

Legislative Analysis



MEDICAL PROBATION AND COMPASSIONATE RELEASE

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House Bill 5234 as introduced
Sponsor: Rep. Martin Howrylak
Committee: Law and Justice
Complete to 11-27-17

BRIEF SUMMARY:

House Bill 5234 would amend the Code of Criminal Procedure by adding two sections to allow for medical probation or compassionate release of a prisoner if certain conditions are met.

For a prisoner to be eligible for medical probation, the prisoner would have to be physically or mentally incapacitated due to a medical condition that renders him or her unable to perform activities of basic daily living; the prisoner would have to require 24-hour care; the prisoner would have to require acute long-term medical treatment or services; a placement option would have to be secured for the prisoner in the community; the county sheriff would have to make a reasonable effort to determine the source of payment for medical expenses; and the court would have to conduct a public hearing at which the prosecuting attorney and victims are provided an opportunity to be heard.

For a prisoner to be eligible for compassionate release, a physician would have to determine that the prisoner has a life expectancy of not more than 6 months; a placement option would have to be secured for the prisoner in the community; the county sheriff would have to make a reasonable effort to determine the source of payment for medical expenses; and the court would have to conduct a public hearing at which the prosecuting attorney and victims are provided an opportunity to be heard.

DETAILED SUMMARY:

Medical Probation

House Bill 5234 would allow a county sheriff to notify the court in writing that a prisoner may be eligible for medical probation. The sheriff would first have to consult with a physician and include in the notification the evidence that the physician considered when making his or her determination. For a prisoner to be eligible for medical probation, the physician would have to determine either of the following:

- The prisoner is physically or mentally incapacitated due to a medical condition that renders the prisoner unable to perform basic daily living activities and requires 24-hour care. The physician would be required to evaluate when the incapacitation arose.
OR
- The prisoner requires acute long-term medical treatment or services.

If a court finds that either of the above conditions applies, the court could then enter an order of probation and place the prisoner on medical probation under the charge and supervision of a probation officer. However, all of the following must apply for a court to place a prisoner on medical probation:

- A placement option must be secured for the prisoner in the community. A placement option may include, but is not limited to, home confinement or a medical facility.
- The county sheriff must make a reasonable effort to determine whether expenses related to the prisoner's placement are covered by Medicaid, a health care policy, a certificate of insurance, or another source for the payment of medical expenses or whether the prisoner has sufficient income or assets to pay the placement expenses.
- The court must conduct a public hearing and provide to the prosecuting attorney of the county and each victim who requests and is entitled to notice under the William Van Regenmorter Crime Victim's Rights Act (MCL 780.751 to 780.834) adequate notice of the hearing and an opportunity to be heard during the hearing.

If the county incurs placement expenses that are not covered by payment sources available to the prisoner, then the county may seek reimbursement as permitted by law.

In an order of medical probation, a court could include a condition to require reexamination of the prisoner to assess whether the prisoner continues to meet the requirements for medical probation. If the requirements are no longer met, the court would be required to revoke the medical probation and order the prisoner back to county jail for, at most, the remainder of the original sentence time, less time served.

Compassionate Release

The bill also would allow a county sheriff to notify the court in writing that a prisoner may be eligible for compassionate release if the sheriff has consulted with a physician who determined that the prisoner has a life expectancy of not more than 6 months. The notification must include the evidence the physician considered in making the determination.

A court may grant compassionate release if it finds that the prisoner has a life expectancy of 6 months or less and that the release would not reasonably pose a threat to public safety or the prisoner. Additionally, all of the following must apply for a court to grant compassionate release to a prisoner:

- A placement option must be secured for the prisoner in the community. A placement option may include, but is not limited to, placement in the prisoner's home or a medical facility.
- The county sheriff must make a reasonable effort to determine whether expenses related to the prisoner's placement are covered by Medicaid, a health care policy, a certificate of insurance, or another source for the payment of medical expenses or whether the prisoner has sufficient income or assets to pay the placement expenses.

- The court must conduct a public hearing and provide to the prosecuting attorney of the county and each victim who requests and is entitled to notice under the William Van Regenmorter Crime Victim's Rights Act (MCL 780.751 to 780.834) adequate notice of the hearing and an opportunity to be heard during the hearing.

If compassionate release is granted, the court would be required to enter an amended judgment of sentence specifying that the prisoner is released from the term of imprisonment originally imposed.

If the county incurs placement expenses that are not covered by payment sources available to the prisoner, then the county may seek reimbursement as permitted by law.

As defined in the bill:

- "County sheriff" would include the sheriff of a county in this state or the sheriff's designee.
- "Physician" would mean that term as defined in the Public Health Code (MCL 333.17001).
- "Prisoner" would mean an individual committed or sentenced to imprisonment (1 year or less) under Section 28 of Chapter IX of the Code of Criminal Procedure (MCL 769.28).

The bill would take effect 90 days after its enactment.

Proposed MCL 771.3g and 771.3h

FISCAL IMPACT:

House Bill 5234 would have an indeterminate fiscal impact on local units of government. It is not known how many prisoners might be eligible for medical probation or compassionate release. Any potential savings would be realized in the assumed shift of health care costs from local units to Medicaid, a health care policy, a certificate of insurance, or some other source of payment (i.e., prisoner income or assets).

Under the bill, if placement of a prisoner on medical probation or compassionate release results in expenses not covered by an identified payment source, (i.e., Medicaid, a health care policy, a certificate of insurance, prisoner income or assets), the county would be authorized to seek reimbursement for the expenses. It is unclear from where the county would seek reimbursement.

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