Legislative Analysis

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OBJECTIVE, EVIDENCE-BASED PAROLE

House Bill 5377 as introduced
Sponsor: Rep. Klint Kesto
Committee: Law and Justice
Complete to 2-5-18

BRIEF SUMMARY:

House Bill 5377 would amend the Corrections Code to make the following revisions to the parole process:

- Specify that there is no entitlement to parole.
- Specify that the purpose of the parole guidelines is to assist the parole board in making objective, evidenced-based release decisions.
- Prohibit the parole board from using subjective reasons such as a lack of insight, insufficient remorse, or an inadequate parole plan to deny parole.
- Establish a list of circumstances constituting substantial and compelling objective reasons for which a departure from the parole guidelines could be made for a prisoner with high probability of parole. (This provision would not apply to a prisoner serving a life sentence.)
- Allow the parole board to deny parole for up to 1 year to allow for completion of programming ordered by the Department of Corrections to reduce the prisoner's risk, if the programming is not available in the community and the risk cannot be managed in the community prior to completion. A prisoner thus denied parole would have to be reconsidered for parole within 30 days after completing the programming. (This provision would not apply to a prisoner serving a life sentence.)
- Require the parole eligibility report to include the result on any validated risk assessment instrument.
- Apply the proposed revisions pertaining to a departure from the parole guidelines only to prisoners whose controlling offense was committed on or after the bill's effective date.

DETAILED SUMMARY:

Currently, the Department of Corrections (DOC) develops, consistent with statutory requirements, parole guidelines whose purpose is to assist the parole board in making release decisions that enhance the public safety. House Bill 5377 would revise the purpose of the parole guidelines to specify that they are to assist the parole board in making *objective, evidence-based* release decisions that enhance the public safety.

Parole Guidelines Departure

Currently, the parole board is granted discretionary authority to depart from the guidelines; for instance, the parole board may deny parole to a prisoner who has a high probability of parole as determined under the parole guidelines, or grant parole to a prisoner who has a low probability of parole. However, a departure must be for substantial and compelling reasons

stated in writing. The bill would specify that a parole guidelines departure must be for substantial and compelling *objective* reasons stated in writing.

Further, the parole board cannot use a prisoner's gender, race, ethnicity, alienage, national origin, or religion to depart from the recommended parole guidelines. To this provision, the bill would add that the parole board cannot use subjective reasons such as a lack of insight, insufficient remorse, or an inadequate parole plan. This change, and the requirement that a parole guidelines departure must be for substantial and compelling *objective* reasons stated in writing, would apply only to prisoners whose controlling offense was committed on or after the bill's effective date, meaning future prisoners only. (When a prisoner is serving multiple sentences, the ***controlling offense*** is typically the offense for which any sentencing court imposed the longest term of imprisonment.)

Substantial and Compelling Objective Reasons

Currently, the Code does not define "substantial and compelling reasons" on which to base a departure. The bill would establish a limited number of circumstances that would constitute ***substantial and compelling objective reasons*** for a departure from the parole guidelines for a prisoner with a high probability of parole, as follows:

- The prisoner exhibits a pattern of ongoing behavior while incarcerated indicating that he or she would be a substantial risk to public safety. This would include major misconducts or additional criminal convictions.
- The prisoner refuses to participate in programming ordered by the DOC to reduce the prisoner's risk. A prisoner could not be considered to have refused programming if he or she is unable to complete programming due to factors beyond his or her control.
- There is verified objective evidence of substantial harm to a victim that could not have been available for consideration at the time of sentencing.
- The prisoner has threatened to harm another person if released.
- There is objective evidence of post-sentencing conduct, not already scored under the parole guidelines, that the prisoner would present a high risk to public safety if paroled.
- The prisoner is a suspect in an unsolved criminal case being actively investigated.
- The prisoner has a pending felony charge or is subject to a detainer request from another jurisdiction.
- The release is otherwise barred by law.
- The prisoner has not yet completed programming ordered by the DOC to reduce his or her risk; the programming is not available in the community; and the risk cannot be adequately managed in the community prior to completion. The parole board could deny parole for up to 1 year to such a prisoner, to allow for completion of the ordered programming. The prisoner must receive parole consideration within 30 days after completing the programming.

The above provisions describing ***substantial and compelling objective reasons*** for departures from the parole guidelines for a prisoner with a high probability of parole would only apply to prisoners whose controlling offense was committed on or after the bill's effective date, meaning future prisoners only. They would not apply to a prisoner serving a life sentence, regardless of the date of his or her controlling offense. (When a prisoner is serving multiple sentences, the ***controlling offense*** is typically the offense for which any sentencing court imposed the longest term of imprisonment.)

Parole Reviews

The parole board would have to conduct a review of a prisoner, except for a prisoner serving a life sentence, who has been denied release as follows:

- If the prisoner scored high or average probability of parole, conduct a review not less often than annually.
- If the prisoner scored low probability of parole, conduct a review not less often than every two years until a score of high or average probability of parole is attained.

