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Senate Bills 861 through 864 (as introduced 5-7-24)

Sponsor: Senator Jeff Irwin (S.B. 861)
Senator Roger Victory (S.B. 862)
Senator Erika Geiss (S.B. 863)
Senator Ed McBroom (S.B. 864)

Committee: Civil Rights, Judiciary, and Public Safety

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INTRODUCTION

The bills would allow certain eligible prisoners to earn productivity credits that could reduce their maximum and minimum sentences. Eligibility would be limited to prisoners who were sentenced after the bills took effect, who were subject to disciplinary time, and who had not been sentenced for specified crimes, such as murder or human trafficking.¹ The Michigan Department of Corrections (MDOC) would have to award specified credit amounts based on enrollment in and completion of approved educational and vocational programs; additional credits would be awarded for completion of a high school diploma or equivalent or a higher education degree. In addition, the bills would require a prosecutor or court to notify a victim of a crime perpetrated by a prisoner eligible for productivity credits of the prisoner's eligibility.

Senate Bills 861 and 864 are tie-barred. Senate Bills 862 and 863 are tie-barred to Senate Bill 861.

PREVIOUS LEGISLATION

(This section does not provide a comprehensive account of all previous legislative efforts on the relevant subject matter.)

Senate Bills 861 through 864 are companion bills to House Bills 4450, 4453, 4451, and 4452, respectively.

BRIEF FISCAL IMPACT

The bills would have an indeterminate but likely positive fiscal impact, saving the State an estimated \$35,000 per eligible prisoner, assuming the maximum number of prisoners participated in eligible programming and attained the average maximum days of productivity credits. The addition of the additional notification requirement to victims would be unlikely to add any significant administrative costs to local prosecutors. The bills would have no fiscal impact on courts.

Proposed MCL 800.33a (S.B. 861)
MCL 780.763 & 780.791 (S.B. 862)
769.12 (S.B. 863)
791.233 et al. (S.B. 864)

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¹ Generally, prisoners may receive disciplinary time for each major misconduct they are found guilty of, and accumulated disciplinary time is submitted to a parole board for consideration in parole review.

CONTENT

Senate Bill 861 would amend the Corrections Code to do the following:

- Allow the MDOC to award eligible prisoners productivity credits which could be deducted from a prisoner's minimum and maximum sentence to determine the prisoner's parole eligibility date and discharge date.**
- Prescribe eligibility requirements to earn productivity credits.**
- Prescribe the amount of productivity credits, in days, that a prisoner could earn by participating in educational, vocational, or MDOC-approved programs.**

Senate Bill 862 would amend the Crime Victim's Rights Act to require a prosecuting attorney to include in a victim's request for information whether the defendant or juvenile could be eligible to earn productivity credits as proposed by Senate Bill 861.

Senate Bill 863 would amend the Code of Criminal Procedure to specify that an offender who received certain enhanced penalties for an offense other than a major controlled substance offense before the bill's effective date and was subject to disciplinary time would not be eligible for parole until the prisoner served his or her minimum sentence.

Senate Bill 864 would amend the Corrections Code to do the following:

- Require parole to be subject to minimum time served less productivity credits for a prisoner subject to disciplinary time after the bill's effective date.**
- Specify that a prisoner sentenced before the bill's effective date would not be eligible for an adjustment to the prisoner's minimum and maximum sentence based on productivity credits proposed by Senate Bill 861.**

Senate Bill 861

Productivity Credits

The bill would amend the Corrections Code to allow an eligible prisoner subject to disciplinary time sentenced after the bill's effective date to be eligible to earn productivity credits. Productivity credits would have to be earned and forfeited as described below and accumulated credits would have to be deducted from a prisoner's minimum and maximum sentence to determine the prisoner's parole eligibility date and discharge date. The MDOC would have to promulgate rules pursuant to the Administrative Procedures Act prescribing the minimum standards to earn and the procedures for awarding productivity credits.

Ineligible Prisoners

A prisoner sentenced to the following would not be eligible to earn productivity credits:

- Imprisonment for life without parole.**
- A conviction of first- or second-degree murder under Section 316 or Section 317 of the Penal Code.**
- A conviction of certain human trafficking related crimes, including knowingly obtaining or benefiting from an individual for forced labor or services, knowingly obtaining or benefitting from an individual to hold in debt-bondage, and obtaining a minor for forced labor services under Section 462b, Section 462c, Section 462d, or 462e(b) of the Penal Code.**
- A conviction under the Sex Offenders Registration Act.**

Limitations on Award of Productivity Credits

The MDOC could not award productivity credits in an amount greater than 20% of the prisoner's minimum sentence, and a prisoner could not earn more than 100 aggregate days of productivity credits for enrollment in educational, vocational, or MDOC-approved programs described below. Also, the MDOC could not award a prisoner a productivity credit described below during any month in which the prisoner was found guilty of having committed a major misconduct. The amount of productivity credits not awarded because of being found guilty of a major misconduct would have to be limited to the productivity credits that would have been earned for the month in which the major misconduct occurred.

