

CAPPS ANALYSIS/COMMENTS/RECOMMENDATIONS

MAY 16, 2016

This chart is in reference to the CAAPS article appearing in Volume 39, Issue 8 of the Criminal Defense Newsletter.

Bill no. Sponsor	Contents	Comments	Recommendations
Possible relationship to reducing size of prisoner population			
932 Proos	<p>Creates a system of “parole sanction certainty supervision” analogous to “swift and sure probation.”</p> <ul style="list-style-type: none"> • 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 charge.) Sanctions account for seriousness, frequency and parolee’s background. Also provides for rewards and incentives for compliance. • MDOC to decide which parolees are placed in the program. Participants get notice of sanctions in advance and agree to abide. • MDOC required to implement in 5 	<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>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. 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>Senate budget proposal includes \$940,000 for</p>	<p>Implementation issues differ from “swift and sure probation” since decision making all controlled by MDOC, not several hundred circuit judges. Also, swift and sure probation is one of several options, including fines, jail, prison and routine probation. Parole is only release option for prisoners not kept to their maximum. Difference is in level of supervision and nature of conditions.</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, with sanctions tailored to nature and frequency of violations and parolee risk as proposal suggests. The proposal permits excluding categories of parolees. Allowing the MDOC to potentially cherry-pick participants, e.g. by including only parolees least likely to be revoked or only a limited number, would not reduce revocations or provide accurate basis for evaluation.</p>

	<p>largest counties.</p> <ul style="list-style-type: none"> • Allows for up to 30 days' confinement as sanction. (Can only use local jails if reimbursement agreement.) • Only allows revocation for technical violations if there is "significant risk to prior victims...or the community at large... that can't be managed in ... community." • Has substantial reporting requirements to identify disparities among agents, assess effectiveness. 	<p>implementation.</p>	<p>If pilot testing is desired, could begin with fewer counties as opposed to selected parolees.</p> <p>Need to clarify sec 58F(5) prohibiting sanctions for any violation that "may warrant" an additional, separate felony charge. Does not address situation where criminal conduct may have occurred but was not prosecuted. Is it assumed that all unprosecuted alleged felony behavior is a risk to community and will result in revocation, regardless of nature, level of proof or reason not prosecuted? Or does it create potential situation where there are no consequences because neither sanctions nor revocation are permitted?</p> <p>Need to clarify relationship to parole sanctions certainty pilot program funded in FY 16 budget and results of that program.</p>
<p>933 Pros</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>Could reduce some need for local jail beds by limiting time probation violators could spend in jail, but would not impact prison beds. 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</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>agents to examine available information about revocation practices and develop voluntary revocation guidelines.</p>
<p>935 Shirkey</p>	<p>Creates the “supervising region incentive act” and an accompanying fund to receive money from any source, 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. They only get the money if they succeed.</p> <p>Incentive funds can 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>Since funds can be used to assist regions to implement practices that reduce revocations, purpose of incentives is unclear. Treats FOA 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. Clarity needed as to purpose.</p> <p>Goal of 10% reduction in one year is highly ambitious. 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>Not clear who must “approve” probationer and parolee incentive programs.</p> <p>Senate budget proposal</p>	<p>Could simply devote more funds directly to revocation reduction-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>

		includes \$3 million for this initiative.	
936 Emmons	An effort to have all supervision programs for probationers or parolees that receive state funds 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>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"> • How this compares to current practices and how those practices will affect the 4-year deadline. • What the increased expenses will be for programs, evaluation and oversight. • 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. • Whether there is adequate allowance for potentially useful programs that have not yet been definitively assessed. • Whether the requirement of case plans for low-risk individuals risks over-supervision with concomitant negative effects. <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</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>to include probation without jail. But phrase “community supervision” is not actually used in rest of bill.</p> <p>The Senate budget proposal contains \$13.5 million for this initiative. There is no way to assess possible impact on prison/jail beds.</p>	
Efforts apart from reducing size of prisoner population			
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. Requires the MDOC to notify the court when half-way point is reached. MDOC also required to give report re reduction to legislature.	Unclear what purpose of proposal is, other than to require MDOC to notify court when probationers have served 50% of their sentences. 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(3) says the court may amend an order of probation “in form or substance at any time.” Need clarification as to intent.	Limit amendment to requiring MDOC to notify court when 50% of probation sentence has been served, along with recommendation re: whether to reduce term.
937 Knollenberg	Defines recidivism for purpose of corrections code as “rearrest, reconviction or reincarceration in prison or jail within 5 years of release from incarceration, placement on probation or conviction, whichever is later, for misdemeanor and felony convictions and probation and parole violations.	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, resentencing and return to prison rates at one, two and three-year intervals after exiting prison or jail and after entering probation. 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.	Amend CJPC statute to include data on five-year recidivism rates, instead of this section of law.
938 Colbeck	Creates criminal justice data collection act. Establishes a criminal justice data collection and management program within the legislative council. Says	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:	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

