Legislative Analysis

EVIDENCE-BASED SUPERVISION PRACTICES

Senate Bill 8 as enacted
Public Act 5 of 2017
Sponsor: Sen. Peter MacGregor
House Committee: Michigan Competitiveness
Senate Committee: Michigan Competitiveness
Complete to 5-23-19

BRIEF SUMMARY: Senate Bill 8 creates a new act that:

- Requires the use of evidence-based supervision practices for probation and parole supervision.
- Restricts state funds to programs in accordance with evidence-based practices.
- Eliminates ineffective recidivism policies and practices.
- Adopts policies to increase victim satisfaction with the criminal justice system.
- Provides intensive initial and ongoing training and professional development in evidence-based practices to Department of Corrections (DOC) employees and employees of certain local agencies who supervise probationers or parolees.
- Requires reports by supervising agencies to the governor, the legislature, and the Supreme Court Administrative Office (SCAO) on efforts to implement the act.

FISCAL IMPACT: The fiscal impact of Senate Bill 8 on the state and on local units of government is indeterminate. The bill requires the use of evidence-based practices for supervision and recidivism intervention within four years. At this time, the effect of the evidence-based practices is not known. If the effect is an increase in probation and parole success, with a corresponding decrease in the number of individuals sentenced to jails and prisons due to probation or parole revocation or recidivism, then there could be a savings to the state and to local units of government (i.e., state and local correctional facilities, court systems, and law enforcement). In 2018, the average cost of prison incarceration in a state facility was roughly $38,000 per prisoner per year, a figure that includes various fixed administrative and operational costs. The cost of local incarceration in county jails varies by jurisdiction.

THE APPARENT PROBLEM:

On average, about 64,000 individuals in Michigan are being supervised on probation or parole. Supervised individuals have conditions placed on them, such as attending 12-step programs, avoiding alcohol and illegal drugs, and staying employed, among other things, with noncompliance resulting in additional sanctions being imposed that can include being returned to jail or prison. Reportedly, policies and rules regarding supervision practices have not necessarily been vetted to see which policies and rules are effective tools in managing supervised populations as shown in fewer probation or parole violations and fewer parolees or probationers being returned to prison for violations or the commission of new crimes. Legislation is being offered to require that policies governing supervision practices by DOC and other supervising agencies be based on scientific evidence.

THE CONTENT OF THE BILL:

Senate Bill 8 creates a new act to provide for the use of *evidence-based practices* by an *agency*.

> *Agency* means DOC or a local agency that receives state funding and supervises individuals on probation or parole.

> *Evidence-based practices* means supervision policies, procedures, programs, and practices that scientific research demonstrates reduce recidivism among individuals on probation, parole, or postrelease supervision.

Supervision Policies, Rules, and Regulations

An agency must adopt policies, rules, and regulations that, by June 29, 2021 (four years after the bill's effective date), result in all supervised individuals being supervised in accordance with evidence-based practices, or practices developed based upon evidence-based practices, in order to improve success rates of supervised individuals and to reduce their recidivism rates. In doing so, the agency must consult with and seek recommendations from local law enforcement agencies, including sheriffs' departments, circuit courts, county prosecutors' offices, and community corrections programs.

Policies, rules, and regulations must include all of the following:
- The adoption, validation, and use of an objective risk and needs assessment tool.
- The use of assessment scores and other objective criteria to determine the risk level and program needs of each supervised individual, prioritizing supervision and program resources for offenders at higher risk to reoffend.
- Definitions of low-, moderate-, and high-risk levels during the period of supervision.
- The development of a *case plan*, based on the assessment score, for each individual who is assessed to be moderate to high risk, and for each individual who was assessed to be low risk. A case plan must allow options for programming and be subject to conditions of supervision, if any, imposed by a court having jurisdiction over the individual.
- The identification of swift, certain, proportionate, and graduated responses that a supervising agent will apply in response to a supervised individual's compliant and noncompliant behaviors.
- The adoption of caseload guidelines based on offender risk levels that take into account agency resources and employee workload.
- The establishment of protocols and standards that assess the degree to which agency policies, procedures, programs, and practices relating to offender recidivism reduction are evidence-based.

Case plan means an individualized accountability and behavior change strategy for supervised individuals that does all of the following:
- Targets and prioritizes the offender's specific criminal risk factors.
- Matches programs to the offender's individual characteristics, such as gender, culture, motivational stage, developmental stage, or learning style.

- Establishes a timetable for achieving specific behavioral goals, including a schedule for payment of victim restitution, child support, and other financial obligations, subject to a determination of ability to pay.
- Specifies positive and negative actions that will be taken in response to the individual's behaviors.

