivery	20 min/30 max	10 yr, 30 max	28	1			29
225-649	Possession	20 min/30 max	10 yr, 30 max	2		1		3
50-224	Delivery	10 min/20 max	5 yrs, 20 max	87	7	2		96
50-224	Possession	20 min/20 max	5 yrs, 20 max	13		1		14
Less than 50	Delivery	1 min/20 max or lifetime probation	up to 20 years	1,238	1,515	101	28	2,882
25-49	Possession	1 min/4 max	up to 4 yrs	23	59	14	1	97
Less than 25	Possession	up to 4 yrs	up to 2 yrs	507	2,888	547	85	4,027
			TOTAL	1,909	4,471	666	114	7,160

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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.

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