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SFA BILL ANALYSIS

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Senate Bill 280 (Substitute S-6 as passed by the Senate)
Senate Bill 281 (Substitute S-4 as passed by the Senate)
Sponsor: Senator William Van Regenmorter (Senate Bill 280)
Senator Mike Rogers (Senate Bill 281)
Committee: Judiciary

Date Completed: 11-24-97

CONTENT

Senate Bills 280 (S-6) and 281 (S-4) would amend the Public Health Code and the Department of Corrections (DOC) law, respectively, to do all of the following:

- **-- Allow parole eligibility, under certain circumstances, for persons sentenced, either before or after the bill's effective date, to life imprisonment for certain major controlled substance delivery or manufacture offenses. (Senate Bill 281 (S-4) would provide for lifetime parole and place other parole restrictions on those parolees.)**
- **-- Allow an alternative to a life sentence for certain major controlled substance possession offenses, and delete the current alternative sentence for a juvenile tried as an adult.**
- **-- Expand on a court's authority to depart from mandatory minimum sentences for certain major controlled substance possession offenses, but delete the court's specific authority to depart from mandatory minimum sentences for a juvenile tried as an adult for a possession offense.**
- **-- Require the revocation of the parole of a person convicted of a major controlled substance offense, if he or she committed certain violations during release.**
- **-- Require the parole board to rescind the parole of any parolee charged with a felony. If convicted, the person would not be eligible for parole for either violation.**
- **-- Require all parolees to undergo random drug testing.**

The bills are tie-barred to each other and to Senate Bills 278 and 279, which would provide for the effectiveness of provisions commonly referred to as "truth-in-sentencing" that were enacted in 1994 but whose effective date is tie-barred to the enactment of sentencing guidelines.

Senate Bill 280 (S-6)

Overview

The bill would do all of the following:

- -- Allow parole eligibility, under certain circumstances, for persons sentenced to life imprisonment for manufacturing, delivering, or possessing with intent to deliver 650 grams or more of a mixture containing cocaine or a Schedule 1 or 2 narcotic.
- -- Allow an alternative sentence of at least 25 years' imprisonment (rather than the mandatory penalty of life imprisonment) for possession of 650 grams or more of a mixture containing cocaine or a Schedule 1 or 2 narcotic.
- -- Delete the alternative sentence of at least 25 years' imprisonment that currently is allowed specifically for a juvenile tried as an adult for a possession offense involving 650 grams or more.
- -- Extend to an offense involving possession of 650 grams or more the sentencing court's authority to depart from a mandatory minimum term of imprisonment, but delete the court's specific authority to depart from a mandatory minimum sentence for a juvenile tried as an adult for an offense involving possession of less than 650 grams.

Parole Eligibility for Manufacture or Delivery

Currently, a person convicted of manufacturing, delivering, or possessing with intent to deliver 650 grams or more of a mixture containing cocaine or a Schedule 1 or 2 narcotic 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. Under the bill, a person convicted of that offense would be eligible for parole after serving 15 years of his or her sentence, if all of the following applied:

-- The prosecuting attorney or his or her successor had certified to the court, in writing, that the person cooperated with law enforcement authorities. (The bill specifies that it would not confer a right to any individual to be certified.)
-- The court certified to the DOC, in writing, that it had determined that the prosecutor had certified the person's cooperation; that the person had never been convicted of a "violent felony", a controlled substances violation of the Public Health Code that is punishable by imprisonment for four years or more, or a violation of a law of another state, a political subdivision of another state, or the United States that substantially corresponded to a "violent felony" or a four-year drug felony; and that the person had never organized or maintained an illegal drug enterprise of two or more persons.
-- For a person convicted after the bill's effective date, and granted parole eligibility after sentencing, the sentencing judge or the judge's successor certified to the DOC that he or she did not object to the person's release on parole.

