

## BOOT CAMPS AND COMMUTATIONS

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**House Bills 4184 and 4272 as introduced**  
**Sponsor: Rep. Paul Condino**

**House Bill 4475 with House committee amendment**  
**Sponsor: Rep. Mark Meadows**  
**Committee: Judiciary**

### **First Analysis (3-22-07)**

**BRIEF SUMMARY:** House Bills 4184 and 4272 would expand the eligibility for placement in a prison boot camp to include prisoners and probationers who had previously been sentenced to prison and who already completed a program in boot camp. House Bill 4475 would create an expedited process for commutation for prisoners who were physically or mentally incapacitated or terminally ill.

**FISCAL IMPACT:** The bills would have a fiscal impact on state and local governments. A more detailed discussion follows in the Fiscal Information section.

### **THE APPARENT PROBLEM:**

In light of continuing revenue shortfalls, state departments continue to look for ways to reduce costs and increase efficiencies. Recently, several measures have been proposed to reduce costs generated by the corrections system. In particular, some feel that the pool of eligible candidates for placement in prison boot camps could be expanded without jeopardizing public safety.

In addition, it has been noted that the state's prison population is aging and that many prisoners no longer pose a risk to the public due to advanced age and illnesses associated with old age. Some of these prisoners have terminal illnesses. Furthermore, many prisoners have been diagnosed with severe mental illness. Prisons are not equipped to provide the level of medical care needed by severely or terminally ill prisoners, nor to deliver the mental health services needed by severely mentally ill prisoners. Transporting prisoners to nearby hospitals for treatment greatly increases the cost to provide constitutionally-mandated medical care. Meanwhile, the state constitution authorizes the governor to issue reprieves, pardons, and commutations of sentences. An application for commutation can be based on physical or mental incapacity. However, the process can be lengthy (up to a year or longer). Recently, a prisoner being considered for a medical commutation died before the process could be completed. If there was an expedited process for prisoners who were seriously ill or with severe mental illness, they could be moved to facilities, or home with relatives, who could provide the needed care; again, without a risk to public safety but with a cost savings to the state.

## ***THE CONTENT OF THE BILLS:***

### House Bills 4184 and 4272

The bills would amend two different acts to allow a prisoner serving a second sentence to be eligible for placement in the Special Alternative Incarceration Program (SAI), or boot camp. The bills would also allow a prisoner who previously had been in the SAI to be placed a second time.

House Bill 4184 would amend the Corrections Code (MCL 791.234a) to revise the eligibility criteria for placement in the Special Alternative Incarceration Program (SAI) to allow a prisoner serving his or her first or second prison sentence to be eligible.

In order to be eligible for placement in the SAI, the code currently requires that a prisoner never have been previously placed in an SAI unit as either a prisoner or probationer; an exception is made for a person removed for medical reasons. The bill would eliminate this provision. A person removed due to medical reasons could still be replaced in an SAI unit under other provisions in the code.

The code excludes from eligibility for placement in a boot camp persons serving sentences for certain assaultive and violent crimes, sex offenses, riot, and arson and also habitual offenders. These provisions would remain intact except that references to two crimes involving railroad trains that were previously repealed by Public Acts 290 and 291 of 2002 would be deleted.

In addition, the bill would replace references to the Crime Victim's Rights Act with the "William Van Regenmorter Crime Victim's Rights Act" to reflect the change in name of that act.

House Bill 4272 would amend Chapter XI the Code of Criminal Procedure (MCL 771.3b), which applies to probationers, to delete a provision that currently specifies that a person not be incarcerated in an SAI unit more than once. To be eligible for placement in the SAI, the code currently requires that the person had never served a sentence of imprisonment in a state correctional facility; this provision would also be deleted.

### House Bill 4475

The bill would establish a mechanism to expedite a request for a commutation of sentence for a prisoner based on physical or mental incapacity or for a terminally ill prisoner.

