

## **PRISONERS: ALLOW TRANSFER FOR MEDICAL/BEHAVIORAL TREATMENT**

Phone: (517) 373-8080  
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**House Bill 5245 as introduced**  
**Sponsor: Rep. Klint Kesto**  
**Committee: Law and Justice**  
**Complete to 11-27-17**

Analysis available at  
<http://www.legislature.mi.gov>

### **SUMMARY:**

House Bill 5245 would allow, in certain circumstances, a court to order the transfer of a prisoner to a facility or home outside the jurisdiction of the Department of Corrections (DOC) in order for the prisoner to receive long-term medical or mental health treatment or services or because the prisoner no longer poses a threat to society due to a deterioration in his or her physical or mental health.

Currently, with a few exceptions, Michigan's Truth in Sentencing law requires a prisoner subject to disciplinary time who is committed to the jurisdiction of the DOC to serve the duration of his or her minimum sentence in a secure correctional facility under the jurisdiction of the DOC. A prisoner, including those serving certain life sentences, may be released on parole if eligible, if approved by the Parole Board, and if he or she meets all other statutory conditions. Otherwise, a prisoner remains in a secure facility under the DOC's supervision until the maximum sentence is completed or, in the case of a life sentence without parole, the prisoner is deceased. However, a prisoner may leave a DOC facility, but only if under DOC supervision, when participating in a work detail or to visit a critically ill relative, attend a relative's funeral, or obtain medical services not otherwise available at the prison.

House Bill 5245 would add a new section to the Corrections Code to also allow, by court order, a prisoner to be transferred to a facility that is not under DOC supervision in certain circumstances. Specifically, the bill would do the following:

- Allow the assistant director in charge of the Bureau of Correctional Facilities (hereafter A.D.) to petition the sentencing court for an order transferring the prisoner for medical or mental health treatment, but only *if*:
  - The A.D. determines that the transfer would pose a minimal risk to society, and
  - The A.D. consulted with a physician who determined that:
    - The prisoner's physical or mental health has deteriorated to a point rendering the prisoner a minimal threat to society, and/or
    - The prisoner requires acute long-term medical or mental health treatment or services.

The petition would have to be accompanied by the evidence the A.D. used to make his or her determination, including, but not limited to, the results of the validated risk assessment, and also the evidence the physician considered in making a determination.

- Allow the sentencing court to enter an order to transfer a prisoner if the court finds that:

- The prisoner requires acute long-term medical or mental health treatment or services, or
- The prisoner's physical or mental health has deteriorated to a point rendering the prisoner a minimal threat to society.

The court's order would have to require the prisoner transferred under the bill to be returned to a correctional facility *if* the prisoner no longer met the requirements of this provision *or* the conditions described below were no longer satisfied.

An order entered under this provision could include a requirement that the prisoner submit to periodic reexamination by a physician to assess whether the prisoner continued to meet the transfer requirements. If a reexamination revealed that the prisoner no longer met the transfer requirements, the court would have to order the return of the prisoner to a correctional facility for a term of imprisonment not to exceed the prisoner's sentence, less time served, for the offense of conviction. For purposes of calculating time served, the time a prisoner spent transferred would be treated as if he or she had been imprisoned in a correctional facility.

A court would be prohibited from entering an order to transfer a prisoner *unless* all of the following conditions were satisfied:

- A placement option had been secured in the community. This could include, but would not be limited to, home confinement or a medical or mental health facility. A placement option would not need to involve any type of supervision of the prisoner by the DOC or an employee of a private contractor of the DOC or otherwise be considered a secure facility, but could involve electronic monitoring (tether).
- The placement option poses a minimal risk to society for a prisoner requiring acute long-term medical or mental health treatment or services.
- The A.D. made a reasonable effort to determine whether the expenses related to the placement option were covered by Medicaid (i.e., the prisoner was placed in a nursing home), 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 for expenses related to the transfer.
- The DOC had provided notice to the prosecutor's office in the county in which the prisoner had been sentenced and to each victim entitled to notice under the William Van Regenmorter Crime Victim's Rights Act.

The bill would take effect 90 days after its enactment.

MCL 791.265 and proposed 791.265j

## **FISCAL IMPACT:**

House Bill 5245 would have an indeterminate fiscal impact on the state because it is unclear whether it would supersede existing sentencing law and, if it did, how many prisoners might be eligible. Any potential savings would be realized in the assumed shift of health care costs from the Department of Corrections to Medicaid. A cost shift to Medicaid would result in a net savings equal to approximately 65%, as the state generally must provide state match equal to

35% of Medicaid expenditures. Under the bill, a health care policy, a certificate of insurance, or some other source of payment could also be used to cover health care costs, though the number of prisoners who might exercise these options is unknown.

Providing health care to an aging prison population is a large and growing cost for the state. Caring for prisoners inside the prison environment is far more expensive than it is on the outside. Under the 1965 law that created Medicaid, anyone entering a state prison forfeited Medicaid eligibility; however, an exception to that general rule opened up in 1997 when the United States Department of Health and Human Services wrote to state Medicaid directors saying that prisoners who leave state or local facilities for care in hospitals or nursing homes are eligible for Medicaid. Most prisoners would qualify under existing Medicaid rules, as long as they receive care outside of prison facilities. Receiving federally subsidized long-term care outside of prison walls potentially could save the state millions of dollars in health care costs.

For prisoners to be eligible for transfer under HB 5245, the Assistant Director in charge of the Bureau of Correctional Facilities would have to determine that the transfer would pose a minimal risk to society, a physician would have to determine that the prisoner's physical or mental health has deteriorated to a point that renders the prisoner a minimal threat to society or that the prisoner requires long-term medical or mental health treatment or services, and a placement option would have to be secured for the prisoner in the community. Under the bill, community placement need not involve any type of supervision or be considered a secure facility.

The bill does not define "minimal risk to society," so the number of prisoners who would be eligible is unknown. The bill does not take into account truth-in-sentencing laws, prisoners' earliest release dates, or prisoners' eligibility for parole. Also, under current law, prisoners under the jurisdiction of the Department of Corrections cannot be placed in the community without supervision.

Legislative Analyst: Susan Stutzky  
Fiscal Analyst: Robin Risko

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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.