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**BILL ANALYSIS**

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House Bill 5421 (Substitute H-2 as passed by the House)  
House Bill 5422 (Substitute H-2 as passed by the House)  
House Bill 5531 (Substitute H-3 as passed by the House)  
House Bill 5532 (Substitute H-1 as passed by the House)  
Sponsor: Representative Phil Pavlov (H.B. 5421 & 5422)  
Representative David Law (H.B. 5531 & 5532)

House Committee: Judiciary  
Senate Committee: Judiciary

Date Completed: 5-9-06

## **CONTENT**

**House Bills 5421 (H-2) and 5531 (H-3) would amend the Michigan Penal Code, and House Bills 5422 (H-2) and 5532 (H-1) would amend the Corrections Code, to do all of the following:**

- Establish a mandatory minimum penalty of 25 years' imprisonment for first-degree criminal sexual conduct (CSC) involving a victim under 13 years of age and an offender who was 17 or older.
- Require a sentence of imprisonment for life, without the possibility of parole, for first-degree CSC described above if the offender were armed or used force or coercion and had been convicted previously of CSC.
- Allow a court to order a consecutive sentence for first-degree CSC and any other crime arising from the same transaction.
- Provide for parole board jurisdiction, after 25 years, of a person sentenced to life imprisonment for first-degree CSC when the victim was under 13, the offender was at least 17, and the offender was armed or used force or coercion.
- Allow parole to be granted only for life for a person convicted of first-degree CSC involving a victim under 13 and an offender who was at least 17.
- Require a sentence of lifetime electronic monitoring for a defendant

**convicted of first-degree CSC, in addition to any other penalty.**

- Require a sentence of lifetime electronic monitoring for a person convicted of first- or second-degree when the victim was under 13 and the offender was at least 17.
- Establish the lifetime electronic monitoring program in the Department of Corrections (DOC) and establish requirements for the program.
- Prescribe a felony penalty for violations of the lifetime electronic monitoring program.
- Require an individual sentenced to lifetime electronic monitoring to wear or carry a monitoring device and reimburse the DOC or its agent for the cost of monitoring.

The bills would take effect 90 days after their enactment.

(House Bill 5532 (H-1) would define "electronic monitoring" as a device by which, through global positioning system satellite or other means, an individual's movement and location are tracked and recorded.)

### **House Bill 5421 (H-2)**

Under the Penal Code, first-degree CSC (which involves sexual penetration) is a felony punishable by imprisonment for life or any term of years. Under the bill, if the

victim were under 13 and the offender were at least 17, the penalty would be imprisonment for life or any term of years, but not less than 25 years. The penalty would be imprisonment for life, without the possibility of parole, if all of the following applied:

- The victim was under 13.
- The offender was at least 17.
- The offense was accomplished either through force and coercion or while the offender was armed with a weapon or any article used or fashioned in a manner to lead the victim reasonably to believe it to be a weapon.
- The offender previously had been convicted of first-, second-, third-, or fourth-degree CSC.

The bill would require the court to sentence a defendant convicted of first-degree CSC to lifetime electronic monitoring, in addition to any other penalty.

Under the bill, the court could order a term of imprisonment for first-degree CSC to be served consecutively to any term of imprisonment imposed for any other criminal offense arising from the same transaction.

The bill is tie-barred to House Bills 5422 and 5531.

### **House Bill 5422 (H-2)**

Under the Corrections Code, a prisoner sentenced to life imprisonment is subject to the jurisdiction of the parole board after a certain number of years. Generally, a prisoner is subject to the board's jurisdiction after he or she has served 10 calendar years of a life sentence, in the case of a prisoner sentenced for a crime committed before October 1, 1992, or 15 calendar years of the sentence, in the case of a prisoner sentenced for a crime committed on or after that date. (Longer periods apply to prisoners sentenced for manufacturing, creating, delivering, or possessing with intent to deliver large amounts of any mixture containing a Schedule 1 or 2 narcotic or cocaine.)

Under the bill, a prisoner sentenced to life imprisonment for first-degree CSC when the victim was under 13, the offender was at least 17, and the offense was accomplished either through force or coercion while the

offender was armed with a weapon or any article used or fashioned in a manner to lead the victim reasonably to believe it to be a weapon, would be subject to the jurisdiction of the parole board after 25 years.

If parole were granted for a prisoner sentenced for first-degree CSC when the victim was under 13 and the offender was at least 17, it would have to be for life.

The Code's provision for parole board jurisdiction excludes a prisoner sentenced for life for any of the following (each of which is punishable by life imprisonment without parole):

- First-degree murder (MCL 750.316).
- Knowingly or recklessly adulterating, misbranding, removing, or substituting a drug or medicine, or being involved with the sale of such a drug or medicine, if the violation results in death (MCL 750.16(5)).
- Knowingly or recklessly mixing, coloring, staining, or powdering a drug or medicine with an ingredient or material, injuriously affecting the quality or potency of the drug or medicine, or being involved with the sale of such a drug or medicine, if the violation results in death (MCL 750.18(7)).
- Violating Chapter 33 (Explosives, Bombs, and Harmful Devices) of the Michigan Penal Code (MCL 750.200-750.212a).
- Knowingly or recklessly adulterating, misbranding, removing, or substituting a drug or device knowing or intending that it be used, or being involved with the sale of such a drug or device (MCL 333.17764(7)).

