Legislative Analysis

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`PAROLE OF LIFERS:
REMOVE SUCCESSOR JUDGE'S VETO POWER

House Bill 5273 (reported from committee as H-1)
Sponsor: Rep. Dave Pagel
Committee: Criminal Justice
Complete to 5-6-16 ***(Public Act 354 of 2016)***

BRIEF SUMMARY: The bill would retain a successor judge's right to file objections regarding the parole of a prisoner sentenced to life but eligible for parole, but those objections would no longer automatically bar the parole board from granting parole.

FISCAL IMPACT: The bill would have an indeterminate fiscal impact on the state, though very likely nominal. The impact would depend on the change in the number of parole hearings and paroles resulting from provisions of the bill.

THE APPARENT PROBLEM:

The penalty for some serious crimes, such as second-degree murder, is incarceration for any term of years or life with parole eligibility. A "parolable lifer" must serve at least 10 or 15 years before being eligible for parole, depending on the date the crime was committed. Before the parole board may make its final decision whether to grant or deny parole, a public hearing must held. After the hearing is scheduled, a notice must be sent to the judge who imposed the life sentence. If that judge is retired or deceased, the notice is sent to the judge who replaced the sentencing judge. Whoever is on the bench and receives the notice, whether it is the sentencing judge or the successor judge, has 30 days in which to file written objections to the parole. If the judge files an objection, the public hearing is cancelled, the parole process stops, and the prisoner must wait five years until the next parole review is scheduled.

Some see a problem with the ability of a successor judge having automatic veto power over the parole board in deciding whether a prisoner is rehabilitated and deserving of release. Unlike the judge who tried the case, the successor judge is less familiar, or not familiar at all, with the facts of the case. The successor judge does not meet the prisoner, interview the prisoner, or necessarily learn about the case before objecting to the parole. In fact, no explanations for why an objection is being made have to be given. This can be demoralizing to a prisoner who has spent decades in prison, who has taken responsibility for past actions, and who has made life-altering changes, but who now has no opportunity for parole.

Moreover, a quirk in the sentencing laws back in the 1960s through the 1980s meant that a parolable lifer could be eligible for parole after 10 years but a person with a long sentence but not life, say 40 years, would be eligible in about 15 or so years, with reductions for good time. Thus, it was not uncommon for judges to urge defense attorneys and defendants to accept a life sentence over a longer term of imprisonment if the judge felt a defendant

deserved earlier parole consideration. However, sentencing policies have changed drastically since then. The result is that prisoners that the original sentencing judges intended to be out in 10 years are still incarcerated 30, 40, even 50 years later, when more culpable codefendants who accepted longer sentences were paroled decades ago. Of judge vetoes over the past decade, 90 percent were by successor judges. In one county, 11 of 16 vetoes were by a single judge who was the successor to judges who had originally imposed the life sentences.

As this population ages, the costs of incarcerating them goes up while the risk of recidivism plunges. Some are bedridden or terminally ill. For these and other reasons, over the past few years, there has been growing support among advocates, attorneys, former prison wardens, and even judges for removal of the veto power of successor judges, yet still permit them to file written objections if they choose. Legislation has been offered to address the issue.

THE CONTENT OF THE BILL:

Under the bill, a written objection by a "successor judge" to the parole of a prisoner who was sentenced to life imprisonment but who is eligible for parole would no longer automatically remove the decision to grant or deny parole from the jurisdiction of the parole board. (A "successor judge" is the judge who succeeded the judge who originally imposed the life sentence.) The bill would take effect 90 days after enactment.

Currently, before the Michigan Parole Board can grant or deny parole to a prisoner serving a sentence of life but who is eligible for parole, a public hearing must be held. (For detailed information, see Michigan's Parole Process for Parolable Lifers below.) Notice of the public hearing must be given to the judge who imposed the sentence (sentencing judge) or to the judge who currently holds that office (successor judge). If either the sentencing judge or the successor judge files a written objection to the parole within 30 days of receiving the notice, parole cannot be granted. The written objections become part of the prisoner's file.

House Bill 5273 would amend the Corrections Code to remove the ability of a successor judge to block a parole hearing from going forward (MCL 791.234). Under the bill, the notice of the parole hearing would still have to be given to the sentencing judge or the successor judge and either could file written objections.

However, a sentencing judge's written objections would bar parole only if that judge were still in office in the court before which the prisoner was convicted and sentenced.

A successor judge's written objections would not bar the granting of parole.

The bill would also clarify that the written objections filed by either the sentencing judge or the judge's successor in office will be made part of the prisoner's file.

BACKGROUND INFORMATION:

Michigan's Parole Process for Parolable Lifers

The parole process for a prisoner sentenced to life imprisonment but eligible for parole is different from the process for other prisoners. A parolable lifer must serve at least 10 or 15 years of a sentence before being considered for release on parole, depending on whether the offense for which life was imposed was committed before or after October 1, 1992. According to statute, one member of the parole board must interview the prisoner at the conclusion of 10 years of imprisonment and again thereafter according to a schedule determined by the parole board until such time as the prisoner is paroled, discharged, or deceased. Prisoners may be represented at the interview by an individual of their own choosing, but the representative may not be another prisoner. The prisoner or the representative may present evidence in favor of holding a public parole hearing. In addition, the prisoner's file must be reviewed after 15 years post-sentencing and every 5 years thereafter. The prisoner must be notified 30 days prior to a file review and must be allowed to submit written statements or documentary evidence for consideration by the parole board.

