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**SFA**



BILL ANALYSIS

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Senate Bill 281 (as enrolled)

House Bill 4065 (as enrolled)

Sponsor: Senator Mike Rogers (Senate Bill 281)

Representative Lyn Bankes (House Bill 4065)

Senate Committee: Judiciary

First Senate Committee: Health Policy and Senior Citizens (House Bill 4065)

House Committee: Judiciary

Date Completed: 8-13-99

**PUBLIC ACT 314 of 1998**

**PUBLIC ACT 319 of 1998**

## **CONTENT**

**Senate Bill 281 and House Bill 4065 amended the Department of Corrections (DOC) law and the Public Health Code, respectively, to do all of the following:**

- **Provide for parole eligibility for persons previously sentenced to imprisonment for life without possibility of parole for manufacturing, creating, delivering, or possessing with intent to deliver 650 grams or more of a mixture containing a Schedule 1 or 2 narcotic or cocaine.**
- **Prescribe a sentence of at least 20 years' imprisonment, rather than a mandatory life sentence, for manufacturing, creating, delivering, or possessing with intent to deliver 650 grams or more of a mixture containing a Schedule 1 or 2 narcotic or cocaine.**
- **Make it a felony, punishable by up to 20 years' imprisonment, to deliver a controlled substance or cause a controlled substance to be delivered to a person in order to commit or attempt various criminal sexual conduct (CSC) offenses.**
- **Add "flunitrazepam" and "prazepam" to the Public Health Code's list of Schedule 4 controlled substances.**

- Senate Bill 826 (Public Act 316 of 1998) and House Bills 5398 and 5419 (Public Acts 315 and 317), which amended the prison code, the DOC law, and the Code of Criminal Procedure, respectively, to provide for the enactment of statutory sentencing guidelines and the effectiveness of provisions enacted in 1994 and commonly referred to as "truth-in-sentencing".
- House Bills 4444 and 4445 (Public Acts 311 and 312), which amended the Michigan Penal Code to raise the felony threshold level and increase the penalties for various larceny, property damage, and bad check offenses.
- House Bill 4446 (Public Act 313), which amended the Revised Judicature Act to require the payment of specific fees and charges for checks written on insufficient funds or no account and to revise a provision concerning the recovery of damages and costs by a merchant who was a victim of retail fraud.
- House Bill 4515 (Public Act 320), which amended the DOC law to make, with certain exceptions, earning a high school diploma or a general education development (G.E.D.) certificate a condition of parole for a prisoner serving a minimum term of at least two years.
- House Bill 5876 (Public Act 318), which amended Public Act 46 of 1975 to revise the procedures and duties of the Legislative Corrections Ombudsman.

The bills took effect on October 1, 1998. House Bill 4065 was tie-barred to all of the following:

## **Senate Bill 281**

### Parole Eligibility

Under the DOC law's parole provisions, a prisoner serving a sentence for life or a term of years is under the jurisdiction of the parole board after having served 10 calendar years of the sentence, if he or she was sentenced for a crime committed before October 1, 1992, or after having served 15 calendar years of the sentence, if he or she was sentenced for a crime committed on or after that date. This parole-eligibility provision does not apply to prisoners sentenced to life for first-degree murder or for a violation of Chapter 33 of the Michigan Penal Code, which deals with explosives and bombs. Previously, the law also made an exception for prisoners sentenced to life or a minimum term for a major controlled substance offense.

Under the bill, a person who has served 20 calendar years of a mandatory life sentence for manufacturing, creating, delivering, or possessing with intent to deliver 650 grams or more of a mixture containing a Schedule 1 or 2 narcotic or cocaine, and who has another conviction for a "serious crime", is under the parole board's jurisdiction. A prisoner serving a mandatory life sentence for that controlled substance offense, and who does not have another conviction for a serious crime, is under the parole board's jurisdiction after having served 17½ calendar years of that sentence. (These provisions also apply to a person sentenced for conspiring to commit the controlled substance offense.)

If the sentencing judge, or the judge's successor, determines on the record that a prisoner sentenced to life imprisonment for manufacturing, creating, delivering, or possessing with intent to deliver 650 grams or more of a mixture containing a Schedule 1 or 2 narcotic or cocaine has cooperated with law enforcement, the prisoner is subject to the parole board's jurisdiction and may be released on parole 2½ years earlier than the time otherwise allowed by the bill. A prisoner is considered to have cooperated with law enforcement if the court determines on the record that he or she had no relevant or useful information to provide. The court may not make a determination that the prisoner failed or refused to cooperate with law enforcement on grounds that the defendant exercised his or

her constitutional right to a trial by jury. If the court determines at sentencing that the defendant cooperated with law enforcement, the court must include its determination in the judgment of sentence.

The bill defines "serious crime" as a violation of (or conspiracy to violate) Article 7 of the Public Health Code (MCL 333.7101-333.7545), which deals with controlled substance offenses, that is punishable by more than four years' imprisonment; or a violation of the Michigan Penal Code against a person involving any of the following:

- Assault with intent to commit murder (MCL 750.83).
- Assault with intent to do great bodily harm (MCL 750.84).
- Assault with intent to maim (MCL 750.86).
- Assault with intent to commit another felony not otherwise specified (MCL 750.87).
- Assault with intent to commit unarmed or armed robbery (MCL 750.88 or 750.89).
- First- or second-degree murder, or manslaughter (MCL 750.316, 750.317, or 750.321).
- Kidnapping, taking another prisoner hostage, or kidnapping a child under 14 years old (MCL 750.349, 750.349a, or 750.350).
- Mayhem (MCL 750.397).
- First-, second-, or third-degree criminal sexual conduct, or assault with intent to commit CSC (MCL 750.520b-750.520d or 750.520g).
- Armed robbery with aggravated assault, carjacking, or unarmed robbery (MCL 750.529, 750.529a, or 750.530).