In addition, parole may not be granted in the case of a prisoner who is otherwise prohibited by law from parole consideration. In such cases, the interview procedure in Section 44 of the Corrections Code (described below) must be followed.

The bill would delete language excluding the offenders described above from the provision placing prisoners sentenced for life under the parole board's jurisdiction. The bill, instead, states that a prisoner sentenced to imprisonment for life for any of the following would not be eligible for parole and would be subject to Section 44 of the Corrections Code:

- First-degree murder.
- Knowingly or recklessly adulterating, misbranding, removing, or substituting a drug or medicine, or being involved with the sale of such a drug or medicine, if the violation results in death.
- Knowingly or recklessly mixing, coloring, staining, or powdering a drug or medicine with an ingredient or material, injuriously affecting the quality or potency of the drug or medicine, or being involved with the sale of such a drug or medicine, if the violation results in death.
- Violating Chapter 33 of the Michigan Penal Code.
- Knowingly or recklessly adulterating, misbranding, removing, or substituting a drug or device knowing or intending that it be used, or being involved with the sale of such a drug or device.
- First-degree CSC punishable by imprisonment for life without possibility of parole (as provided under House Bill 5421 (H-2)).
- Any other violation for which parole eligibility is expressly denied under State law.

(Under Section 44 of the Corrections Code, subject to the constitutional authority of the Governor to grant reprieves, commutations, and pardons, one member of the parole board must interview a prisoner serving a sentence for first-degree murder, or any sentence of imprisonment for life without parole, at the conclusion of 10 calendar years and subsequently as determined appropriate by the parole board. This provision applies until the prisoner is granted a reprieve, commutation, or pardon by the Governor, or is deceased. Section 44 also specifies a schedule for the parole board to review a prisoner's case upon initiating or receiving an application for a reprieve, commutation, or pardon.)

The bill is tie-barred to House Bill 5421.

### **House Bill 5531 (H-3)**

Under the Penal Code, second-degree CSC (which involves sexual contact) is a felony punishable by up to 15 years' imprisonment. The bill would require the court to sentence the defendant to lifetime electronic monitoring if the victim were under 13 and the offender was at least 17, in addition to that penalty.

The bill also would require that a person convicted of first-degree or second-degree CSC be sentenced to lifetime electronic monitoring if the victim were under 13 and the offender were at least 17.

A person sentenced to lifetime electronic monitoring who did any of the following would be guilty of a felony punishable by up to two years' imprisonment, a maximum fine of \$2,000, or both:

- Intentionally removed, defaced, altered, destroyed, or failed to maintain the electronic monitoring device in working order.
- Failed to notify the DOC that the device was damaged.
- Failed to reimburse the DOC or its agent for the cost of the monitoring.

The bill specifies that the lifetime electronic monitoring provision would not prohibit an individual from being charged with, convicted of, or punished for any other violation of law committed by that individual while violating that provision. A term of imprisonment imposed for an electronic monitoring violation described above could run consecutively to any term of imprisonment imposed for another violation arising from the same transaction.

The bill is tie-barred to House Bills 5421 and 5533. (House Bill 5533 would amend the Code of Criminal Procedure to include the electronic monitoring felony described above in the sentencing guidelines.)

### **House Bill 5532 (H-1)**

The bill would establish the lifetime electronic monitoring program within the DOC. The program would have to implement a system of monitoring individuals released from parole, prison, or both parole and prison, who were sentenced by the court to lifetime electronic monitoring. The program would have to accomplish both of the following:

- By electronic means, track the movement and location of each individual from the time he or she was released on parole or prison until the time of his or her death.
- Develop methods by which the individual's movement and location could be determined, both in real time and recorded, and recorded information

retrieved upon request by the court or a law enforcement agency.

An individual who was sentenced to lifetime electronic monitoring would have to wear or otherwise carry an electronic monitoring device as determined by the DOC under the program, in the manner prescribed by that program. The individual also would have to reimburse the DOC or its agent for the actual cost of electronically monitoring him or her.

The DOC Director could promulgate rules providing for the creation and operation of the program.

The bill is tie-barred to House Bill 5531.