Additionally, the MDOC could not award a prisoner productivity credits for any period during which the prisoner met either of the following:

- The prisoner had received a score of very high risk on the prisoner's most recent validated risk and needs assessment.
- The prisoner was assigned a housing unit having a security classification of V or VI.

("Security classification" means one to six levels of restrictiveness enforced in housing units at each correctional facility, as determined by the MDOC, with security level one being the least restrictive and security level six being the most restrictive.)

Award of Productivity Credits

Unless otherwise provided, the MDOC would have to award an eligible prisoner productivity credits as follows:

- Twenty days for each month the prisoner maintained enrollment in a program recommended by the MDOC or an educational or vocational program.
- Ten, 15, or 20 days for each month the prisoner maintained voluntary enrollment in a program approved by the MDOC.
- Ninety days upon successful completion of a program recommended by the MDOC or educational or vocational program that did not result in a high school diploma, high school equivalency certificate, or higher education degree.
- One-hundred and twenty days if the prisoner earned a high school diploma, high school equivalency certificate, or higher education degree.

Additional Productivity Credits

Under the bill, the MDOC could, at its sole discretion, approve additional programs for a prisoner to earn productivity credits for the following if research and evidence indicated that the program improved rehabilitation, behavioral, or post-release prisoner outcomes:

- Ten, 15, or 20 days for each month of voluntary enrollment in an MDOC-approved program.
- A maximum of 90 days for successful completion of a voluntary enrollment program.

Concurrent or Consecutive Sentences

If a prisoner had been sentenced *concurrently for separate convictions*, the prisoner's productivity credits would have to be computed based on the longest of the concurrent sentences. If a prisoner were serving *consecutive sentences for separate convictions*, the prisoner's productivity credits would have to be computed and accumulated on each sentence

individually. The bill would prohibit productivity credits for a commuted sentence unless the executive order commuting the sentence stipulated to the credit.

Senate Bill 862

Victim Notification

Under the Crime Victim's Rights Act a prosecuting attorney, upon and in accordance with a request of a victim, must give the victim notice of the following:

- The defendant's conviction.
- The crimes for which the defendant was convicted.
- The victim's right to make a written or oral impact statement for use in the preparation of a presentence investigation report concerning the defendant.
- The address and telephone number of the probation office that prepares the presentence investigation report.
- That a presentence investigation report and any statement of the victim included in the report will be made available to the defendant unless exempted from disclosure by the court.

Under the bill, the prosecuting attorney also would have to give the victim notice of whether the defendant could be eligible to earn productivity credits as proposed by Senate Bill 861, that could reduce a sentence of imprisonment.

The Act also requires a prosecuting attorney or an eligible court, upon request of a victim, to provide the victim notice of all the following:

- The offenses for which the juvenile was adjudicated or convicted.
- The victim's right to make an impact statement at the disposition hearing or sentencing.
- The time and place of the disposition or sentencing proceeding.

Under the bill, the prosecuting attorney also would have to give the victim notice of whether the juvenile could be eligible to earn productivity credits as proposed by Senate Bill 861, that could reduce a sentence of imprisonment.

Senate Bill 863

Minimum Term Before Parole

Generally, the Code of Criminal Procedure provides for enhanced sentencing penalties for an individual who commits a felony in the State and who has previously been convicted of a felony or an attempt to commit a felony in the State or another state.

An offender that receives enhanced penalties, or is convicted of three or more felonies for an offense other than a major controlled substance offense, is not eligible for parole until the expiration of the following:

- For a prisoner other than a prisoner subject to disciplinary time, the minimum term fixed by the sentencing judge at the time of sentence unless the judge gives written approval for parole at an earlier date.
- For a prisoner subject to disciplinary time, the minimum term fixed by the sentencing judge.

The bill specifies that the parole eligibility requirements for a prisoner subject to disciplinary time as described above only would apply to a prisoner who was sentenced before the bill's effective date.

Senate Bill 864

Limited Prisoners Subject to Disciplinary time

Under the bill, the provisions of the Corrections Code described below regarding a prisoner subject to disciplinary time would apply instead to a prisoner other than a *limited* prisoner subject to disciplinary time. "Limited prisoner subject to disciplinary time" would mean a prisoner subject to disciplinary time who is sentenced before the bill's effective date.

Other than for a prisoner granted parole upon completion of Special Alternative Incarceration (SAI) or as a medically frail parolee, a prisoner sentenced to an indeterminate sentence and confined in a State correctional facility with a minimum in terms of years other than a prisoner subject to disciplinary time is subject to the jurisdiction of the parole board when the prisoner has served a period of time equal to the minimum sentence imposed by the court for the crime of which the prisoner was convicted, less good time and disciplinary credits, if applicable.^{2,3,4} Under the bill, productivity credits also could be subtracted from the minimum sentence imposed by a court for the crime of which a prisoner was convicted.

Other than for a prisoner granted parole upon completion of SAI or as a medically frail parolee, a prisoner subject to disciplinary time sentenced to an indeterminate sentence and confined in a State correctional facility with a minimum in terms of years is subject to the jurisdiction of the parole board when the prisoner has served a period of time equal to the minimum sentence imposed by the court for the crime of which he or she was convicted.

