

Legislative Analysis



PAROLE SANCTION CERTAINTY ACT AND SUPERVISING REGION INCENTIVE PROGRAM ACT

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Senate Bill 16 as enacted
Public Act 1 of 2017
Sponsor: Sen. John Proos

Analysis available at
<http://www.legislature.mi.gov>

Senate Bill 17 as enacted
Public Act 11 of 2007
Sponsor: Sen. Mike Shirkey

House Committee: Michigan Competitiveness
Senate Committee: Michigan Competitiveness
Complete to 4-12-19

BRIEF SUMMARY: The bills do the following:

Senate Bill 16 creates the Parole Sanction Certainty Act and the Parole Sanction Certainty Program—a Program that will utilize a set of established graduated sanctions to supervise eligible parolees placed on parole. The act requires non-confinement sanctions to be developed and restricts the use of confinement sanctions to not more than 60 days. Participation in the Program will be voluntary, though eligibility will be determined by the Department of Corrections. The DOC will be required to implement the Program in at least the five counties in the state in which the greatest number of individuals convicted of a crime are sentenced to incarceration under its jurisdiction, but could expand implementation of the Program to additional counties.

Senate Bill 17 requires the DOC to adopt a Supervision Region Incentive Program—a Program with financial incentives offered to field operations administration regions (geographic areas that oversee supervised individuals) to assist them in implementing supervision practices directed at reducing the numbers of parole and probation revocations. Some funds would be provided to assist in initial implementation, with additional funds from the newly created Supervising Region Incentive Fund being granted if the FOA achieves a measurable reduction in revocations within a specific time period. The act will be repealed five years after enactment.

The bills, which took effect June 29, 2017, are part of a larger package of legislation to implement corrections reforms that includes Senate Bills 5 to 15, 17 to 24, and 50.

FISCAL IMPACT: The bills would have fiscal implications for the state and local units of government. See *Fiscal Information*, below, for a more detailed discussion.

THE APPARENT PROBLEM:

Costs to incarcerate prisoners continue to be a significant portion of the state's annual budget. Of Michigan prisoners, about 50% are incarcerated for parole or probation violations. A program for probationers started several years ago in some courts called the Swift and Sure Sanctions Program is said to be showing remarkable success in aiding probationers at high risk

of being returned to prison to remain in the community. Some feel that if a program of non-prison sanctions were created for offenders who violate parole that corrections costs could further be reduced without endangering the public.

In a related matter, some believe that those who supervise parolees and probationers should be encouraged in their efforts to provide more assistance to help offenders successfully comply with the terms of their release. Reportedly, some states offer financial incentives by way of increased funding to supervising agent's departments if the supervision results in reduced revocation rates. Legislation has been offered to create programs that could increase compliance with conditions of probation and parole and reduce the number of offenders that return to prison for certain parole or probation violations.

THE CONTENT OF THE BILLS:

Senate Bill 16

The bill creates the Parole Sanction Certainty Act and places the new act within the Corrections Code as a new Chapter IIIB. The bill also creates the Parole Sanction Certainty Program within the Department of Corrections (DOC).

By January 1, 2018, the DOC must adopt a system of graduated sanctions for violations of conditions of parole for offenders supervised under the Parole Sanction Certainty Program. Graduated sanctions adopted under the bill must utilize evidence-based practices demonstrated to reduce recidivism and increase compliance with conditions of parole based on the identified risk and needs of the supervised individual as determined by a validated risk and needs assessment.

The Program must be implemented in at least the five Michigan counties having the greatest number of individuals convicted of criminal violations who are sentenced to incarceration under the supervision of the DOC. (This will be determined using the DOC's annual statistical report). The DOC could implement the Program in additional counties. In developing a plan for implementation, the DOC is required to consult with and seek recommendations from local law enforcement agencies in each county where the Program is implemented, including the sheriff's departments, circuit courts, county prosecutor's offices, and community corrections Programs.

Currently, felons eligible for parole come under the jurisdiction of the Parole Board after serving at least their minimum sentences. If paroled, they must meet certain conditions or face sanctions. Some conditions are general and apply to all parolees; other conditions may be more specific to the offender. Violating conditions of parole, even a technical violation (e.g., failing to show up for an appointment with the parole agent or drinking), may subject the parolee to more intensive case management by the parolee's parole agent, community service, substance-abuse treatment, or even a return to prison if the parolee poses, or appears to pose, a threat to public safety.

