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BILL



ANALYSIS

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House Bill 5234 (as passed by the House)
Sponsor: Representative Martin Howrylak
House Committee: Law and Justice
Senate Committee: Judiciary

Date Completed: 4-16-18

CONTENT

The bill would amend Chapter 11 (Probation) of the Code of Criminal Procedure to establish procedures under which a prisoner (a person committed to jail for one year or less) could be released on medical probation or granted compassionate release. The bill would do the following:

- **Allow a county sheriff to notify a court that a prisoner could be eligible for medical probation if a physician determined that the prisoner was physically or mentally incapacitated, or required acute long-term medical treatment.**
- **Allow a court to order placement of a prisoner on medical probation if it found that the prisoner required acute long-term medical treatment or services, or was physically or mentally incapacitated.**
- **Prohibit the court from placing a prisoner on medical probation unless a placement option had been secured, the sheriff had made a reasonable effort to determine a source of payment for placement-related expenses, and the court conducted a public hearing in which the prosecuting attorney and each victim were given an opportunity to be heard.**
- **Allow an order of medical probation to include as a condition that the prisoner submit to reexamination by a physician to assess whether he or she continued to meet the requirements for medical probation.**
- **Allow a county sheriff to notify a court that a prisoner could be eligible for compassionate release if a physician determined that the prisoner had a maximum life expectancy of six months.**
- **Allow a court to grant a prisoner's compassionate release if it found that the prisoner had a maximum life expectancy of six months, and that the release would not reasonably pose a threat to public safety or the prisoner.**
- **Prohibit the court from granting a prisoner compassionate release unless all of the same conditions as those proposed for medical probation were satisfied.**

The bill would take effect 90 days after its enactment.

Definitions

"County sheriff" would include the sheriff of a county in the State or the sheriff's designee.

"Prisoner" would mean an individual committed or sentenced to imprisonment under Section 28 of Chapter 9 of the Code. (That section specifies that if a person convicted of a crime or contempt of court is sentenced to imprisonment for one year or less, the sentence must be to the county jail of the county in which the person was convicted and not to a State penal institution.)

"Physician" would mean that term as defined in Section 17001 of the Public Health Code: an individual who is licensed under Article 15 of the Code to engage in the practice of medicine.

Medical Probation

The bill would allow a county sheriff to provide written notice to a court that a prisoner could be eligible for medical probation if the sheriff had consulted with a physician, and the physician determined either of the following:

- The prisoner was physically or mentally incapacitated because of a medical condition that rendered him or her unable to perform activities of basic daily living, and he or she required 24-hour care.
- The prisoner required acute long-term medical treatment or services.

If a physician determined that a prisoner was physically or mentally incapacitated, the physician would have to evaluate when the incapacitation arose.

The county sheriff's notice submitted to the court would have to be accompanied by the evidence the physician considered in determining that the prisoner was incapacitated or required long-term medical treatment or services.

Subject to the conditions described below, a court could enter an order of probation placing a prisoner on medical probation under the charge and supervision of a probation officer if the court found that the prisoner required acute long-term medical treatment or services, or that the prisoner was physically or mentally incapacitated with a medical condition that rendered him or her unable to perform activities of basic daily living and he or she required 24-hour care.

The court could not place a prisoner on medical probation unless all of the following applied:

- A placement option, including home confinement or a medical facility, had been secured for the prisoner in the community.
- The county sheriff had made a reasonable effort to determine whether expenses related to the placement were covered by Medicaid, a health care policy, a certificate of insurance, or another source for the payment of medical expenses, or whether the prisoner had sufficient income or assets to pay those expenses.
- The court conducted a public hearing and the prosecuting attorney of the county and each victim who requested and was entitled to notice under the Crime Victim's Rights Act were given adequate notice of the hearing and an opportunity to be heard.

If, as a result of a court's placement of a prisoner on medical probation, the county incurred expenses that were not covered by a medical expenses payment source, the county could seek reimbursement for those expenses to the extent permitted under applicable law.

An order of medical probation could include as a condition of the probation that the prisoner submit to reexamination by a physician to assess whether he or she continued to meet the requirements for medical probation. At any time while the prisoner was on medical probation, the court or probation officer could require the prisoner to submit to a reexamination. If, after reexamination, the court found that the requirements for medical probation were no longer met, the court would have to revoke the probation and order the prisoner committed to the county jail for a term of imprisonment that did not exceed the penalty that was imposed, less time served, for the offense for which the prisoner was originally convicted and placed on medical probation.

Compassionate Release

The bill would allow a county sheriff to provide written notice to a court that a prisoner could be eligible for compassionate release if the sheriff had consulted with a physician, and the physician determined that the prisoner had a life expectancy of not longer than six months.

The notice would have to include the evidence the physician considered in making that determination.

Subject to same conditions as those proposed for medical probation regarding a placement option, placement-related expenses, and a public hearing, a court could grant a prisoner compassionate release if it found that the prisoner had a maximum life expectancy of six months, and that the prisoner's release would not reasonably pose a threat to public safety or the prisoner. If the court granted a prisoner compassionate release, it would have to enter an amended judgment of sentence specifying that the prisoner was released from the term of imprisonment imposed for the offense for which he or she was originally convicted.

If, as a result of a court's grant of compassionate release, the county incurred expenses that were not covered by a medical expenses payment source, the county could seek reimbursement for those expenses to the extent permitted under applicable law.

Proposed MCL 777.3g & 777.3h

Legislative Analyst: Jeff Mann

FISCAL IMPACT

The bill could have a negative fiscal impact on the State and an indeterminate fiscal impact on local government. It is not known how many prisoners could be eligible for medical probation or compassionate release. The bill would define "prisoner" to include only an individual committed or sentenced to imprisonment for one year or less, so it would not include an inmate under the custody of the Department of Corrections who was housed in a county jail. An inmate released on medical probation would be under the supervision of a county probation office. Since the costs of probation supervision vary by county, it is not possible to calculate the cost of that supervision, but the cost presumably would be less than the cost of incarceration in the county jail, producing a net saving for the county.

The county also would have reduced medical costs for each prisoner released under the bill. Depending on how the medical costs were paid for the released prisoner and his or her income and assets, the State could see increased costs (i.e. the costs paid by Medicaid).

Medicaid costs would vary depending upon need for services. If a person's medical condition were severe enough that person required nursing home care, it is highly likely that he or she would be Medicaid-eligible and would not have many assets to spend down for eligibility. Basic nursing home costs are about \$80,000 per year per person with about \$28,000 of those costs paid from the General Fund. (The rest are paid by Federal Medicaid match dollars.)

Under the bill, if a court's grant of either medical probation or compassionate release resulted in the county incurring expenses that were not covered by Medicaid, a health care policy, a certificate of insurance, another source of payment of medical expenses, or the prisoner's income or assets, the county could seek reimbursement for those expenses. The bill does not specify whether the calculated expenses would need to be in excess of the county's savings. It also does not specify from whom the county could seek reimbursement, but if it were an entity of the State, the State would experience increased costs.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.