

JAIL REIMBURSEMENT PROGRAM



House
Legislative
Analysis
Section

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House Bills 5540-5542 as passed by the House
Committee: Towns and Counties

House Bill 5543 as passed by the House
Committee: Public Health

Sponsor: Rep. Gregory E. Pitoniak
Second Analysis (4-24-90)

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 roughly 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 50 minimum security jail or camp 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. However, if the state failed to appropriate sufficient funds for either the sentencing guidelines reimbursement program or the jail construction assistance program, a county could void a construction program contract and return all state prisoners to the state at state expense (see Note, below). 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 in a participating county 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. However, if the state failed to appropriate sufficient funds to pay the expense of either program, a county could void a construction contract and all affected state prisoners would be returned to the Department of Corrections at state expense. (Note: as amended on the House floor, the bill contains a nonsense sentence in this provision. The language in question reads "...a county may void a contract entered into under this section shall be void.")

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.

Beginning October 1, 1990, the Department of Corrections (DOC) would administer a jail construction assistance program under which counties could contract with the

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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, 1987 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 minimum security camp, or a local community corrections center. Reimbursable costs would include the costs of purchasing land, preparing the site, construction (including conversion of an existing facility), 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 prisoners. For a camp or 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 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 submit documentation establishing the need for the proposed construction and plans for its use.

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 generally would not be less than the actual cost per diem as determined by the Department of Corrections, plus 15 percent. The base rate could not exceed the average state per diem cost of maintaining a prisoner under the jurisdiction of the department. Generally, a county would be reimbursed at the base rate for all Class II prisoners housed in a county jail, security camp, or local community corrections center. However, a reimbursement rate of the base rate plus 5 percent generally would apply under state-county contracts where the county agreed to provide at least 50 minimum security jail and camp beds for Class II prisoners. Contracts would be for five to ten years and would provide that the beds be available first for the placement of Class II prisoners from the contracting county who were committed to jail or a camp. A county could contract with other counties and with the state to house their prisoners. A county could not charge another county for Class II prisoners accepted under contract with that county. The reimbursement rate for DOC prisoners would be the base rate.

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. However, offsets could not reduce construction reimbursements to less than 25 percent of the limits set for Class I prisoners and 35 percent of the limits set for Class II prisoners.

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 in a county participating in the state-local partnership to sentence a person to a determinate (flat) sentence in a county facility for up to 24 months, if certain conditions were met. The person being sentenced would have to have a sentencing guidelines score in which the upper limit was no more than 12 months; the offense in question could not have a maximum statutory penalty of more than five years. In order for a judge to impose the sentence, the county would have to have agreed to participate in the construction program, the sentencing guidelines reimbursement program, or both, and the county board of commissioners would have to annually approve the use of the jail or other local facilities for the offenders in question. Additional approval would have to be obtained from the county executive, if any. The court could not impose the determinate sentence provided by the bill unless the state appropriated funds to pay the costs of maintaining the prisoners so sentenced. The bill would not take effect unless 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, camp, or corrections center when the person had been sentenced to incarceration for a maximum of two years or less. However, this provision would not apply unless the state appropriated funds to pay for the expense of maintaining these prisoners. 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 not take effect unless 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 facility. The bill would take effect April 1, 1990, providing House Bill 5540 was enacted.

MCL 141.472 et al.

FISCAL IMPLICATIONS:

According to the Department of Management and Budget, the package would result in a net cost savings to the state, the magnitude of which would depend on the extent of county participation. (4-20-90)

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 and other counties' 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; higher caps on construction payments would apply for such facilities. By favoring those 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. Whether the proposal would actually stimulate jail construction remains a matter of debate, particularly as the marketability of construction bonds remains in doubt. Further, the legislation presents various issues of state versus local control. Reimbursable costs would be determined by the state, meaning not only that state reimbursements could be inadequate, but also that the state could exercise financial control over decisions on local facility operations. In addition, 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 potential for increased costs.

Response: The program would be conditioned on adequate state funding; without state funding, the longer jail terms would not be authorized and a county could opt out of the program. 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. With regard to concerns over sentencing guidelines, it makes sense to use them as 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:

As reported from committee, the legislation would have allowed a judge in any county to sentence felons to county facilities for fixed sentences of up to 24 months, only 12 of which could be served in the jail. As passed by the House, the new sentencing authority would be limited to judges in participating counties, and placement would be contingent on state funding for housing the prisoners involved. The 12-month limitation on jail time was dropped. While the changes to the legislation mitigated concerns that counties could be forced to pay for housing felons who were properly the responsibility of the state, other concerns exist. For one thing, sentencing authority, by statute, would vary from county to county — an apparently unprecedented situation, and one with possible implications for the equal administration of justice that is supposed to be available across the state. In addition, by allowing a judge to order the full term to be served in a jail, the legislation raises a fresh possibility that jails will be overburdened and jail overcrowding exacerbated. The proposal continues to represent a major policy change, and should be examined carefully.

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:

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.

Response: The bills would complement the Community Corrections Act, not compete with it.

POSITIONS:

The Department of Corrections supports the bills. (4-2-90)

The Department of Management and Budget supports the bills. (4-2-90)

The Michigan Association of Counties supports the bills. (4-2-90)

The Office of Criminal Justice supports the bills. (4-2-90)

The Prosecuting Attorney Association of Michigan supports the bills. (4-2-90)

The Wayne County Executive Office supports the bills. (4-24-90)

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. (4-2-90)

The Michigan Council on Crime and Delinquency is reviewing the legislation and has no position at this time. (4-2-90)