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BILL ANALYSIS



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Senate Bill 16 (as introduced 1-18-17)
Sponsor: Senator John Proos
Committee: Michigan Competitiveness

Date Completed: 1-25-17

CONTENT

The bill would enact the "Parole Sanction Certainty Act" as Chapter IIIB of the Corrections Code to provide for the creation of a Parole Sanction Certainty Program, which would be a program using a set of established sanctions to supervise eligible offenders who had been placed on parole. The bill would do the following:

- Require the Department of Corrections (DOC) to adopt a system of sanctions for parole violations by offenders supervised under the Program.
- Require the sanctions to use evidence-based practices demonstrated to reduce recidivism and increase compliance with conditions of parole.
- Require the system to set forth a list of presumptive sanctions for the most common types of supervision violations, and to define positive reinforcements.
- Require the Department to implement the Program in the five counties where the most individuals convicted of criminal violations were sentenced to DOC incarceration.
- Require an individual to be informed of the conditions of parole sanction certainty supervision and to sign an agreement, before being placed on that supervision.
- Provide that a supervised individual who violated a condition of his or her parole sanction certainty supervision would be subject to 1) a confinement sanction (confinement for up to 30 days); 2) a nonconfinement sanction; or 3) parole revocation proceedings and possible incarceration.
- Require a supervising agent to notify a supervised individual if the agent intended to impose a sanction.
- Provide that failure to comply with a sanction would constitute a violation of parole.
- Require the DOC to appoint an individual to review confinement sanctions recommended by agents, and to report specified information to the House and Senate committees concerned with corrections, on a biannual basis.

The bill would take effect 90 days after enactment.

Definitions

"Parole sanction certainty supervision" would mean being placed on parole subject to conditions and sanctions as set forth in the Parole Sanction Certainty Program.

"Sanction" would mean any of a wide range of nonprison offender accountability measures and programs, including 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, requirements to report to supervision officers, community service or work crews, secure and insecure residential treatment facilities or halfway houses, and short-term or intermittent incarceration.

"Supervised individual" would mean an individual placed on parole subject to parole sanction certainty supervision.

"Supervising agent" would mean the parole agent assigned to directly supervise an individual on parole sanction certainty supervision.

System of Sanctions

By January 1, 2018, the DOC would have to adopt a system of sanctions for violations of conditions of parole for offenders supervised under the Parole Sanction Certainty Program. The sanctions would have to use evidence-based practices that had been demonstrated to reduce recidivism and increase compliance with the conditions of parole based on the identified risk and needs of the supervised individual as determined by a validated risk and needs assessment.

("Validated risk and needs assessment" would mean a tool or tools adopted by the DOC that had been validated as to the tool's or tools' 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 would have to be uniform throughout the State for all parolees subject to parole sanction certainty supervision. Subject to the following provision, the Department would have to determine which offenders would be placed in the community on parole under the Program.

The DOC would have to implement the Program in the five counties in the State in which the greatest number of individuals convicted of criminal violations were sentenced to incarceration under the Department's supervision, as determined by the DOC's annual statistical report.

In developing a plan for implementing the Program in a county, the DOC would have to consult with and seek recommendations from local law enforcement agencies in the county, including the sheriff's department, circuit court, county prosecutor's office, and community corrections programs.

Notice to & Agreement of Supervised Individual

Before a supervised individual was placed on parole sanction certainty supervision subject to sanctions, he or she would have to be informed of its conditions. The individual would have to sign a written agreement to abide by those conditions or to be immediately subject to sanctions or to parole revocation, whichever the DOC determined to be appropriate.

Presumptive Sanctions

The Parole Sanction Certainty Program would have to set forth a list of presumptive sanctions for the most common types of supervision violations, including failing to report, participate in a required program or service, complete community service, or refrain from the use of alcohol or a controlled substance.

The system of sanctions would have to take into account factors such as the severity of the violation, the impact of the violation on the safety or well-being of the crime victim, if applicable, the supervised individual's previous criminal record and assessed risk level, the individual's needs as established by a validated risk and needs assessment, the number and severity of any previous supervision violations, and the extent to which sanctions were imposed for previous violations.

The system also would have to define positive reinforcements that supervised individuals would receive for complying with their conditions of supervision.

Imposition of Sanctions; Modification; Confinement

Subject to the following provision, the DOC would have to establish a process to review and to approve or reject sanctions that deviated from the presumptive sanctions, before the sanctions were imposed.