Other than for a prisoner granted parole upon completion of SAI or as a medically frail parolee, if a prisoner other than a prisoner subject to disciplinary time is sentenced for consecutive terms, whether received at the same time or at any time during the life of the original sentence, the parole board has jurisdiction over the prisoner for purposes of parole when the prisoner has served the total time of the added minimum terms, less the good time and disciplinary credits allowed by statute. The maximum terms of the sentences must be added to compute the new maximum term, and discharge must be issued only after the total of the maximum sentences has been served less good time and disciplinary credits, unless the prisoner is paroled and discharged upon satisfactory completion of the parole. Under the bill, productivity credits also could be used in the calculation of minimum and maximum time.

Other than for a prisoner granted parole as a medically frail parolee, if a prisoner subject to disciplinary time is sentenced for consecutive terms, whether received at the same time or at any time during the life of the original sentence, the parole board has jurisdiction over the prisoner for purposes of parole when the prisoner has served the total time of the added minimum terms. The maximum terms of the sentences must be added to compute the new maximum term, and discharge must be issued only after the total of the maximum sentences has been served, unless the prisoner is paroled and discharged upon satisfactory completion of the parole.

² The SAI is a 90 day "boot-camp" Program for eligible screened prisoners serving a minimum term of three years or under with automatic parole upon the Program's completion.

³ Prisoners sentenced for certain offenses may be granted good time credits or special good time credits if the prisoner were eligible and was convicted for an offense before April 1, 1987.

⁴ Certain prisoners may be granted disciplinary credits if the prisoner were sentenced for certain offenses committed after December 10, 1978, and before December 15, 2000.

If a prisoner other than a prisoner subject to disciplinary time has one or more consecutive terms remaining to serve in addition to the term he or she is serving, the parole board may terminate the sentence the prisoner is presently serving at any time after the minimum term of the sentence has been served.

Conditions for Granting Parole

The Corrections Code prescribes conditions that must be considered before a prisoner is granted parole. Among other conditions, parole must not be granted to a prisoner subject to disciplinary time until the prisoner serves the minimum term imposed by the court.

Under the bill, except for a prisoner granted parole upon completion of SAI or as a medically frail parolee, parole could not be granted to a prisoner subject to disciplinary time who was sentenced on or after the bill's effective date until the prisoner had served the minimum term imposed by the court, less an allowance for productivity credits as proposed by Senate Bill 861.

Parole Board Review

The Code specifies that the release of a prisoner on parole is granted solely upon the initiative of the parole board. Generally, a prisoner must not be denied parole without an interview by at least one member of the parole board, unless the board determined that the prisoner has a low probability of being paroled and the parole board therefore does not intend to parole the prisoner.

An interview must be conducted at least one month before the expiration of the prisoner's minimum sentence, less good time and disciplinary credits if applicable, or at least one month before the expiration of the prisoner's minimum sentence for a prisoner subject to disciplinary time. Under the bill, an interview would have to be conducted at least one month before the expiration of the prisoner's minimum sentence, less good time credits, disciplinary credits, *and productivity* credits if applicable, or at least one month before the expiration of the prisoner's minimum sentence for a *limited* prisoner subject to disciplinary time.

Additionally, at least 90 days before the expiration of the prisoner's minimum sentence, less applicable good time credits and disciplinary credits; or at least 90 days before the expiration of the prisoner's minimum sentence for a prisoner subject to disciplinary time; or the expiration of a 12-month continuance for any prisoner; or at the request of the parole board for a prisoner being considered for medical parole, the appropriate institutional staff must prepare a parole eligibility report. The bill specifies that this provision would apply to a limited prisoner subjected to disciplinary time and would include the subtraction of time for productivity credits.

FISCAL IMPACT

The bills would have an indeterminate but likely positive fiscal impact, saving the State an estimated \$35,000 per eligible prisoner, assuming the maximum number of prisoners participated in eligible programming and attained the average maximum days of productivity credits. The bills would allow productivity credits to be applied to the sentences of prisoners convicted of specified qualifying offenses. The application of productivity credits would reduce the sentences for eligible prisoners leading to a savings for the State.

The 2020 MDOC Statistical Report estimated the average minimum sentence was 4.5 years, or 1,643 days. The maximum productivity credits that could be granted are 20% of the minimum sentence, equating to an average maximum reduction of days served of 329 days.

The MDOC estimates about 60% of the total prison population would qualify for productivity credits under the bills' provisions. The most recent monthly prison census report from the MDOC lists the population at just under 33,000, thus an estimated 19,800 prisoners would be eligible for productivity credits.

Based on the estimated 19,800 prisoners that would be eligible for productivity credits, and the average maximum reduction of 329 days, the total number of days reduced would total approximately 6.5 million. The average per diem cost for a prisoner housed in a Level 1 facility is \$106, equating to an estimated savings per prisoner of \$35,000 based on the average reduction in sentence of 329 days.

It is important to note that savings would not be realized until approximately 4.5 years after enactment of the bills based on the average sentence, excluding productivity credits.

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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.