



**House
Legislative
Analysis
Section**

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NO DAY PAROLE FOR SEX OFFENDERS

House Bill 4045 Substitute H-1
First Analysis (3-10-87) Floor Copy

Sponsor: Rep. Philip E. Hoffman
Committee: Corrections

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H.B. 4045 (3-10-87)

THE APPARENT PROBLEM:

Public Act 60 of 1962 provides for day parole of prisoners in county jails. A 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. Several problems with this provision have been noted.

The provision has caused confusion in some counties because of a perceived inconsistency with a section of the Code of Criminal Procedure which says that a person sentenced to imprisonment for certain sex offenses is ineligible for "custodial incarceration outside a state correctional facility or a county jail." 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; day parole makes it too easy for sex offenders to repeat their crimes, and weakens the punishment that such persons ought to receive. In addition, 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 generally prohibit day parole for jailed sex offenders.

THE CONTENT OF THE BILL:

The bill would amend Public Act 60 of 1962 to prohibit day parole for jailed sex offenders, except for the purpose of medical treatment, substance abuse treatment, mental health counseling, and psychological counseling. (A "sex offender" would be someone convicted of criminal sexual conduct in the first, second, or third degree; child abusive commercial activity, which includes the making and distribution of child pornography; murder in connection with sexual misconduct; or, the attempt to commit any of the above-mentioned crimes.)

In addition, the bill would add substance abuse counseling, mental health counseling, and psychological counseling to the list of purposes for which day parole may be granted to prisoners other than sex offenders. The bill would delete language that limits to women day parole for housekeeping and family care (MCL 801.251).

FISCAL IMPLICATIONS:

The House Fiscal Agency says that the bill would have no fiscal implications for the state, but may have fiscal implications for local units of government in an indeterminable amount (3-4-87).

ARGUMENTS:

For:

The bill would reduce the potential for tragedy that results 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 getting day parole, or how many have committed crimes while on day parole, the potential problems are vividly illustrated by something that happened in Delta County. A person who was under sentence for marijuana possession and awaiting trial for cocaine possession committed rape while on day parole. After his arrest on the rape charge, he was charged with a rape committed prior to the drug arrests. He was subsequently convicted of both rapes, and is now in prison. Although this person was not known to be a sex offender at the time day parole was granted, the case is a compelling example of what may happen when sex offenders are allowed into the community and why they should not be granted day parole except to receive treatment. At least a sex offender would be unable to prey on the community while in jail. Public Act 110 of 1986 amended the Code of Criminal Procedure to prevent the corrections department from placing sex offenders on prison farms, in halfway houses, and other places where their freedom of movement created a risk to the community. The bill would provide the same protections to the public with regard to prisoners sentenced to county jails.

Against:

The bill is rigid and inappropriate to the situation. Judges should be allowed the discretion to order day parole based 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 may make judges more likely to impose probation. If day parole is to be prohibited for certain people, better to condition the prohibition on danger to the community, rather than on the commission of certain sex offenses. As it stands, the bill would prohibit day parole for sex offenders, but continue to allow it for jail prisoners whose crimes and tendency to violence may present a greater threat to the community.

Response: The bill would not prohibit day parole for fourth degree criminal sexual conduct, which is a misdemeanor. Judges would continue to have discretion regarding those offenders.

For:

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

Against:

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. It could easily happen that the sheriff or deputies would be more familiar with the prisoner and the potential threat to the community than the judge. If sheriffs are to face liability lawsuits over problems caused by offenders on day parole, they should at least be consulted by the judges charged with granting it.

POSITIONS:

The Michigan Sheriffs' Association supports the bill (3-3-87).

The Michigan Judges' Association has no position on the bill (3-3-87).

The Michigan Council on Crime and Delinquency opposes the bill (3-3-87).