

Senate Corrections Bill Package (Reintroduced) – CAPPs analysis/comments/recommendations

Feb. 13, 2017

Bill no. Sponsor	Contents	Comments	Recommendations
<b>Definitions/Data Collection/Reporting</b>			
5 Proos	<p>Amends definitions in code of criminal procedure:</p> <p>“Recidivism” means the rearrest, reconviction, or reincarceration in prison or jail for a felony or misdemeanor offense or a probation or parole violation, or any combination of those events, of an individual as measured first after 3 years and again after 5 years from the date of his or her release from incarceration, placement on probation, or conviction, which is later.</p> <p>“Technical parole violation” means a violation of the terms of a parolee’s parole order that is</p>	<p>MCL 769.33a, which charges the Criminal Justice Policy Commission (CJPC) with collecting and analyzing a broad range of data already defines recidivism measures as rearrest, resentence and return to prison rates at one, two and three-year intervals after exiting prison or jail and after entering probation.</p> <p>Inclusion of misdemeanors without limits could mean investing enormous resources to collect piles of data on low level misdemeanors that will ultimately be meaningless. Whether someone has been previously convicted of a felony or a misdemeanor, what is really learned about recidivism if they’re convicted of a 93-day misdemeanor 5 years later?</p> <p>Both definitions fail to recognize that technical violators include people committed to prison whose conduct</p>	<p>If the goal is to include five-year intervals as well, it would seem sufficient to amend the CJPC definition rather than have different definitions in separate statutory provisions.</p> <p>MDOC has recommended separating each measure (rearrest, reconviction, reincarceration) to avoid confusion in analyzing and reporting data.</p> <p>CAPPs suggests limiting data to be collected to misdemeanors with maximum sentences up to 1 year. That will capture most serious offenses and those most likely to have been pleas down from felonies.</p> <p>Change to say the probation or parole violation did not result in a conviction of a felony and sentence of</p>

	<p>not in and of itself a violation of a law...</p> <p>“Technical probation violation” means a violation of the terms of a probationer’s probation order that is not in and of itself a violation of a law...</p>	<p>constituted a crime that either was not prosecuted or resulted in a conviction with probation or jail time but not a new prison sentence.</p>	<p>incarceration in state prison.</p>
6 Schuit- maker	<p>Amends definitions in community corrections act as in SB 5</p>	<p>See SB 5</p>	<p>See SB 5</p>
7 Knollen- berg  [937 Knollen- berg]	<p>Amends definitions in corrections code as in SB 5</p>	<p>See SB 5</p>	<p>See SB 5</p>
10 O’Brien  [939 Nofs]	<p>Establishes a quarterly reporting requirement to legislative committees re prisoners past their ERD. Report is to categorize reasons for parole denial as follows: offense, program performance, misconducts, prior record and “other relevant factors under the parole guidelines developed by the department under sec. 33e considered by the parole board in denying parole” – but not the parole guidelines score itself.</p>	<p>Requires reporting about all prisoners past their ERD but no action. Last session’s HB 4138, the safe and smart parole bill, not only provided for increased releases of prisoners who score high probability of release (i.e. low risk) on the MDOC’s parole guidelines but extensive reporting about those who are denied release.</p> <p>Note, under parole guidelines, listed factors are not, in and of themselves, reasons for parole denial. They are all variables weighted within guidelines scoring but overall guidelines score is supposed to determine likelihood of release.</p>	<p>Could expand reporting requirement of reintroduced safe and smart bill to include reasons for denying release to all prisoners who have reached their earliest possible parole date, not just those with high probability scores.</p> <p>See also format of report on Prisoners Reviewed for Parole required by boilerplate Sec. 422 in 2017 MDOC Corrections bill.</p>

