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Senate Bill 1141 (as introduced 11-12-14)
Sponsor: Senator Rick Jones
Committee: Judiciary

Date Completed: 12-2-14

CONTENT

The bill would amend Chapter IX (Judgment and Sentence) of the Code of Criminal Procedure to do the following:

- **Create a Criminal Justice Policy Commission within the Legislative Council.**
- **Specify the Commission's duties, including conducting ongoing research regarding the effectiveness of sentencing guidelines and developing modifications to sentencing guidelines.**
- **Require the Commission to submit to the Legislature a prison and jail impact report relating to any proposed modifications to sentencing guidelines.**
- **Require certain policies to be reflected in proposed modifications to sentencing guidelines.**
- **Require the Commission to submit any recommended modifications to the sentencing guidelines or other laws, administrative rules, or policies to the Senate Majority Leader, the Speaker of the House of Representatives, and the Governor.**
- **Allow intermediate sanctions to include a term of probation after incarceration that was at least equal to the term of imprisonment.**
- **Extend the Department of Corrections' (DOC's) jail reimbursement program to certain probation and parole offenders, as well as felony offenders housed in county jails who otherwise would have been sentenced to prison.**
- **Require the reimbursement rate under the jail reimbursement program to be at least \$35 per day per offender serving a sanction for a parole or probation violation.**
- **Require the DOC to track and report prisoner restitution collection as a performance measure.**

The bill is tie-barred to House Bill 5930, which would amend the Code to revise sanctions imposed for a violation of conditions of probation.

Criminal Justice Policy Commission

The bill would create a 15-member Criminal Justice Policy Commission in the Legislative Council. The Commission would include two members of the Senate; two members of the House of Representatives; and the Attorney General or his or her designee, representing crime victims. The Senate and House members would have to be the chairperson and minority vice-chairperson of the Senate and House Judiciary Committees, or their designees, who would have to be members of the Judiciary Committees.

The Commission also would include the following members, who would have to be appointed by the Governor before March 1, 2015:

- One circuit court judge, appointed from a list of three names submitted by the Michigan Judges Association.
- One district court judge, appointed from a list of three names submitted by the Michigan District Judges Association.
- One person representing the State's prosecuting attorneys, appointed from a list of three names submitted by the Prosecuting Attorneys Association of Michigan.
- One person representing criminal defense attorneys, appointed from a list of three names submitted by the Criminal Defense Attorneys of Michigan.
- One person appointed from a list of three names submitted by the Michigan Sheriffs' Association.
- One person appointed from a list of three names submitted by the DOC Director.
- One person representing advocates of alternatives to incarceration.
- One mental health expert.
- One person appointed from a list of three names submitted by the Michigan Association of Counties.
- One person representing community corrections agencies.

The Governor would have to designate one member of the Commission as its chairperson.

Except for some of the members first appointed, Commission members would serve four-year terms. A vacancy on the Commission would have to be filled in the same manner as original appointment. Commission members would not receive a salary but would have to be reimbursed for reasonable, actual, and necessary expenses incurred in the performance of their duties.

The Commission could establish subcommittees that could include people who were not members of the Commission, including experts in matters of interest to the Commission.

The Commission would be subject to the Open Meetings Act and the Freedom of Information Act.

The Legislative Council would have to provide the Commission with suitable office space, staff, and necessary equipment.

Duties of the Commission

The Criminal Justice Policy Commission would have to do the following:

- Collect, prepare, analyze, and disseminate information regarding State and local sentencing and release policies and practices for felonies and the use of prisons and jails.
- Collect and analyze information concerning the effect on local jails of misdemeanor sentences and the detention of defendants pending trial.
- Conduct ongoing research regarding the effectiveness of sentencing guidelines in achieving purposes set forth in the bill.
- In cooperation with the State Court Administrator, collect, analyze, and compile data regarding the effect of sentencing guidelines on the caseload, docket flow, and case backlog of the State's trial and appellate courts.
- Consider the suitability and impact of offense variable scoring in applying sentencing guidelines, with regard to physical and psychological injury to victims and victims' families.

In cooperation with the DOC, the Commission also would have to collect, analyze, and compile data and make projections regarding the population and capacity of State and local correctional facilities; the impact of sentencing guidelines and other laws, rules, and policies on the population and capacity of State and local correctional facilities; and the effectiveness of

efforts to reduce recidivism. Measurement of recidivism would have to include, as applicable, analysis of all of the following:

- Rates of rearrest, resentencing, and return to prison.
- One-, two-, and three-year intervals after exiting prison or jail and after entering probation.
- The statewide level, and by locality and discrete program, to the extent practicable.

The Commission also would have to develop modifications to the sentencing guidelines as described below.

