



House
Legislative
Analysis
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JAIL REIMBURSEMENT PROGRAM

House Bills 5540-5542 as introduced
Committee: Towns and Counties

House Bill 5543 with committee amendments
Committee: Public Health

Sponsor: Rep. Gregory E. Pitoniak
First Analysis (3-12-90)

THE APPARENT PROBLEM:

The severity of the state's prison overcrowding problem is well-known. The problem is worsening despite the undertaking in early 1985 of a massive prison construction effort that will have more than doubled capacity by 1992 at a cost of about \$900 million. October 1989 estimates from the Department of Corrections are that prison capacity will be short by nearly 16,000 beds by the end of 1992; the state is at present about 4,200 beds short. In recent years, offenders sentenced to minimum terms of 24 months or less have been representing increasing proportions of new admissions into the state corrections system. However, while the fastest rate of growth in the current prison population is represented by the short-termers, over time existing capacity is expected to be filled by the steadily growing numbers of people being sentenced to longer terms. It seems clear that somehow space must be found for relatively minor offenders while ensuring that prison beds are available for the worst offenders.

Perhaps less well-known than the prison overcrowding problem is the jail overcrowding problem. Even though jail capacity statewide has increased about 50 percent over the past few years, the jail overcrowding act (an act providing progressive remedies to alleviate jail overcrowding) has been triggered over 200 times in diverse counties across the state. At least one-third of the jails in the state are considered to have severe overcrowding problems. While nearly 2,000 jail beds are currently authorized or under construction, some of these jail beds will replace existing facilities, and only some of them will be minimum security-type facilities suitable for minor offenders. Many people are concerned that insufficient attention is being given to where and how comparatively minor offenders will be housed. To encourage counties to plan for and accommodate offenders in minimum security beds, and to alleviate both prison and jail overcrowding problems, a program of state reimbursements to counties has been proposed.

THE CONTENT OF THE BILL:

House Bills 5540 through 5543 constitute a package of bills providing for the funding and development of county minimum security facilities. Two types of financial assistance programs would be established: one for construction that added minimum security space ("beds") in the form of jails, community corrections centers, and camps, and the other for the costs of housing prisoners in local facilities. The construction program would provide reimbursement under state contracts, with reimbursement limited to certain percentages of the cost per bed; those percentages would vary according to type of facility and class of offenders to be housed, with the higher limits

applying to beds for more serious offenders, and to construction of camps and corrections centers. Under the housing program, to be called the Sentencing Guidelines Reimbursement Program, the state would provide payments for the housing of relatively serious offenders in local facilities. A county that agreed to provide at least 100 minimum security beds for certain more serious offenders could contract with the state and receive a housing reimbursement rate higher than the rate that would otherwise apply. With both programs, expenditures would be subject to annual appropriations for that purpose. The package contains two other main elements: it would allow counties to pledge certain revenues against bonds to finance acquisition, construction, or equipping of a jail, and it would allow a judge to sentence an offender to a county jail for up to two years (the current limit is one year). A more detailed explanation follows.

House Bill 5540 would create the State and Local Partnership on Corrections Act, under which the jail construction assistance program and the sentencing guidelines reimbursement program would be established. Programs and projects receiving state funding under the Community Corrections Act could not receive duplicate funding under the bill. Expenditures of state funds under the bill would be subject to annual appropriations for that purpose.

Payments to counties would be dependent in part on the seriousness of the offenders to be housed. A "Class I prisoner" would be one whose minimum sentence, computed under the sentencing guidelines in effect at the time, had an upper limit of 12 months. (Sentencing guidelines, as used in Michigan, score offense and offender characteristics to determine a range for an offender's minimum sentence.) A "Class II prisoner" would be one whose guidelines minimum sentence had an upper limit of between 12 and 48 months. A "Class III prisoner" would have a guidelines minimum sentence with an upper limit of over 48 months.

Beginning October 1, 1990, the Department of Corrections (DOC) would administer a jail construction assistance program under which counties could contract with the department to receive reimbursements for the capital outlay costs of building certain minimum security facilities. The department would be prohibited from entering into more contracts that could reasonably be expected to be funded from the appropriations for that purpose. To be eligible, a facility would have to provide a net increase in beds, would have to be opened between January 1, 1988 and January 1, 1995, and would have to be one of the following: a minimum security jail, a minimum security portion of a jail, a security camp, or a local community corrections center. Reimbursable costs would include the costs of purchasing land, preparing the site, construction,

H.B. 5540-5542, & 5543 (3-12-90)

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initial equipment, and interest expense. Reimbursements for any one eligible project could not continue for more than 20 years, and would be limited according to the type of facility and class of prisoner.

For jail space, the maximum reimbursement would be 40 percent of the reimbursable costs for eligible beds occupied by Class I prisoners, and 65 percent of the reimbursable costs of eligible beds occupied by Class II and III prisoners. For a security camp or local community corrections center, the limits would be 50 percent for beds occupied by Class I prisoners, and 75 percent for beds occupied by Class II and III prisoners. Reimbursement rates would be established by contract and calculated on a per diem basis.