<p>11 Colbeck</p> <p>[938 Colbeck]</p>	<p>Creates criminal justice data collection act. Establishes a criminal justice data collection and management program within the legislative council. Says the program is to "be implemented in not fewer than 1 county."</p> <p>Provides for a state operations team to collect data from state agencies and participating counties and a state project team to assist in process and technology improvements for collecting data and county operations teams. Provides for grants to participating counties. Data collected is to support determination of jail and prison capacities, types of recidivism and application of sentencing guidelines. Puts responsibility for maintaining the database in DTMB and limits access to data to DTMB and legislative council.</p>	<p>Is strong need for improvement and coordination of statewide criminal justice data collection and analysis. But 769.33a already mandates CJPC to collect and analyze a wide array of data about:</p> <ul style="list-style-type: none"> <li>• State and local sentencing and release practices for felonies and jail and prison usage</li> <li>• Misdemeanor sentences and the detention of defendants pending trial</li> <li>• The effectiveness of sentencing guidelines</li> <li>• The populations and capacities of prisons and jails and the effectiveness of efforts to reduce recidivism.</li> </ul> <p>So the first question is the need for a separate entity rather than funding the CJPC adequately to perform its functions. The second is how the competing needs and overlapping statutory mandates of two agencies housed in the Legislative Council would be managed.</p> <p>Other observations: requires state level coordination with MDOC and SCAO but not MSP, which already collects and analyzes crime data. No data to be collected on victims. Need clarity as to why legislation appears to get only one county on line and why access is limited to DTMB.</p>	<p>Provide adequate funding to CJPC and let it systematically explore what data is available and what is needed, what the costs and logistics of significantly improved data collection and analysis would be and how priorities should be set to maximize the availability of the most critical information. Once the CJPC has had sufficient resources and a reasonable time to begin fulfilling its mandate, an assessment can be done to determine whether another entity is needed. Additionally, add MSP to data collection and reporting mechanism.</p> <p>See SB 5 re: defining misdemeanors.</p>
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**Attempts to improve community supervision outcomes**

<p>8 Mac- Gregor  [936 Emmons]</p>	<p>An effort to have all supervision programs for probationers or parolees that receive state funds, except those administered by a district court, be evidence-based within 4 years. Requires use of risk assessment tools, case plans tailored to risk, responses to compliant and non-compliant behaviors, caseload guidelines, the elimination of programs shown not to reduce recidivism, intensive staff training, victim satisfaction policies.</p>	<p>Goal is worthy but huge, given the number and variety of programs administered directly by or funded through the MDOC. Proposal raises many questions, including:</p> <ul style="list-style-type: none"> <li>• How this compares to current practices and how those practices will affect the 4-year deadline.</li> <li>• What the increased expenses will be for programs, evaluation and oversight.</li> <li>• How these requirements will be coordinated with swift and sure probation, the parole sanction certainty program proposed by SB 932, grants to prisoner re-entry local service providers and community corrections funding under PA 511.</li> <li>• Whether there is adequate allowance for potentially useful programs that have not yet been definitively assessed.</li> <li>• Whether the requirement of case plans for low-risk individuals risks over-supervision with concomitant negative effects.</li> </ul> <p>Definition of “community supervision” needs clarification. First of two options requires both diversion from prosecution and a suspended sentence of confinement, which seem contradictory. Second option is for supervision after time in jail or prison. Neither seems to include probation without jail. But</p>	<p>A workgroup with all affected stakeholders to assess logistics, costs, implementation strategies and unintended consequences. Possibly add a delay to effective date to allow for stakeholders to meet and discuss, prepare for impact.</p> <p>See SB 5 comments re: definitions of recidivism and technical probation and parole violations that are repeated here.</p>
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		<p>phrase "community supervision" is not actually used in rest of bill.</p> <p>Unclear why district courts are excluded from compliance. Costs of implementation and potential savings in jail and prison beds cannot be determined.</p>	
<p>13 Proos [933 Proos]</p>	<p>Limits temporary incarceration for a technical probation violation to no more than 30 days. After release, court can reinstate on probation with original terms or issue a new probation order. Limit does not apply to probationer who has committed five or more technical violations.</p> <p>Does not prohibit court from revoking probation and imposing a prison term for technical violations.</p> <p>Defines technical violation as a violation of a term of probation order that is not in itself a violation of the law.</p>	<p>Could reduce some need for local jail beds by limiting time probation violators could spend in jail. Could actually increase use of prison beds if judges decide 30 days of incarceration for technical violations is not enough so choose prison instead.</p> <p>This is unlike proposal by CSG that would have set graduated penalties for technical probation violations, depending on seriousness level and frequency, and would have allowed revocation only for those probationers posing the most risk, thereby reducing need for prison beds.</p>	<p>Stakeholders have been unable to reach consensus on CSG or similar proposal so far. But limiting use of probation revocation for supervision violations is critical to reducing prison population. Are presumably wide disparities among counties and individual judges.</p> <p>In addition to bill enactment, could establish a work group, perhaps in concert with SCAO, including judges, prosecutors, defense attorneys and probation agents to examine available information about revocation practices and develop voluntary revocation guidelines.</p>
<p>16 Proos [932 Proos]</p>	<p>Creates a system of "parole sanction certainty supervision" analogous to "swift and sure probation."</p> <ul style="list-style-type: none"> <li>MDOC to develop a system of presumptive nonprison sanctions for technical parole violations and to apply them uniformly. (Excludes violations that "may warrant" a separate felony</li> </ul>	<p>Although DOC already uses decision trees for imposing graduated sanctions on all parolees, this would give parolees advance notice of consequences of violations and ensure more uniformity among agents. Most importantly, it sets limits on use of revocation for technical violations that do not pose risk to prior victims or community and, apparently, on use of residential re-entry, since it limits incarceration for those not revoked to 30 days.</p>	<p>If goal is to ensure consistency in handling of supervision violations and limit returns to prison where public safety is not at risk, program should apply to all parolees. Implementation issues differ from "swift and sure probation" since decisionmaking all controlled by MDOC, not several hundred circuit judges. If pilot testing is desired, could begin with fewer counties as opposed to selected parolees.</p>

