

PAROLE SANCTION CERTAINTY ACT & SUPERVISING REGION INCENTIVE PROGRAM ACT

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Senate Bill 16 as passed by the Senate
Sponsor: Sen. John Proos

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

Senate Bill 17 as passed by the Senate
Sponsor: Sen. Mike Shirkey

House Committee: Michigan Competitiveness
Senate Committee: Michigan Competitiveness
Complete to 2-8-17

BRIEF SUMMARY:

Senate Bill 16 creates the Parole Sanction Certainty Program—a program that utilizes a set of established 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 30 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 the five counties in the state in which the greatest number of individuals convicted of a crime are sentenced to incarceration under its jurisdiction.

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 at least a 10 percent reduction in revocations within an 18 month period.

The bills, which take effect 90 days after enactment, are part of a larger package of legislation to implement corrections reforms that includes Senate Bills 5-15, 17-24, and 50.

FISCAL IMPACT:

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 reduce parole and probation revocations by 10% and to reach that goal. 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.

DETAILED SUMMARY:

Senate Bill 16 creates the Parole Sanction Certainty Act, and places the new act within the Corrections Code under a new Chapter IIIB. By January 1, 2018, the Department of Corrections (DOC) must adopt a system of sanctions for violations of conditions of parole for offenders supervised under the Parole Sanction Certainty Program. The program must be implemented in 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). 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, and any period of confinement imposed for a violation will be limited to not more than 30 days. However, nothing in the act will prevent the arrest of a parolee under Section 39, which provides for warrantless arrests for parole violations, or the revocation of parole under Section 40a of the Code (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 is responsible for determining which offenders will be placed in the community on parole under the Program.*

Before being placed on parole sanction certainty supervision subject to sanctions, the parolee must be informed in person of the conditions of that parole sanction certainty supervision. The parolee must also sign a written agreement to abide by those conditions or to be immediately subject to sanctions or to parole revocation under Section 40a, whichever is determined by the DOC to be appropriate.

"Sanction" is defined to mean any of a wide range of non-prison offender accountability measures and programs. These include, but are not limited to, electronic supervision tools, drug and alcohol testing or monitoring, day or evening reporting centers, restitution centers, forfeiture of earned compliance credits, rehabilitative interventions such as substance abuse or mental health treatment, counseling, reporting requirements to supervision officers, community service or work crews, secure and unsecure residential treatment facilities or halfway houses, and short-term or intermittent incarceration.

Sanctions

The program must establish a list of presumptive 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, or not refraining from the use of alcohol or controlled substances.

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 sanctions must be uniform throughout the state for all parolees subject to supervision under the program. The 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 parolee's previous criminal record, number and severity of any previous supervision violations, and the parolee's assessed risk level. The DOC must also establish a process to review and approve or reject—before imposition—sanctions that deviate from these.

The imposition of a sanction must comport with the system of sanctions adopted by the DOC under the act. Sanctions specified and imposed by a supervising agent are immediately effective. *Failure to comply with a sanction will constitute a violation of parole.*

A sanction could not be imposed for any violation of parole that may warrant an additional, separate felony charge. However, a sanction may be imposed if the violation were based only upon the parolee's testing positive for a controlled substance.

The system must also define positive reinforcements that supervised individuals will receive for complying with their conditions of supervision. If the parolee successfully completes conditions imposed under a sanction, the DOC could not revoke the assigned term of parole sanction certainty supervision or impose additional 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 if the failure to comply with the condition of supervision constitutes a significant risk to prior victims of the parolee or the community at large and the risk cannot be appropriately managed in the community.

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, the supervising agent must issue to the parolee a notice of this intended 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 sanction to be imposed. The agent must also file a copy of the modified conditions with the DOC.

Sanction involving confinement

If the parole is not going to be revoked under Section 40a for a violation of the terms of the parolee's parole under the bill, the parolee could be subject to a confinement sanction and be confined in a correctional or detention facility for not more than 30 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 appoint an individual from within the department to review, on a biannual basis, confinement sanctions recommended by supervising agents in the five counties where the Parole Sanction Certainty Program is implemented to assess any disparities that may exist among agents, evaluate the effectiveness of the sanction as measured by the parolees' subsequent conduct, and monitor the impact on the agency's number and type of revocations for violations of the conditions of supervision.

Biannual report to the Legislature

The person appointed by the DOC to review the Program as described above must also report all of the following on a biannual (twice each year) basis to the House and Senate committees concerned with corrections issues:

- The number of supervised individuals completing parole supervision and being discharged from parole.
- The number of and type of parole violations, including violations that do or do not result in parole revocation.
- The number of parole revocations.
- The number of parole violations specifically related to a supervised individual's testing positive for controlled substances, without a physician's prescription, or alcohol in violation of a parole order, as applicable.
- The number of parole violations specifically related to failure to appear at a scheduled meeting with the supervising agent.

Senate Bill 17 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 not less than a 10 percent reduction in parole and probation revocations in the region's supervised population.

"Field operations administration region" is defined to mean one of the geographic regions delineated by the DOC that oversee supervised individuals within the region and that employ parole and probation officers to engage in direct supervision of the supervised individuals. "Supervised individual" means an individual placed on probation or serving a period of parole or post-release supervision from prison or jail.

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 at least a 10 percent reduction within an 18-month period 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 18-month period for seeking the 10 percent reduction in revocations begins 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 if it achieves at least a 10 percent reduction in parole and probation revocations within an 18-month period. Additional funding could be received if, after three years have elapsed after the FOA region received the incentive funding, it achieves an additional reduction in revocations of not less than 10 percent within a one-year period compared to the number of revocations in the year the FOA region received the incentive funding.

Incentive funding must be used 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 officers 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.

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, with the report to include 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 probationers and parolees.
- 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.

Senate Bill 17 is tie-barred to Senate Bill 16, meaning that it cannot take effect unless Senate Bill 16 is also enacted into law.

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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.