



**House
Legislative
Analysis
Section**

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INCREASE JAIL CONTRABAND PENALTIES

**House Bill 4403 as enrolled
Sponsor: Rep. Michael Kowall**

**Senate Bill 528 as passed by the Senate
Sponsor: Sen. Mat J. Dunaskiss**

Revised First Analysis (5-20-99)

**Committee: Criminal Law and
Corrections**

THE APPARENT PROBLEM:

State law criminalizes the possession or delivery of contraband -- alcohol, drugs, or weapons -- in prisons and jails. Public Act 17 of 1909 makes it a felony punishable by imprisonment for up to five years (or a fine of up to \$1,000, or both) for prisoners to have -- or to furnish prisoners with -- weapons, alcohol, or controlled substances in prison facilities. Public Act 7 of 1981 makes the same violation in jails a misdemeanor punishable by imprisonment for up to one year and a fine of up to \$500, or both.

As the result of a 1996 incident involving the smuggling of marijuana by a visitor to an Oakland County jail inmate, the late sheriff of Oakland County asked that the penalty for contraband in jails be made the same as that for contraband in prisons.

THE CONTENT OF THE BILLS:

Public Act 7 of 1981 prohibits an individual from bringing alcoholic liquor, controlled substances, weapons, or certain other items into a jail or onto jail grounds; however, alcoholic liquor and controlled substances may be brought into the jail with permission of the jail's chief administrator. The act also prohibits selling or furnishing an inmate with such items without appropriate permission. House Bill 4403 would amend the act (MCL 801.265) to increase the penalty for violations. Currently, violations are misdemeanors, punishable by a fine of up to \$500 and/or imprisonment for no more than one year. The bill would make a violation a felony and increase the penalty to a fine of no more than \$1,000 and/or imprisonment for no more than five years. However, the bill would prohibit the prosecution of an individual under the act if the violation involved a controlled substance crime that, on its own, would be punishable

for more than five years imprisonment. If enacted, the bill would take effect August 1, 1999.

Senate Bill 528 would amend that statutory sentencing guidelines provisions of the Code of Criminal Procedure (MCL 777.17) to include the felony offenses, as created by House Bill 4403, of bringing weapons, drugs, or alcohol into a jail, or a prisoner's possessing those items. A violation of the prohibitions in House Bill 4403 involving weapons in jails would be categorized as a Class E felony against public safety, with a statutory maximum penalty of five years' imprisonment. A violation involving alcohol and drugs in jails would be categorized as a Class H felony against public safety, with a statutory maximum penalty of five years' imprisonment. The bill would take effect on August 1, 1999, and is tie-barred to House Bill 4403.

BACKGROUND INFORMATION:

Public Act 7 of 1981 defines "jail" to include "a municipal or county jail, work-camp, lockup, holding center, half-way house, community corrections center, house of correction, or any other facility maintained by a municipality or county which houses prisoners." The prohibition on weapons includes any item that could be used to injure someone or used to help a prisoner escape from jail. There are two exceptions to the prohibition against bringing alcohol or controlled substances into jails: if a physician certifies in writing that an alcoholic liquor or a controlled substance is necessary for the health of a prisoner or employee, and if wine is brought by clergy for "clergy purposes." Public Act 17 of 1909 has similar exemptions. In addition, the prison prohibition exempts (1) the bringing of alcoholic liquor,

House Bill 4403 and Senate Bill 528 (5-20-99)

prescription drugs, or controlled substances into or onto a correctional facility except for "the ordinary hospital supply of the correctional facility, and the bringing of alcoholic liquor, prescription drugs, poisons, or controlled substances into or onto privately operated community corrections centers or resident homes for the use of the resident owner, operator, or nonprisoner resident or his or her nonprisoner guests. Both laws also exempt from their weapons prohibition weapons authorized by the chief administrator of the correctional facility or of the jail.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, to the extent that people were sentenced to prison instead of jail for this offense, the bills would increase state costs and decrease local costs of incarceration. To the extent that the bill increased payments of criminal fines, it would increase revenues for county libraries. (4-28-99)

ARGUMENTS:

For:

Someone who smuggles contraband to a jail inmate should not be "protected" by being subject to a lesser charge than someone who smuggles contraband to an inmate in a state prison facility, or even someone who delivers an illegal substance to someone outside of jails or prisons. In fact, it could be argued that a law, such as the current jail contraband law, which actually lessens the penalty for a crime committed in a jail as opposed to the same crime committed in a prison or in public serves to create dangerous situations and set undesirable precedents.

It is only right that the penalties for delivering contraband -- drugs (including alcohol) and weapons -- to prisoners be the same regardless of where a legally incarcerated inmate is housed. Jails house state prisoners for the state Department of Corrections, and many jail prisoners -- especially in the larger counties -- house DOC prisoners waiting to be taken to state prison facilities or on a writ for some court proceeding. In the specific Oakland County jail incident, moreover, it is only right that the highest penalty for delivery of marijuana be imposed. House Bill 4403 would do both.

Delivery of marijuana typically is a four-year felony, while delivery of contraband (including marijuana) in prison is a 5-year felony. However, delivery of marijuana to a jail inmate is a misdemeanor with a

maximum sentence of one year and a fine of up to \$500, or both. Obviously, the penalties for delivering or possessing contraband to legally incarcerated inmates should be the same, regardless of whether the facility is a local jail or a state correctional facility. Moreover, given that the law already has a greater penalty for delivering a controlled substance than even the current penalty for delivering a controlled substance to a prison inmate, it only makes sense to impose the greater of the two penalties when the delivery of contraband to a jail inmate involves a controlled substance.

Against:

Under House Bill 4403, a prisoner caught with a single bottle of beer could face up to five years in prison and a fine of up to \$1,000, which seems a bit extreme for an "offense" that, outside of jail, would be perfectly legal. Compounding the problem is the fact that under our judicial system, which presumes that an accused person is innocent until proven guilty, an innocent person held in jail pending trial could wind up being sentenced to five years in prison for an action that, committed outside the jail, would be perfectly legal. At the very least, alcohol possession should be kept as a misdemeanor to forestall possible miscarriages of justice. Moreover, given that increased sentences generally have a poor track record in deterring what is considered undesirable behavior anyway, since people apparently tend to assume (however mistakenly) that they won't get caught in the first place, it is unclear whether the bill would pose any deterrent to the targeted behavior while clearly posing possible constitutional problems. Finally, the bill was amended to be given an effective date of August 1 of this year, and yet, traditionally, new crimes enacted in law are given delayed implementation to allow citizens to become aware of the existence of the new laws and the citizen's new criminal liability should they violate the law. The bill would take effect very quickly, but contains no provision to reasonably ensure that jailed inmates and other citizens would know of their potentially increased criminal liability.

Response:

A drunken prisoner, whether already convicted or not, still could pose a danger to jail personnel through potentially violent drunken behavior.

Reply:

It's highly unlikely that a single bottle of beer could result in a degree of drunkenness that might pose a danger to jail personnel. Surely the rights of all citizens to be considered innocent until proven guilty are of greater constitutional import than the abrogation

of these rights in order to forestall the remote likelihood that an innocent prisoner might pose a physical threat to his or her jailers by possessing an otherwise legal substance such as beer.

POSITIONS:

The Oakland County Office of the Sheriff indicated support for House Bill 4403. (3-23-99)

The Michigan Sheriffs' Association indicated support for House Bill 4403. (3-23-99)

The Department of Corrections has no position on House Bill 4403. (4-14-99)

The American Civil Liberties Union opposes House Bill 4403. (4-14-99)

Analyst: S. Ekstrom

■ 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.