"Violent felony" would mean any of the following:

-- Felonious assault or assault with intent to murder, to do great bodily harm, to maim, to commit a felony not otherwise specified, or to commit unarmed or armed robbery (MCL 750.82-750.84 and 750.86-750.89).
-- First- or second-degree murder, or manslaughter (MCL 750.316, 750.317, and 750.321).
-- Kidnapping, the taking of a hostage by a prisoner, or kidnapping a child under 14 years of age (MCL 750.349-750.350).
-- Mayhem (MCL 750.397).
-- First-, second-, third-, or fourth-degree criminal sexual conduct or assault with intent to commit criminal sexual conduct (MCL 750.520b-750.520e, and 750.520g).
-- Armed robbery with aggravated assault, carjacking, or unarmed robbery (MCL 750.529-750.530).

For a person convicted before the bill's effective date, upon motion of the prosecuting attorney, the court could certify to the DOC that the person was eligible for parole after he or she served 15 years of his or her sentence, if the person met the bill's parole eligibility requirements.

For a person convicted after the bill's effective date, upon motion of the prosecutor made within one year after sentencing, the court could certify to the DOC that the person was eligible for parole after he or she served 15 years of his or her sentence, if the person met the bill's parole eligibility requirements. Upon motion of the prosecutor made one year or more after sentencing, the court could certify to the DOC that the person was eligible for parole after he or she served 15 years of his or her sentence, if the person met the bill's parole eligibility requirements, but only if the cooperation involved information or evidence not known by that person until one year or more after sentencing.

Alternative Sentence for Possession

Currently, a person convicted of possessing 650 grams or more of a mixture containing cocaine or a Schedule 1 or 2 narcotic 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 penalty, however.)

Under the bill, a person convicted of that offense could be sentenced to imprisonment for life or any term of years, but not less than 25 years. The bill would delete the 25-year minimum sentence alternative that currently is allowed specifically for a juvenile tried and convicted as an adult of a possession offense involving 650 grams or more.

Departure from Mandatory Minimum Sentences

The Code provides for mandatory minimum prison sentences for offenses involving less than 650 grams, but allows the sentencing court to depart from those minimum terms of imprisonment if it finds, on the record, that there are substantial and

compelling reasons to do so. In addition, the Code allows a sentencing court to depart from the mandatory minimum prison terms for a juvenile tried and convicted as an adult.

Under the bill, the court's authority to depart from a mandatory minimum term of imprisonment also would apply to a possession offense involving 650 grams or more. The bill would delete the court's specific authority to depart from a mandatory minimum sentence for a juvenile tried and convicted as an adult of a possession offense.

Senate Bill 281 (S-4)

Overview

The bill would do all of the following:

-- Provide for lifetime parole of persons sentenced to life imprisonment for a violation involving manufacture or delivery of 650 grams or more of a mixture containing cocaine or a Schedule 1 or 2 narcotic and eligible for parole under Senate Bill 280 (S-6), and place additional requirements on those parolees.
-- Require the revocation of parole of a person who was convicted of a delivery or possession offense involving a mixture containing cocaine or a Schedule 1 or 2 narcotic, regardless of the amount involved, if he or she committed certain violations during release.
-- Require the parole board to rescind the parole of a parolee charged with committing a felony. If the parolee were convicted of the felony, he or she would not be eligible for parole for either violation.
-- Specify that a parole order would have to require the parolee to undergo random drug testing and that the DOC would have to provide adequate testing materials to parole agents.

Parole Eligibility for Manufacture or Delivery/ Lifetime Parole

Under the DOC law, a prisoner sentenced to life or a term of years, other than a prisoner sentenced to life for first-degree murder or sentenced to life or 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 revise the exclusion for major controlled substance offenders. The bill specifies that a prisoner could not be released on parole if he or she were sentenced to imprisonment for life or a minimum term for a major controlled substance offense and were not eligible for parole under the Public Health Code (as it would be amended by Senate Bill 280 (S-6)).

The bill provides that a prisoner sentenced to life imprisonment for a major controlled substance violation, who was released on parole under Senate Bill 280 (S-6), would have to be placed on parole for life. The bill also specifies that a prisoner sentenced to life imprisonment for a major controlled substance violation, who was released on parole, would have to report in person to his or her parole supervisor at least monthly, and could not be discharged from parole or have supervision suspended by the DOC for any reason.