	<p>the program is to “be implemented in not fewer than 1 county.” 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. Itemizes data about cases, convictions, sentences and recidivism to be collected and reported by counties, MDOC and SCAO on a daily basis. Puts responsibility for maintaining the database in DTMB and limits access to data to DTMB and legislative council.</p>	<ul style="list-style-type: none"> • State and local sentencing and release practices for felonies and jail and prison usage • Misdemeanor sentences and the detention of defendants pending trial • The effectiveness of sentencing guidelines • The populations and capacities of prisons and jails and the effectiveness of efforts to reduce recidivism. <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, why access is limited to DTMB, why daily reporting is required.</p>	<p>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>939 Nofs</p>	<p>Establishes a quarterly reporting requirement to legislative committees (but not ombudsman) 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</p>	<p>Requires reporting about all prisoners past their ERD but no action. HB 4138, the presumptive parole bill, not only provides 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. If information is desired about reasons for denying release to</p>	<p>Expand reporting requirement of HB 4138 to include reasons for denying release to all prisoners who have reached their earliest possible parole date.</p>

	<p>guidelines developed by the dept under sec. 33e considered by the parole board in denying parole” – but not the parole guidelines score itself.</p>	<p>other prisoners, that reporting requirement can be added.</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>	
940 Pros	<p>Requires the DOC 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. DOC is to develop screening procedures and may deny approval to those who don't meet guidelines. Must put application on website.</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>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. 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>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>
941 Jones	<p>Sets up a process to ostensibly expedite medical commutations. Only applies when governor requests expedited review based at least in part on medical condition. Still a very long process with open-ended points. Requires two separate notices to court and prosecutor – one to notify</p>	<p>Not necessary in light of HB 5078, the medical parole bill, which is designed to take the burden of decision in medical cases off the governor, encourage more medical releases by simplifying the process, and provide placements for medically frail parolees.</p>	<p>Enact HB 5078.</p>

	that commutation is being considered and one to notify that public hearing has been set. First is made before evaluation by bureau of health care. Implies that objections could stop process. Says nothing re where people released would be housed.		
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.	Appears to be desirable use of funds.	None
943 Horn	Requires the FOA regions to report to DHHS probationers and parolees who have absconded	Seems reasonable	None.
944 Zorn	Prohibits DHHS from giving public assistance to absconders	Also reasonable, so long as impact is only on absconder personally. As drafted, DHHS is not required to advise MDOC of assistance application which could contain information useful to locating absconder.	Clarify that prohibition applies only to absconder and not other members of household, as is clear in Sec.10b(1) for people with arrest warrants. Require DHHS to report information on application to MDOC.
945 Johnson	Requires MDOC, to extent it is able, to house prisoners aged 17-22 only with others of same age	17-year-olds are already housed separately as required by PREA. Not clear that facilities with only younger	None.

	at facilities with programming for youth rehabilitation	males are desirable. They can be very rough places. Mixed age populations allow older prisoners to exert a settling influence. Age specific programming can still be provided.	
946 Brandenberg	<p>Creates a “work opportunity act”. Has the DOC create an employer reimbursement fund for grants to employers who hire probationers or parolees full-time.</p> <ul style="list-style-type: none"> • 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. • For someone who works more than 400 hours (10 weeks), it’s 40% or \$2,400. <p>Says the fund can receive money from any source but doesn’t seem to contemplate a GF appropriation.</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.	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.
947 Robertson	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
948 Proos	<p>Amends swift and sure sanctions act in code of criminal procedure.</p> <ul style="list-style-type: none"> • Creates a fund within the state treasury to receive money to be expended by SCAO for swift and sure grants to circuit courts. • Allows for swift 	Excluded offenses are not probationable in any event per MCL 771.1.	None

	<p>and sure participants to transfer to other jurisdictions based on residence of participant or unavailability of program in charging jurisdiction.</p> <ul style="list-style-type: none"> • Defines probationer eligibility to exclude certain offenses. 		
949 Proos	Amends revised judicature act to allow courts to accept swift and sure participants from other jurisdictions	Mirrors provision in 948.	None
R257	Resolution to change name of MDOC to Department of Corrections and Rehabilitation.	Main reason not to would be cost	None

The Citizens Alliance on Prisons and Public Spending (CAPPS) is a non-profit public policy organization. We are concerned about Michigan's excessive use of punitive strategies rather than preventive ones to deal with crime and its impact on our quality of life. CAPPS advocates re-examining those policies and shifting our resources to services that prevent crime, rehabilitate offenders and address the needs of all our citizens in a cost-effective manner. For more information about CAPPS's research, recommendations, or to get involved, please go to the CAPPS website at www.capps-mi.org or email Laura Sager, executive director, at capps@capps-mi.org.

If you are interested in helping with CAPPS's public education and outreach efforts, please email Laura Sager at lmsager@capps-mi.org.