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House Bill 4037 (Substitute S-3 as reported)**Sponsor: Representative Kay M. Hart****House Committee: Corrections****Senate Committee: Criminal Justice, Urban Affairs, and Economic Development****Date Completed: 11-29-88****RATIONALE**

The State's community corrections programs have come under increasing scrutiny in recent years, primarily as a result of the worsening prison overcrowding situation. In using community corrections placements to help relieve overcrowding, the Department of Corrections reportedly has placed in community corrections prisoners whom many feel should not have been eligible for placement, including some who have committed widely publicized crimes. While it is difficult to ascertain exactly how much such prisoners contributed to local crime problems, it is generally acknowledged that problems with community corrections programs have increased. Some people feel that closer monitoring of community corrections program prisoners and stricter enforcement of Department regulations are needed to alleviate those problems.

CONTENT

The bill would amend the Department of Corrections Act to do the following:

- Require the Department of Corrections to promulgate rules, within 120 days after the bill's effective date, governing community corrections placement programs.
- Require the Department to establish curfews for prisoners in community corrections placement.
- Require random biweekly screening for alcohol and controlled substances.
- Require the transfer to a State correctional facility of a prisoner in community corrections placement who was found guilty of a major misconduct violation that required detention prior to an administrative hearing on the violation.
- Require a prisoner in community corrections placement to participate in substance abuse counseling or other special treatment if recommended by the Department, and if appropriate services were available.
- Establish a procedure for treatment and sanctions for prisoners in community corrections placement who were found guilty of a major misconduct violation involving substance abuse.

The bill would define "community corrections placement" as a community residential home or a community corrections center as those terms are defined in Public Act 272 of 1988, which became effective on December 1, 1988. (A "community corrections center" is a facility either contracted for or operated by the Department of Corrections in which a security staff is on duty seven days a week, 24 hours a day; a "community residential home" is a facility in which constant electronic monitoring of a prisoner's presence is provided.)

The Department would have to promulgate rules under the Administrative Procedures Act that prescribed the major misconduct violations that would be a basis for the return of prisoners to a correctional facility, and any other factors that could be a basis for their return, including posted rule violations.

A prisoner in community corrections placement would be required to participate in substance abuse counseling or other special treatment services if such participation were recommended by the Department staff that determines community corrections placement eligibility or by community corrections placement staff. Such participation only would be required, however, if "appropriate services" were available. Every prisoner in community corrections placement would have to be employed or participate in an educational or training program or seek employment, unless he or she were participating in special treatment services.

Each day before leaving a community corrections center, a prisoner would have to inform the center staff of his or her intended destination, which would have to be registered by a staff member in a log book. Weekly random verification of employment and job performance or other destinations to which a prisoner had signed out would have to be conducted by community corrections placement staff.

A prisoner in community corrections placement could not knowingly enter or remain on the premises of an establishment that was licensed for on-premises consumption of any alcoholic liquor, unless the prisoner were seeking employment or were employed at the establishment.

A random biweekly screening for the detection of alcohol, marihuana, amphetamines, barbituates, morphine, methadone, cocaine, codeine, Darvon, Demerol, and other substances, as provided by Department rules, would have to be conducted of each prisoner in community corrections placement.

Any prisoner in community corrections placement who was found guilty of a major misconduct violation that required detention prior to a hearing would have to be transferred immediately to a State correctional facility and could be eligible for community corrections placement only after his or her parole date had been established. A prisoner who had been found guilty of one major misconduct could be returned to a State correctional facility, if the Department determined that the circumstances and the prisoner's behavior warranted return.

A prisoner in community corrections placement who was found guilty of a major misconduct violation that involved

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substance abuse would be subject to participation in an outpatient substance abuse program. A second violation involving substance abuse would result in a review of the prisoner's performance in the placement, and participation in an outpatient substance abuse program. For a third violation, the prisoner would have to participate in an inpatient substance abuse program. After a fourth violation, the prisoner would have to be transferred immediately back to a State correctional facility and could be eligible for community corrections placement only after his or her parole date had been established.

Proposed MCL 791.265d

SENATE COMMITTEE ACTION

The Senate Committee on Criminal Justice, Urban Affairs, and Economic Development adopted a substitute (S-3) to the bill that would establish a procedure for treatment and sanctions for community corrections placement prisoners who violated rules involving substance abuse. The House-passed version contains no such procedure, but would allow the return to a State correctional facility of a prisoner who was found guilty of one major misconduct (as would the substitute) and would require return for two major misconduct violations. The substitute would allow return for one violation, if the Department determined that circumstances and the prisoner's behavior warranted return, and would mandate return only for a major misconduct violation that required detention prior to a hearing.

In addition, the House-passed version would require substance abuse counseling or other special treatment if recommended by community corrections placement staff or Department staff that determine placement eligibility. The substitute would require such counseling or treatment only if appropriate services were available. The substitute also removed phencyclidine and methaqualone from the list of substances for which random biweekly screening would have to be conducted.

FISCAL IMPACT

The bill would result in an indeterminate expenditure increase for the State in FY 1988-89. The indeterminate increase for the State would primarily be the result of increased expenditures associated with:

- Those prisoners returned to a State correctional facility for being found guilty of major misconduct violations while on community status.
- Increased demand for both outpatient and inpatient substance abuse counseling programs.