When the parole board receives an application for a reprieve, commutation, or pardon, it must conduct a review to determine if the request has merit; deliver its determination to the governor; forward specified documentation to the sentencing judge and county prosecutor; direct the Bureau of Health Care Services to evaluate the condition of the prisoner in question if the application or initiation for commutation is based on physical

or mental incapacity; make a full investigation and determination on whether or not to proceed to a public hearing; conduct a public hearing after first sending notices to certain people as required; and transmit its formal recommendation to the governor. Though there are specified time periods for some of these steps, the entire process can still exceed a year (up to 15 months) just to deliver the board's recommendation to the governor.

The bill would amend the Corrections Code to shorten the process for prisoners seeking a commutation based on physical or mental incapacity or who had less than six months to live. The following changes would be made:

- Currently, the sentencing judge and county prosecutor having jurisdiction of the case may file information at their disposal, along with any objections, in writing within 30 days of receiving the written notice of the filing of the application or initiation of the request for commutation. Under the bill, in the case of a proposed commutation based on physical or mental incapacity, a response would have to be filed within 10 days. The current 30-day time period would still apply in all other situations.
- Currently, written notice of the required public hearing on a commutation must be provided at least 30 days before the hearing to the state attorney general, the sentencing trial judge, the county prosecutor, and each victim requesting notice under provisions of the William Van Regenmorter Crime Victim's Rights Act. The bill would shorten the time-period for notification of a public hearing conducted for a proposed commutation based on physical or mental incapacity to at least 14 days before the public hearing and would allow the notice to be provided at the same time the notice described above was provided to the sentencing judge and county prosecutor.
- Currently, when an application or initiation for commutation is based on mental or physical incapacity, the prisoner's condition must be evaluated and reported by the Bureau of Health Care Services. If it determines the prisoner is mentally or physically incapacitated, the bureau must appoint an appropriate specialist, not employed by the Department of Corrections, to also evaluate and report on the prisoner's condition. Both of the evaluation reports must be provided to the governor. The bill would waive the requirement for a public hearing for a proposed commutation based on mental or physical incapacity if both of the evaluation reports gave the prisoner a life expectancy of six months or less and the parole board gave written notice of the proposed commutation to the attorney general, sentencing judge, prosecuting attorney (or their successors in office), and each victim requesting notification. The written notice would have to request a written response be given within 14 days as to the proposed commutation and could be made simultaneously with the first notice made to the sentencing judge and prosecutor described above. Any written responses would have to be forwarded to the governor along with the parole board's final recommendation and would be matters of public record. This provision would

not apply to a prisoner serving a sentence for a listed offense as defined in the Sex Offenders Registration Act.

- The bill would also specify that a provision allowing the parole board to grant a medical parole for a prisoner determined to be physically or mentally incapacitated would not preclude a prisoner from seeking a commutation based on physical or mental incapacity.

### ***FISCAL INFORMATION:***

#### **HB 4184 (Prisoners)**

The FY 2006-07 budget for the Department of Corrections (MDOC) assumes enactment of legislation to extend boot camp eligibility to offenders who had once previously been in prison. In a request submitted February 8, 2007 for FY 2006-07 supplemental appropriations, the Department of Management and Budget noted that "should the legislature fail to enact proposed boot camp placement changes that were agreed to as part of the original FY 2007 budget, the projected unfunded bed liability will increase by \$4 million."

In Spring 2006, the Department of Corrections estimated that if boot camp eligibility were extended to prisoners who had once previously been in prison, about 400 prisoners might immediately be placed in special alternative incarceration (SAI, or boot camp), and about 80 additional prisoners in annual intake might be placed in boot camp. These figures were based on assumptions that in about two-thirds of the cases, the sentence would contain no prohibition against SAI placement, and that 98 percent of the resulting pool of eligible prisoners would volunteer for boot camp.

