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**SFA**



**BILL ANALYSIS**

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Senate Bill 1013 (Substitute S-1 as passed by the Senate)  
Sponsor: Senator William Van Regenmorter  
Committee: Judiciary

Date Completed: 3-15-02

### **RATIONALE**

Since 1978, lifetime probation has been a sentencing option for some controlled substances offenses. Beginning in 1988, that sentence has been allowed for a conviction of manufacturing, delivering, or possessing with intent to deliver less than 50 grams of a mixture containing a Schedule 1 or 2 narcotic or cocaine and for a conviction of possessing 25 grams or more, but less than 50, of such a substance. (Before March 30, 1988, probation for life was a sentencing option for a violation that involved 50 grams or more, but less than 225.) According to the Department of Corrections (DOC), more than 4,000 people currently are serving lifetime probation. As more offenders are given that sentence, the number of lifetime probationers continues to grow because the probationary term can end only with death or by revocation of probation resulting in imprisonment. Some contend, though, that the burgeoning population of people serving probation for life is straining the resources of the courts and the DOC and that, after five years, a probationer should be allowed to petition the court for termination of his or her probation.

### **CONTENT**

The bill would amend the Code of Criminal Procedure to allow a person who was placed on probation for life, or who was serving probation for life on the bill's effective date, for either of the following violations, to petition the sentencing court for termination of the probation, if he or she had served at least five years of the term of probation:

- Manufacturing, delivering, or possessing with intent to deliver less than 50 grams of a mixture containing a Schedule 1 or 2 narcotic or cocaine (MCL

333.7401(2)(a)(iv)).

- Possessing 25 grams or more, but less than 50 grams, of a mixture containing a Schedule 1 or 2 narcotic or cocaine (MCL 333.7403(2)(a)(iv)).

Currently, if a defendant is placed on probation for life for one of those violations, the probationary period may not be reduced other than by a revocation of probation that results in imprisonment. Under the bill, however, if the court determined that a petitioner had complied with all the terms and conditions of the probation order for the period of probation served, it could discharge the person from probation and enter a record of that discharge. If the court denied a petition for termination of probation for life, the court would have to state on the record its reason for denying the petition.

A probationer whose petition was denied could submit another petition at least one year after the denial, and the court could grant the petition if the petitioner had complied with all terms and conditions of the probation order since the date of the previous denial.

MCL 771.2 et al.

### **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

#### **Supporting Argument**

In felony probation cases, the DOC is responsible for the costs of probation officers' salaries, while counties pay the costs of office expenses from their circuit court budgets. In addition, courts must conduct hearings when

a probation violation is alleged. Therefore, both the Department and the counties, which provide for the funding of circuit courts, bear costs associated with supervising probationers.

Apparently, the caseload of life probationers has been a problem particularly in Wayne County, where more than 1,200 people currently are serving probation for life. According to testimony before the Senate Judiciary Committee by a judge of the Third Circuit Court (Wayne County), processing these cases can be expensive. If a probationer misses one scheduled phone call to a probation officer, for instance, that constitutes a probation violation and the court must address it, even if the probationer has complied with the terms of probation for many years. Often, a court hearing must be held even for such a minor violation, which can strain the court's resources. According to other sources, sometimes judges simply do not take any action to enforce probationary terms in the case of a long-term probationer who slips up after years of complying with his or her probation. By allowing a court to terminate lifetime probation, after five years of compliance with probationary terms and upon the petition of the probationer, the bill would offer some relief to overburdened courts and DOC probationary staff and would recognize that, sometimes, enforcing probationary terms beyond a lengthy period of good behavior is neither necessary nor efficient.

#### **Supporting Argument**

Imposing a lifetime probationary period has been a sentencing option for drug violators in cases involving less than 50 grams of cocaine or a Schedule 1 or 2 narcotic for about 14 years. Offenders who receive that sentence are required to continue to meet terms of probation and stay out of legal trouble far beyond the five-year maximum period of probation provided for other felonies. By allowing a person who had complied with probationary terms and kept out of trouble to ask the court to be released from probation after a five-year period, the bill would recognize that some people sentenced to lifetime probation may warrant a review of that sentence.

The bill would establish a process to allow those people a second chance, without entirely

excusing their responsibility for committing a drug crime. Termination of probation would not be automatic; the probationary period could be terminated only after the probationer petitioned the court and the court reviewed the case. Discretion on the question of whether to grant termination or continue the original sentence of lifetime probation would rest with the court that imposed that sentence in the first place. If the court determined that the sentence should remain intact, it would have to state on the record its reasons for denying the petition, and the person still would be required to meet the terms of probation but could petition the court for review again after one year.

**Response:** The bill also should require that a court state on the record its reasons for *approving* a petition for termination of probation for life.

#### **Opposing Argument**

Although the amounts of controlled substance in the violations punishable by lifetime probation might be considered small, the type of substance involved--cocaine or a Schedule 1 or 2 narcotic--makes those violations serious offenses. Obviously, the gravity of the offenses was considered great enough to warrant a serious penalty, including probation for life, when the Public Health Code was codified in 1978 and when the criminal penalties were amended in 1987 and 1988. Moreover, lifetime probation not only is a punishment but also functions as a deterrence against future wrongdoing. Lifetime probation, without termination, should continue as a sentence for violations involving less than 50 grams of a Schedule 1 or 2 narcotic or cocaine.

#### **Opposing Argument**

Lifetime probation has not been good public policy or served as a fair criminal sanction. While the bill would be an improvement over strict probation for life for relatively minor drug crimes, allowing the courts to decide whether to terminate probation could result in great disparity across the State. In some counties, termination of probation after five years could become routine while in others, judges might simply take a strong stance against terminating probation. To ensure consistency in the application of criminal sanctions, the bill should require the sentencing court to terminate probation after five years, rather than allow it to do so, if the

probationer had a clean record of compliance with probationary terms. In addition, perhaps lifetime probation should be eliminated altogether and replaced with a specific five-year probationary period.

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

The bill would have an indeterminate impact on State government. The Department of Corrections estimates that there are between 4,000 and 4,500 offenders on lifetime probation. There are no data to indicate how many are serving for the applicable offenses or how many would receive an early discharge under the bill. The State incurs the cost of felony probation at an estimated \$4.38 per day. In the absence of data, if one assumes that 10 offenders would receive probation terminations shortening their terms by an average of 20 years, it would save the State \$320,000.

Fiscal Analyst: Bethany Wicksall

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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.