

Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536

**SFA**



**BILL ANALYSIS**

Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

House Bills 4364 and 4365 (as reported without amendment)  
Sponsor: Representative Timothy Walberg  
House Committee: Corrections  
Senate Committee: Judiciary

Date Completed: 11-10-98

### **RATIONALE**

A district judge in Lenawee County has pointed out that it clearly is the policy of the State to have the State and counties collect the cost of room and board from prisoners as often as possible. That policy is expressed in the Prisoner Reimbursement to the County Act, which provides specific methods by which a county can sue to recover the cost of room and board and medical expenses. The Michigan Court of Appeals, however, has interpreted the statute to mean that since the Legislature specifically provided counties with the right to sue to collect those costs and has not provided any other means of collection, the courts have no authority to require payment as part of the terms of probation (*People v Gonyo*, described in **BACKGROUND**, below). Some people believe that courts should be authorized by statute to require reimbursement from prisoners as part of the terms of probation.

In addition, under current law, the ability of the court to require that a defendant have no contact with a specific person and to have that requirement put into the Law Enforcement Information Network (LEIN) ends as soon as the sentencing is held. In domestic violence, stalking, and criminal sexual conduct cases, however, there may be a need to minimize the risk that the defendant, while on probation, will continue to harass the victim. Prior to trial, this protection can be enforced through bond conditions, which are placed in the LEIN, and law enforcement officials can make an arrest for a violation of bond conditions. There is no authority granted in statute, however, for a court to continue that protection into a period of probation and to enter a probationary "no contact" order into the LEIN.

### **CONTENT**

**House Bills 4364 and 4365 would amend the Code of Criminal Procedure and the Prisoner**

**Reimbursement to the County Act, respectively, to do all of the following:**

- **Provide that reimbursement of a county for its expenses could be a condition of probation.**
- **Authorize protection orders as a condition of probation.**
- **Provide for protection orders that were a condition of probation to be entered into the Law Enforcement Information Network.**

The bills are tie-barred.

### **House Bill 4364**

The bill would include in the list of conditions that a court may require of a probationer both of the following:

- That the probationer be subject to conditions reasonably necessary for the protection of one or more named persons.
- Reimbursement of the county by the probationer for expenses incurred by the county in connection with the conviction for which probation was ordered, as provided in the Prisoner Reimbursement to the County Act (pursuant to House Bill 4365).

The bill also provides that, if an order or amended order of probation contained a condition for the protection of one or more named persons, the court would have to order a law enforcement agency within its jurisdiction to enter the order into the LEIN. If the court rescinded the order or condition, it would have to notify the law enforcement agency, which would have to remove the order or condition from the LEIN.

## **House Bill 4365**

The bill specifies that reimbursement under the Prisoner Reimbursement to the County Act could be ordered as a probation condition entered under the Code of Criminal Procedure (pursuant to House Bill 4364).

The bill also states that, if a prisoner were ordered to reimburse the county as a probation condition, the prisoner would be subject to probation revocation under the Code of Criminal Procedure (MCL 771.4). (That provision of the Code specifies that probation orders are revocable in any manner in which the court that imposed probation considers applicable, either for a violation or attempted violation of a probation condition or for any type of antisocial conduct or action that satisfies the court that revocation is proper in the public interest.)

MCL 771.3 (H.B. 4364)  
801.83 & 801.85 (H.B. 4365)

### **BACKGROUND**

#### **The Prisoner Reimbursement to the County Act**

In 1984, the Prisoner Reimbursement to the County Act was enacted, authorizing counties to collect in a civil action reimbursement for the costs of incarceration from jail inmates who are serving sentences (as opposed to those who are jailed while awaiting arraignment or trial). The Act capped the amount that a county may seek from a jail inmate at \$30 a day. That per diem limit was increased to \$60 by Public Act 212 of 1994. Public Act 212 also extended the period of time during which a county may sue a former inmate for reimbursement from six months to 12 months after release.

#### **People v Gonyo, 173 Mich App 716 (1988)**

The defendant, Jeffrey A. Gonyo, pleaded guilty to larceny of a building. The trial court sentenced him to two years' probation with the first 90 days to be served in the county jail. One of the conditions of probation was that Gonyo pay room and board for his jail stay, to be paid after he was released and went back to work. Gonyo appealed this provision of the sentence.

The Court of Appeals stated that, "Although a sentencing judge has considerable discretion in setting conditions of probation, ...[t]he statute does not state that reimbursement of room and board for a jail term is a permitted condition of probation."