To obtain a contract under the jail construction assistance program, a county would have to: submit a jail classification system for review and approval by the DOC; implement a DOC-approved classification system; submit schematic plans of the proposed construction for department approval; and, if the county had developed a comprehensive corrections plan under the Community Corrections Act, the county would have to show that the proposed construction was consistent with that plan.

A sentencing guidelines reimbursement program providing operating funds would be created beginning on April 1, 1990. A base rate of reimbursement under the program would be established annually by appropriations, but could not be less than \$35 per day per prisoner. Generally, a county would be reimbursed at the base rate for all Class II and III prisoners housed in a county jail, security camp, or local community corrections center. However, a reimbursement rate of base rate plus \$3 would apply under contracts where the county agreed to provide at least 100 minimum security jail and camp beds for Class II and III prisoners. Certain priorities would be imposed on the use of those beds, and the contract would include a condition that allowed the DOC to place Security Level I and II prisoners in the facility if the facility had surplus beds (however, the DOC could not place more prisoners than the number that would bring occupancy to 90 percent of capacity). The reimbursement rate for DOC prisoners would be the base rate. Contracts would be for five to ten years.

Payments to counties under each program would be reduced by offsets based on the number of Class I prisoners from the county that were committed to the jurisdiction of the Department of Corrections after April 1, 1990. If the county participated in the sentencing guidelines reimbursement program but not the construction reimbursement program, it would be subject to an additional capital outlay offset billed at \$5 per diem.

A county could pledge reimbursement payments to be received under the bill to the Michigan Municipal Bond Authority for financing construction costs.

Beginning in 1991, the DOC would annually assess the need for constructing or expanding minimum security jail facilities.

The bill would take effect April 1, 1990, providing House Bills 5541, 5542, and 5543 were enacted.

House Bill 5541 would amend the Code of Criminal Procedure to authorize a judge to sentence a person to a county facility for up to 24 months, if the upper limit of the sentencing guidelines score was more than 12 months. The sentence would be a determinate (flat) sentence. No more

than 12 months of the sentence could be served in a jail facility other than a security camp, unless the person had to be sent from a security camp to a jail facility for security reasons. For offenders being sentenced for a second felony, the presentence investigation report would have to contain the sentencing guidelines grid for the guidelines recommended sentence and the computation for the sentencing range that would have applied had the person not been scored on the basis of a second felony. The bill would take effect April 1, 1992, providing House Bill 5540 was enacted.

MCL 769.8 et al.

House Bill 5542 would amend the Code of Criminal Procedure to permit the commitment of a person to a county jail when the person had been sentenced to incarceration for a maximum of two years or less. The conditions of probation would be amended to allow up to 24 months to be spent in a county jail, security camp, local community corrections center, or combination of these facilities. The bill would take effect April 1, 1992, providing House Bill 5540 was enacted.

MCL 769.28 and 771.3

House Bill 5543 would amend the Health and Safety Fund Act to permit a county to pledge to the Michigan Municipal Bond Authority all or a portion of the 5/17 distribution received from the cigarette tax and allocated for jails, juvenile facilities, and court operations. (According to the Office of Revenue and Tax Analysis, about \$5 million total is potentially available statewide; the portion of that figure a county is eligible to receive is based on population.) The pledge would have to be against an obligation whose proceeds were used for the acquisition, construction, expansion, or equipping of a jail, security camp, or local community corrections center. The bill would take effect April 1, 1990, providing House Bill 5540 was enacted.

MCL 141.475A

FISCAL IMPLICATIONS:

According to Department of Management Budget figures that assume an additional 2,000 beds at the local level by the end of fiscal year 1990-91, the package would save the state about \$3 million in fiscal year 1990-91, or about \$1.5 million if the program was phased in at 50 percent during the coming fiscal year. The \$3 million net savings is based on expenditures of about \$22.5 million considered in conjunction with savings in Department of Corrections operating costs of about \$25.5 million (the figure does not include potential savings though avoiding capital outlay costs). (3-12-90)

ARGUMENTS:

For:

The legislation offers counties the option to participate in a program that would help them to finance badly-needed minimum security beds, while saving the state the costs of otherwise having to house prisoners that under the legislation would be retained locally. Scarce and expensive prison beds could be reserved for the most serious offenders. The benefits could be felt statewide, for jail overcrowding is a serious problem affecting both urban and rural counties. The limited period during which facilities would be eligible for construction reimbursements would encourage counties to act promptly to increase their minimum security space. Counties could build for their future needs, fill those beds with state prisoners

immediately, and receive reimbursements for their costs. Counties that bond for construction under the Michigan Municipal Bond Authority could receive lower interest rates by pledging reimbursement payments and cigarette tax revenues that statute already allocates for jails and other criminal and juvenile justice expenses. The incentives to construct camp and corrections center beds would be more attractive than those provided for jail beds; reimbursement rates would favor the comparatively economical camps and corrections centers, and higher caps on construction payments would apply for such facilities. By favoring such facilities, the legislation contemplates punishments that contain a stronger element of community service; such punishments also often allow family and community ties, with their stabilizing influences, to be maintained.

