



**House
Legislative
Analysis
Section**

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PRISONERS: END EXTENDED FURLOUGHS

RECEIVED

House Bill 4084 as enrolled
Third Analysis (8-1-88)

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Sponsor: Rep. Floyd Clack
House Committee: Corrections
First Senate Committee: Committee on Education and
Mental Health
Second Senate Committee: Committee on Criminal
Justice, Urban Affairs, and Economic
Development

Mich. State Law Library

THE APPARENT PROBLEM:

In an effort to ease prison overcrowding and at the same time encourage soon-to-be-released prisoners to find employment and prepare to re-enter the community, the Department of Corrections has authorized extended furloughs for a number of prisoners, meaning that the prisoners are allowed to live at home while still "inmates" of the corrections system. According to the department, to qualify for an extended furlough a prisoner must be in the community residential program, meet the department's criteria for classification as "low-risk", and, generally, be employed. (Although a prisoner must be in the community residential program in an administrative sense, that person is not necessarily housed in a community corrections facility such as a halfway house at the time extended furlough is granted. However, according to the department, the vast majority of prisoners placed on extended furlough first spend some time—usually about 30 days—in a community residential facility.)

The department uses Public Act 232 of 1953, which allows the department to authorize a prisoner to visit a specifically designated place or places for up to 30 days, as statutory authority for its extended furlough program. The law says that this furlough may be granted for family emergencies, medical treatment, job hunting, or "any other compelling reason consistent with the public interest," which the department has construed to include prison overcrowding. The department also considers a furlough to be renewable, so that, while it requires furloughed prisoners to check in every week, it also allows furloughs to last more than 30 days; extended furloughs typically last several months. The furlough provision also has been used as authority for the release of prisoners 30 days before their parole date.

The department's community residential program, of which the extended furlough program is a part, has come under increasing criticism from the press and the public. The department acknowledges that it has in recent years used the community residential program to help relieve overcrowding and has placed prisoners who should not have been there in the community residential program. Some heinous crimes have been committed by prisoners in the minimally-staffed community residential program. Unfortunately, the extended furlough program cannot be adequately evaluated because the department has not maintained records on furloughed prisoners as a group apart from the rest of the community residential program.

Lack of data on furloughed prisoners, various problems with the community residential program in general, and strong concerns over the potential threat to the public posed by furloughed prisoners were cited in the November 1985

report issued by the House Committee on Corrections following its investigation of the corrections department (MDOC). The committee recommended "that the MDOC immediately eliminate the existing extended furlough program and that the legislature amend the furlough law to reflect this."

THE CONTENT OF THE BILL:

The bill would amend Public Act 232 of 1953 to prohibit the corrections department from renewing furloughs. Under the bill, certain restrictions on furloughs would be placed on prisoners housed in a state correctional facility, which the bill defines as a facility owned or leased by the department, exclusive of a community correction center or a community residential home. The maximum amount of time for a furlough, or series of furloughs, could not exceed a cumulative total of 30 days. Existing provisions authorizing furloughs for family emergencies and job hunting would be retained, but the provision "for any other compelling reasons consistent with the public interest," which was used as authority for granting furloughs to ease overcrowding, would be deleted. Furloughs for medical services not otherwise available to a prisoner housed in a state correctional facility would also be retained; however, there would be no maximum time limitation on release under this provision. Under the bill, the director could authorize these furloughs only in cases where there was reasonable assurance that the prisoner would not become a menace to society or to the public safety. The bill would also require the department to report to the Senate and House corrections committees on the number of prisoners who came under these provisions, the amount of time each prisoner was released, and any major misconducts or crimes committed by prisoners released between December 1, 1988 and December 1, 1989.

For those prisoners housed at community corrections centers or community residential homes while working at paid employment, the 30-day restriction on furloughs would not apply. The bill would, however, require that these prisoners be housed either in a corrections center with 24-hour security staffing or be placed on electronic monitoring (tethers). The bill would define the former as a facility in which a security staff is on duty at all times, but where the department could waive the electronic monitoring requirement for those prisoners who were within three months of their parole date. The latter would be defined as a residence in which electronic monitoring of prisoner presence is provided at all times. The bill would also include participation in educational programs or in community residential drug treatment programs as reasons

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to provide furloughs for those prisoners housed in community centers or homes. Under the bill, prisoners serving a mandatory life sentence for first degree murder one would not be eligible for community corrections placement until the parole board had established a release date.

The bill would take effect December 1, 1988.

MCL 791.265a.