### Parole Determination

In determining whether to parole a prisoner convicted of manufacturing, creating, delivering, or possessing with intent to deliver 650 grams or more of a mixture containing a Schedule 1 or 2 narcotic or cocaine (or conspiring to commit that offense) and sentenced to imprisonment for life before October 1, 1998, the parole board must consider all of the following factors:

- Whether the violation was part of a continuing series of violations of Section

7401 or 7403 of the Public Health Code (which prohibit the manufacture, creation, delivery, or possession of controlled substances) by that person.

- Whether the prisoner committed the violation in concert with five or more other people.
- Whether the prisoner was a principal administrator, organizer, or leader of an entity that he or she knew or had reason to know was organized, in whole or in part, to commit violations of Section 7401 or 7403 of the Public Health Code and whether the violation for which the person was convicted was committed to further the interests of that entity.
- Whether the prisoner was a principal administrator, organizer, or leader of an entity that he or she knew or had reason to know committed violations of Section 7401 or 7403 of the Public Health Code and whether the prisoner committed the violation for which he or she was convicted to further that entity's interests.
- Whether the violation was committed in a drug-free school zone.
- Whether the violation involved the delivery of, or possession with intent to deliver, a controlled substance to a person under 17 years old.

#### Parole Revocation

The bill specifies that parole must be revoked if a prisoner convicted of manufacturing, creating, delivering, possessing with intent to deliver, or possessing 650 grams or more, or 225 grams or more but less than 650 grams, of a mixture containing a Schedule 1 or 2 narcotic or cocaine, is released on parole and violates or conspires to violate Article 7 of the Public Health Code and that violation or conspiracy is punishable by four or more years' imprisonment, or commits a "violent felony" during his or her release on parole. The prisoner's parole order must contain a notice of this requirement.

The bill defines "violent felony" as an offense against a person involving a Penal Code violation included in the bill's definition of "serious crime" (listed above), felonious assault (MCL 750.82), or fourth-degree CSC (MCL 750.520e), which is a misdemeanor.

## **House Bill 4065**

### Drug Offense Penalties

Prior to the bill's enactment, the Public Health Code included a penalty of mandatory imprisonment for life for manufacturing, creating, delivering, or possessing with intent to deliver 650 grams or more of a mixture containing a Schedule 1 or 2 narcotic or cocaine. The Code also provided for an alternative sentence of at least 25 years' imprisonment when the offender was a juvenile tried as an adult.

The bill specifies, instead, that a violation involving 650 grams or more is punishable by imprisonment for life or any term of years, but not less than 20 years. The bill deleted the 25-year alternative for a juvenile tried as an adult. The bill retained the mandatory minimum sentences for violations involving less than 650 grams. (A violation involving at least 225 but less than 650 grams requires imprisonment for not less than 20 but not more than 30 years; a violation involving at least 50 but less than 225 grams requires imprisonment for not less than 10 but not more than 20 years; and a violation involving less than 50 grams requires imprisonment for not less than one or more than 20 years, and may include a maximum fine of \$25,000 or probation for life.)

### Drug Rape

Under the bill, delivering a controlled substance to a person or causing a controlled substance to be delivered to a person, without his or her consent, for the purpose of committing or attempting to commit first-, second-, third-, or fourth-degree CSC or assault with intent to commit CSC against that person, is a felony punishable by up to 20 years' imprisonment.

A conviction or sentence under this provision does not prohibit a conviction or sentence for any other crime arising out of the same transaction, and this provision applies regardless of whether the offender is convicted of the underlying CSC offense.

MCL 791.234 & 791.236 (S.B. 281)  
333.7218 et al. (H.B. 4065)

Legislative Analyst: P. Affholter

## **FISCAL IMPACT**

Senate Bill 281 and House Bill 4065 will have an indeterminate fiscal impact on State government.

The State incurs costs for the incarceration of prisoners in the custody of the State prison. To the extent that a prisoner becomes eligible for parole, costs remain the same. However, if the parole board grants parole to an eligible prisoner, the State's costs are reduced as the prisoner leaves prison.

Therefore, to the extent that individuals convicted of delivering 650 or more grams of a narcotic who otherwise would have served a life sentence without parole, become eligible for parole and are granted parole, the costs for the Department of Corrections will be reduced. If the conditions described in Senate Bill 281 are met, an individual may become eligible for parole after 20 years with a conviction for another serious offense, or after 17.5 years without a conviction for a serious offense.

In 1997, 164 individuals were serving a life sentence for delivery of 650 grams or more. In addition, there were nine new life sentence commitments for delivery of 650 grams or more. If one assumes that 25% of these new commitments will meet the eligibility criteria for parole after 20 years, and that the parole board will, in fact, grant parole to these individuals (although the parole board data indicate that very few individuals with life sentences are ever paroled), costs after 20 years will begin to decrease. In the long term, based on these assumptions, costs for the confinement of these offenders will be reduced by \$1.5 million annually, assuming a life sentence equals 50 years.

Additionally, there are no data available to estimate the number of offenders who may be convicted of delivering a controlled substance to a person in order to commit or attempt to commit a criminal sexual conduct offense. However, if one assumes that 10 offenders a year are committed to State prison for this offense, and that these offenders receive and serve two-thirds of the 20-year maximum sentence, the annual additional cost to the State after 13 years will be \$3 million.

Also, in 1997, there were 308 people convicted of manufacturing, delivering, or possessing a Schedule 4 drug, and of those, 62 were sentenced to prison. There are no data to indicate how many more offenders may be convicted of this crime with the inclusion of flunitrazepam and prazepam on the Public Health Code's Schedule 4 list.

Fiscal Analyst: K. Firestone

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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.