

REIMBURSEMENT TO MUNICIPAL JAIL

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Senate Bill 393 as passed by the Senate

Sponsor: Sen. Rick Jones

House Committee: Judiciary

Senate Committee: Judiciary

First Analysis (4-17-12)

BRIEF SUMMARY: The bill would allow any city, village, or township to seek reimbursement from a person who was or had been a convicted inmate in a municipal jail, or incarcerated in a county jail, for expenses incurred by the municipality for that person's incarceration.

FISCAL IMPACT: To the extent that newly-eligible municipalities elected to pursue reimbursement under the bill's provisions, the bill could increase local revenue for these units.

THE APPARENT PROBLEM:

Many municipalities operate jails or lockups. For the most part, these local jails or lockups are used to house arrestees prior to arraignment or transfer to a county jail. Sometimes, if no beds are available at the county jail, a person may be held in the municipal jail, even post-sentencing. Reportedly, operating a jail is very expensive, with some local police departments reporting that at least half of their operating budgets are spent on incarcerating and caring for inmates.

Under the Prisoner Reimbursement to the County Act, counties may seek reimbursement from a prisoner for expenses the county incurred in relation to a charge for which the prisoner was sentenced to a county jail. In 2006, Public Act 88 was enacted to create a parallel program for municipalities operating a jail or lockup to seek reimbursement from inmates - if convicted - for expenses the municipality incurred related to the person's incarceration in a municipal jail or in a county jail, whether pretrial or post-sentencing. However, Public Act 88 only applies to cities, villages, and townships in a county with a population of more than 500,000. This means that only municipalities located in Kent, Wayne, Oakland, and Macomb Counties may seek reimbursement from current or former inmates for incarceration costs.

One problem with the population quota restriction of PA 88 is that cities of similar size and with similar court funding mechanisms for district courts are treated differently. State law creates three classes of district court districts - first, second, and third. A district of the first class is a district consisting of one or more counties where each of those counties is responsible for maintaining, financing, and operating the district court. A district of the second class is a district consisting of a group of political subdivisions within a county where the county is responsible for maintaining and funding the district

court. A district of the third class consists of one or more cities, townships, or villages where each municipality is responsible for maintaining, operating, and funding its district court. The funding mechanism in place for the three classes of court districts affects who pays the incarceration costs for a person who violates a local ordinance.

For instance, under Section 801.4a of the Revised Statutes of 1846, it is the county that bears the burden of incarceration expenses related to housing a person in the county jail for a local ordinance violation, but only if a district court of the first or second class has jurisdiction of the offense (this is because these counties retain two-thirds of fine revenue from ordinance violations). Thus, municipalities located in a district court of the third class (who keep 100 percent of fine revenue from ordinance violations) may be charged for the costs related to incarceration by their counties if an ordinance violator is transferred to the county jail. However, only those municipalities located in Wayne, Kent, Macomb, and Oakland Counties are allowed under PA 88 to recoup those county charges directly from the inmate.

As an example, the district courts in both the City of Plymouth and the City of East Lansing are district court districts of the third class. Under PA 88, the City of Plymouth can recoup charges by the Wayne County Jail for housing inmates sent there for ordinance violations, but the City of East Lansing cannot seek reimbursement from ordinance violators sent to the Ingham County Jail.

In addition, it has been pointed out that many local police departments are understaffed and suffering in the current economic climate. Budgets are strained and some departments are finding it difficult to fund the continued operation of their jails. Local jails and lockups are needed because they relieve overcrowding in county jails and enable police to hold persons who pose a danger to themselves or others if released, such as drunk drivers. Some feel that if all municipalities could seek reimbursement from jail inmates, it may prevent layoffs of police officers or other necessary staff such as 9-1-1 operators.

THE CONTENT OF THE BILL:

Under the Inmate Reimbursement to Municipalities Act, a city, village, or township located in a county with a population of 500,000 or more (Kent, Macomb, Wayne, and Oakland) may seek reimbursement from a person who was or had been a convicted inmate in the municipal jail, or incarcerated in a county jail, for expenses incurred by the municipality for that person's incarceration.

Senate Bill 393 would amend the act (MCL 801.312) to eliminate the population quota restriction and instead apply the act to any city, village, or township -- regardless of the size of the county. Under the bill, any municipality could seek reimbursement from an inmate for allowable expenses.

HOUSE COMMITTEE ACTION:

The House Committee did not make changes to the Senate-passed version.

BACKGROUND INFORMATION:

The bill is similar to House Bill 6156 of the 2009-2010 legislative session. House Bill 6156 would have expanded the Inmate Reimbursement to Municipalities Act to any city, village, or township located in a district court district of the third class. The bill was passed by the House but died in the Senate.

Costs allowed to be sought under the Inmate Reimbursement to Municipalities Act

A municipality may be reimbursed the following: up to \$60 per day for incarceration in a municipal jail; the per-day cost charged to a municipality by a county for housing the inmate in the county jail, not to exceed \$60 per day; the cost of providing medical care, prescription drugs, dental care, and other medical services; the cost of investigating the financial status of the person to determine the ability to bear the reimbursement; and any other expenses incurred by the municipality in collecting payments allowed by the act. The act prohibits a municipality from enforcing a judgment against the defendant's homestead.

