

Legislative Analysis



PAROLE AND PROBATION REVISIONS FOR CONTROLLED SUBSTANCES VIOLATIONS

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House Bill 5829

Sponsor: Rep. Bert Johnson

House Bill 5830

Sponsor: Rep. Mark Meadows

House Bill 5831

Sponsor: Rep. Rick Jones

Committee: Judiciary

Complete to 3-4-08

A SUMMARY OF HOUSE BILLS 5829-5831 AS INTRODUCED 2-28-08

In 2002, legislation was enacted that eliminated the mandatory minimum sentences for drug offenses involving the manufacture/delivery/possession of controlled substances, revised the penalties for various drug crimes, eliminated the sentence of life probation for violations involving less than 50 grams of a Schedule 1 or 2 narcotic or cocaine, and provided parole for people previously convicted and sentenced to mandatory minimum terms of imprisonment for drug offenses prior to the effective date of the revisions, which was March 1, 2003. The bill package (all the bills are tie-barred to each other) would make further amendments to this area of law as described below.

House Bill 5829

House Bill 5829 would amend the Corrections Code (MCL 791.234). Among other things, Public Act 670 of 2002 shortened the minimum time a person has to serve before being eligible for parole for persons convicted of violating the Public Health Code's prohibition on the manufacture/delivery/possession of Schedule 1 and 2 narcotics and cocaine before the act's effective date. As written, a person who committed an offense before the revisions took effect, but was convicted after the revisions took effect, was sentenced under the old provisions but not eligible for parole under the revised criteria and is therefore subject to the general parole provisions. In general, a prisoner is eligible for parole after serving his or her minimum sentence.

The bill would amend the code to do the following:

- Apply the provisions to a conviction for attempting to commit a violation (currently, the provisions specify a conviction for violating or conspiring to violate the prohibitions regarding controlled substances).

- Apply the revised parole criteria, for offenses involving 25 grams to 999 grams of prohibited substances, to persons whose offense occurred before March 1, 2003, but who were sentenced according to those sections of the Public Health Code as they existed before March 1, 2003. This would apply regardless of the date of the conviction.
- Extend parole eligibility to a prisoner who has served 15 years of a life sentence for violating, or attempting or conspiring to violate, the prohibition on manufacturing/delivery/possession with intent to deliver and simple possession involving Schedule 1 or 2 narcotics or cocaine of 50 grams to 999 grams, regardless of when the crime had been committed.
- Allow a person convicted of violating, or attempting or conspiring to violate, provisions of the Public Health Code involving amounts of Schedule 1 and 2 narcotics and cocaine of 1,000 grams or more, but whose offense occurred before March 1, 2003 and who was sentenced to serve a term of years, to be eligible for parole after serving 20 years (if he or she had another serious crime) or 17½ years (if he or she did not have another conviction for a serious crime, or after serving the minimum sentence, whichever was less).

Further, an individual sentenced to consecutive terms for two or more convictions for an offense involving Schedule 1 or 2 narcotics or cocaine, in any amount, whose offenses occurred before March 1, 2003, and who had been sentenced according to those sections of the Public Health Code as they existed before that date, would be eligible for parole when he or she had served the longest period required for parole eligibility for any of the sentences, as determined under the act. This provision would apply to all sentences imposed for violations or attempted violations involving controlled substances, *that arose from a single incident*. It also would apply to sentences imposed for conspiring to manufacture/deliver/possess with intent to deliver or simple possession of a Schedule 1 or 2 narcotic or cocaine.

Sentences arising from a single incident would include, but not be limited to: an arrest and related search of property associated with the individual; contemporaneous offenses involving more than one controlled substance or more than one quantity of the same controlled substance; and violations involving the manufacture/delivery/possession with intent to deliver and simple possession of any controlled substance that had been prosecuted in more than one county and involved the same controlled substance.

House Bill 5830

House Bill 5830 would amend the Public Health Code (MCL 333.7401 and 333.7403) to repeal Section 333.7413. The bill would also revise two provisions regarding lifetime probation to specify that the provisions would pertain to an individual sentenced to lifetime probation under Section 7401(2)(a)(iv)—manufacture, delivery, or possession with intent to deliver—or Section 7403(2)(a)(iv)—possession—as those sections existed

before March 1, 2003. Both provisions pertain to violations involving a Schedule 1 or 2 narcotic or cocaine in an amount less than 50 grams.

The section to be repealed provides the following:

- Life sentence without the possibility of parole for second or subsequent conviction for the manufacture/delivery/possession, or conspiracy to commit the same, involving Schedule 1 or 2 narcotics or cocaine of 50 to 999 grams.
- Enhanced sentence for second or subsequent conviction of any other offense involving any controlled substance, including convictions under any federal or other state statute.
- Enhanced penalties for violations involving delivery or distribution of Schedule 1 or 2 narcotics or cocaine to a minor less than three years younger than the offender and delivery to anyone within 1,000 feet of a school or public library. Further, the court may depart from the enhanced penalty if it finds on the record substantial and compelling reasons to do so.

House Bill 5831

House Bill 5831 would amend the Code of Criminal Procedure (MCL 771.2). Public Act 666 of 2002 deleted Section 1(4) of Chapter XI, which allowed for life probation for offenses involving less than 50 grams of a Schedule 1 or 2 narcotic or cocaine. However, the act specified in Section 2(3) that a defendant who had been placed on life probation under Section 1(4) prior to the act's effective date (March 1, 2003) would still be subject to the conditions of probation specified in the code.

The bill would clarify that Section 2(3) applies to a defendant placed on life probation under Section 1(4) as it existed before March 1, 2003 for an offense committed before March 1, 2003.

FISCAL IMPACT:

A fiscal analysis is in process.

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■ 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.