Sentencing Guidelines Modifications; Recommendations

Any sentencing guidelines modification would have to accomplish all of the following:

- Provide for the protection of the public.
- Consider offenses involving violence against a person or serious and substantial pecuniary loss as more severe than other offenses.
- Be proportionate to the seriousness of the offense and the offender's prior criminal record.
- Reduce sentencing disparities based on factors other than offense characteristics and offender characteristics, and ensure that offenders with similar offense and offender characteristics received substantially similar sentences.
- Specify the circumstances under which a term of imprisonment was proper and the circumstances under which intermediate sanctions were proper.
- Establish sentence ranges for imprisonment that were within the minimum and maximum sentences allowed by law for the offenses to which the ranges applied.
- Maintain separate sentence ranges for convictions under the habitual offender provisions of Chapter IX, which could include as an aggravating factor, among other relevant considerations, that the accused had engaged in a pattern of proven or admitted criminal behavior.
- Establish sentence ranges that the Commission considered appropriate.
- Consider the necessity for local corrections system capacity and maintain funding to ensure that capacity.

In developing modifications to the sentencing guidelines, the Criminal Justice Policy Commission would have to submit to the Legislature a prison and jail impact report relating to any modifications. The report would have to include the projected impact on total capacity of State and local correctional facilities. Modifications would have to include recommended intermediate sanctions for each case in which the upper limit of the recommended minimum sentence range was 18 months or less.

The Commission also could recommend modifications to any law, administrative rule, or policy that affected sentencing or the use and length of incarceration. The recommendations would have to reflect all of the following policies:

- To render sentences in all cases within a range of severity proportionate to the gravity of offenses, the harm done to crime victims, and the blameworthiness of offenders.
- When reasonably feasible, to achieve offender rehabilitation, general deterrence, incapacitation of dangerous offenders, restoration of crime victims and communities, and reintegration of offenders into the law-abiding community.
- To render sentences no more severe than necessary to achieve the applicable purposes described in the two items above.
- To preserve judicial discretion to individualize sentences within a framework of law.
- To produce sentences uniform in their reasoned pursuit of the purposes specified in the bill.
- To eliminate inequities in sentencing and length of incarceration across population groups.
- To encourage the use of intermediate sanctions.

- To ensure that adequate resources were available for carrying out sentences imposed and that rational priorities were established for the use of those resources.
- To promote research on sentencing policy and practices, including assessments of the effectiveness of criminal sanctions as measured against their purposes.
- To increase the transparency of the sentencing and corrections system, its accountability to the public, and the legitimacy of its operations.

The Commission would have to submit any recommended modifications to the sentencing guidelines or other laws, administrative rules, or policies to the Senate Majority Leader, the Speaker of the House, and the Governor.

Report to the Legislature

By December 1, 2015, the Criminal Justice Policy Commission would have to submit to the Legislature, the Governor, and the Supreme Court a report on the implementation of legislative policies adopted in 2014 affecting the criminal justice system. The report would have to include all of the following:

- Education of practitioners on changes in legislative policy.
- The length of probation supervision terms imposed.
- The number of probationers subject to swift and sure sanctions probation.
- The number of noncompliance, risk, and major risk sanctions imposed on the probation population.
- Noncompliance and risk sanctions imposed on the parole supervision population.
- Parole guideline decisions.
- Victim restitution collection data in the courts and the DOC.
- Implementation of revisions to the Community Corrections Act.

Intermediate Sanctions: Probation

Chapter IX requires intermediate sanctions to be imposed under certain conditions. Under one of those conditions, if the upper limit of the recommended minimum sentence range for a defendant determined under the sentencing guidelines is 18 months or less, the court must impose an intermediate sanction unless it states on the record a substantial and compelling reason to sentence the person to the DOC's jurisdiction. An intermediate sanction may include a jail term that does not exceed the upper limit of the recommended minimum sentence range or 12 months, whichever is less. Under the bill, that intermediate sanction also could include a subsequent term of probation supervision at least equal to the jail term.

In addition, under Chapter IX, if the upper limit of the recommended minimum sentence exceeds 18 months and the lower limit is 12 months or less, the court must sentence the offender as follows, absent a departure:

- To imprisonment with a minimum term within that range.
- To an intermediate sanction that may include a term of imprisonment of not more than 12 months.

Under the bill, the intermediate sanction also could include a subsequent term of probation supervision at least equal to the term of imprisonment.

Jail Reimbursement Program

Chapter IX requires the DOC to operate a jail reimbursement program that provides funding to counties for housing in county jails offenders who otherwise would have been sentenced to prison. The bill specifies that the reimbursement program would have to provide funding to

counties for housing in county jails felony offenders who otherwise would have been sentenced to prison, and under both of the following:

- Sections 4(1)(b) and 4(1)(c) of Chapter XI of the Code of Criminal Procedure (proposed by House Bill 5930).
- Section 40a of the Corrections Code (which deals with parole violations and revocation of parole).

