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Senate Bills 826 and 827 (as introduced 9-16-09)

Sponsor: Senator Alan L. Cropsey

Committee: Judiciary

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### **CONTENT**

<u>Senate Bill 826</u> would amend the Community Corrections Act to revise the criteria for participation in community corrections programs, by providing for use of an "objective risk and needs assessment".

## Senate Bill 827 would amend the Corrections Code to do all of the following:

- -- Require the Department of Corrections (DOC) to use a "validated risk assessment instrument" in its parole guidelines.
- -- Require the parole board to consider a report of a validated risk assessment instrument before granting a prisoner parole.
- -- Delete a requirement that a departure from the parole guidelines be for substantial and compelling reasons.
- -- Allow a departure from a parole guideline of high probability of parole only for certain reasons.
- -- Revise requirements regarding a prisoner's employment, education, or care upon release on parole.
- -- Require a prisoner to be paroled after serving his or her minimum term if he or she had a parole guideline of high or average probability, but allow the parole board to defer parole under certain circumstances.
- -- Require a prisoner whose parole was deferred to be paroled not later than the date on which the prisoner served 120% of his or her minimum term, subject to certain exceptions.
- -- Require the parole of other prisoners not later than nine months before the end of their maximum sentence.
- -- Require a prisoner whose parole was rescinded to be returned to parole within nine months, except under certain circumstances.

The bills are tie-barred.

# Senate Bill 826

The Community Corrections Act allows a county, city, city-county, or regional advisory board, on behalf of the city, county, or counties it represents, to apply for funding and other assistance by submitting to the office of community alternatives a comprehensive corrections plan that meets requirements specified in the Act and the criteria, standards, rules, and policies developed by the State community corrections board.

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The Act specifies that it "is intended to encourage" participation in community corrections programs of offenders who would likely be sentenced to imprisonment in a State correctional facility or jail, would not increase the risk of public safety, have not demonstrated a pattern of violent behavior, and do not have a criminal record that indicates a pattern of violent offenses. The bill specifies, instead, that the Act would be intended to encourage participation in community corrections programs of offenders who met the following criteria:

- -- The offenders would likely be sentenced to imprisonment in a State correctional facility or jail.
- -- The offenders would not likely increase the risk to public safety based on an objective risk and needs assessment that demonstrated that the offender could be safely treated and supervised in the community.

"Objective risk and needs assessment" would mean an evaluation of a probationer's criminal history and noncriminal history; a determination of the availability in the community of appropriate programming; and any other factors relevant to predicting the risk the probationer would present to the public safety, including a criminal record that indicated a pattern of violent offenses.

## Senate Bill 827

#### Parole Guidelines

<u>Development</u>. The Corrections Code requires the DOC to develop parole guidelines that govern the exercise of the parole board's discretion as to the release of prisoners on parole. In developing the parole guidelines, the DOC must consider factors listed in the Code. The bill also would require the Department to use a validated risk assessment instrument in developing the guidelines.

The bill would delete from the list of factors that must be considered, the offense for which the prisoner is incarcerated at the time of parole consideration. The bill also would delete a provision allowing the DOC to consider a prisoner's statistical risk screening and age in developing parole guidelines.

"Validated risk assessment instrument" would mean an objective and comprehensive analysis of a prisoner's criminal history and background, and his or her behavior while in the correctional facility, that is used to validly predict the risk the prisoner would present to the public safety if and when he or she is released.

<u>Departure</u>. The Code allows the parole board to depart from the parole guidelines by denying parole to a prisoner who has a high probability of parole, or by granting parole to a prisoner who has a low probability of parole, as determined under the guidelines. The bill would delete a requirement that a departure be for substantial and compelling reasons stated in writing.

Under the bill, the following would be the only reasons for departing from a parole guideline of high probability of parole:

- -- The prisoner's current psychological state, as determined by a psychiatrist based on a diagnosis of serious mental illness and psychopathology, would pose a significant risk to the public safety if the prisoner were released on parole.
- -- The prisoner had demonstrated continued risk to the public safety through serious institutional misconduct.
- -- The prisoner was serving a sentence for which the maximum penalty was imprisonment for life.

