House
Legislative
Analysis
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PROBATION CONDITIONS, COUNTY REIMBURSEMENT

House Bills 4364 and 4365 as introduced
First Analysis (6-2-98)

Sponsor: Rep. Timothy Walberg
Committee: Corrections

THE APPARENT PROBLEM:

A district judge in Lenawee County has pointed out that it is the obvious policy of the legislature to collect the cost of room and board from prisoners as often as possible. That intent is clear from the Prisoner Reimbursement to the County Act, Public Act 118 of 1984, which provides specific methods by which the county can sue to recover the cost of room and board and medical expenses. (See *BACKGROUND INFORMATION.)*

That same official also observes that the court of appeals has consistently interpreted the statute as meaning that since the legislature specifically provided counties with the right to sue to collect the cost of upkeep and has not provided any other means of collection, the courts have no authority to require payment as part of the terms of probation (*People* v *Ganyo*, 173 Mich App 716 [1988]). Further, the court of appeals has extended that ruling in an opinion that prohibits trial courts from ordering the reimbursement of medical expenses incurred while the defendant was in jail (although the court pointed out that the county may seek reimbursement of medical expenses by a civil action) (*People* v *Krieger*, 202 Mich App 245 [1993]).

Some argue that appropriate amendments should be made to the sentencing statute to allow courts to require reimbursement from prisoners as part of the terms of probation. Likewise, a similar change should be made in the Prisoner Reimbursement to the County Act to allow counties to seek such relief.

In addition, some argue that the sentencing statute should be amended to specifically allow a term of probation which constitutes a protective order to be placed in the law enforcement information network (LEIN). Under current law, the ability of the court to have a "no contact" requirement put in LEIN ends as soon as the sentencing is held. In domestic violence, stalking, and criminal sexual conduct cases there is a need to minimize the risk that the defendant will continue to harass the victim, even after sentencing. Prior to trial this can be done through bond conditions which are placed in LEIN, and law enforcement officials can make an arrest for violations. Occasionally the need for a "no contact" requirement continues after sentencing and during the period of probation.

THE CONTENT OF THE BILLS:

House Bill 4364 would amend the probation chapter (chapter 11) of the Code of Criminal Procedure (MCL 771.3) to add two new conditions of probation that a court could require of a probationer, either separately or in combination with any of the other 14 conditions already specified in the law. Under the bill, the court could require a probationer to "be subject to conditions reasonably necessary for the protection of one or more named persons." This is a statutory phrase that echoes statutory references to personal protection orders. Further, the bill specifies that when a probation order contained a condition for the protection of named people, that order would be entered into the law enforcement information network (LEIN) by a law enforcement agency, as directed by the court. When that condition was rescinded or amended, the law enforcement agency would be required to remove information from the LEIN.

In addition, under the bill the court could require the probationer to reimburse the county for expenses incurred in connection with the conviction for which the probation was ordered.

House Bill 4365 would amend the Prisoner Reimbursement to the County Act (MCL 801.83 and 801.85) to specify that county reimbursement may be ordered as a probation condition, in accordance with the complementary amendments to the Criminal Code of Procedure as provided in House Bill 4364. Further, the bill would specify that a probationer who was ordered to reimburse the county but willfully refused to do so would be subject to probation revocation.

House Bill 4364 and House Bill 4365 are tie barred to each other.

BACKGROUND INFORMATION:

In 1984, the state enacted the Prisoner Reimbursement to the County Act, authorizing counties to collect reimbursement for the costs of incarceration from jail inmates who are serving sentences (as opposed to jail inmates who are in jail awaiting arraignment or trial). The act capped the amount that a county may seek from a jail inmate at $30 a day. At the request of Macomb County, that per diem limit was increased to $60 by Public Act 212 of 1994. At the time, Macomb County ran what its jail administrator claimed was the largest jail reimbursement program in Michigan. Between 1985, when the program was instituted, and June 1993, the county collected and deposited to its general fund about $2.7 million from former inmates. At the time the per diem costs of the Macomb county jail were estimated at $56, while the Senate Fiscal Agency reported that the generally accepted average per diem cost of county jails elsewhere in the state was about $35. Public Act 212 of 1994 also extended the period of time during which a county can sue a former inmate for reimbursement from six months after release to 12 months after release.

FISCAL IMPLICATIONS:

Of House Bill 4364, the House Fiscal Agency notes that the bill likely would have no significant fiscal impact on the Department of Corrections, but could increase local revenues to the extent counties were able to recoup costs not otherwise enforceable. Revenue increases could, however, be to some degree offset by any extra costs associated with sanctions imposed for failure to comply with conditions of probation. To the extent that such probation violators were sentenced to prison, the bill could marginally increase costs to the Department of Corrections, although it is not likely that such costs would be significant. (3-11-98)

Of House Bill 4365, the House Fiscal Agency notes that the bill would have no fiscal impact on the Department of Corrections, but could increase local revenues by enabling reimbursement to be enforced through probation orders. However, to the extent that probation violators were sentenced to local sanctions or to prison for failure to reimburse, local or state costs of incarceration could increase. (3-11-98)

ARGUMENTS:

For:

The legislation is necessary so that trial courts know they may consider these conditions of probation. Although current sentencing legislation [MCLA 771.3(4)] specifically gives trial courts the authority to "impose other lawful conditions of probation as the circumstances of the case may require or warrant, or as in its judgment may be proper," it appears the appellate courts do not give this statement much weight. Instead, they require the authority for specific terms of sentencing to be specifically spelled out by the legislature. These bills would provide that policy specificity, making these two conditions explicit, thus providing guidance for decisions of the court.

For:

The legislation would allow law enforcement officers to track people who are named in personal protection orders after they receive a sentence of probation. House Bill 4364 would require the court to notify the local law enforcement agency, which would have to enter the order into the law enforcement information network (LEIN), whenever the court included protection conditions in a probation order. In domestic violence, stalking and criminal sexual assault cases, there is a need to minimize the risk that the defendant will continue to harass the victim. Prior to trial this can be done through bond conditions, which are placed in LEIN. Then law enforcement can make an arrest for violations of the bond condition based upon probable cause. Sometimes the need for "no contact" clauses continues after sentencing and during the period of probation; however, current law does not allow placing such conditions in LEIN. This legislation would specifically allow a term of probation that constitutes a protective order to be placed in LEIN using the same procedures and giving the same arrest powers as provided in pretrial release settings already outlined in law (MCL 764.15e).

Against:

Truly indigent probationers cannot afford to reimburse a county for the costs of incarceration. Neither can most offenders who are struggling to put their lives in order upon their release. This legislation risks creating situations in which the inability to pay would become a violation of probation. Legislation of this kind, designed to recover what are apt to be very
modest sums of money, is penny-wise but pound foolish, given that the greatest hope of cost savings in county and state corrections budgets is the rehabilitation and well being of most former prisoners.

POSITIONS:

The 2nd Judicial District Court supports the bills. (3-12-98)

Analyst: J. Hunault

■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.