(House Bill 5930 would allow a court to sanction a probationer by confinement for up to three days in the county jail for committing or attempting to commit a second through fifth noncompliance violation, and up to 30 days in the county jail for committing or attempting to commit a risk violation. A "noncompliance violation" would be a failure to report or other violation of a condition of supervision. A "risk violation" would be a violation of a condition of supervision that constituted any of the following:

- Contact with a specifically prohibited person, or proximity to a specifically prohibited business or location.
- An arrest for domestic violence or other threatening, stalking, or assaultive behavior that was not a violation of a protective order.
- An arrest for an unadjudicated new felony that was not a major risk violation.
- Absconding from supervision.
- The probationer's sixth or subsequent noncompliance violation.)

In addition, Chapter IX requires the criteria for reimbursement and the rate of reimbursement to be established in the annual appropriations acts for the DOC. The bill would delete reference to the criteria for reimbursement, and specifies that the rate of reimbursement established in annual appropriations acts could not be less than \$35 per diem per offender serving a sanction for a parole or probation violation. The bill would require the DOC to submit to the Legislature a projected budget to address county expenses for housing felony offenders in county jails, and would require the Legislature to fund the budget as provided by law.

Assessment & Collection of Restitution

Chapter IX requires a court, when sentencing a defendant convicted of a felony, misdemeanor, or ordinance violation, to order the defendant to make full restitution to any victim of his or her course of conduct that gives rise to the conviction or to the victim's estate. The court must order restitution to the Crime Victim Services Commission or to any individuals or legal entities that have compensated the victim or the victim's estate for a loss incurred by the victim to the extent of the compensation paid for that loss. The court also must order restitution for the costs of services provided to people or entities that have provided services to the victim as a result of the felony, misdemeanor, or ordinance violation.

The bill states: "It is the intent of the legislature that the Michigan supreme court implement measurement of restitution assessment and collection as a court performance measure for circuit courts and district courts."

In addition, the bill would require the DOC to track and report prisoner restitution collection as a performance measure.

MCL 769.1a et al.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

There are several areas in which the bill could have a fiscal impact on State and local government. First, the bill would have an indeterminate fiscal impact on the State's Legislative Council. Members of the proposed Criminal Justice Policy Commission would not receive a

salary but would be eligible for reimbursement for necessary expenses. Also, the bill would require the Legislative Council to provide the Commission with office space, staff, and equipment. The bill does not specify the number of staff who would be needed; however, a similar commission that existed from fiscal year (FY) 1994-95 through FY 2001-02 (the former Michigan Sentencing Commission) was staffed with 2.0 FTE positions: an administrator and an administrative assistant.

The annual appropriations for the former commission ranged from a low of \$130,000 in FY 1998-99 to a peak of \$259,000 in FY 2000-01. The annual appropriation averaged an estimated \$250,000 for most fiscal years that the commission existed. The appropriation covered the costs of the 2.0 FTE positions, office space and equipment, and reimbursement to commission members for necessary costs. The estimated annual cost for the proposed Commission is indeterminate, but based on prior estimates could range between \$300,000 and \$400,000 annually. The current estimated average annual cost of one classified State employee is \$85,000 gross, \$45,000 GF/GP for salary and benefits. These estimates could be higher or lower based on the classification level of the staff hired.

Second, the bill would set the minimum reimbursement for housing felony offenders at county jails at \$35 per prisoner per day. The current reimbursement rates set at \$35, \$50, and \$60, are based on the sentencing guideline score that the offender receives. At a minimum of \$35 per diem, the annual cost per offender would be \$12,775 annually. Currently the short-term marginal cost to house an additional offender in a DOC facility is approximately \$4,100 annually. The long-term marginal cost is approximately \$31,100 annually. In FY 2012-13, for the 3,234 prisoners who were housed under the county jail reimbursement program, counties were reimbursed at \$35 per diem for 1,965, \$50 per diem for 832, and \$60 per diem for 437. Depending on the impact of an increased use county jail bed space and the per-prisoner per diem rate used to reimburse counties, there could be fiscal savings to State government.

Third, the bill would set the minimum probation term at least equal to a jail sentence for those serving a jail sentence. To the extent that those offenders do not currently require probation after serving a jail sentence, there would be a cost to the State for additional supervisory resources.

Finally, the bill would require the Michigan Department of Corrections to track prisoner restitution as a performance measure which could increase the staffing and data collection costs to the Department. The bill also states legislative intent for the Michigan Supreme Court to use as a performance measure restitution collection from offenders at the circuit and district court level. To the extent that this would require additional staffing and data collection at the Michigan Supreme Court as well as the local district and circuit courts, there would be a cost to both State and local government to supply the staffing resources.

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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.