	<p>charge.) Sanctions account for seriousness, frequency and parolee's background. Also provides for rewards and incentives for compliance.</p> <ul style="list-style-type: none"> <li>• MDOC to decide which parolees are placed in the program. Participants get notice of sanctions in advance and agree to abide.</li> <li>• MDOC required to implement in 5 largest counties.</li> <li>• <b>Limits confinement as sanction for violation short of revocation to 30 days.</b> (Can only use local jails if reimbursement agreement.)</li> <li>• <b>Only allows revocation for technical violations if there is "significant risk to prior victims...or the community at large and the risk cannot be appropriately managed in the community."</b></li> <li>• Has substantial reporting requirements to identify disparities among agents, assess effectiveness.</li> </ul>	<p>Could be an important tool for controlling use of prison beds for PVTs (whether through revocation or residential re-entry). However, allowing MDOC to decide who should be in program, without any statutory criteria, creates large loophole. Not clear why all parolees shouldn't participate, since presumptive sanctions are required to account for parolee's risk and can be tailored to intensity of supervision.</p> <p>Would be desirable if reporting requirements included use of positive reinforcements.</p>	<p><b>Regardless of scope of "sanction certainty supervision" program, should apply 30-day incarceration limit and standard for revocation to all parolees. These are important reforms that would reduce the need for prison beds and treat parolees fairly without increasing risk to public safety.</b></p> <p>Need to clarify sec 58F(5) prohibiting sanctions for any violation that "may warrant" an additional, separate felony charge. Highly subjective. Does not address situation where criminal conduct may have occurred but was not prosecuted, regardless of reason.</p> <p>Need to clarify relationship to parole sanctions certainty pilot program funded in FY 16 budget and results of that program.</p>
<p>17 Shirkey [935</p>	<p>Creates the "supervising region incentive act" and an accompanying fund to receive money from any source,</p>	<p>Since funds can be used to assist regions to implement practices that reduce revocations, purpose of incentives is unclear. Treats FOA</p>	<p>Not clear why this is needed in addition to parole sanctions certainty. Could simply devote more funds directly to revocation reduction-</p>

