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BILL ANALYSIS

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House Bill 4084 (Substitute S-1 as reported)**Sponsor: Representative Floyd Clack****House Committee: Corrections****Senate Committee: Criminal Justice, Urban Affairs, and Economic Development**

Mich. State Law Library

Date Completed: 6-14-88**RATIONALE**

In an effort both to ease prison overcrowding and encourage soon-to-be-released prisoners to find employment and prepare to return to the community, the Department of Corrections (DOC) has authorized extended furloughs for a number of prisoners. Prisoners on furlough are allowed to live at home while still under the jurisdiction of the DOC. According to the Department, to qualify for an extended furlough, a prisoner must be in the community residential program, and meet the DOC's criteria for classification as "low-risk". 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 was granted. According to the Department, however, the vast majority of prisoners placed on extended furlough first spend some time, usually about 30 days, in a community residential facility.

Lack of data on furloughed prisoners, various problems with the community residential program, and strong concerns over the potential threat to the public posed by furloughed prisoners were cited by the House Committee on Corrections in a 1985 report. Some people feel that the authorization for granting furloughs should be revised to limit the use of extended furloughs and curb some alleged patterns of abuse in the furlough system.

CONTENT

The bill would amend Public Act 232 of 1953, which authorizes the Department of Corrections to allow a prisoner to visit a designated place for up to 30 days for certain purposes. The bill would:

- Set a 30-day total limit on a furlough for the purpose of visiting a critically ill relative, attending the funeral of a relative, or contacting prospective employers.
- Allow a furlough only if the prisoner would not become a menace to society or the public safety.
- Require the Department to report to the Legislature on furloughed prisoners.
- Provide for certain furloughed prisoners either to be housed in a corrections center having 24-hour security staffing, or to be placed on electronic monitoring.
- Provide that a furlough could not be granted to a prisoner serving a sentence for first degree murder until a parole release date was established by the parole board.

Current law authorizes the Department to "extend the limits of the place of confinement of a prisoner" to visit a specifically designated place or places for up to 30 days for the purpose of visiting a critically ill relative, attending the funeral of a relative, obtaining medical services not otherwise available, or contacting prospective employers,

or for "any other compelling reason consistent with the public interest". The bill provides, instead, that the Department could extend the limits of confinement, when there was reasonable assurance, after consideration of all the facts and circumstances, that the prisoner would not become a menace to society or to the public, by authorizing the prisoner to visit a specifically designated place or places. A furlough under this provision could be granted only to a prisoner housed in a State correctional facility to visit a critically ill relative, attend the funeral of a relative, or contact prospective employers. The maximum time of such a furlough could not exceed a cumulative total period of 30 days. ("State correctional facility" would not include a community corrections center or community residential home.) On or before December 31, 1989, the Department would have to report to the standing committees of the Senate and House having jurisdiction over corrections, the number of prisoners released under this provision, the amount of time each prisoner was released, and any major misconducts or crimes committed by a prisoner released under this provision between July 1, 1988, and July 1, 1989.

Furloughs could continue to be granted in order to obtain medical services not otherwise available to a prisoner housed in a State correctional facility; or to work at paid employment, participate in a training or educational program, or participate in a community residential drug treatment program while continuing as a prisoner housed on a voluntary basis at a community corrections center or in a community residential home. (The 30-day restriction would not apply to furloughs for these purposes.) "Community corrections center" would mean a facility contracted for or operated by the Department in which a security staff is on duty seven days per week, 24 hours per day. "Community residential home" would mean a facility where electronic monitoring of prisoner presence is provided by the Department seven days per week, 24 hours per day.

The bill also would delete the provision that authorizes the State to reimburse counties for costs incurred in the prosecution of inmates (which has been replaced by Public Act 272 of 1987).

MCL 791.265a

SENATE COMMITTEE ACTION

The Senate Committee on Criminal Justice, Urban Affairs, and Economic Development adopted a substitute (S-1) to the bill that reflects changes made to the Act by Public Act 271 of 1987.

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BACKGROUND

Public Act 232 of 1953, the Department of Corrections Act, allows the DOC to authorize a prisoner to visit a specifically designated place or places for up to 30 days. The Act specifies that such furloughs may be granted for family emergencies, medical treatment, job hunting, or "any other compelling reason consistent with the public interest", which the DOC has construed to include the relief of prison overcrowding. The Department also considers a furlough to be renewable; 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 to release prisoners 30 days before their parole date.

The DOC's community residential program, of which the extended furlough program is a part, has been criticized by the press and the public. Reportedly, the Department has acknowledged that it has used the community residential program to help relieve overcrowding in recent years and has placed prisoners in the community residential program who should not have been placed there. Some crimes allegedly have been committed by prisoners in the minimally-staffed community residential program. The extended furlough program cannot be evaluated completely, however, because the DOC has not maintained records on furloughed prisoners as a group apart from the rest of the community residential program.

