



**House  
Legislative  
Analysis  
Section**

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**RESTRICT COMMUNITY CORRECTIONS PRISONERS**

House Bill 4813 as passed by the House  
Second Analysis (2-9-90)

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Sponsor: Rep. Kay Hart  
Committee: Corrections

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**THE APPARENT PROBLEM:**

In response to the explosion in prison populations in recent years, and to assist in providing increased options for sentencing judges and in alleviating the problem of overcrowding, community diversion programs were promoted nationally to provide training, counseling and job placements for offenders to be successfully reintegrated into society and thereby reduce or eliminate the potential for recurring criminal behavior. In Michigan, at least 151 ongoing community corrections programs, serving a total of 29,757 offenders, were identified in a 1986 survey, and a House Fiscal Agency analysis in 1988 identified between 300 and 700 potential diversions. Public Act 511 of 1988 created the Community Corrections Act to establish state policy on community based corrections programs. These alternative corrections programs were intended not only as a means of reducing prison overcrowding, but as a means of providing a rehabilitative alternative to "idle" prison life, with its exposure to other criminal personalities. The focus would be on programs that expected growth and held prisoners accountable for their behavior. Almost immediately, however, community corrections programs came under scrutiny because of crimes committed by halfway house residents and other prisoners in the program. Critics maintained that, in using the program to help relieve overcrowding, the corrections department had placed prisoners in the community who should not have been placed there. Although it was difficult to ascertain exactly how much halfway house prisoners contributed to local crime problems, it was generally acknowledged that problems with the community corrections program had increased. Legislation was introduced to alleviate the problems through administrative approaches such as closer monitoring of community corrections program prisoners and stricter enforcement of department regulations. The legislation was vetoed by the governor, who instead requested that the Department of Corrections issue policy directives establishing stricter regulations for halfway house residents, with special emphasis on penalties for major misconduct substance abuse violations. Although the policy directives became effective March 1, 1989, it is felt that enacting the requirements in statute would reduce problems experienced with failures to adhere to department policy.

**THE CONTENT OF THE BILL:**

The bill would amend the Department of Corrections act to provide for certain restrictions on prisoners placed in community corrections facilities. Under the bill, the Department of Corrections would be required to promulgate rules to prescribe the major misconduct violations, and any other factors, including posted rule violations, which could be a basis for having a prisoner returned to a correctional facility. The department would also be required to establish curfews, which every prisoner, with the possible exception of those who were employed, in school, or participating in special treatment services, would be required to adhere to.

Under the bill, prisoners in community corrections placement would be required to adhere to the following rules. (Community corrections placement" is defined under the bill to mean a community residential home or a community corrections center.)

- Prisoners would either be employed or participants in an educational or training program, or would be required to seek employment, unless participating in special treatment services.
- Prisoners would participate in substance abuse counseling or other special treatment services, if available, and if recommended by either the department staff that determined community corrections placement eligibility, or by community corrections placement staff.
- Each day, before leaving, prisoners would be required to provide community corrections center staff with their intended destination, which the staff would register in a log book. The staff would be required to conduct weekly random verifications of employment and job performance or other destinations to which a prisoner had signed out.
- Prisoners could not knowingly enter or remain on the premises of establishments which had as their primary purpose the sale of alcoholic liquor for consumption on the premises, unless employed or seeking employment there.
- Prisoners would receive random biweekly screenings for the detection of alcohol, marijuana, diazepam, amphetamines, barbiturates, morphine, methadone, cocaine, codeine, propoxyphene (Darvon), and other substances, as provided by rules promulgated by the department.
- Prisoners found guilty of one major misconduct violation that required detention prior to an administrative hearing would immediately be reclassified to a state correctional facility and would only be eligible for community corrections placement after a parole date had been set. Prisoners found guilty of one major misconduct violation could also be reclassified to a state correctional facility if the department determined that the circumstances and behavior of the prisoner warranted the action.
- Prisoners found guilty of a major misconduct violation involving substance abuse would be required to participate in a department-approved substance abuse program for a first violation. A second violation would result in immediate transfer to a state correctional facility, and the prisoner would only be eligible for community corrections placement after his or her parole date had been established.
- 90 days after the effective date of the bill, only those prisoners with community status classification on both management and confinement levels would be placed or transferred into a community corrections placement. A prisoner would not receive community corrections

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placement if he or she had been assigned a security classification of community status as a result of a waiver, departure, or any other procedure other than a full initial classification or classification review.