A supervised individual who violated the terms of his or her parole sanction certainty supervision, but whose parole was not going to be revoked by the Parole Board as a result of the violation, could be subject to a confinement sanction and confined in a correctional or detention facility for up to 30 days. ("Confinement sanction" would mean a violation sanction resulting in confinement in a departmental facility or county jail for not more than 30 days.) After completing his or her confinement, the individual could be returned to parole sanction certainty supervision under the same terms of supervision as those under which he or she was previously supervised, or under new terms, at the DOC's discretion.

A supervised individual would be subject to one of the following for violating any condition of his or her parole sanction certainty supervision:

- A nonconfinement sanction (defined below).
- A confinement sanction.
- Parole revocation proceedings and possible incarceration for failure to comply with a condition of supervision if the failure constituted a significant risk to prior victims of the individual or the community at large and the risk could not be appropriately managed in the community.

In addition, if an individual violated a condition of parole sanction certainty supervision, the DOC could either 1) modify the conditions of supervision for the limited purpose of imposing sanctions; or 2) place the individual in a State or local correctional or detention facility for a period specified in the bill's list of presumptive sanctions or as otherwise provided in the proposed Act. An individual could be placed in a local correctional or detention facility only if the facility agreed to take the individual and the DOC had an existing reimbursement agreement with it.

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

If an individual successfully completed 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.

"Nonconfinement sanction" would mean a violation sanction that does not result in imprisonment in the custody of the DOC or the county jail, including any of 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.
- Counseling or treatment for behavioral health problems, including substance abuse.

Supervising Agent Imposition of Sanctions

If a supervising agent intended to modify the conditions of a supervised individual's parole sanction certainty supervision by imposing a sanction, the agent would have to notify the individual of the intended sanction. The notice would have to inform the individual of each violation alleged, the date of each violation, and the sanction to be imposed.

A supervising agent's imposition of a sanction would have to comport with the system of sanctions and presumptive sanctions adopted by the DOC. Sanctions imposed by an agent would be immediately effective. A supervised individual's failure to comply with a sanction would constitute a violation of parole.

A sanction that involved confinement in a correctional or detention facility would be subject to the 30-day limit. If the individual were employed, the supervising agent would have to impose the sanction for weekend days or other days or times when the individual was not working, to the extent feasible.

If a supervising agent modified the conditions of parole sanction certainty supervision by imposing a sanction, the agent would have to do all of the following:

- Deliver a copy of the modified conditions to the supervised individual.
- Note the date of delivery of the copy in the individual's file.
- File a copy of the modified conditions with the DOC.

DOC Appointee Review & Report

The DOC would have to appoint an individual from within the Department to review confinement sanctions recommended by supervising agents in the five counties where the Parole Sanction Certainty Program was implemented. The review would have to be on a biannual basis and assess any disparities that could exist among agents' use of confinement sanctions, evaluate the effectiveness of the sanction as measured by the supervised individuals' subsequent conduct, and monitor the impact on the agency's number and type of revocations for violations of the conditions of supervision.

The appointed individual would have to report all of the following biannually to the Senate and House committees concerned with corrections issues:

- The number of supervised individuals completing parole supervision and being discharged from parole.
- The number and type of parole violations, including those that did or did 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 a supervised individual's failure to appear at a scheduled meeting with his or her supervising agent.

Arrest or Revocation of Parole

Nothing in the proposed Act would prevent the arrest of a parolee under Section 39 or the revocation of parole under Section 40a.

(Those sections are contained in Chapter III of the Corrections Code, which establishes the Parole Board in the DOC and provides for the granting of parole. Under Section 39, a probation or parole officer, a peace officer, or an authorized DOC employee may arrest a parole violator without a warrant and detain the person if the officer or employee has reasonable grounds to believe that the person has violated parole or a warrant has been issued for his or her return.

Under Section 40a, a prisoner's parole order is subject to revocation by the Parole Board for cause, as provided in that section.)

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on State and local government. It costs the State an average of \$5,260 per year for each parolee supervised. Parole sanction certainty supervision would likely cost more, but it is unknown by how much. A pilot program was launched in November 2015 in targeted counties, but it is too soon to have data on the costs per parolee or parolee outcomes.

If fewer parolees were returned to prison as a result of the bill, there would be savings to the State from lower incarceration costs. For any decrease in prison intakes, in the short term, the marginal savings to State government would be approximately \$3,764 per prisoner per year. In the long term, if the reduced intake of prisoners reduced the total prisoner population enough to allow the Department of Corrections to close a housing unit or an entire facility, the marginal savings to State government would be approximately \$34,550 per prisoner per year.

Any additional reporting requirements would be handled by the Department of Corrections within existing appropriations.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.