The act also requires an inmate in a municipal or county jail to cooperate with the municipality seeking reimbursement. An inmate who willfully refuses to cooperate cannot receive a reduction in his or her term as allowed under Public Act 60 of 1962 (a reduction of one-fourth of the term, subject to court approval, if the inmate's conduct, diligence, and general attitude merits the reduction). Reimbursement may be ordered as a probation condition and failure to reimburse the municipality subjects the inmate to probation revocation.

ARGUMENTS:

For:

Under current law, some municipalities can seek reimbursement from inmates housed in their own city jails or lockups and for incarceration expenses incurred in a county jail for ordinance violations that are charged back to a municipality, while similar municipalities cannot recoup these incarceration expenses. Currently, only municipalities located in Kent, Oakland, Wayne, or Macomb Counties are eligible to seek reimbursement directly from prisoners for the costs of incarceration.

Since districts of the first and second class share the bulk of the revenue from local ordinance violations with the county, the county is required under the Revised Statutes to bear the responsibility of all incarceration costs incurred by the county for housing ordinance violators. Districts of the third class, on the other hand, retain 100 percent of fine revenue from ordinance violations. Thus, a county may charge incarceration costs for ordinance violators back to the municipalities, but the municipality may not seek reimbursement from the inmate. Thus, current law especially disadvantages

municipalities located in a district of the third class that are not located in one of those four counties. The bill would address the inequality by enabling all municipalities in the state to have the same ability to seek reimbursement from inmates.

The bill would not apply to all arrestees. Only a person who had been convicted could be ordered to pay, and only if not indigent. If charges were dropped or the person was later acquitted, a municipality could not seek reimbursement. The reimbursement could be for time served in the local jail or county jail (for ordinance violations) both pre-trial or after conviction.

For:

Many police departments have laid off significant numbers of officers and support staff in recent years, with some police departments even closing down and contracting with the county sheriff's office for police services. Other departments struggle to keep operating their local jails. The local jails provide an important function. They temporarily house arrestees (up to three days) while awaiting arraignment or transport to the county jail, and they house persons post-conviction or sentencing if no beds are available at the county jail - thus alleviating over-crowding at the county level. Drunk drivers and others, who due to intoxication or drug use may pose a risk to themselves or others if released, can also be held at the local jail. All this comes at a significant cost to police departments.

According to law enforcement departments offering testimony on the bill, the additional revenue that could be collected under the bill is sorely needed to support local law enforcement efforts and may enable struggling municipalities to continue to operate their jails rather than having to choose between closing their jails and laying off police officers or other necessary support staff.

Against:

The bill may have unintended consequences. The bill from last session would have applied only to municipalities located in a district of the third class and so would have impacted only certain municipalities in Genesee, Washtenaw, and Ingham Counties such as Flint, Ann Arbor, Ypsilanti Township, Lansing, and East Lansing. Senate Bill 393, on the other hand, would enable any city, village, or township in the state to seek reimbursement from an inmate for incarceration expenses. The bill would enable those in first or second class district court districts, as well as third class districts, that operate a local jail to seek reimbursement for an inmate's incarceration costs. But the concern is that the counties - who under the Revised Statutes must cover the costs of ordinance violators housed in the county jail districts of the first and second class - may instead charge back the incarceration costs to the locals and let them try to collect directly from the inmate. Thus, the municipalities in these districts would shoulder the risk of trying to collect from an inmate and would suffer financially if unable to collect in whole or in part.

In addition, it is not clear if the bill's language expanding applicability of the act to all cities, villages, and townships was intended or needed to enable a municipality to seek reimbursement for housing an inmate in its own jail or lockup. It also is not clear if the

expansion of authority to recoup costs charged back to municipalities by a county for housing ordinance violators was intended to apply to municipalities in counties that currently cover such costs (i.e., those located in district court districts of the first or second class). Perhaps the intent was only to allow those municipalities in districts of the third class -- those who are being charged by their counties for incarceration costs of ordinance violators -- to seek reimbursement from an inmate. Regardless, the bill could easily be amended to clarify the intent.

Against:

According to information supplied by the ACLU of Michigan, a 2010 report by the Pew Charitable Trusts found that "efforts to enforce unpaid criminal justice debts can be self-defeating because they have the effect of impeding reentry and reintegration into society." The ACLU written testimony also highlighted the findings of a recent commission in Massachusetts established to study the impact of legislation authorizing county sheriffs to charge jail reimbursement fees to inmates. The commission came to similar conclusions, citing the fees as a detriment to successful reentry by decreasing the limited savings and economic resources available to inmates upon release, increasing the number of inmates qualifying as indigent, and placing a greater financial burden on inmates' families.

In addition, investigating an inmate's ability to pay, coupled with the administrative and/or court costs associated with assessing, collecting, and distributing the reimbursement fees could be greater than the amount collected. Therefore, the ACLU recommends Michigan follow the lead of Massachusetts and establish a commission to assess the costs and benefits of the existing statutes allowing counties and those municipalities in Kent, Wayne, Macomb, and Oakland to seek reimbursement from inmates before further expanding either of those acts.

POSITIONS:

A representative of the East Lansing Police Department testified in support of the bill. (3-22-12)

The ACLU of Michigan opposes the bill. (3-22-12)

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■ 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.