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### **FISCAL IMPLICATIONS:**

According to the House Fiscal Agency, it has been estimated that the average annual cost of keeping a prisoner in prison is \$20,700. The cost for community based programs, on the other hand, ranges from an average of \$30 per day for probation residential centers to an average cost of \$1,200 per year for service provider programs. While it is impossible to estimate how many community residential program residents will be reclassified and returned to prison as a result of the bill, 351 prisoners were reclassified from March 1, 1989 to October 15, 1989, as a result of the governor's requested policy directives. (11-2-89)

### **ARGUMENTS:**

#### **For:**

The personal freedom granted to prisoners who are placed in community settings makes it essential that they be adequately monitored in order to guard the public safety. There is a need to swiftly identify abuses of privilege and respond to them as they occur. Prisoners who prove unfit for community corrections placement should be promptly returned to prison. The bill would meet these demands by specifying the administrative actions that should be taken to ensure that prisoners who are in the community corrections program obey the rules and prepare to re-enter society. Although most of the bill's requirements are already department policy, enacting the requirements in statute should reduce problems experienced with failures to adhere to department policy.

#### **For:**

The bill would protect the public by ensuring that only low-risk prisoners receive community corrections placement. The department employs a security classification system for its prisoners which dictates where a prisoner is placed. Unfortunately, the department sometimes waives a prisoner's classification and places the person in a facility less secure than indicated by his or her classification. The bill would prohibit the department from placing "waivered" prisoners in community corrections facilities. In addition, the bill would make a return to prison guaranteed for prisoners found guilty of a second major misconduct substance abuse violation. Many violent crimes are committed by people under the influence of alcohol or other drugs, and robbery and violence often accompany efforts to obtain drugs. The risk to the public is enough to warrant sending a prisoner back to prison after one or two substance abuse misconducts.

#### **Against:**

The bill would restrict the department's flexibility in handling prisoners by attempting to establish a simple procedure by which it would be decided which prisoners could or could not be placed in a community residential program. However, the department, by necessity, must take many factors into account when assessing a prisoner's security classification. The department only waives security classifications in order to cope with staggering overcrowding. If the department could not waive security

classifications when necessary and place otherwise well-behaved prisoners where space was available, worsened crowding in high-security facilities would soon lead to serious eruptions of violence. In addition, current department policy provides for up to four substance abuse violations before a return to prison is guaranteed. That these policies have been effective since their implementation in March, 1989, is evident in that the percentage of CRP residents with positive drug tests has decreased continuously from 11.7 percent in January to 7.2 percent in August 1989. From March 1, 1989, through October 15, 1989, the department estimates that approximately 351 CRP residents were reclassified for receiving three positive substance abuse tickets.

#### **Against:**

The bill's provision that CRP residents be reclassified if found guilty of certain major misconduct violations is not good public policy. Prisons are already overcrowded, and those who are sent to community residential programs are the "cream of the crop." Recent studies have shown that, while imprisonment offers the public protection from a small number of criminals (10 to 20 percent) who are violent and need a secure facility, 34 percent of the people in jail are not convicted but are awaiting trial, 27 percent of crimes are substance abuse related, and 55 percent of crimes are committed while under the influence of alcohol. For these prisoners punishment need not be synonymous with incarceration. There are more effective, less costly, more humane ways to punish. Community residential programs reduce the amount of public funds normally expended on imprisonment.

#### **Against:**

The requirement that all prisoners be tested randomly every two weeks for drugs — even those who do not appear to have drug problems — would be very expensive, and at present the department is scrambling to find funds for drug testing. Drug testing also exacerbates morale problems among prisoners and staff, because the testing is done on urine samples that must be obtained in the presence of a staff person, a particularly unpleasant duty for staff, and one which also makes it more difficult to find and retain qualified personnel for the community corrections program. It would make more sense to test only when there is reason to do so, and since drug use among residents is highly noticeable this wouldn't be difficult.

**Response:** The certainty of being tested would provide a strong incentive for prisoners to stay away from hard drugs. Further, the proposed testing would identify prisoners in need of drug treatment before their release, and before a drug problem manifested itself in other ways. Early detection of drug problems would enable early enrollment in a drug treatment program.

### **POSITIONS:**

The Michigan Sheriffs' Association supports the bill. (2-8-90)

The Michigan Association of Counties supports the bill. (2-8-90)

Michigan Community Corrections Training has no position on the bill. (1-2-90)

The Michigan Trial Lawyers Association has no position on the bill. (1-4-90)

The Michigan Corrections Organization/SEIU Local 526M has no position on the bill. (1-9-90)

The Department of Corrections opposes the bill. (1-4-90)

The Office of the Legislative Corrections Ombudsman opposes the bill. (1-5-90)

The Michigan Council on Crime and Delinquency opposes the bill. (1-5-90)

The Office of Substance Abuse Services in the Department of Public Health opposes the bill. The office supports the concept of the bill but objects to its lack of specificity regarding implementation and financing.(1-4-90)