Shirkey]	<p>including a GF approp. Money is to be spent by MDOC 1) as incentive to FOA regions that implement practices directed at parole and probation revocation reduction and/or 2) to assist regions to implement these practices.</p> <p>To be eligible for incentive funds, regions have to enter an agreement with the DOC to seek a 10% reduction in revocations within an 18-month period by implementing the practices, procedures and sanctions of parole sanction certainty.</p> <p>Incentive funds must be used for: Monitoring technology, job training, substance abuse and mental health treatment, approved parolee and probationer incentive programs, reimbursement for jail services, the hiring of additional agents and evidence-based cognitive and behavioral programs that have demonstrated success.</p> <p>Bill is tie-barred to SB 16.</p>	<p>regions as if they are autonomous entities with independent standing to contract with the MDOC, not administrative subdivisions of the MDOC itself. Appears to put the DOC in position of entering agreements with own employees to perform current tasks. Does not define basis for funding pot to be divided among regions so potentially puts administrative regions in competition with each other. Must regions also be selected for implementation of parole sanction certainty in order to qualify?</p> <p>Goal of 10% reduction in one year is highly ambitious. While funds are to be divided between parole and probation divisions within region, unclear whether proposal requires separate 10% reduction in each type of revocation or whether number of parolees and probationers could be cumulated with a 10% target for the total. Unlike parole, DOC does not control probation revocations. Could regions where courts decline to reduce probation revocations compensate with greater reductions in parole revocations? Incentive agreements create risk that agents would not recommend revocation when appropriate.</p> <p>Note that there is no limit on share of funds to go to jail reimbursement.</p>	<p>related programs.</p> <p>If goal is to increase creativity and flexibility at local level to ensure that expenditures can be tailored to local needs, could reserve a portion of fund for grants to be awarded by FOA. Regions could apply for supplemental funds to focus on specific needs of local probationers and parolees, e.g. for transportation or housing or mentoring. This could be similar to grant awards for community corrections and re-entry services and should be done in coordination with those local programs. Would need to broaden definition of how incentive funds can be used. Evaluation of innovative local efforts could then be used to add to inventory of evidence-based programs available statewide.</p>
23 Proos	<p>Amends swift and sure sanctions act in code of criminal procedure.</p> <ul style="list-style-type: none"> <li>Creates a fund within the</li> </ul>	<p>Excluded offenses are not probationable in any event per MCL 771.1.</p>	<p>None</p>

[948 Proos]	<p>state treasury to receive money to be expended by SCAO for swift and sure grants to circuit courts.</p> <ul style="list-style-type: none"> <li>Allows for swift and sure participants to transfer to other jurisdictions based on residence of participant or unavailability of program in charging jurisdiction.</li> <li>Defines probationer eligibility: receives a high risk score on a validated assessment instrument; receives a score other than high or low but judge, prosecutor, defendant agree; not charged with certain offenses.</li> </ul>		
24 Proos [949 Proos]	Amends revised judicature act to allow circuits to establish swift and sure specialty courts		None
<b>Miscellaneous</b>			
9 Proos [940 Proos]	Requires the MDOC to allow representatives from all nonprofit organizations (faith, business, professional, civic) that go through registration process to enter prisons for purpose of providing reentry services. MDOC is to put application on website and develop screening procedures. It may deny approval to those who don't meet	<p>Positive step to make opening up facilities to volunteers a higher priority than current MDOC policy directives. Sets no criteria for screening guidelines, e.g., objective risk to security or institutional order, so leaves MDOC lots of leeway to disapprove applicants.</p> <p>Examples of reentry services are very narrow. MDOC defines academic and vocational programs as reentry.</p>	<p>Require screening criteria to be based on potential risk to institutional order or security.</p> <p>Expand definition of reentry services to include any academic, vocational or skills training classes.</p>

	<p>guidelines and can always deny an individual entry to a given facility.</p> <p>Defines reentry services as including but not limited to counseling, providing info on housing and job placement, money management.</p> <p>Prohibits DOC from endorsing or sponsoring any faith-based program or religious message or requiring an inmate to participate in a faith-based program.</p>	<p>Anything that involves any type of learning should be expressly included.</p> <p>Facilities will be concerned about adequacy of space and staffing and possibility of redundant programs so everyone who registers as a volunteer won't be able to enter any particular prison whenever they want to. But standardized screening and easier application procedure is substantial improvement.</p>	
<p>12 Jones</p> <p>[941 Jones]</p>	<p>Shortens timing for several steps in commutation process when governor requests expedited review based at least in part on medical condition. Reduces maximum total time from 420 days to 190 days. Sets no release criteria. Says nothing re where people released would be housed.</p>	<p>Not necessary in light of the medical parole bills, which are designed to take the burden of decision in medical cases off the governor, encourage more and faster medical releases by simplifying the process, and provide placements for medically frail parolees.</p>	<p>Enact medical paroles..</p>
<p>14 Brandenburg</p> <p>[946 Brandenburg]</p>	<p>Creates a "work opportunity act". Has the dept. of talent and economic development create an employer reimbursement fund for grants to employers who hire probationers or parolees full-time.</p> <ul style="list-style-type: none"> <li>For someone who works at least 120 hours (3 weeks), the employer gets 25% of the first-year wage or \$1,500, whichever is less.</li> </ul>	<p>Criteria for employer eligibility are extremely low. Notably, the information employers are required to report doesn't include anything about the nature of the job or whether the person remains employed and, if not, why not.</p>	<p>Substantially lengthen time person must be employed to discourage "churning." Add incentives for training and promoting. Require reporting on nature of position and reasons for employment terminations. Set employer eligibility criteria that would allow for exclusion of those who do not appear to be making a good faith effort to retain employees.</p>