FISCAL IMPACT

The bill would result in a GF/GP expenditure increase for the State of \$735,000 in FY 1987-88 and \$1,890,000 in FY 1988-89.

The bill would require the Department of Corrections to place prisoners on extended furlough either on the electronic tether monitoring system, or in a community corrections center. The net cost to the State for an individual on the electronic tether is budgeted at \$2,100 per year for FY 1988-89. Based on an average of 350 prisoners during FY 1987-88 and 900 average home furlough tethered prisoners in FY 1988-89, the cost to the State would be \$735,000 and \$1,890,000, respectively.

ARGUMENTS

Supporting Argument

The bill would end extended furloughs (i.e., those beyond 30 days) in some cases, and force the DOC to put furloughed prisoners living at home either back into correctional facilities or onto electronic monitoring devices (i.e., tethers). It is inappropriate for the State to allow people who are still prisoners to live virtually unsupervised at home for months at a time. Such a practice exposes the public to increased risk by making it easy for criminals to commit more crimes while still prisoners of the State's correctional 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 situation in which assaultive prisoners rejected by a halfway house in Flint reportedly were 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 eliminate a practice that is poor public policy.

Response: Although the bill would end virtually unsupervised furloughs by requiring either the use of the tether or placement in a community corrections center, it does not go far enough to curb abuses of the furlough system. The only prisoners who would be limited to 30 days are those in secure facilities; prisoners in the community residential program, where extended furloughs are common, would not be limited in the length of their furloughs. So, if the DOC wanted to use the furlough program to ease overcrowding, it could simply transfer prisoners in secure facilities to the community residential program and put them on tethers.

Opposing Argument

The bill would preserve the obscure language of the statute and complicate efforts to ascertain its meaning. Granted, the bill specifies that an extension of the limits of confinement (i.e., a furlough) could not exceed a cumulative total period of 30 days, when the furlough was granted for the purpose of visiting a critically ill relative, attending the funeral of a relative, or contacting prospective employers. Deciding whether a relative was "critically ill", however, would require a subjective decision on the part of prison officials. In addition, some people have indicated that because the bill would limit the total amount of furlough time for a prisoner to 30 days, a prisoner who was given a two-day furlough to attend a funeral, for instance, would have only 28 days of furlough time remaining for whatever reasons it was needed. If this were the case, then the law could be overly rigid. Over the course of many years of incarceration, legitimate furlough needs (hospitalization, family emergencies, and job hunting, for example) may exceed a total of 30 days.

Response: Furloughs are a privilege, not a right. The Department is not required to grant furloughs for each instance that a prisoner requests one. In addition, the 30-day limit on furloughs is not a quota—prisoners would not be granted a 30-day allotment to be used over the course of their period of incarceration. Department guidelines are used to determine whether a request for furlough is justified. 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 the relative's area of residence, who then determines with a physician's consultation whether 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. Prisoners usually end up using furloughs to attend funerals. In addition, the bill would not limit the cumulative time for furloughs granted to obtain medical services not otherwise available or for employment, education or training, or drug rehabilitation programs.

Opposing Argument

The bill could create more problems than it would solve. By forcing the DOC to create more bedspace for the prisoners who otherwise would be on extended furlough, at a time when the prison system already is over capacity, the bill would contribute to the overcrowding problem. Further, it is not clear that prisoners on extended furlough have created major problems. As a group, those on extended furlough are the prisoners that have the best records and, presumably, the best chance to lead constructive lives. In fact, the extended furlough program offers prisoners strong incentive to improve their habits and

find jobs. The bill is an ill-advised and piecemeal response to a problem that may be based more on public misperceptions than on facts.

Response: Any overcrowding problems caused by the bill would be minimal, because, while the bill would restrict cumulative furlough time for prisoners housed in a State correctional facility (which would not include a community corrections center or those on the tethering device), extended furloughs still would be allowed for those prisoners in the DOC's community residential program. Those prisoners likely would be placed on electronic monitoring (i.e., tethers), so the DOC would not have to provide any new beds. If beds were available, however, those prisoners on extended furlough could be placed in a community corrections center with 24-hour security staffing. In fact, the Director of the DOC reportedly has supported elimination of extended furloughs when sufficient beds are available. Further, furloughed prisoners should be monitored in some way, either by limiting furloughs, requiring housing in a community corrections center, or placing them on electronic tether because it has not been shown that prisoners on extended furlough have been rehabilitated to the point where they no longer posed a threat to the public, or that good prison records and job opportunities would deter prisoners from committing crimes. Limiting furloughs to 30 days and using the technology of tethers is a pragmatic response to some of the problems of the State's prison system.

Opposing Argument

The bill should prohibit so-called "parole furlough". Allowing a prisoner a 30-day furlough before his or her release date subverts the parole process; prisoners should stay in correctional 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 certain serious crimes be ineligible for parole until he or she has served the minimum term imposed by the court.

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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.