Under the bill, eligible parolees who consent to placement in the Parole Sanction Certainty Supervision Program will be subject to a wide range of non-prison sanctions established by the DOC for violations. A violation could also result in confinement for not more than 60 days if parole were not going to be revoked. After completion of the confinement, the supervised

individual could be returned to parole sanction certainty supervision under the same terms of supervision under which previous supervision was conducted, or under new terms at DOC's discretion. However, nothing in Chapter IIIB prevents a parolee from arrest under Section 39, which provides for warrantless arrests for parole violations, or the revocation of parole under Section 40a (for example, if the parolee commits a new crime).

The bill applies only to “supervised individuals,” those individuals placed on parole subject to parole sanction certainty supervision. *The DOC, in consultation with the parole board, is responsible for determining which offenders will be placed in the community on parole under the Program.*

During the initial orientation with the supervising agent, the supervised individual must be informed in person of the conditions of that parole sanction certainty supervision. The supervised individual must also sign a written agreement to abide by those conditions or to be immediately subject to graduated sanctions or to parole revocation under Section 40a, whichever is determined by the DOC to be appropriate.

“Graduated sanction” is defined to mean any of a wide range of offender accountability measures and programs. These include, but are not limited to, electronic supervision tools, drug and alcohol testing and monitoring, day or evening reporting centers, community service or work crew, rehabilitative interventions such as substance abuse or mental health treatment, counseling, reporting requirements, residential treatment, confinement, and incarceration.

Sanctions

The Program must establish a list of presumptive graduated sanctions for the most common types of supervision violations, such as failing to report or to participate in a required program or service; failing to complete community service; not refraining from the use of alcohol or controlled substances; failing to pay fines, fees, or victim restitution; violating a protective or no-contact order; refusing to complete a drug test; possessing a firearm; or being involved in a felony-related activity.

Graduated sanctions adopted under the Program must utilize evidence-based practices demonstrated to reduce recidivism and increase compliance with parole conditions based on the identified risk and needs of the supervised individual as determined by a validated risk and needs assessment (a tool or tools adopted by the DOC that have been validated regarding effectiveness in determining a supervised individual's likely risk of re-offense, violent re-offense, or both, as well as the offender's criminogenic needs).

To the extent possible, the system of graduated sanctions must be uniform throughout the state for all parolees subject to supervision under the Program. The system of graduated sanctions must also take into account certain factors, including: severity of the violation, the impact of the violation on the well-being of the victim, the supervised individual's previous criminal record, number and severity of any previous supervision violations, the supervised individual's assessed risk level, the supervised individual's needs as established by a validated risk and needs assessment, and the extent to which graduated sanctions were imposed for previous violations. The DOC must also establish a process to review and approve or reject—before imposition—graduated sanctions that deviate from these.

The imposition of a sanction must comport with the system of graduated sanctions adopted by the DOC under the Parole Sanction Certainty Act. Sanctions specified and imposed are immediately effective. *Failure to comply with a sanction will constitute a violation of parole.*

The system must also define positive reinforcements that supervised individuals will receive for complying with their conditions of supervision. If the individual successfully completes conditions imposed under a graduated sanction, the DOC could not revoke the assigned term of parole sanction certainty supervision or impose additional graduated sanctions for the same violation.

Violating conditions of the Program

Violating any condition of parole sanction certainty supervision will subject the parolee to one of the following:

- A non-confinement sanction. The term is defined to mean a violation sanction that does not result in imprisonment in the custody of the DOC or the county jail, and includes, but is not limited to, the following: extension of the period of supervision within the time period provided by law; additional reporting and compliance requirements; testing for the use of controlled substances or alcohol; or counseling or treatment for behavioral health problems, including substance abuse.
- A confinement sanction.
- Parole revocation proceedings under Section 40a of the Code and possible incarceration for failure to comply with a condition of supervision.

The DOC may do either of the following if the parolee violates a condition of parole sanction certainty supervision:

- Modify the conditions of supervision for the limited purpose of imposing sanctions.
- Place the parolee in a state or local correctional or detention facility or residential center for a period specified in the list of presumptive sanctions (to be established by the DOC) or as otherwise provided in the bill. If placed in a local correctional or detention facility, the individual could only be placed in a facility that agrees to take the individual and with whom the DOC has an existing reimbursement agreement.