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- -- The prisoner had pending felony charges or detainers.
- -- A validated risk assessment instrument had deemed that the prisoner's risk of reoffending was high, in the absence of a reentry plan such that the prisoner could not be managed effectively in the community.

### Grant of Parole

<u>Risk Assessment</u>. Under the Code, a prisoner may not be given liberty on parole until the board has reasonable assurance, after consideration of all of the facts and circumstances, including his or her mental and social attitude, that the prisoner will not become a menace to society or to the public safety. Under the bill, instead of consideration of the prisoner's mental and social attitude, the parole board would have to consider the report of a validated risk assessment instrument.

Employment, Education, or Care. Currently, a prisoner may not be released on parole until the parole board has satisfactory evidence that arrangements have been made for honorable and useful employment that the prisoner is capable of performing, for the prisoner's education, or for the prisoner's care if he or she is mentally or physically ill or incapacitated. Under the bill, instead, the DOC would have to implement and administer evidence-based programming in response to validated assessment instruments to ensure that prisoners were prepared for honorable and useful employment, education, or care. The parole board would have to impose conditions of parole to ensure that each prisoner participated in evidence-based programming identified by the Department and designed to address the prisoner's educational, vocational, and social needs, including obtaining a high school diploma or general educational development (GED) certificate.

The Code prohibits a prisoner from being paroled if his or her minimum term of imprisonment is two years or more unless he or she has earned either a high school diploma or a GED certificate. The bill would delete that prohibition.

Release after Minimum or by 120% of Minimum. Under the bill, except as otherwise provided, a prisoner who had a parole guideline of high or average probability would have to be placed on parole when he or she had served the minimum sentence imposed by the court, less any applicable good time allowances or disciplinary credits. The parole board could defer a prisoner's parole until after that date, but not later than the date on which he or she had served 120% of the minimum sentence, for either of the following reasons:

- -- To allow the prisoner to complete required programs that were determined by the DOC or the parole board to reduce the risk to the public safety from the prisoner' release.
- -- To allow a period of time for the prisoner to demonstrate positive institutional conduct.

The requirement that a prisoner be paroled after serving the minimum sentence or by the date on which he or she had served 120% of his or her minimum sentence would not apply to any of the following:

- -- A prisoner sentenced for a felony for which the maximum penalty was imprisonment for life.
- -- A prisoner who had pending felony charges or detainers.
- -- A prisoner who was interviewed by the parole board and denied parole because a validated risk assessment instrument deemed that the prisoner's risk of reoffending was high, in the absence of a reentry plan such that the prisoner could not be managed effectively in the community.

Any prisoner not placed on parole under this provision, who had served his or her minimum sentence, would have to be placed on parole not later than nine months before his or her maximum sentence expired, to ensure a period of intensive supervision in the community.

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In addition, a prisoner whose parole was rescinded would have to be placed on parole again not more than nine months following the date on which parole was rescinded, unless the prisoner's conduct that led to the parole rescission involved possession or use of a weapon or injury to a victim, or resulted from a second or subsequent parole violation. In that case the parole board could place the prisoner on parole again at its discretion.

MCL 791.408 (S.B. 826) 791.233 et al. (S.B. 827)

## Legislative Analyst: Patrick Affholter

# **FISCAL IMPACT**

The bills would have an indeterminate fiscal impact on State and local government. In general, Senate Bill 827 could allow the State to achieve savings through reductions in the prison population. According to the Michigan Department of Corrections, the bill would drive a reduction of approximately 433 inmates by the end of FY 2010-11 by requiring parole at 100% to 120% of the minimum sentence for individuals who are not likely to reoffend. The MDOC estimates that \$1.6 million in first-year savings would accrue, net of necessary reinvestments in community supervision and reintegration programs. In subsequent years, the policy changes outlined in the bill have the potential to produce both further reductions in the prison population and additional savings. The extent of these population reductions and the amount of savings are, however, uncertain.

Fiscal Analyst: Matthew Grabowski

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.