Against:

The legislation appears to offer more to the state than it does to counties, which might be discouraged from participating by various aspects of the proposal. For one thing, the proposal suffers from the experience that many have already had with promises of state funding for other matters, notably state funding of the courts. Many are wary of a statutory "guarantee" of funding, fearing that a county could commit to construction of a facility, then find that no reimbursements were available. Further, the possible variability of reimbursement rates could make it difficult for counties to develop their budgets. Moreover, the sufficiency of the proposed housing reimbursement rates is questionable; a minimum base rate of only \$35 per day is proposed, even though it costs a number of counties, especially urban counties where the crime and crowding problems are most severe, more than that to house prisoners. If the larger counties do not participate, the legislation fails to address a major part of the problem of lesser offenders being sentenced to state prison. Finally, the legislation presents various issues of state versus local control. A county that seeks a construction reimbursement contract would have to develop and implement a facility classification system that met the approval of the corrections department; local authorities could have to cooperate with burdensome state intervention. The proposals also incorporate the use of sentencing guidelines in which local governments have no say. At best, counties will be faced with the complex task of balancing the potential benefits of participation with the increased costs likely to result.

Response: Construction reimbursements and the higher-rate housing reimbursements would not be guaranteed by statute only; they would be provided under contract. Besides, as a practical matter, the state would be unlikely to renege on payments, as the state would then have to house the prisoners in question. The severity of the prison overcrowding problem ensures that the state will have a strong interest in keeping its promises under the program. The \$35 per day figure approximates what it costs the state to house minimum security prisoners, and should be sufficient for local minimum security facilities. Those local facilities where the operating costs are higher tend to be maximum-security jails with high staffing ratios. More modern facilities require fewer staff. The sufficiency of the \$35 floor is further borne out by figures compiled by the Senate Fiscal Agency on a reimbursement program provided under the corrections department budgets of the 1988-89 and current fiscal years. The program offers \$35 per prisoner per day to counties that house convicted felons who otherwise would have been sentenced to a state prison term with a guidelines minimum sentence range with a lower figure of 12 months or more. Urban, as well as rural,

counties have accepted this reimbursement for housing prisoners. Although Wayne County, with its critical overcrowding problem, was not among those counties, it has broken ground for a new 840-bed facility that could meet the construction program's requirements, and thus Wayne County, too, could benefit from the proposal. With regard to concerns over sentencing guidelines, it makes sense to use them for a standard for several reasons: they provide an objective measurement based on the seriousness of the offense and the prior record of the offender and they have been in use under supreme court order statewide since 1984.

Against:

There is nothing optional about the legislation's proposal to allow judges to sentence felons to county jails for fixed sentences of up to two years. That proposal represents a major policy change that would put the heaviest burden on counties experiencing the worst overcrowding. Reports are that Wayne County voters approved a millage for the new 840-bed facility with the understanding that those beds would be used for the misdemeanor offenders for whom there is now no room. Under House Bills 5541 and 5542, those beds would go to felons who are properly the responsibility of the state.

Response: House Bills 5541 and 5542 would not take effect until 1992, giving counties two years to prepare for any increase in prisoners. Further, reimbursements would be automatic under the sentencing guidelines reimbursement program, and would be at a level sufficient to meet operating costs in minimum security facilities.

For:

The highest rate of increase in admissions to the state corrections system is in the group of prisoners with minimum terms of less than 12 months. It is basically this group that the bills would strongly encourage counties to retain locally. That encouragement would come in the form of offsets to reimbursements, thus providing financial disincentives to send such minor offenders to the state.

Response: This aspect, like much of the proposal, depends on how judges will exercise their discretion in sentencing offenders. A sheriff or county has no control over a judge's sentencing decisions, but could nonetheless suffer the financial consequences of those decisions.

Against:

The legislation proposes that prisoners with minimum sentences of up to 48 months be retained locally in minimum security facilities. A prisoner with a four-year minimum can be a dangerous person, and may not be appropriate for such placement.

Against:

Many of the benefits claimed for the legislation can also be obtained through the development of a strong community corrections program. The state has only recently enacted a statute to encourage community corrections programs, and implementation of that statute is just beginning. It would be better to focus attention and resources on the Community Corrections Act.

POSITIONS:

The Department of Corrections supports the bills. (3-9-90)

The Department of Management and Budget supports the bills. (3-9-90)

The Office of Criminal Justice supports the bills. (3-9-90)

The Michigan Association of Counties supports the concept of the bills. (3-8-90)

The Michigan Sheriffs' Association supports the concept of state assistance in county jail costs, but has reservations regarding the major policy changes presented by the package. (3-9-90)

The Michigan Council on Crime and Delinquency is reviewing the legislation and has no position at this time. (3-12-90)

The Prosecuting Attorneys Association is reviewing the legislation, and does not have a formal position at this time. (3-9-90)

The Wayne County Executive Office strongly opposes House Bills 5541 and 5542. (3-12-90)