

Legislative Analysis



FREQUENCY OF CERTAIN PAROLE REVIEWS

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House Bill 4562 (H-3) as reported from committee
Sponsor: Rep. Sarah L. Lightner

Analysis available at
<http://www.legislature.mi.gov>

House Bill 4563 as reported from committee
Sponsor: Rep. Angela Witwer

Committee: Judiciary
Complete to 6-3-21

BRIEF SUMMARY: House Bill 4562 would amend the Corrections Code to allow parole reviews after a parole denial to be conducted at least every five years for prisoners who pose a public safety risk based on a history of certain behaviors. House Bill 4563 would make a technical revision to a provision pertaining to decisions of parole board panel.

FISCAL IMPACT: The bills would have no fiscal impact on the state or local units of government.

THE APPARENT PROBLEM:

Significant revisions to the parole guidelines were enacted by 2018 PA 339. One of the changes was to shorten, from five years to one year, the maximum time period between parole reviews for an inmate who scored high or average probability of parole but was denied parole. For an inmate who scored low probability of parole and was denied, the maximum interval between parole reviews was shortened from five years to two years. While the change incentivizes inmates to complete required programming and strive for self-improvement, some feel that in rare cases the increased frequency of parole reviews can be very traumatic for some victims. For example, since it is six months from the time a victim of a crime receives notification of an upcoming parole hearing for the perpetrator and when the parole board makes its decision, a yearly parole review each time parole is denied means that the victim is reliving the crime for half of each year. It has been suggested that in a case in which parole was denied, and for which certain circumstances exist, such as harm to the victim by the more frequent reviews, the interval between parole reviews should be lengthened to no more than five years.

THE CONTENT OF THE BILLS:

House Bill 4562 would amend provisions of the Corrections Code pertaining to mandatory reviews of prisoners by the parole board. Currently, if a prisoner is denied parole, the parole board is required to conduct a review at least annually if the prisoner scored high or average probability of parole. For a prisoner who scored low probability of parole, a review must be conducted at least every two years until a score of high or average probability of parole is attained. (This mandatory review of parole denials does not apply to prisoners sentenced to life but who are eligible for parole. Those prisoners undergo a different parole process that includes input by the sentencing judge or his or her successor and a public hearing, as well as input by the victim and the county prosecutor.)

Under the bill, the parole board could conduct a subsequent review of a prisoner, except for a prisoner serving a life sentence, up to five years after the review denying the prisoner parole if a majority of the members of the parole board agree to and sign a written recommendation to waive the requirements described above. A waiver could be issued only if a majority of the parole board members find that, and include a statement in the waiver that, all of the following apply:

- The parole board had no interest in granting the prisoner parole in the review denying the prisoner parole.
- The annual or biennial review after a parole denial would cause unnecessary additional harm to a victim of a crime for which the prisoner was committed.
- The harm could be mitigated only by waiving the post-denial annual or biennial parole review process.
- Unique circumstances and factors contributed to the decision to deny the prisoner parole and to waive the post-denial annual or biennial parole review process.

The Department of Corrections would have to include the number of prisoners issued a waiver under the above provisions in the annual report of parole statistics it provides to the standing committees of the Senate and House of Representatives with jurisdiction over corrections issues. The report currently includes, among other things, the number of prisoners who scored high probability of parole who were granted parole in the previous calendar year, as well as the number who were deferred to complete necessary programming and the number who were denied parole for a substantial and compelling objective reason.

In addition, the bill would eliminate references to the Criminal Justice Policy Commission established by 2014 PA 465. The sections of the Corrections Code that created the commission and prescribed its powers and duties were repealed by a sunset provision on September 30, 2019.

MCL 791.233e

House Bill 4563 would also amend the Corrections Code. The code now provides that all decisions and recommendations of the parole board required by the act must be by a majority vote of the parole board or a parole board panel. Under the bill, those decisions and recommendations could be made by majority vote of a parole board panel *except as otherwise prohibited by the act*.

MCL 791.246

The bills are tie-barred to each other, which means that neither could take effect unless both were enacted.

ARGUMENTS:

For:

All victims experience some level of trauma, but some crimes are particularly heinous. Even the passage of time may not dull the impact of the emotions released upon receiving notice of an upcoming parole hearing for the person who harmed them. The time period from receipt of the hearing notice to the parole board's decision can be fraught with memories that may be

painful and that make it difficult to move forward in life. According to testimony presented to the committee by a victim of a near-fatal attack, the time between the notice and the decision to parole or deny parole affects sleep, work, and health. If the hearing is yearly, this means half of each year is being consumed by reliving the attack as letters are written to the parole board contesting parole and attending parole hearings. When the nature of the crime and factors unique to a particular prisoner make a grant of parole unlikely, allowing a longer interval of up to five years between parole reviews could mitigate the extreme distress imposed on some victims. It is believed that the conditions established by HB 4562 that must be met for the extended time to apply, coupled with the requirement that a majority of the entire parole board approve the longer review interval (rather than just a majority of a parole board panel), will limit applicability to a handful of prisoners who are unsuitable for parole. In addition, the number of prisoners each year for whom the annual or biennial reviews were delayed would be reported to the legislature, which would allow for legislative oversight to ensure that the bill has the intended result and is not used in such a way as to violate the spirit of the 2018 reforms.

The companion bill, HB 4563, would ensure that a parole board panel (which has just three members) could not make decisions in situations for which a statute requires action by the full parole board.

Response:

Some may be concerned that HB 4562 could water down the reforms made by 2018 PA 399. That legislation, which among other things revised the length between parole reviews for those denied parole, was due in part to low parole rates and a high number of prisoners languishing in prison long after their earliest parole dates, as well as recommendations by the Council of State Governments, which had done a study of the state's parole practices. More frequent reviews give incentive to prisoners to make use of required programming and optional work or educational opportunities for self-improvement and make it less likely that a parole panel or the full board will habitually deny parole to a prisoner who has worked hard to rehabilitate. While some may feel that the pain of victims going through frequent parole hearings is being overlooked, others feel that the amount of time spent incarcerated should reflect the nature of the crime, the effort a prisoner makes to reform, and whether he or she poses a threat to public safety, and not be based on the level of anger or distress of a victim. Research shows that most victims favor balanced and restorative justice principles, which focus on the perpetrator's making amends to victims and the community, rather than a "lock them up and throw away the key" approach. Further, the prisoners to which the bills apply will all be released one day. Those released on parole must abide by conditions and remain under the oversight of the Department of Corrections for the length of the parole period. A parole violation can mean tighter restrictions or a return to prison. When a prisoner completes his or her maximum sentence, there is no oversight or programs to help with reintegration.

POSITIONS:

A representative of the Prosecuting Attorneys Association of Michigan testified in support of the bills. (5-18-21)

The following entities indicated a neutral position on the bills (5-18-21):

- Safe and Just Michigan
- Criminal Defense Attorneys of Michigan
- ACLU of Michigan

The Michigan Domestic and Sexual Violence Prevention and Treatment Board did not take a position on HB 4562. (5-17-21)

The State Appellate Defender Office indicated opposition to the bills. (5-3-21)

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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.