

# Legislative Analysis



## PRIVATELY OPERATED PRISONS

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### House Bills 4033 and 4034 as reported from committee

Sponsor: Rep. Scott VanSingel

Committee: Judiciary

Complete to 11-4-21

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

**BRIEF SUMMARY:** House Bills 4033 and 4034 would amend different acts to apply certain provisions regarding trespassing and the possession by inmates of prohibited items to a privately operated correctional facility and prisoners detained in such a facility and to revise certain definitions to include those privately operated facilities.

**FISCAL IMPACT:** The bills would have an indeterminate fiscal impact on state and local governmental units. (See **Fiscal Information**, below, for a detailed discussion.)

### **THE APPARENT PROBLEM:**

According to committee testimony, for about a year now, activists protesting at the state's only privately operated prison have been caught tossing contraband (primarily cell phones) over the prison walls. Contraband in the hands of prisoners, whether alcohol, drugs, or weapons, creates safety issues for prison staff and prisoners alike. Cell phones can be used to intimidate witnesses, plan escapes, and orchestrate criminal activity on the outside. State law makes it a felony to trespass on prison grounds or furnish contraband to prisoners, but these laws do not apply to the privately operated prison. Instead, offenders can only be charged under the state's general trespassing law, which is a minor misdemeanor. Many of the offenders are from out of state, and the penalty is so minor that fines are not paid and many do not even show up for court. Due to the danger presented by trespassing to pass contraband to prisoners, it has been suggested that the laws that apply to Michigan prisons regarding contraband and trespassing should be expanded to apply also to the private prison.

### **THE CONTENT OF THE BILLS:**

The North Lake Correctional Facility near Baldwin (formerly the Michigan Youth Correctional Facility) is a private, for-profit prison operated by the GEO Group, Inc. under a federal contract to house immigrant detainees. The bills would change several provisions in Michigan law to also apply to the North Lake facility and its prisoners.

**House Bill 4033** would amend 1909 PA 17, which prohibits or limits access by prisoners and corrections employees to certain items, such as alcohol, drugs, and certain weapons and wireless communication devices. The bill would amend the following defined terms:

**Correctional facility** would be revised to include a facility operated by a private contractor under section 20i of the Corrections Code for the housing, custody, and care of detainees or inmates from a federal agency.

**Chief administrator** would be revised to include the facility administrator of a correctional facility operated by a private contractor, in addition to the warden,

superintendent, or Department of Corrections-appointed chief administrative officer of a correctional facility.

***Prisoner*** would be revised to include an individual detained by and under the custody of a federal agency and housed in a correctional facility operated by a private contractor.

These definitional changes would make facilities operated by a private contractor, employees of those facilities, and prisoners housed in those facilities subject to the provisions of the act. Generally speaking, with specified exceptions, the act prohibits prisoners from possessing liquor, prescription drugs, poison, controlled substances, or weapons or other implements that could be dangerous or assist an escape. It also prohibits others from providing those items to a prisoner or bringing them into a correctional facility.

The act also currently prohibits a prisoner from possessing or using a cell phone or other wireless communications device in a correctional facility or on the grounds except as authorized by the Department of Corrections. The bill would expand the prohibition to include use by a prisoner in or on the grounds of a facility operated by a private contractor except as authorized by the chief administrator of that correctional facility.

A violation of the act is a felony punishable by imprisonment for up to five years or a fine of up to \$1,000, or both.

MCL 800.281a and 800.283a

**House Bill 4034** would amend section 552b of the Michigan Penal Code, which prohibits trespassing on the property of a ***state correctional facility*** and provides that a person who willfully violates this prohibition is guilty of a felony punishable by imprisonment for up to four years or a fine of up to \$2,000, or both.

The bill would revise the definition of ***state correctional facility*** to include a facility or institution that is operated by a private contractor under section 20i of the Corrections Code for the housing, custody, and care of detainees or inmates from a federal agency.

MCL 750.552b

The bills are tie-barred to each other, which means that neither can take effect unless both are enacted into law.

#### ***BACKGROUND INFORMATION:***

House Bills 4033 and 4034 are reintroductions of House Bills 6170 and 6169 of the 2019-20 legislative session. Those bills were passed by the House of Representatives.

#### ***FISCAL INFORMATION:***

The bills would have an indeterminate fiscal impact on the state and on local units of government. House Bill 4033 would amend 1909 PA 17, which generally prohibits or limits the presence of liquor, narcotics, and weapons in state prisons, to include correctional facilities

operated by private contractors and prisoners housed in correctional facilities operated by private contractors. Violation of 1909 PA 17 is a felony punishable by imprisonment for up to five years or a fine of up to \$1,000, or both. Under provisions of HB 4034, a person who trespasses by entering or remaining on the property of a correctional facility operated by a private contractor, without authority or permission, would be guilty of a felony punishable by imprisonment for up to four years or a fine of up to \$2,000 or both.

The number of persons who would be convicted under provisions of either bill is not known. New felony convictions would result in increased costs related to state prisons and state probation supervision. In fiscal year 2020, the average cost of prison incarceration in a state facility was roughly \$42,200 per prisoner, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision averaged about \$4,300 per supervised offender in the same year. Those costs are financed with state general fund/general purpose revenue. The fiscal impact on local court systems would depend on how provisions of the bill affected court caseloads and related administrative costs. Any increase in penal fine revenue would increase funding for public and county law libraries, which are the constitutionally designated recipients of those revenues.

***ARGUMENTS:***

***For:***

Currently, state law makes trespassing on prison grounds or furnishing contraband to a prisoner a felony, but the laws apply only to prisons under the jurisdiction of the state Department of Corrections. Trespassing on the grounds of the state's only privately owned prison falls under the state's general trespassing law, violation of which is a misdemeanor punishable by no more than 30 days in jail or a maximum fine of \$250.

With such a minor penalty, there is little local law enforcement can do to effectively deter people from trespassing on the prison's grounds or trying to get contraband over the prison walls. Reportedly, federal law enforcement agencies are not prosecuting these cases. With a maximum fine of \$250 for a violation but a cost of prosecution of about \$6,000 to \$7,000 per case, there is also little incentive for local officials to prosecute cases. Further, because a national fingerprint search is not conducted on misdemeanor offenses with a maximum term of imprisonment of 92 days or less, it can be difficult to accurately identify out-of-state offenders or to locate them if they fail to show for court dates or pay fines. Under the bills, if federal law enforcement agencies did not prosecute a case, Michigan police, prosecutors, and the courts would have more appropriate penalties with which to prosecute violations that occur at the private prison.

***POSITIONS:***

The ACLU of Michigan indicated opposition to the bills. (10-26-21)

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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.