Modifications of conditions of supervision

If the conditions of parole sanction certainty supervision are to be modified by imposing a graduated sanction, the supervising agent must issue to the parolee a notice of this intended graduated sanction and note the date of delivery of the copy in the parolee's file. The notice must inform the parolee of each violation alleged, the date of the each violation, and the graduated sanction to be imposed. The agent must also file a copy of the modified conditions with the DOC.

Sanction involving confinement

If the parole will not be revoked under Section 40a for a violation of the terms of parole sanction certainty supervision, the parolee could be subject to a confinement sanction and be confined in a correctional or detention facility for not more than 60 days. After the confinement is completed, the parolee may be returned to parole sanction certainty supervision under the same terms of supervision under which the parolee had been supervised, or under new terms at the discretion of the DOC.

If the parolee is employed, the supervising agent must, to the extent possible, impose the sanction for weekend days or other days or times when the parolee is not working.

Further, the DOC must review, on a biannual (twice per year) basis, confinement sanctions recommended by supervising agents in the counties where the Parole Sanction Certainty Program is implemented to assess any disparities that may exist among the use of confinement sanctions by supervising agents and evaluate the effectiveness of the sanction as measured by the parolees' subsequent conduct.

Biannual report to the Legislature

The DOC must also report all of the following on a biannual (twice per year) basis to the House and Senate committees concerned with corrections issues:

- The number of supervised individuals whom the parole board, in consultation with the parole board, has referred for supervision under the Program.
- The number of supervised individuals currently being supervised under the Program.

Senate Bill 17

The bill creates the Supervising Region Incentive Program Act to require the Department of Corrections (DOC), by January 1, 2018, to adopt a supervising region incentive program to be offered to field operations administration regions (FOAs) that agree to seek a measurable reduction in parole and probation revocations.

The act will be repealed five years after enactment.

“Field operations administration region” is defined to mean one of the geographic regions delineated by the DOC that oversee offenders within the region. “Offender” means an individual placed on felony probation or serving a period of parole.

Program eligibility

Eligibility to receive funding from the Supervising Region Incentive Fund (described below) requires an FOA region to enter into an agreement with the DOC to seek a measurable reduction in parole and probation revocations. The reduction in revocations is to be achieved by implementing the practices, procedures, and sanctions, as applicable, under the Parole Sanction Certainty Act (created by Senate Bill 16) as well as other efforts to reduce parole and probation revocations.

Initial funding and implementation

A portion of the money in the Fund, as described in the bill, will be available to an FOA region that enters into an agreement to reduce revocations to be used to begin implementing the supervision practices described above. The time period for seeking the measurable reduction in revocations begins to run when (and if) an FOA region accesses funds to begin implementing the supervision practices.

The FOA region must work with local law enforcement agencies within its region, including sheriff's departments, circuit courts, county prosecutor's offices, and community corrections programs in developing the region's plan to reduce parole and probation revocations.

Receiving incentive funding

An FOA region will only receive incentive funding for the quarters in which it achieves a measurable reduction in parole and probation revocations as compared to the previous quarter. The DOC must, on a quarterly basis, provide the FOA region an equal share of 20 percent of the total incentive funds available in the Fund calculated as described in the bill. Incentive funding must be divided between the parole and probation divisions within the FOA region in a manner commensurate to the percentage of offenders in each division.

Incentive funding must be used only for the following purposes:

- The purchase and maintenance of monitoring technology.
- Job training.
- Substance abuse treatment.
- Mental health counseling and treatment.
- Approved parolee and probationer incentive programs.
- Hiring additional supervising agents to reduce supervision officer caseloads.
- Reimbursement for jail services.
- Evidence-based cognitive or behavioral programs and practices that have demonstrated success in reducing recidivism.

The Supervising Region Incentive Fund

The Fund is created within the state treasury, and the treasurer may receive money or other assets from any source—including General Fund appropriations, gifts, grants, and bequests. All interests and earnings from fund investments will be credited to the Fund, and money in the Fund at the close of a fiscal year will remain and not lapse to the General Fund. The DOC will be the Fund’s administrator for auditing purposes. The DOC can only expend money from the Fund, upon appropriation, only for the following:

- As an incentive to FOA regions that implement supervision practices, procedures, and sanctions directed at parole and probation revocation reduction within the region; and/or,
- To assist FOA regions to implement supervision practices, procedures, and sanctions directed at parole and probation revocation reduction within the region.