Recidivism

By June 29, 2021 (four years of the bill's effective date), an agency must eliminate supervision policies, procedures, programs, and practices intended to reduce *recidivism* that scientific research demonstrates does not do so. Any data collected and maintained under the bill regarding recidivism rates must be collected and maintained in a manner that separates the data regarding technical parole violations and technical probation violations from data on new felony and misdemeanor convictions.

> *Recidivism* means the rearrest, reconviction, or reincarceration in prison or jail for a felony or misdemeanor offense or a probation or parole violation of an individual as measured first after three years and again after five years from the date of release from incarceration, placement on probation, or conviction, whichever is later.

Crime Victim Satisfaction

An agency must adopt policies, rules, and regulations that improve crime victim satisfaction with the criminal justice system, including all of the following:
- Supervised individuals' payment of victim restitution and child support.
- The opportunity for victims to complete victim impact statements or provide input into presentencing investigation reports.
- Providing victims with information about their rights and services, and referrals to access those rights and services.
- Facilitating victim-offender dialogue if a victim is willing.
- Offering victims the opportunity to complete a "victim satisfaction survey" with data used to measure agency performance. The Department of the Attorney General must develop that survey for use by the agency.

Employee Training

An agency must provide its employees and supervising agents with intensive initial and ongoing training and professional development services to support the implementation of evidence-based practices that include assessment techniques, case planning, risk reduction and intervention strategies, effective communication skills, substance abuse intervention information, and other topics identified by the agency or its employees and supervising agents.

Annual Report

By March 1 of each year, beginning in 2018, an agency must submit to the governor, the Secretary of the Senate, the Clerk of the House of Representatives, and SCAO a comprehensive report on the agency's efforts to implement the new act. The report must include all of the following:
- The percentage and number of supervised individuals being supervised in accordance with evidence-based practices.

- The amount of state funds spent for evidence-based programs.
- A list of all programs, including an identification of all evidence-based programs.
- An identification of all supervision policies, procedures, programs, and practices that were eliminated.
- The results of victim satisfaction surveys.
- The agency's recommendations for resource allocation, and any additional collaboration with other state, regional, or local public agencies, private entities, or faith-based or community organizations.

The agency must make the full report and an executive summary of it available to the general public on its website.

Miscellaneous
By June 29, 2021 (four years after the bill's effective date), all state funds spent on programs must be for those that are in accordance with evidence-based practices or developed based upon such practices.

Further, DOC may form partnerships or enter into contracts with institutions of higher education or other qualified organizations for assistance with data collection, analysis, and research.

Senate Bill 8 took effect (as Public Act 5 of 2017) on June 29, 2017.

BACKGROUND INFORMATION:

The bill is part of a larger package, including Senate Bills 5 through 24 and Senate Bill 50, that addresses various components of the criminal justice system. With the exceptions of Senate Bills 11 and 50, which were vetoed by the governor, and Senate Bill 14, which did not pass the House, these bills were enacted as Public Acts 1 through 18 of 2017.

ARGUMENTS:

For:

Proponents say that if policies and rules governing parole and probation supervision in the community were based on scientific evidence demonstrating the policy results in reduced recidivism, it would follow that public safety should increase while societal costs be reduced. Senate Bill 8 addresses this concern by requiring DOC and local supervising agencies to use, and the state to pay for, only those policies and rules for supervising parolees and probationers in the community shown to be effective based on scientific evidence. Agencies would have four years from the bill's effective date to investigate effective policies and practices and incorporate them into all agency policies, rules, and regulations pertaining to supervising parolees and probationers. Employees and supervising agents would be required to receive ongoing training in implementing the policies. The annual report required to be submitted to the legislature should help identify if any further statutory tweaks are needed to provide the structure, yet flexibility, that implementing evidence-based strategies for community supervision may entail.

Further, agencies would also be required to adopt policies to track victim "satisfaction" with the criminal justice system. Though that may sound odd, the information to be gathered will reveal such things as whether victims are receiving restitution and child support by supervised individuals, if victims are being given opportunities to submit victim impact statements as provided in law, and if victims are receiving information about their rights and services and referrals to receive those rights and services. Should the victim satisfaction survey show low levels of satisfaction, it would signal areas needing further policy adjustments and/or employee and supervising agent training.

All in all, by focusing resources on policies regarding probationers and parolees that have been shown to work to reduce recidivism and improve services to victims, public safety should be increased and at a lower cost to taxpayers.

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