Report to Legislature and CJPC

By March 1 of each year, the DOC would be required to report to the standing committees of the Senate and the House of Representatives having jurisdiction of corrections issues and the Criminal Justice Policy Commission (CJPC) all of the following information:

- For the preceding calendar year, the number of prisoners who scored high probability of parole:
  - Who were granted parole.
  - For whom parole was deferred to complete necessary programming.
  - Who, as of December 31, were incarcerated at least 6 months past their first parole eligibility date.
  - Who were denied parole for a ***substantial and compelling objective reason*** (described above). This information must be provided with a breakdown of parole denials for each of the ***substantial and compelling objective reasons*** listed.
- The number of prisoners who scored high probability of parole and were denied parole whose controlling offense is in each of the following groups:
  - Homicide.
  - Sexual offense.
  - An assaultive offense other than a homicide or sexual offense.
  - A nonassaultive offense.
  - A controlled substance offense.
- Of the total number of prisoners subject to ***substantial and compelling objective reasons*** (described above) who were denied parole, the number who have served the following amount of time after completing their minimum sentence:
  - Less than 1 year.
  - 1 year or more but less than 2 years.
  - 2 years or more but less than 3 years.
  - 3 years or more but less than 4 years.
  - 4 or more years.

Changes to the Scoring of Parole Guidelines

The DOC would be required to immediately advise the Senate and House standing committees having jurisdiction over corrections issues and the Criminal Justice Policy Commission of any changes made to the scoring of the parole guidelines after the bill's effective date, including any change in the number of points that define "high probability of parole."

Miscellaneous provisions

- The bill would specify that there is no entitlement to parole.
- A parole eligibility report would have to, in addition to current requirements, include the result on any validated risk assessment instrument.

The bill would take effect 90 days after enactment.

MCL 791.233e and 791.235

BACKGROUND INFORMATION:

Under Michigan's system of indeterminate sentencing for felony sentences, a person convicted of a felony that does not carry a mandatory life sentence or other mandatory sentence (e.g., felony firearm) is given a range of months or years up to the maximum sentence that can be imposed for that particular crime, with the lowest number in the range being the minimum term of incarceration the offender will serve and the highest number the maximum.

The range is determined by use of grids that score points for the type of crime that was committed (e.g., against property or against a person) and for various elements of the crime (e.g., if a person was harmed or if a weapon was used). A higher score usually results in a higher minimum sentence, as the maximum sentence is set in statute. Depending on the score and the resulting range, some offenders may be placed on probation and/or serve a term of incarceration in a county jail. For those sent to prison, the person must serve at least the minimum sentence before being eligible to be considered for parole by the Michigan Parole Board. A prisoner may be paroled at any time after serving the minimum sentence and before reaching the maximum sentence.

The Parole Board gains jurisdiction over the prisoner on the prisoner's earliest release date (minimum sentence), calculated based on the Judgment of Sentence document submitted by the court. Typically, about eight months before the earliest release date, according to the Michigan Department of Corrections website,

> a Parole Eligibility Report is prepared and the prisoner will be scheduled for consideration by the Board. The Board considers many factors to determine whether parole should be granted. State law holds that "A prisoner shall not be given liberty on parole until the board has reasonable assurance, after consideration of all of the facts and circumstances, including the prisoner's mental and social attitude, that the prisoner will not become a menace to society or to the public safety." Most prisoners are interviewed by one member of the Parole Board. The scope of the interview includes the prisoner's criminal, social and substance abuse history, previous adjustment on parole or probation, conduct in prison, programming, parole plans, and other factors. The prisoner may have a representative at the interview, although the representative cannot be another prisoner or an attorney. The parole decision is made by majority vote of a three member panel of the Board. If granted a parole, the prisoner is allowed to return to the community under the supervision of a Parole Agent for a specified term.

The release is conditioned upon the parolee's compliance with terms set by the Parole Board.[1]

Parole supervision is provided by the Field Operations Administration of the DOC, and an offender is typically supervised for a period of one to four years. To maintain parole status, parolees must meet certain conditions; failure to do so can result in the imposition of additional conditions or in having the parole status revoked and the individual's being returned to prison. A prisoner who is not released on parole is released directly back to the community, without supervision by the DOC, upon completing the maximum term of the sentence.

House Bill 5377 is similar to House Bill 4138 of 2015. Referred to as the "presumptive parole" bill, House Bill 4138 would have presumed, absent substantial and compelling reasons to do otherwise, that a prisoner with a high probability of parole score would not be a menace to society and would be released on parole upon serving his or her minimum sentence. The bill was passed by the House of Representatives but failed to see action in the Senate.

FISCAL IMPACT:

House Bill 5377 would result in a savings to the state, eventually. Savings would not be realized immediately because the bill does not apply to prisoners who are currently in the custody of the Department of Corrections. Because the bill would reduce the average length of stay in prison for future prisoners, it is expected that prison population growth would decline over time and savings to the state's corrections system would occur due to a decrease in the number of prison beds used. It is anticipated that the Department of Corrections would be able to close housing units in the near future (years 2020 and 2021) and possibly be able to close a facility in the near distant future (year 2022 and beyond).

Given that more offenders would be on parole under House Bill 5377, there could be a corresponding increase in the need for parole supervision services. State costs for parole supervision averaged about $3,600 per supervised offender in fiscal year 2017. Also, the state could see an increase in costs for prisoner reentry programming and services.

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[1] See http://www.michigan.gov/corrections/0,4551,7-119--230397--,00.html