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BILL ANALYSIS



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Senate Bill 948 (Substitute S-1 as passed by the Senate)
Senate Bill 949 (as passed by the Senate)
Sponsor: Senator John Proos
Committee: Michigan Competitiveness

Date Completed: 8-25-16

CONTENT

Senate Bill 948 (S-1) would amend the Probation Swift and Sure Sanctions Act (Chapter XIA of the Code of Criminal Procedure) to do the following:

- Create the "Swift and Sure Probation Supervision Fund" and require the State Treasurer to allocate money from the Fund for administration of the Act and for grants to fund circuit court programs of swift and sure probation supervision.
- Allow a court that received a grant to accept participants from other jurisdictions in the State, if certain conditions were met.
- Establish eligibility criteria for participants in the Swift and Sure Probation Supervision Program.
- Allow an individual who was eligible for the Program to request not to participate in it.

Senate Bill 949 would amend the Revised Judicature Act to allow the circuit court in any judicial circuit to institute a swift and sure sanctions court, and accept participants from other jurisdictions in the State with the agreement of various parties.

Each bill would take effect 90 days after it was enacted.

Senate Bill 948 (S-1)

Program Creation

The Probation Swift and Sure Sanctions Act states a legislative intent "to create a voluntary state program to fund swift and sure probation supervision at the local level based upon the immediate detection of probation violations and prompt imposition of sanctions and remedies to address those violations". The bill would retain this language but delete the phrase "at the local level".

The Act creates the State Swift and Sure Sanctions Program and specifies its objectives. The bill would require the Program to be implemented and maintained as provided in the Act, and as described in those objectives (which are listed below in the **BACKGROUND** section).

Swift & Sure Probation Supervision Fund

The bill would create the Swift and Sure Probation Supervision Fund within the State Treasury. The State Treasurer could receive money or other assets from any source for deposit into the

Fund. The Treasurer would have to direct the investment of the Fund and credit to it interest and earnings from investments. Money in the Fund at the close of the fiscal year would remain in the Fund.

The Act requires the State Court Administrative Office (SCAO), under the supervision of the Supreme Court, to provide grants to fund programs of swift and sure probation supervision in the circuit court that meet the Act's objectives and requirements. The bill, instead, would require the State Treasurer to allocate sufficient funds to allow the SCAO, under the Supreme Court's supervision, to spend funds from the Swift and Sure Probation Supervision Fund to administer the Act and to provide grants to fund those programs.

Grants; Transfer of Participants

The Act allows a court to apply for a grant to fund a program of swift and sure probation supervision by filing an application with the SCAO, and provides that the funding of all grants is subject to appropriation.

Under the bill, a court that received a grant could accept participants from any other jurisdiction in the State based upon the residence of the participant in the receiving jurisdiction or the unavailability of a swift and sure probation supervision program in the jurisdiction where the participant was charged. The transfer could occur at any time during the proceedings, including before adjudication. The receiving court would have jurisdiction to impose sentence, including sanctions, incentives, incarceration, and phase changes.

A transfer would not be valid unless all of the following agreed to it:

- The defendant or respondent in writing.
- The attorney representing the defendant or respondent.
- The judge of the transferring court and the prosecutor of the case.
- The judge of the receiving court and the prosecutor of the funding unit of that court.

Program Eligibility

The bill provides that an individual would be eligible for the Swift and Sure Probation Supervision Program if either of the following applied:

- He or she received a risk score of high on a validated risk assessment.
- He or she received a risk score other than high or low on the validated risk assessment and the judge, prosecutor, and defendant agreed to the defendant's placement in the Program.

An individual who was eligible to participate in the Swift and Sure Probation Program could request that he or she not be sentenced to probation in the Program. The court could place the individual on probation under Chapter XI (Probation) of the Code of Criminal Procedure.

A defendant who was charged with one of the following crimes would not be eligible: first- or second-degree murder; first- or third-degree criminal sexual conduct; armed robbery, treason against the State; or a major controlled substance offense (as defined in the Code).