For FY 1988-89, the average cost of maintaining a prisoner in a State correctional facility ranges from \$23,100 for close/maximum custody to \$12,500 for minimum security prisoners. Community status prisoners for FY 1988-89 cost the State between \$2,000 and \$13,400 depending on the specific program they are involved with and the level of staff supervision. In summary, the increased annual expense for each prisoner returned to a secure correctional facility from community status would be approximately \$10,000 on average. The cost per prisoner would increase an average of \$5,000 if the prisoner were returned to a minimum security facility from community status.

Two factors that would contribute to the indeterminate expenditure increase associated with prisoner maintenance costs include:

- The number of prisoners who would violate the major misconduct rule.
- The availability of prison bed space.

As of November 9, 1988, the Department reported 2,399 prisoners assigned to community status. In addition, as of that date, the Department's secure correctional facilities were 3,493 prisoners over the facilities' rated capacity. In the event community status prisoners violated the major misconduct provision in the bill, the current overcrowding situation would worsen, thereby further increasing the demand for additional prison beds along with increasing the operational expenditures of the Department.

The Department currently recommends prisoners to both outpatient and inpatient substance abuse counseling programs. The cost of these programs to the Department varies across the State. The average outpatient program costs \$2,000 per prisoner, while the average inpatient program costs \$5,500 per prisoner for a six-month program. The major factor contributing to the indeterminate cost increase is estimating the potential increase in demand for these programs, above current levels.

Finally, the Department currently screens community status prisoners on a biweekly basis for alcohol and other controlled substances. Therefore, no additional costs would be incurred by the State from this provision of the bill.

ARGUMENTS

Supporting Argument

The relative personal freedom granted to prisoners placed in community settings makes it essential that they be thoroughly monitored in order to protect the public adequately. There is a need to identify abuses of privileges swiftly and to respond to them as they occur. Prisoners who demonstrate that they are undeserving of community corrections placement should be returned promptly to prison. The bill would accomplish this by specifying the administrative actions to be taken to ensure that prisoners in community corrections programs obeyed specified rules and prepared to re-enter society. Although most of the bill's requirements reflect current Department policy, placing the requirements in statute should reduce problems experienced with failures to adhere to that policy.

In addition, the procedure for requiring substance abuse counseling and treatment for offenders of drug-related violations would offer those individuals an opportunity not otherwise available in the corrections system, and would help to alleviate overcrowding by offering an alternative to returning them to prison.

Opposing Argument

Drug testing of all prisoners in community corrections placement, even those who do not appear to have drug problems, would be very expensive. The money would be better used for increased staffing for community corrections. In addition, testing for alcohol is an expensive proposition that actually could worsen overcrowding and threaten the effectiveness of community corrections programs. Although the use of portable breathalyzers instead of urine tests could minimize costs related to alcohol detection, breathalyzers are not completely reliable. A positive test for alcohol, regardless of the amount found, would be a major misconduct violation, which could send a person back to prison. While it may be proper to prohibit drinking by prisoners, someone who has had a few drinks

while in community corrections placement may not present the sort of threat to society that warrants a return to prison. The more prisoners were returned to prison under the bill, the greater the risk to prison overcrowding and increased chances of relatively low-risk prisoners being replaced in the community corrections placement by more dangerous ones.

Response: The proposed testing is necessary to identify prisoners in need of substance abuse treatment and counseling before their release, and would enable early enrollment in a treatment program. Also, the certainty of being tested would provide a strong deterrent to drug use. In addition, alcohol is frequently a factor in crime and probation violations, and many prisoners have alcohol abuse problems. Laxness on the matter of alcohol consumption could encourage prisoners to drink. Random testing combined with the threat of return to prison would act as a deterrent to casual violation of the rule against alcohol use.

Opposing Argument

To protect the public adequately, the bill should ensure that only low-risk prisoners received 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 classification and places a prisoner in a facility less secure than indicated by the classification. The bill should prohibit the Department from placing prisoners whose classification is waived in community corrections facilities.

Response: The Department only waives security classification in order to cope with staggering overcrowding. If it could not waive security classifications when necessary and place otherwise well-behaved prisoners where space was available, enhanced 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. In addition, this bill addresses only the administration of community corrections placement, not eligibility for such placement. House Bill 4164 addresses eligibility for participation in community-based corrections programs, who should make those decisions, and on what criteria they should be based.

Opposing Argument

The bill almost would invite prisoners to commit drug-related major misconducts by allowing them up to three such violations without a mandatory return to prison. Community corrections participants should not be given so many chances to commit violations, with the only retribution for such actions being substance abuse treatment. There should be a mandatory return to prison after two major misconduct violations.

Response: The bill would allow the Department to return a community corrections participant to prison after only one major misconduct violation, if the Department determined that the circumstances and the prisoner's behavior warranted a return. Also, one major misconduct violation that required detention and a hearing would mandate a prisoner's return. Forcing the Department to return a person to prison, however, would unnecessarily restrict the Department's ability to respond appropriately to individual situations.

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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.