If the parole board member conducting the interview believes the prisoner is a good candidate for parole, the case is presented before the parole board at what is known as an "executive session." A majority of the board must then decide whether or not to proceed with considering parole for the prisoner. A decision to not proceed any further is referred to as a "no interest decision" and the parole process is effectively ended until the next scheduled review.

If the parole board decides to continue consideration for parole, a public hearing is scheduled. A decision to grant or deny parole cannot be made until after a public hearing is held. Notice of the public hearing must be sent to the judge who sentenced the prisoner to life or to the judge who is currently holding that position on the bench (the "successor judge"), and also to the prosecutor of the county where the prisoner was convicted. The sentencing judge or the successor judge has 30 days from the date the notice of the public hearing was received to submit to the parole board written objections to the parole of the prisoner. If the parole board receives such written objections, the public hearing is cancelled and the parole process is effectively ended until the next scheduled review.

If no objections to the parole by the sentencing judge or the successor are received by the parole board, the public hearing is conducted. A member of the parole board conducts the hearing and the public is represented by the attorney general. Anyone can speak at a public parole hearing, including the county prosecutor and victims or their families. After the hearing, the parole board makes its final decision whether to grant or deny parole. If parole is granted, it must be for a period of at least four years. The county prosecutor or the victim of the crime may appeal a grant of parole in circuit court.

ARGUMENTS:

For:

It is important to note that the bill does not require that parole be granted to a person sentenced to life but eligible to be paroled. The bill simply removes the power of a successor judge to automatically stop the parole process and gives the decision-making authority back to the members of the parole board. A public hearing would still have to be held, the successor judge could still file an objection, and the county prosecutor and any victims could still file comments. The bill also clarifies that for a sentencing judge to retain veto power, the judge must still be in office in the court before which the prisoner was convicted and sentenced. A judge who was in office in a different court or jurisdiction would not be able to bar parole.

One consequence of the veto power being added to successor judges is that many prisoners sentenced decades ago are still incarcerated today, long after the sentencing judges thought they would be released. Statistically speaking, parolable lifers have some of the best institutional records and lowest recidivism rates for their offense categories. Advocates say that many prove that they have taken responsibility for their actions and changed their lives. Yet even when the parole board members determine that a parolable lifer has earned release and poses little to no risk to public safety, their decision–based on knowledge of the prisoner–can be overruled by a judge who was never involved in the case, never met the prisoner, and may not have even sought information about the case or who the prisoner has become. Removing successor judge vetoes, on the other hand, enables the parole board to consider the entire case starting with the offense to the prisoner's institutional conduct, rehabilitation, psychological evaluation, outside support, and future plans, as well as objections, if any, by the sentencing or successor judge, prosecutor, or victims.

Proponents of the bill say that allowing successor judges to derail the parole process does nothing to increase public safety or improve the decision-making process as to whether to parole or not. With a growing number of aging and infirm prisoners being housed in Level II prisons (medium security), the security level for parolable lifers, it does not make sense to take the final decision away from those who have had the most recent contact with the prisoner–the parole board–and place it in the hands of a person who may have no knowledge of the prisoner, or who may be concerned with political fallout if they do not object. According to the testimony of a former warden, no successor judge ever contacted her about a prisoner's progress. Especially with the burgeoning costs of housing prisoners, the parole board should have the final say.

Response:

Some say that the bill is a good and necessary first step, but that all judge vetoes should be eliminated. Critic say that allowing any judge to have automatic veto over a parole decision is essentially the same as creating an alternative parole board. There is the board created by statute, the members of which must follow a prescribed process of interviews with the prisoner, must consider the prisoner's progress and institutional conduct, completed programming, and community support system, assess the probability of a successful parole, etc. Then, as a practical matter, there is the alternative parole board consisting of a single judge who does not interview the prisoner, is not required to look at any information

regarding the prisoner (and may not look at any information other than the offense committed), does not assess the recidivism risk, does not look at letters commending the prisoner's growth, and yet has the power to end the parole process. Judges should be allowed to weigh in, but should not carry more power and authority than the parole board, prosecutor, or victims, say parole advocates.

POSITIONS:

A representative of the Prisons & Corrections Section, State Bar of Michigan, testified in support of the bill. (4-12-16)

A representative of Citizens Alliance on Prisons and Public Spending (CAPPS) testified in support of the bill. (4-12-16)

The Michigan Judges Association submitted written testimony supporting the bill. (4-12-16)

The U.S. Justice Action Network submitted written testimony supporting the bill. (4-12-16)

Michigan Catholic Conference indicated support for the bill. (4-12-16)

Criminal Defense Attorneys of Michigan indicated support for the bill. (4-12-16)

ACLU of Michigan indicated support for the bill. (4-12-16)

National Association of Social Workers, MI indicated support for the bill. (4-12-16)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.