Judicial Responsibilities

The Act establishes certain requirements for a program of swift and sure probation supervision. Under the bill, a judge would be required to meet those requirements if swift and sure probation supervision applied to a probationer.

In addition to the current requirements, the bill would require a judge to adhere to and not depart from the prescribed list of sanctions and remedies imposed on the probationer.

Currently, a program must provide for an appearance before the judge for any probation violation as soon as possible but within 72 hours after the violation is reported to the court, unless a departure from that time frame is authorized for good cause as determined by criteria set forth by the SCAO. Under the bill, the judge would be required to provide for an appearance before him or her or another judge for a probation violation, within the 72-hour time frame, unless the probationer waived a hearing or a departure was authorized for good cause.

Senate Bill 949

The bill would allow the circuit court in any judicial circuit to adopt or institute a swift and sure sanctions court, by statute or court rule. A swift and sure sanctions court would have to carry out the purposes of the Probation Swift and Sure Sanctions Act.

A court that adopted a swift and sure sanctions court could accept participants from any other jurisdiction in the State based upon the residence of a participant or the unavailability of such a court in the jurisdiction where the participant was charged. The transfer would not be valid unless all of the following agreed to it:

- The defendant or respondent.
- The attorney representing the defendant or respondent.
- The judge of the transferring court and the prosecutor of the case.
- The judge of the receiving court and the prosecutor of a court funding unit of that court.

MCL 771.3-771.6 (S.B. 948)

Proposed MCL 600.1086 (S.B. 949)

BACKGROUND

Public Act 616 of 2012 enacted the Probation Swift and Sure Sanctions Act. The Act creates the State Swift and Sure Sanctions Program with the following objectives:

- Probationers are to be sentenced with prescribed terms of probation meeting the objectives of the Act, and are to be aware of their probation terms as well as the consequences of violating those terms.
- Probationers are to be closely monitored and every detected violation is to be promptly addressed by the court.
- Probationers are to be arrested as soon as a violation has been detected and are to be promptly taken before a judge for a hearing on the violation.
- Continued violations are to be addressed by increasing sanctions and remedies as necessary to achieve results.
- To the extent possible and considering local resources, probationers subject to swift and sure probation must be treated uniformly throughout the State.

When the statute was enacted, a swift and sure sanctions program was being administered on a pilot basis in the following four counties: Barry, Berrien, Isabella, and Wayne. The fiscal year 2011-12 budget for the Judiciary appropriated \$1.0 million to the State Court Administrative Office to administer the program. In the fiscal year 2012-13 Judiciary budget, the funding was increased to \$6.0 million and the "pilot" status was removed.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

Senate Bill 948 (S-1)

The bill would have an indeterminate fiscal impact on State and local government. The Swift and Sure Probation Supervision Program is a voluntary program for courts in the State. The State Court Administrative Office currently administers the grant program for courts wishing to implement the program. The budget for fiscal year 2016-17 appropriates \$4.0 million for the grants, although the State is not obligated to continue funding them. If passage of the bill led to more courts implementing swift and sure probation sanctions, it would result in greater costs to local government or the State, or both, depending on whether the grants to local jurisdictions were increased or not.

Senate Bill 949

The bill would have an indeterminate fiscal impact on State and local government. Under the bill, circuit courts would be allowed, but not required, to institute a swift and sure sanctions court. The cost to local government would depend on how many jurisdictions chose to set up these courts and how many probationers were admitted to the program. The typical costs involved with this program are for an increased number of hearings before a judge and bed space in local jails for sanctions. The State Court Administrative Office currently has a grant program set up to reimburse local courts that run swift and sure sanctions courts, but the State would not be obligated to fund them under the bill.

If the program led to fewer probationers having probation revoked and being sentenced to prison, there would be savings to the State. For any decrease in prison intakes, in the short term, the marginal savings to State government would be approximately \$3,764 per prisoner per year. In the long term, if the decreased intake of prisoners lowered the total prisoner population enough to allow the Department of Corrections to close a housing unit or an entire facility, the marginal savings to State government would be approximately \$34,550 per prisoner per year.

Fiscal Analyst: Ryan Bergan

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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.