

## MEDICAL PROBATION AND COMPASSIONATE RELEASE

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**House Bill 5234 as enacted**

**Public Act 149 of 2018**

**Sponsor: Rep. Martin Howrylak**

**House Committee: Law and Justice**

**Senate Committee: Judiciary**

**Complete to 6-20-18**

Analysis available at

<http://www.legislature.mi.gov>

**BRIEF SUMMARY:** House Bill 5234 would amend the Code of Criminal Procedure to allow for medical probation or compassionate release of a prisoner if certain conditions are met.

**FISCAL IMPACT:** House Bill 5234 would have an indeterminate fiscal impact on local units of government. (See *Fiscal Information*, below, for further discussion.)

### **THE APPARENT PROBLEM:**

According to committee testimony, counties incur significant costs for in-facility care to extremely ill and dying prisoners housed in their county jails. As stated by written testimony from the Oakland County Sheriff, “currently, when an inmate enters the county jail, they are taken off their public or private health insurance and the jail is required to pay for any pre-existing conditions or any medical treatment needed while they are incarcerated.” Some inmates are even turned away from advanced care or rehabilitation facilities because of their existing incarceration. Often, these frail and ill prisoners no longer pose a threat to society due to their age or extreme health problems. This legislation would allow doctors, sheriff departments, and courts to come together and decide if an inmate could be released for medical purposes—which would allow the prisoner to receive needed health care while not imposing significant health care costs on sheriff departments.

### **THE CONTENT OF THE BILL:**

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.

Briefly, for a prisoner to be eligible for medical probation (also referred to as “medical release”), 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.

The bill is described in greater detail below.

### **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.

Upon finding that either of the above conditions applies, the court could 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 could 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 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 were to incur placement expenses that are not covered by payment sources available to the prisoner, the county could 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 has 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 could 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 could 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 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 were 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 were to incur placement expenses that are not covered by payment sources available to the prisoner, the county could 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

## ***BACKGROUND INFORMATION:***

According to the Michigan Department of Corrections, a recent population survey found that around 850 Michigan prisoners were medically fragile. The medical conditions among this group include, but are not limited to, late-stage cancers, dementia, Alzheimer's, and polydipsia. Not all of these prisoners are terminally ill, but for most, treatment will continue throughout their imprisonment and beyond. Additionally, many of these prisoners are not eligible for parole, putting their medical costs solely on the department.

## ***FISCAL INFORMATION:***

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, (e.g., 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.

## ***ARGUMENTS:***

### ***For:***

Supporters of the bill argue that county jails currently have too much of a financial burden when they are required to pay for prisoners' costly and lengthy medical expenses relating to physical or mental illnesses. The Oakland County Sheriff's Department shared two specific instances where one hospital bill totaled \$184,000, while another totaled \$166,500. These costs did not include the expenses incurred for employing officers stationed outside of the prisoners' hospital rooms around the clock.

Significant medical costs result in decreased funding for facilities, employees, and programs. A medical release structure like that proposed by this bill would lift the significant and costly burden currently borne by sheriffs and county jails and allow counties to spend money needed elsewhere. Prisoners who would qualify for medical probation or compassionate release are often not only the most expensive to care for, but also too frail to be a danger to society.

### ***Against:***

Concerns were raised regarding usurping the duties of a county sheriff. Critics of the bill argue that currently, once a judge imposes a sentence upon a prisoner, that judge may not later adjust or amend the sentence. Instead, the care of the prisoner is released to the county sheriff and under the sheriff's authority. However, the bill would allow a judge to resentence a prisoner for either medical probation or compassionate release. This action

strips the authority from the county sheriff and gives it back to the judge, who ultimately decides, under the bill, whether the prisoner may be released.

Opponents of the bill also are concerned that Medicaid will not cover medical treatment to an inmate on medical probation or compassionate release. This is because Medicaid in Michigan is not applicable to persons in a secured facility. Opponents raising this concern would like to see the bill amended with clear language to allow Medicaid as a viable option for medical costs during a medical probationary period or upon compassionate release.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.