Revocation of Parole

Drug Offenders. If a prisoner convicted of manufacturing, delivering, or possessing with intent to deliver or convicted of possessing a mixture containing a Schedule 1 or 2 narcotic or cocaine, regardless of the amount involved, who was released on parole, committed a violent felony or a controlled substance violation of the Public Health Code punishable by imprisonment for four or more years 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.

All Offenders. Under the bill, if a paroled prisoner were charged with committing a felony, the parole board would have to rescind his or her parole and order the prisoner placed in a secure facility pending disposition of the charge. If the prisoner were convicted of the felony, he or she would not be eligible for parole for either violation. (That is, the prisoner would have to serve his or her maximum sentence for the offense for which he or she was paroled and his or her maximum sentence for the felony for which he or she was subsequently convicted.)

Drug Testing

The bill would require that each parole order contain a condition requiring the parolee to undergo random drug testing. The DOC would have to provide adequate drug testing materials to parole agents to permit the random drug tests. The drug testing materials would have to be

designed to detect the presence of any one of several different types of controlled substances in one sample.

MCL 333.7401 & 333.7403 (S.B. 280)
791.234 & 791.236 (S.B. 281)

Legislative Analyst: P. Affholter

FISCAL IMPACT

Senate Bills 280 (S-6) and 281 (S-4) would have an indeterminate fiscal impact on State government, and have little fiscal impact on local government.

To the extent that Senate Bill 280 (S-6) would increase the likelihood of parole for individuals convicted of delivering 650 or more grams of a narcotic, reduce the minimum sentence for possession of 650 or more grams, and provide judicial departure from the mandatory minimum sentence for possession of 650 grams or more based on substantial and compelling reasons, costs for the Department of Corrections could decrease.

In 1996, there were nine new commitments for delivery of 650 grams or more. If one assumed that 25% of these 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 the parole board data indicate that very few individuals with life sentences are ever paroled), costs after 15 years would begin to decrease. Based on 1996 new commitments, in the long run, costs for the confinement of these convictions could be reduced by approximately $1.2 million annually, assuming a life sentence equals 50 years. Senate Bill 281 (S-4) would require, however, that a parolee meet at least once a month with a parole supervisor for life, reducing cost-savings for the confinement of these convictions by about $100,000 annually. Additionally, the cost-savings would be negated, if, once paroled, the parolee were convicted of a new four-year felony.

Senate Bill 280 (S-6) also would reduce the mandatory minimum sentence for possession of 650 grams or more from life imprisonment to imprisonment for at least 25 years. In 1996, no one was convicted of this crime and one person was convicted in 1995. Assuming that one person was actually sentenced under the alternative minimum, that the sentence was for 25 years in prison instead of life, and that a life sentence equals 50 years, the Department of Corrections could reduce costs by an estimated $375,000 annually, in the long run. The fiscal impact of allowing judicial departure from the minimum sentence for possession of 650 grams or more is indeterminate, because it is not know how judges would depart or how frequently substantial and compelling reasons would be found to exist.

To the extent that Senate Bill 281 (S-4) would revoke the parole of and make ineligible for future parole, any parolee convicted of a new felony, costs for the Department of Corrections would increase. In 1996, there were 1,509 prisoners on parole returned to prison with a new sentence. Assuming a maximum of penalty of five years in prison for the original crime, a minimum sentence two-thirds of the maximum sentence, and parole granted at first application, an average prisoner would serve about 2.9 years of a five year sentence before parole. The parolee would serve about 7.1 years for the remainder of the original conviction, plus the maximum of the new crime, assuming a new five-year conviction. Under current policy, the prisoner would be considered for parole again in about 2.6 years. Assuming that parole is granted after 2.6 years, the difference is about 4.5 years or an added cost of $67,500. Based on the number of dispositions in 1996, this would be an additional total cost of an estimated $102 million annually.

Additionally, Senate Bill 281 (S-4) would require random drug testing of parolees and provision of drug testing materials by the Department of Corrections. The Department of Corrections currently provides for drug testing of parolees. The standard for average supervision is testing twice a month; once four consecutive tests are passed, testing is once a month for six months. If the parolee does not fail a test in six months, testing is done at the discretion of the parole agent. Thus, there appears to be no change in the cost for drug testing.

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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.