FISCAL IMPLICATIONS:

According to the Senate Fiscal Agency, the bill would result in a general fund expenditure increase for the state of \$735,000 in fiscal year 1987-88, and \$1.89 million in fiscal year 1988-89. The bill would require the Department of Corrections to place prisoners on extended furlough on either electronic monitoring (tethers) or in community corrections centers. The net cost to the state for an individual on the electronic tether is budgeted at \$2,100 per year for fiscal year 1988-89. Based on an average of 350 prisoners during fiscal year 1987-88 and an average of 900 home furlough tethered prisoners in fiscal year 1988-89, the cost to the state would be \$735,000 and \$1.89 million, respectively. (7-28-88)

ARGUMENTS:

For:

The bill would end extended furloughs and force the corrections department to put furloughed prisoners living at home back into corrections facilities where they belong. It is inappropriate for the state to allow people who are still prisoners with up to two years left in their sentences to live virtually unsupervised at home for months at a time. Absent evidence to the contrary, such a practice exposes the public to increased risk by making it all too easy for criminals to commit more crimes while they are still prisoners of the state corrections system. The use of extended furloughs is like placing people on parole before they are eligible; indeed, it has become common practice to place persons approved for parole on extended furlough 30 days before their parole date. Of even greater concern, and exemplifying the potential for abuse of the extended furlough authority, is the fact that assaultive prisoners rejected by a Flint halfway house were — at least for a while — being placed on extended furlough. The abuse of the extended furlough authority circumvents the will of the public and the intent of the sentencing judge by releasing a prisoner into the community before the proper amount of time is served. The bill would do away with a practice that is bad public policy.

Against:

The bill preserves the obscure language of the statute and complicates efforts to ascertain its meaning. Granted, the bill would state that an extension of the limits of confinement (in other words, a furlough) could not exceed a cumulative total period of 30 days, and that the furlough would only be granted for the purpose of visiting a critically ill relative or attending the funeral of a relative. However, deciding whether a relative is "critically ill" or not calls for a subjective decision on the part of prison officials. Committee discussion, on the other hand, indicated that the bill would limit the total amount of furlough time for a prisoner to 30 days, so that if, for example, a prisoner was given a two-day furlough to attend a funeral, then that prisoner would have 28 days of furlough time remaining, for whatever reason(s) it was needed. If this is the case, then the law may be overly rigid, for over the course of many years of incarceration, legitimate furlough

needs (hospitalization, family emergencies, job hunting, and other reasons) may exceed a total of 30 days.

Response: The department asserts that, under department policy, certain guidelines are used to determine when a request for furlough under the above circumstances is justified or not. First, furloughs for visits to sick relatives are granted only when the relative is someone who had a major influence in the prisoner's upbringing. Second, the request is verified by an agent in relative's area of residence, who ascertains from the physician involved that death is imminent. In practice, wardens tend not to allow furloughs for visits to sick relatives, since the procedure allows for the possibility of escape. The prisoner usually ends up using his or her furlough to attend the funeral.

Against:

The bill easily could create more problems than it would solve. By forcing the corrections department to create more bedspace for the 700 or so prisoners who are on extended furlough at any given time, at a time when the prison system is already 2,270 prisoners over capacity, the bill would worsen overcrowding. There is simply no place to put these people. Further, it is not clear that prisoners on extended furlough have created major problems. As a group, these are the prisoners that have the best records and the best chance to lead constructive lives; they have even managed to obtain and hold down jobs. In fact, the extended furlough program offers prisoners strong incentive to improve their habits and find a job. The bill is an ill-advised and piecemeal response to a problem that may be based more on public perception than hard data.

Response: Under the bill, prisoners not in a corrections center with 24-hour security staffing would be placed on electronic monitoring (tethers). The director of the Department of Corrections has publicly supported elimination of extended furloughs when sufficient prison beds are available. It is estimated that capacity will equal population in 1990. Faced with a choice between a breakdown in the system, should extended furloughs be abolished at this time, and the bill's provisions to limit furloughs to 30 days under some method of supervision, the pragmatic choice is to accept the latter.

Rebuttal: It has not been proven in the past that prisoners on extended furlough had been rehabilitated to the point where anyone could say with certainty that they no longer posed a threat to the public, or that good prison records and job opportunities would deter prisoners from committing crime. Recently, a prisoner on furlough committed murder while on electronic monitoring. Faced with this fact, it is inevitable that some other compromise will have to be worked out.

Against:

Furloughing prisoners 30 days before their release date subverts the parole process; prisoners should stay in corrections facilities until they are paroled. The practice circumvents the will of the public expressed through Ballot Proposal B of 1978 and embodied in section 33b of the act: that a person convicted and sentenced for any of a long list of serious crimes be ineligible for parole until the person has served the minimum term imposed by the court.

Response: Only between five and ten percent of the prisoners on extended furlough at any given time are on "parole furlough." Further, the parole furlough serves as an important means of easing soon-to-be-released prisoners back into the community.

POSITIONS:

The Department of Corrections supports the bill. (12-10-87)

The Michigan Council on Crime and Delinquency opposes the bill. (12-10-87)