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House Bill 4045 (Substitute H-1 as reported without amendment)**Sponsor: Representative Philip E. Hoffman****House Committee: Corrections****Senate Committee: Criminal Justice, Urban Affairs, and Economic Development****Date Completed: 10-6-87****RATIONALE**

Under Public Act 60 of 1962, a jail sentence may grant a person the privilege of leaving the jail during necessary and reasonable hours for the purpose of seeking or working at a job, taking care of a family, attending school, or obtaining medical treatment. Reportedly, several problems have been experienced relating to this provision.

The day parole provision has caused confusion in some counties because of a perceived inconsistency with a section of the Code of Criminal Procedure that specifies that a person sentenced to imprisonment for certain sex offenses is ineligible for "custodial incarceration outside a state correctional facility or a county jail". Thus, whether a sex offender may be granted day parole under Public Act 60 is a matter of dispute.

Many believe that sex offenders generally should not be allowed day parole; they argue that sex offenders on day parole are more likely to repeat their crimes, and that granting such privileges weakens the punishment that those offenders ought to receive. In addition, there is concern that sheriffs may be more vulnerable to liability lawsuits when jailed sex offenders are allowed into the community. It has been proposed that Public Act 60 be amended to limit day parole privileges for jailed sex offenders.

CONTENT

The bill would amend Public Act 60 of 1962 to prohibit day parole from a county jail, except for medical treatment, substance abuse treatment, mental health counseling, or psychological counseling, for a person housed in the jail while serving a sentence for first, second, or third degree criminal sexual conduct; assault with intent to commit sexual conduct; child abusive commercial activity; murder in connection with sexual misconduct; or an attempt to commit one of those offenses.

In addition, the bill would add substance abuse treatment, mental health counseling, and psychological counseling to the list of purposes for which day parole may be granted to prisoners other than sex offenders. (Those purposes include employment, seeking employment, conducting the prisoner's own business, and medical treatment.) The bill also would delete language that limits to women day parole for housekeeping and family care.

MCL 801.251

FISCAL IMPACT

The bill would have no fiscal impact on the State in FY 1987-88. For local units, however, the bill would have an indeterminate impact on expenditures. The impact on local

units of government is indeterminate due to a lack of statewide jail data to identify the number of individuals serving sentences for the offenses specified in the bill, as well as the lack of programmatic detail regarding the services which qualify for day parole.

ARGUMENTS**Supporting Argument**

The bill would reduce the potential for tragedy that can result from allowing known sex offenders into the community before they have served their time. While it is unclear how many sex offenders are in county jails, how many are receiving day parole privileges, and how many have committed crimes while on day parole, the potential for danger is obvious. Limiting day parole privileges would reduce the chances that a sex offender will be able to prey on the community. Public Act 110 of 1986 amended the Code of Criminal Procedure to prevent the Department of Corrections from placing sex offenders on prison farms, in halfway houses, and in other places where their freedom of movement created a risk to the community. The bill consistently would provide the same protections to the public with regard to prisoners sentenced to county jails.

Supporting Argument

Sheriffs are concerned that day parole may increase their exposure to liability lawsuits brought as a result of a prisoner's actions while released on day parole. Although it may be unlikely that a sheriff would be found liable, the nuisance of dealing with any such suits would remain. The bill would alleviate some of those concerns, at least with regard to sex offenders.

Response: The bill would not go far enough to protect sheriffs, and would discriminate against a class of offenders. One of the problems with day parole is that there is no provision for a judge to consult with local law enforcement agencies prior to granting it. Generally, the sheriff or deputies is more familiar with the prisoner and potential threat to the community than the judge. If sheriffs potentially are to face liability lawsuits over problems caused by offenders on day parole, they should be consulted by the judges charged with granting. The bill should be used to implement these types of provisions, rather than simply limiting day parole for specific categories of offenders.

Opposing Argument

The bill is rigid and inappropriate for the situation. Judges should be allowed the discretion to order day parole based

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on individual circumstances. No one gains if an individual who does not pose a threat to the community is denied day parole and consequently is fired from a job. By restricting a judge's ability to tailor a jail sentence to meet an individual situation, the bill could encourage judges to impose probation, rather than jail sentences. If day parole is to be prohibited for certain people, the prohibition should be based on the individual's likelihood to be dangerous to the community, rather than on the conviction of specific offenses. The bill would prohibit day parole for sex offenders, but continue to allow it for jailed prisoners whose crimes and tendency to violence may present a greater threat to the community.

Response: Sexual misconduct crimes are particularly offensive to the community and persons convicted of those crimes simply do not deserve the privilege of day parole. Besides, the bill would prohibit day parole only for felony criminal sexual conduct. Day parole for fourth degree criminal sexual conduct, which is a misdemeanor, would not be limited. Judges would continue to have discretion regarding those offenders.

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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.