Legislative Analysis

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EXPEDITED COMMUTATIONS FOR CERTAIN PRISONERS

House Bill 4509 as introduced
Sponsor: Rep. Mark Meadows

House Bill 4510 as introduced
Sponsor: Rep. Rick Jones
Committee: Judiciary

First Analysis (3-26-09)

BRIEF SUMMARY: The bills would establish a mechanism to expedite a request for a commutation of sentence for a prisoner based on physical or mental incapacity or for a terminally ill prisoner.

FISCAL IMPACT: To the extent that the bill enabled commutations and subsequent paroles to be completed more quickly, the department could experience savings. Savings would depend on the numbers of prisoners affected, the degree to which lengths of stay were reduced, and the costs of incarceration.

THE APPARENT PROBLEM:

In light of continuing revenue shortfalls, state departments continue to look for ways to reduce costs and increase efficiencies. Recently, several measures have been proposed to reduce costs generated by the corrections system. In particular, it has been noted that the state's prison population is aging and that many prisoners no longer pose a risk to the public due to advanced age and illnesses associated with old age. Some of these prisoners have terminal illnesses and have only weeks or months to live. Furthermore, many prisoners have been diagnosed with severe mental illness.

Prisons are not equipped to provide the level of medical care needed by severely or terminally ill prisoners, nor to deliver the mental health services needed by severely mentally ill prisoners. Transporting prisoners to nearby hospitals for treatment greatly increases the cost to provide constitutionally-mandated medical care. Moreover, as long as the prisoner is incarcerated, the state bears the full burden of care. If released, many of these persons would qualify for community-based services paid for by Medicare (a federal program), such as hospice, or by Medicaid (a federal/state match program), such as care in a nursing home or inpatient mental health facility. In addition, some may be covered as dependents under a relative's health insurance plan.

Meanwhile, the state constitution authorizes the governor to issue reprieves, pardons, and commutations of sentences. An application for commutation can be based on physical or mental incapacity. However, the process can be lengthy (up to a year or longer). Prisoners being considered for medical commutations have died before the process could be completed. If there was an expedited process for prisoners who were seriously ill or

with severe mental illness, they could be moved to facilities or home with relatives, who could provide the needed care; again, without a risk to public safety but with a cost savings to the state.

THE CONTENT OF THE BILLS:

Together, House Bills 4509 and 4510 would establish a mechanism to expedite a request for a commutation of sentence for a prisoner based on physical or mental incapacity or for a terminally ill prisoner. The bills are tie-barred to each other, meaning that neither bill can take effect unless both are enacted.

When the parole board receives an application for a reprieve, commutation, or pardon, it must conduct a review to determine if the request has merit; deliver its determination to the governor; forward specified documentation to the sentencing judge and county prosecutor; direct the Bureau of Health Care Services to evaluate the condition of the prisoner in question if the application or initiation for commutation is based on physical or mental incapacity; make a full investigation and determination on whether or not to proceed to a public hearing; conduct a public hearing after first sending notices to certain people as required; and transmit its formal recommendation to the governor. Though there are specified time periods for some of these steps, the entire process can still exceed a year (up to 15 months) just to deliver the board's recommendation to the governor.

The bills would amend the Corrections Code to shorten the process for prisoners seeking a commutation based on physical or mental incapacity or for those who had less than six months to live.

House Bill 4509 would amend Section 44 of the code (MCL 791.244) to make the following changes:

- Currently, the sentencing judge and county prosecutor with jurisdiction over the case may file information at their disposal, along with any objections, in writing within 30 days of receiving the written notice of the filing of the application or initiation of the request for commutation. Under the bill, in the case of a proposed commutation based on physical or mental incapacity, a response would have to be filed within 14 days. The current 30-day time period would still apply in all other situations.