	<ul style="list-style-type: none"> <li>For someone who works more than 400 hours (10 weeks), it's 40% or \$2,400.</li> </ul> <p>Places cap of \$7,200 on amount an employer can receive per fiscal year.</p> <p>Is in addition to federal tax credit of up to \$4,200.</p> <p>Says the fund can receive money from any source but doesn't create any revenue stream.</p>		
15 Jones [934 Jones]	Permits judges to reduce by up to 100% the probation term of probationers who have served 50% of their terms, if the probation officer so recommends. Adds victim notification requirement. Permits the MDOC to notify the court when half-way point is reached. MDOC also required to give report re reduction to legislature.	Judges can already reduce probation terms as they choose. Bill appears to create internal inconsistency. New Sec. 2(2) allows for reduction after 50% of service upon probation officer recommendation while renumbered Sec. 2(4) says the court may amend an order of probation "in form or substance at any time." Need clarification as to intent.	Limit amendment to allowing MDOC to notify court when 50% of probation sentence has been served, along with recommendation re: whether to reduce term.
18 Horn [943 Horn]	Requires the FOA regions to report to DHHS probationers and parolees who have absconded and whom a law enforcement agency is actively seeking.		None
19 Zorn [944]	Prohibits DHHS from giving cash or food assistance to absconders		None

Zorn]			
20 Robert- son  [947 Robert- son]	Changes phrase "general education development certificate (GED)" to "high school equivalency certificate" in several places in statute	Technical fix to allow for flexibility in future if MDOC uses some certification program other than GED.	None
21 Warren [942 Warren]	Amends MCL 780.904, Crime Victims Rights Act to allow up to \$1 million/year of fund to be spent on child assessment centers for services to children who have experienced trauma or abuse. Defines a center as a facility providing a child-friendly, safe, neutral place for law enforcement, prosecutor, protective services worker to view forensic interviews. Also where child and non-offending family members can receive support, crisis counseling and ongoing therapy.	Domestic violence advocates oppose this use of Crime Victims' Rights funds.	None
22 Johnson  [945 Johnson]	Requires MDOC, unless there are specific circumstances preventing it, to house prisoners aged 18-22 only with others of same age. Also requires MDOC, to extent it is able, to provide these prisoners with programming for youth rehabilitation	Prisoners younger than 18 are already housed separately as required by PREA. Are roughly 3,200 prisoners aged 18-22. Not clear that facilities with only younger males are desirable. They can be very rough places. Mixed age populations allow older prisoners to exert a settling influence, tho also allow younger prisoners to prey on older ones. Age-specific programming can be provided within mixed-age prisons.  MDOC opposes.	None.

SB 50 Booher	Would allow MDOC to place prisoners in county jails that wish to participate. Prisoners would have to be Level 1, not serving for a sex offense, serving a determinate sentence.	<p>County jails are nothing like Level 1 prisons. Have no programming, no outdoor and generally no indoor recreation, have highly restrictive policies re mail/phones/visits, have limited access to health care and law libraries, don't allow possession of personal property like books, board games and radios.</p> <p>Would have no benefit for prisoners who would not be placed in jails in or near home counties. Would substantially reduce family contact. Would in no way promote reentry. Is designed to benefit counties financially.</p> <p>Only determinate sentences are for felony-firearm. Since 80% of people serving those sentences are African-American, bill would have disparate racial impact.</p> <p>MDOC opposes.</p>	Do not enact
R4 Gregory	Resolution to change name of MDOC to Department of Corrections and Rehabilitation.	Main reason not to would be cost	None