Available data do not indicate how many offenders might be affected by provisions that would extend boot camp eligibility to prisoners who had previously been placed in boot camp.

#### **HB 4272 (Probationers)**

Available data do not indicate how many additional probationers might be sentenced to boot camp under the bill. To the extent that offenders who otherwise would have been sentenced to prison were instead sentenced to and successfully completed boot camp, HB 4272 could reduce costs that MDOC otherwise would incur for those offenders.

According to the Department of Corrections, appropriated costs per offender of boot camp and Level I incarceration are as follows:

FY 2006-07 Appropriated Costs per Offender				
	Boot Camp <sup>1</sup>		Level I	
	Gross	GF/GP	Gross	GF/GP
<b>Per Diem</b>	\$77.41	\$76.38	\$61.29	\$60.54
<b>Per 90 days <sup>2</sup></b>	\$6,967	\$6,874	n/a	n/a
<b>Annually</b>	n/a	n/a	\$22,370	\$22,097
<i>Notes:</i>				
1. These figures do not include subsequent costs of residential placement or continued parole or probation supervision				
2. The boot camp program typically runs 90 days, but may be extended to up to 120 days due to medical reasons or if the department determines that the offender has not made adequate progress				

### House Bill 4475

To the extent that the bill enabled commutations and subsequent paroles to be completed more quickly, the department could experience savings. There is no information to indicate the amount of savings. Savings would depend on the numbers of prisoners affected, the degree to which lengths of stay were reduced, and the costs of incarceration.

### **ARGUMENTS:**

#### ***For:***

House Bills 4184 and 4272 would enact provisions agreed upon for the Department of Corrections for Fiscal Year 2006/2007. Without the enactment of these provisions to expand eligibility for placement in prison boot camps, or SAI, the state would face an additional budget shortfall of approximately \$4 million; that would be in addition to the \$900 million deficit the state is facing for the current fiscal year.

The bills simply allow the DOC to place in a boot camp a prisoner or probationer who had already served one prison sentence or who had already been placed in a boot camp (SAI) previously. Of the 10,000 prisoners presently incarcerated who are on their second or subsequent prison sentences, about 620 would be eligible for placement based on the type of crimes committed. Of those, it is expected that further screening would reduce the number to about 400. It is not clear at this time how many prisoners that could have been sent to prison would be diverted to boot camp. However, the savings would be significant.

It is believed that some prisoners could benefit from a second chance in a boot camp. The discipline afforded by the experience may aid in a person's rehabilitation and successful transition into the community. Other than the changes proposed by the bills, all other criteria for placement would remain the same. Therefore, risks to the public would not be increased by these changes.

***For:***

The governor already has authority to commute a prisoner's sentence. House Bill 4475 would only affect requests for commutations based on medical or mental health needs. Since the prison population affected by the bill represents the oldest and/or sickest of prisoners, the public's safety would not be jeopardized. Many of these prisoners are now bed-ridden or so physically incapacitated that it would be impossible for them to reoffend. Reportedly, there are no incidents in which a prisoner whose sentence was commuted due to illness committed a new crime. In addition, the rights of victims or their families to have input would still be protected. However, the current process is too long for severely ill prisoners or prisoners facing a terminal illness; at least one person has died recently while waiting for the request to go through all the steps required by statute.

House Bill 4475 has the potential for significant savings to the Department of Corrections by shifting the costs to provide medical services for severely ill or terminal prisoners to Medicaid, which is funded by state and federal dollars. In addition, nursing homes, hospices, and even home-based care would provide a more appropriate setting in which to deliver needed medical or end-of-life care and mental health facilities and out-patient treatment programs would be more appropriate to render psychiatric care.

***Against:***

Opponents of the House Bill 4475 feel that it is unfair to the victims of these prisoners for them to be released earlier, for any reason, even if they don't pose a threat to public safety.

***POSITIONS:***

The Department of Corrections supports the bills. (3-21-07)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.