The DOC could not expend money from the fund to provide direct monetary payments to a supervising agent.

Annual report

The DOC must submit an annual report, by November 1, to the members of the Senate and House appropriations subcommittees on corrections and the Senate and House fiscal agencies, providing all of the following:

- Which and how many FOA regions are participating in the Supervising Region Incentive Funding Program.
- The total, if any, of avoided costs of incarceration and avoided costs to victims realized through implementation of the supervision practices, procedures, and sanctions described in the bill for offenders. “Avoided costs” means the amount of money that the DOC would have expended if there were no reduction in the number of parole or probation revocations within an FOA region calculated based upon historical data compared to actual DOC costs for offender monitoring.

- The total, if any, of avoided costs of the probation or parole revocation process realized through implementation of the supervision practices, procedures, and sanctions described in the bill for supervised individuals.

FISCAL INFORMATION:

Senate Bill 16 would have an indeterminate fiscal impact on the state and on local units of government. If implementation of the Parole Sanction Certainty Program results in a reduced number of parolees returning to prison, there would be a savings to the state. The average cost of prison incarceration in a state facility was roughly \$36,000 per prisoner in FY 2016, a figure that includes various fixed administrative and operational costs. The average cost to the state per offender for parole/probation supervision was roughly \$3,500.

Senate Bill 17 would have an indeterminate fiscal impact on the state and no fiscal impact on local units of government. The bill would require the Department of Corrections to implement an incentive Program for field operations administration regions to agree to seek a measurable reduction in parole and probation revocations by implementing practices, procedures, and sanctions directed at parole and probation revocation. The fiscal impact on the state would depend on to what degree parole and probation revocations are actually reduced. The state would realize a savings if the number of individuals returning to prison is decreased. In FY 2016, the average cost of prison incarceration in a state facility was roughly \$36,000 per prisoner per year, a figure that includes various fixed administrative and operational costs. Also, the bill creates a fund which is to be used for incentives and for assisting field operations administration regions with implementing supervision practices, procedures, and sanctions which are directed at reducing parole and probation revocations. The fund would be subject to appropriations made by the legislature. The current FY 2016–17 budget for the Department of Corrections includes a \$3.0 million appropriation for incentives.

ARGUMENTS:

For:

Senate Bill 16 is expected to reduce the number of parolees returning to prison for violating conditions of their parole by setting parameters for when parole should be revoked and by establishing graduated sanctions that relate to the seriousness and frequency of violations but provide for a variety of options that do not result in confinement. Advocates say parolees make mistakes, and often learn from those mistakes. Limiting the situations that will land them back in prison, and reducing the time they can be confined for certain violations to no more than 60 days, is more likely to help offenders keep jobs and reintegrate with family—factors known to reduce recidivism.

Together with the financial incentive program created in Senate Bill 17, which encourages supervising agents to work with their offenders to avoid parole and probation revocations, the bills could provide effective tools to reduce prison costs by enabling more offenders avoid parole or probation revocation.

With the corrections budget accounting for over \$2 billion a year, a multi-pronged approach may be the most effective way to reign in prison costs. The bills don't simply try to save money by keeping offenders in the community. Rather, they are said to be part of a holistic approach

of using evidence-based practices to increase rehabilitation and successfully reintegrate those who made mistakes back into the community as productive members. Benefits will come not just in fewer prison beds, but in increased public safety and more people contributing to the economy.

Against:

Critics argue that in order to ensure consistency in the handling of parole violations and reduce the number of parolees returning to prison, especially when public safety is not at risk, that the Parole Sanction Certainty Program created in Senate Bill 16 should be expanded to include all parolees, not just some handpicked by the DOC and in a limited number of counties. Even within a participating county, it is not clear how many parolees would be included in the Program.

Some feel the funding in Senate Bill 17 earmarked for field operations administration units that reach certain levels of probation and parole revocation would be better utilized to simply increase the funding levels to all units to be used for revocation-reduction programs. Or the funds could be used to support a grant program that would give units the flexibility to create programs that meet the particular needs of offenders under supervision in that locality. For instance, probationers and parolees may have a particular need for transportation assistance to access employment, counseling, court appearances, meetings with the supervising agent, etc.

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