- Currently, a public hearing must be held not later than 90 days after a decision to proceed with consideration of a commutation, reprieve, or pardon. Written notice of the required public hearing on a commutation must be provided at least 30 days before the hearing to the state attorney general, the sentencing trial judge, the county prosecutor, and each victim requesting notice under provisions of the William Van Regenmorter Crime Victim's Rights Act. The bill would shorten the time-period for notification of a public hearing conducted for a proposed commutation based on physical or mental incapacity to at least 14 days before the public hearing and would allow the notice to be provided at the same time the

notice described above was provided to the sentencing judge and county prosecutor.

- Currently, when an application or initiation for commutation is based on mental or physical incapacity, the prisoner's condition must be evaluated and reported by the Bureau of Health Care Services. If it determines the prisoner is mentally or physically incapacitated, the bureau must appoint an appropriate specialist, not employed by the Department of Corrections, to also evaluate and report on the prisoner's condition. Both of the evaluation reports must be provided to the governor. The bill would waive the requirement for a public hearing for a proposed commutation based on mental or physical incapacity if both of the evaluation reports gave the prisoner a life expectancy of six months or less and the parole board gave written notice of the proposed commutation to the attorney general, sentencing judge, prosecuting attorney (or their successors in office), and each victim requesting notification.

  The written notice would have to request that a written response be given within 14 days as to the proposed commutation and could be made simultaneously with the first notice made to the sentencing judge and prosecutor described above. Any written responses would have to be forwarded to the governor along with the parole board's final recommendation and would be matters of public record. This provision would not apply to a prisoner serving a sentence for a listed offense as defined in the Sex Offenders Registration Act.

House Bill 4510 would amend the Corrections Code (MCL 791.235) to specify that a provision allowing the parole board to grant a medical parole for a prisoner determined to be physically or mentally incapacitated would not preclude a prisoner from seeking a commutation based on physical or mental incapacity under Section 44.

BACKGROUND INFORMATION:

The bills are identical to House Bill 4475 of the 2007-2008 legislative session. That bill passed by the House but failed to see Senate action.

ARGUMENTS:

For:

The governor already has authority to commute a prisoner's sentence. House Bills 4509 and 4510 would only affect requests for commutations based on medical or mental health needs. Since the prison population affected by the bills represents the oldest and sickest of prisoners, the public's safety would not be jeopardized. Many of these prisoners are now bedridden or so physically incapacitated that it would be impossible for them to reoffend. Some are in a vegetative state. Reportedly, there are no incidents in which a prisoner whose sentence was commuted due to illness committed a new crime. In addition, the rights of victims or their families to have input would still be protected. However, the current process is too long for severely ill prisoners or prisoners facing a

terminal illness; prisoners have died while waiting for the request to go through all the steps required by statute.

The bills have the potential for significant savings to the Department of Corrections by shifting the costs to provide medical services for severely ill or terminal prisoners to Medicare, which is funded by federal dollars, or Medicaid, which is funded by state and federal dollars. By some estimates, the savings could be as much as $30 million a year. In addition, nursing homes, hospices, and even home-based care would provide a more appropriate setting in which to deliver needed medical or end-of-life care. Mental health facilities and out-patient treatment programs would be more appropriate to render psychiatric care.

Response:

House Bill 4509 would exclude sex offenders from the provision that would waive the public hearing requirement for terminally ill inmates. The problem with this exclusion is that not all sex crimes denote the perpetrator as a serial rapist or child predator. Often the crime is considered to be "situational" and thus unlikely to be repeated. Contrary to popular belief, the re-offense rate for sex offenders is very low – only 3.1 percent are returned to prison for committing a new sex crime. If an inmate convicted of a sex crime is terminally ill, it is even more unlikely he or she would pose a danger. There simply is no logical reason to exclude terminally ill sex offenders when those who have committed equally or more heinous crimes would be eligible for an expedited commutation.

POSITIONS:

The Michigan Department of Corrections indicated support for the bills. (3-24-09)

A representative of the Citizens Alliance on Prison & Public Spending (CAPPS) testified in support of the bills. (3-25-09)

The ACLU of Michigan indicated support for the bills. (3-25-09)

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