The Court held that, "The absence of express authority under... [the Code of Criminal Procedure] permitting reimbursement to be a condition of probation, coupled with the legislative scheme in the Prisoner Reimbursement to the County Act, leads us to conclude that the Legislature did not intend the reimbursement of room and board to be a proper condition of probation".

The Court also pointed out that the Act grants counties the authority to pursue reimbursement for the expenses of maintaining a prisoner through a civil action seeking reimbursement.

### **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

#### **Supporting Argument**

The bills would provide another mechanism for counties to collect costs of incarceration from probationers who served part of their sentence in the county jail. Although the Prisoner Reimbursement to the County Act provides for the collection of those costs via a civil action by the county against the jail inmate, the bills' method of allowing reimbursement as a condition of probation could be more effective in collecting costs. The Code of Criminal Procedure gives the sentencing court the authority to "impose other lawful conditions of probation as the circumstances of the case may require or warrant, or as in its judgment may be proper". If the court requires the probationer to pay costs, however, those costs currently are limited to expenses of prosecuting the defendant or providing legal assistance to the defendant and probationary oversight. Accordingly, the Court of Appeals has held that the court may not order payment of costs of incarceration as a condition of probation. The bills would provide the specific legislative authority that the Court has ruled is necessary for payment of costs to be ordered as a probationary condition.

#### **Supporting Argument**

Current law allows a court to set conditions of a bond, which may include an order that the defendant have no contact with a specific individual. There is no explicit provision for such a "no contact" order in the court's conditions of probation, after a defendant has been convicted and sentenced. Since a convicted criminal may be out in the community when he or she is serving a term of probation, and another person might continue to need protection from the probationer,

the court should be permitted to enter an order for the protection of a specified person, and make that order a condition of probation. Further, bond conditions, including a protection order, are entered into the LEIN so that law enforcement officers may easily learn about those conditions and can make an arrest based on their violation. When an order of probation contained a condition for the protection of a named person, the court should be authorized to order the information entered into the LEIN, which would make enforcement of that protective probationary condition more effective and enforceable.

**Response:** There may be some technical problems with placing a probation condition in the LEIN system. According to testimony before the Senate Judiciary Committee by the Michigan State Police (MSP), there are no LEIN files for conditions of probation. The MSP suggests, as an alternative, that the sentencing court be authorized to issue a personal protection order (PPO) in addition to probationary conditions. Since the LEIN already includes a file for PPOs, it would be easier to enter and retrieve the information that a certain individual is to be protected from the probationer.

#### **Opposing Argument**

The bills include no provision that would limit reimbursement as a condition of probation based on a person's ability to pay. Indigent probationers could not afford to reimburse the county for incarceration costs. Indeed, most offenders, who likely would be struggling to put their lives in order, probably would not be able to pay. In fact, the bills, in trying to make the county whole, could actually hurt children of probationers by claiming money that otherwise would go toward supporting a probationer's family. Further, the bills risk creating situations in which the inability to pay would become a probation violation and result in the revocation of probation and more time served in jail or prison, thereby requiring the expenditure of even more public funds for the costs of incarceration.

**Response:** Presentence reports include work and family information, so the sentencing court could weigh those factors when considering whether and how to require reimbursement to the county. Also, the Code of Criminal Procedure provides that, in determining whether to revoke probation for failure to pay costs, the court must consider the probationer's employment status, earning ability, and financial resources, the willfulness of the probationer's failure to pay, and any other circumstances that might have a bearing on his or her ability to pay.

Legislative Analyst: P. Affholter

#### **FISCAL IMPACT**

#### **House Bill 4364**

The bill would have an indeterminate fiscal impact on State and local government. To the extent that the State provides probation agents to monitor offenders subject to probation, and that the bill would create additional conditions of probation that could be imposed by a judge, including the protection of one or more persons and the reimbursement to the county for the expenses related to conviction, monitoring workloads would increase. However, there are no data to indicate the amount that workloads could increase. To the extent that local governments would be reimbursed for expenses incurred, costs for local government would be reduced.

#### **House Bill 4365**

The bill would have an indeterminate fiscal impact on State and local government. To the extent that the bill would allow reimbursement of conviction expenses to be a condition of probation, and would allow the revocation of probation if reimbursement were not paid, State or local government would incur expenses for incarcerating offenders who failed to pay the reimbursement required by a probation order. There are no data to indicate how many offenders would be subject to revocation of probation for failing to reimburse conviction costs.

Fiscal Analyst: K. Firestone

H9798\S4364A

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.