



**House
Legislative
Analysis
Section**

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COMMUNITY CORRECTIONS: REMEDIES

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House Bill 4037 as introduced
First Analysis (3-12-87) Floor Copy

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Sponsor: Rep. Kay M. Hart
Committee: Corrections

Mich. State Law Library

H.B. 4037 (3-12-87)

THE APPARENT PROBLEM:

The state's community corrections program has come under increasing scrutiny in recent years because of worsening prison overcrowding. In using the program to help relieve overcrowding, the corrections department has placed prisoners in the community corrections program who should not have been placed there. Crimes committed by halfway house residents and other prisoners in the program have been widely publicized. While it is difficult to ascertain exactly how much halfway house prisoners contributed to local crime problems, it is generally acknowledged that problems with the community corrections program increased. Remedies proposed to alleviate those problems include administrative approaches such as closer monitoring of community corrections program prisoners and stricter enforcement of department regulations.

THE CONTENT OF THE BILL:

The bill would amend Public Act 232 of 1953 to make these requirements for the community corrections program:

- the department would have to establish curfews for community corrections prisoners;
- every prisoner not in a special treatment program would have to either be employed, participate in an educational program, or seek employment;
- a prisoner would have to participate in substance abuse counseling or other special treatment services if participation was recommended either by department staff that determines community corrections eligibility or community corrections staff;
- each day before leaving the facility where he or she was housed, a prisoner would have to notify facility staff of intended destinations in writing. Staff would have to conduct weekly random verification of destinations, including employment and job performance.
- prisoners would be prohibited from knowingly entering or remaining on the premises of an establishment that had a liquor license, unless seeking employment or employed at the establishment; the department would have to test each prisoner every two weeks at random for various specified drugs, including alcohol and marijuana, as provided by rule;
- any prisoner found guilty of three major misconduct violations, as prescribed by rule, would be immediately transferred to a state correctional facility and would be eligible for community corrections placement only after his or her parole date was established. A prisoner who committed one major misconduct could be, but would not have to be, returned to a state correctional facility.

Within 270 days after the bill took effect, the department would promulgate rules prescribing the random biweekly drug screening and naming all controlled substances that would be evaluated under the process, and specifying which major misconduct violations would be the basis for returning a prisoner to prison, along with any other factors which could be a basis, including posted rule violations (MCL 791.265d).

FISCAL IMPLICATIONS:

The Department of Corrections says that drug testing under the bill will cost about \$700,000 per year. The department expects that the bill will have an impact on prison population, the extent and cost of which is unknown because it would depend on the number of people returned to prison under the bill. Further, according to the department, expenses for hearings could increase depending on the frequency of positive drug tests (3-11-87).

ARGUMENTS:

For:

The personal freedom granted to prisoners who are placed in community settings makes it essential that they be adequately monitored in order to guard the public safety. There is a need to swiftly identify abuses of privilege and respond to them as they occur. Prisoners who prove themselves to be unfit for community corrections placement should be promptly returned to prison. The bill would meet these demands by specifying the administrative actions that should be taken to ensure that prisoners who are in the community corrections program obey the rules and prepare to re-enter society. Although most of the bill's requirements are already department policy, enacting the requirements in statute should reduce problems experienced with failures to adhere to department policy.

Response: The bill may be premature. The department has undertaken a community corrections pilot project that incorporates most of the bill's requirements. In January of this year it instituted random biweekly screening of all community corrections prisoners for the drugs listed by the bill, including alcohol. The pilot project will soon provide the data needed to resolve issues of cost and effectiveness. Action on the bill should be postponed until better information is available.

Against:

Drug testing of all prisoners, even those who do not appear to have drug problems, will be very expensive. Further, it could make it harder to find and retain qualified personnel for the community corrections program, because each urine sample would have to be obtained in the presence of a staff person — a particularly unpleasant duty for staff. The money would be better used for increased staffing for the program.

Response: The proposed testing would identify prisoners in need of drug treatment before their release, and before a drug problem manifested itself in other ways. Early detection of drug problems would enable early enrollment in a drug treatment program. The certainty of being tested would provide a strong incentive to stay away from hard drugs.

Against:

Testing for alcohol is an expensive proposition that could worsen problems with overcrowding and the community corrections program. Although the use of portable breathalyzers instead of urine tests might minimize costs, breathalyzers are not fully reliable. A positive test for alcohol, irrespective of the amount found, would be a major misconduct. Three major misconducts would send a person back to prison, even if those misconducts were all due to positive alcohol tests. While it is proper to prohibit drinking by prisoners in the corrections system, someone who has had a few beers while in community corrections placement may not present the sort of threat to society that warrants a return to prison. The more prisoners that are returned to prison under the bill, the more the bill could worsen prison overcrowding and increase chances of relatively low-risk prisoners being replaced in the community corrections program by more dangerous ones.

Response: Alcohol is frequently a factor in crime and probation violations, and many prisoners have problems with alcohol abuse. To be lax on the matter of alcohol consumption would be to encourage prisoners to drink. Random testing combined with certain return to prison for a small number of major misconducts would be enough of a deterrent to prevent casual violation of the rule against drinking.

Against:

To adequately protect the public, the bill should ensure that only low-risk prisoners receive community corrections placement. The department employs a security classification system for its prisoners which should dictate where a prisoner is placed. Unfortunately, the department sometimes waives a prisoner's classification and places him in a facility less secure than indicated by the the prisoner's classification. The bill should prohibit the department from placing "waivered" prisoners in community corrections facilities.

Response: The department only waives security classifications in order to cope with staggering overcrowding. If the department could not waive security classifications when necessary and place otherwise well-behaved prisoners where space was available, worsened crowding in high-security facilities would soon lead to serious eruptions of violence. The bill offers strong safeguards against rule violations and would adequately protect the public.

Against:

The bill invites prisoners to commit major misconducts by allowing them up to three such violations before a return to prison is guaranteed. Two major misconducts should be enough to send a prisoner back to prison.

Response: The bill would explicitly allow the department to return to prison someone who had committed one major misconduct. To reduce the number of misconducts that force a return to prison would be to unnecessarily restrict the department's ability to respond appropriately to individual situations.

Against:

Early detection of drug abuse is so important that the bill should require weekly testing.

Response: Weekly testing would double the cost of the bill and be prohibitively expensive. It also would exacerbate morale problems among prisoners and staff, because the testing is done on urine samples that must be obtained in the presence of a staff person.

Against:

The bill may worsen jail overcrowding, as well as prison overcrowding. A person who must be "immediately transferred" to a state correctional facility may spend several days in the county jail until space can be found in a prison. If the bill somehow increases the number of persons being lodged in county jails prior to return to prison, it could exacerbate jail overcrowding.

Response: It is unclear how the bill could have any effect on jail crowding. It would mandate an immediate return to prison, not immediate placement in a county jail. The bill would not change the circumstances under which prisoners are held in jail prior to being sent to prison.

POSITIONS:

The Department of Corrections supports the bill, provided adequate funding is made available (3-11-87).

The Michigan Council on Crime and Delinquency does not have a position on the bill (3-10-87).

The Michigan Association of Counties has questions about the bill's impact on prison and jail overcrowding and its fiscal impact on counties (3-10-87).