



**House
Legislative
Analysis
Section**

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**TRESPASSING ON PRISON GROUNDS:
FELONY, WARRANTLESS ARREST**

**House Bills 5607-5609 as passed by the
House
Second Analysis (4-29-96)**

**Sponsor: Rep. Terry Geiger
Committee: Judiciary and Civil Rights**

THE APPARENT PROBLEM:

Under current law corrections officers do not have the authority to detain and arrest citizens who are illegally trespassing on the grounds of a correctional facility. A couple of recent incidents have brought attention to this problem. On September 20th of last year an individual drove up to the fence surrounding the Handlon Michigan Training Unit in Ionia. Apparently in an effort to facilitate an escape, he attempted to throw weapons over the fence to some of the prisoners. Corrections officers responded to his actions, and as they approached the individual to apprehend him, he killed himself. Another similar incident occurred in August of 1994 at the City of Detroit's Ryan Correctional Facility. An individual outside the facility approached the fence, cut it and assisted the escape of several prisoners. Furthermore, occasional attempts are made by friends or relatives of prisoners to deliver contraband to prisoners by throwing it over the fences of correctional facilities.

Unfortunately, in any of these situations, if the corrections officers had sought to arrest the individuals as they attempted to assist prisoners to escape or to smuggle contraband into the facility, the officers would not have had the authority to do so. When corrections officers who patrol the perimeter of facility come upon such individuals, the officers do not have the legal authority to arrest them, but must summon local law enforcement officers.

As a result of the lack of authority in current law, the Department of Corrections (DOC) has requested legislation to allow certain DOC employees to make warrantless arrests of trespassers on correctional facility grounds.

THE CONTENT OF THE BILLS:

The bills would amend three laws to make it a felony, punishable by imprisonment for up to four years and a fine of up to \$2,000, to trespass on prison grounds, and to allow warrantless arrests of such trespassers by

certain Department of Corrections employees. The three bills are all tie-barred to each other and would take effect September 1, 1996.

More specifically, currently under the Michigan Penal Code section on criminal trespass, trespassing on the lands or premises of another without lawful authority and after having been forbidden to do so is a misdemeanor (punishable by imprisonment in the county jail for up to 30 days or a fine of up to \$50 or both) if the person refuses to leave when told to do so. House Bill 5609 would add a new section to the Michigan Penal Code (MCL 750.552b) to make it a felony (punishable by imprisonment for up to four years, a fine of up to \$2,000, or both) to "willfully" trespass on prison grounds ("by entering or remaining upon the property of a state correctional facility without authority or permission to enter or remain").

Chapter IV of the Code of Criminal Procedure specifies under what conditions arrests can legally be made, both with and without warrants. House Bill 5607 would add a new section to this chapter of the code (MCL 764.23a) to allow corrections officers from the Department of Corrections to arrest, without a warrant, a person who trespassed on a state correctional facility in violation of the section of the penal code proposed by House Bill 5609. A corrections officer could not make an arrest under the provisions of the bill unless the officer was in uniform.

Finally, Public Act 80 of 1905 (which regulates the "care, order, and preservation of buildings or property dedicated and appropriated to the public use and the conduct of those coming upon the property thereof") makes violations of the act misdemeanors (punishable by imprisonment for ten to sixty days or a fine of up to \$50 or both), and gives those chosen to superintend, watch, or guard such property the authority to arrest violators without a warrant. House Bill 5608 would amend the act (MCL 19.142 and 19.143) to specify that trespass on state prison grounds would be governed

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under the new section of the penal code proposed by House Bill 5609, and to limit the authority to make a warrantless arrest for trespassing on prison grounds to those Department of Corrections employees who would be authorized under House Bill 5607.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bills would have an indeterminate impact on state costs, and local costs and revenues. To the extent that those arrested and convicted of trespassing would be sentenced to prison or jail, there would be increased state or local costs of incarceration, although the number of offenders is likely to be very low. Furthermore, since criminal fines are designated for local libraries there could be a minimal increase in funds for libraries. (3-12-96)

ARGUMENTS:

For:

The bills are necessary to correct a flaw in the current law. The Department of Corrections patrols the perimeter of its facilities; however, if its officers find an individual trespassing on the facility grounds, those officers are not legally able to detain that person or arrest him or her. Currently, if a corrections officer were to detain and attempt to arrest an individual, the officer could potentially face a civil suit for assault and battery or false arrest. Corrections officers need the authority to keep unauthorized persons off prison property, especially those grounds immediately adjacent to the fenced or walled perimeter of a prison.

The bills will provide a greater level of security by allowing corrections officers more power to deal with those who would assist prisoners in attempting to escape. By helping to protect the facilities' outer perimeters, the bills will help to limit the influx of contraband and limit the potential for escape attempts, thus protecting the surrounding communities as well.

Against:

By granting this authority to corrections officers the legislature opens an avenue for abuse of that authority. The bills allow for warrantless arrests for trespassing on prison property; however, in some more rural areas of the state, hunters or others enjoying the outdoors might accidentally wander unknowingly (or at least without any evil intent) onto prison grounds. Does the DOC really intend to arrest all trespassers?

Furthermore, what degree of training will the officers undergo before they are allowed to make these arrests? If they are not properly trained it is possible that the

state could find itself facing a lawsuit for use of excessive force. The officers would also have to receive training in arrest procedures, such as Mirandizing arrestees and knowing how and when an appropriate search can be made.

Response:

Of course, the DOC does not intend to arrest everyone found trespassing, but currently the officers are unable to even detain trespassers. In most cases where the person has simply wandered onto prison grounds unknowingly, an officer could easily ascertain that by temporarily detaining the individual and asking him or her a few questions. Even so, it makes sense that corrections officers treat most people they discover trespassing on prison grounds with suspicion. If someone is on prison grounds and acting suspiciously, it makes sense that the officers be able to attempt to detain him or her and discover whether the person is simply lost or is intending to attempt to smuggle in contraband or assist with an escape.

In addition, obviously, effective signage will have to be established thoroughly demarcating the prison boundaries.

Against:

It makes little sense to restrict the authority for making an arrest to uniformed corrections officers. There are other corrections employees, wardens for example, who do not wear uniforms that could find themselves in the position to make the sort of arrest that would be allowed by the bills. The restriction is unreasonable, and unnecessarily limiting.

POSITIONS:

The Michigan Corrections Organization supports the bills. (3-27-96)

The Department of Corrections supports the bills. (4-29-96)

■ 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.