MCL 750.520b (H.B. 5421)  
791.234 & 791.242 (H.B. 5422)  
750.520a et al. (H.B. 5531)  
791.204 et al. (H.B. 5532)

Legislative Analyst: Patrick Affholter

## **FISCAL IMPACT**

### **House Bills 5421 (H-2) and 5422 (H-2)**

The bills would have an indeterminate fiscal impact on State government. There are no data to indicate how many offenders would be convicted of first-degree criminal sexual conduct involving the factors described in the bills. Table 1 shows the number of dispositions in 2003 for offenders convicted of first-degree CSC involving those factors. Table 2 shows the number of offenders with active sentences convicted of first-degree CSC involving the same factors. There are no data regarding the number of offenders with active sentences convicted of first-degree CSC involving a weapon who had previously been convicted of first-, second-, third-, or fourth-degree CSC. To the extent that fewer offenders would be paroled or serve less than a life term under House Bill 5421 (H-2), and to the extent that offenders would serve increased incarceration time prior to parole under House Bill 5422 (H-2), the State would incur increased incarceration costs at an average annual cost of \$30,000. Depending on the age at incarceration, and assuming a life expectancy of 78 years, the total cost of incarceration for each offender sentenced to life without parole under House Bill 5421 (H-2) could reach \$1.8 million. The total cost of lifetime parole for each paroled offender

convicted of CSC involving the factors described in House Bill 5422 (H-2) could reach \$70,000. Currently, if paroled, an offender convicted of first- or second-degree CSC serves a parole term of at least two years, unless the time remaining to be served on the maximum sentence is less than two years.

The Department of Corrections would incur the cost of implementing the lifetime electronic monitoring program, the cost of the global positioning device or other device, and personnel costs, which are described below.

### **House Bills 5531 (H-3) and 5532 (H-1)**

The bills would have an indeterminate fiscal impact on State and local government. The Department of Corrections would incur the cost of implementing the lifetime electronic monitoring program, the cost of the global positioning device or other device, and personnel costs. The device and personnel costs would be approximately \$19 per diem, assuming a caseload of 20 parolees per officer and more than 50 participants. The cost of one parole officer, including salary, insurance, and retirement costs, is approximately \$76,700 per year. Not including the cost of implementing the monitoring program, these cost estimates suggest that in order for daily operations to be cost neutral, each offender in the monitoring program would have to reimburse the DOC approximately \$7,000 annually.

In the case of an offender convicted of second-degree CSC and sentenced to a term of probation, it is unclear whether the lifetime electronic monitoring sentence would run concurrently with the term of probation, or consecutively to the term of probation. The minimum probation term for an offender convicted of second degree CSC is five years. If the lifetime electronic monitoring sentence ran after imprisonment and probation sentences, the DOC would not incur the cost of operating the monitoring program until the first offender convicted after the effective date of the bills was released from imprisonment or probation. The sentencing guidelines minimum sentence range for second-degree CSC is 0-11 months to 62-114 months. The sentencing guidelines minimum sentence range for first-degree CSC is 21-35 months to 270 months-life. Tie-barred House Bill

5421 (H-2) proposes a minimum sentence of 25 years for first-degree CSC involving the factors described in House Bill 5531 (H-3). In the future, the cost of the program could change due to both inflation and cost decreases via diffusion of the electronic monitoring technology.

It is unclear how much offenders would be required to reimburse the DOC for participation in the electronic monitoring program. Offenders on the current electronic monitoring system, which does not use a global positioning system (GPS), are required to reimburse the DOC at a rate determined by the Deputy Director of Field Operations Administration. Offenders are required to pay a maximum of 50% of their income and unemployed offenders must perform community service as an alternative to payment. In 2004, the reimbursement charge was \$4.53 per diem, \$1,653.45 annually, and an average of 2,284 offenders were in the program during the course of the year. The DOC collected \$2,485,892 that year and spent \$1,290,180 above its

reimbursements. If each offender had reimbursed the DOC in full, the collections would have nearly matched the cost of the program. To the extent that offenders did not violate the proposed requirement to reimburse the DOC for the cost of the electronic monitoring, the DOC would be reimbursed for the costs of operating the program.

There are no data to indicate how many offenders would be convicted of violating the lifetime electronic monitoring provisions of House Bill 5531 (H-3). Local governments would incur the costs of incarceration in local facilities, which vary by county. The State would incur the cost of felony probation at an annual average cost of \$2,000, as well as the cost of incarceration in a State facility at an average annual cost of \$30,000. Additional penal fine revenue would benefit public libraries. To the extent that electronic monitoring as outlined in House Bill 5532 (H-1) resulted in increased violations of parole conditions, the DOC would incur increased corrections costs.

Table 1

Dispositions - 2003*	Convicted	Convicted of Attempting
Total, 1st Degree Criminal Sexual Conduct	795	30
Victim under 13	433	17
Weapon Used	22	0
Multiple Variables (could include victim under 13 and/or weapon used)	166	2
Total, 2 <sup>nd</sup> Degree Criminal Sexual Conduct	909	118
Victim under 13	585	78
Multiple Variables (could include victim under 13)	173	16

Table 2

Active Sentence as of August 2005*	Prison	Parole
Total, 1st Degree Criminal Sexual Conduct	6,508	297
Victim under 13	2,489	111
Weapon Used	338	13
Multiple Variables (could include victim under 13 and/or weapon used)	2,484	106
Total, 2 <sup>nd</sup> Degree Criminal Sexual Conduct	4,315	443
Victim under 13	2,706	253
Multiple Variables (could include victim under 13)	904	97

\*may include offenders younger than 17 years old

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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.