

# Legislative Analysis



## COUNTY JAIL BED SAVINGS PROGRAM

Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

Senate Bill 50 as enrolled

Sponsor: Sen. Darwin L. Booher

House Committee: Michigan Competitiveness

Senate Committee: Michigan Competitiveness

Complete to 12-26-18

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

*(Vetoed by the Governor 3-30-17)*

**BRIEF SUMMARY:** Senate Bill 50 would add a section to Chapter 4 (Bureau of Penal Institutions) of the Corrections Code. The new section would allow the Department of Corrections (DOC) to house eligible prisoners in willing county jails rather than state correctional facilities, and to reimburse the counties accordingly. The bill would take effect 90 days after enactment.

**FISCAL IMPACT:** Senate Bill 50 would have an indeterminate fiscal impact on the state and on local units of government. (For the full fiscal statement, see *Fiscal Information*, below.)

### **THE CONTENT OF THE BILL:**

Under the bill, counties could volunteer to participate in a *county jail bed savings program*. If the county has available bed space and the DOC has eligible prisoners, the DOC may place prisoners in the county jail and reimburse the county a minimum of \$35 per prisoner per day. (However, the legislature may negotiate a minimum rate of reimbursement with participating counties and allot any adjustment to those counties upon appropriation.)

In order to fulfill *eligibility requirements* to be housed in a county jail under the program, a prisoner must:

- Have a Level 1 classification by the DOC, on a scale from 1-6 where 1 is the least restrictive.
- Not be serving a sentence for a conviction of a violation or attempted violation of criminal sexual conduct in the first, second, third, or fourth degree, or assault with intent to commit criminal sexual conduct. (All of these are felony offenses, except fourth degree CSC, which is a misdemeanor.)
- Be serving a fixed sentence with a determined discharge date.

For purposes of this proposed section, *state correctional facility* means a facility or institution that is maintained and operated, or contracted for, by the DOC and that houses prisoners sentenced to the custody of the DOC.

Proposed MCL 791.265j

### **HOUSE COMMITTEE ACTION:**

The House Committee on Michigan Competitiveness reported the Senate-passed version of SB 50 without amendment. The bill was previously changed on the Senate floor to reflect

that, in addition to counties' voluntary participation, DOC placement of prisoners in those jails is permissive rather than mandatory.

***FISCAL INFORMATION:***

The bill requires the Department of Corrections to reimburse counties that participate in the Jail Bed Savings Program a minimum of \$35 per day per prisoner. Under the bill, reimbursement rates could be negotiated by the legislature and the counties. Participating counties would house prisoners who are under the jurisdiction of the Department of Corrections in county jail beds.

The Department of Corrections administered such a program February 2012 through September 2016. To be eligible for the program, prisoners could not have any physical or mental health needs, could not have any special programming needs, could not be registered as sex offenders, could not have pending charges, could not be felony suspects, had to be serving flat sentences (primarily felony firearm flat 2-year sentences), and had to be classified as Level I security. A number of those same eligibility criteria are contained in SB 50. The department identified the prisoners who were eligible and transferred them to county jail beds in participating counties. The counties received a flat per diem, \$35 per prisoner per day. At the peak of the program, 14 county jails participated, with a total bed capacity of 391 beds. Typically, there were between 330 and 360 prisoners in county jail beds at any given time.

Due to the recent decline in prisoner population and due to the department's emphasized focus on offender success and programming, the department deemed it more appropriate to house all prisoners under its jurisdiction in state correctional facilities, in order to utilize empty bed space and so that the department would have direct control over the programming received by prisoners and the education/job skill-related opportunities offered to prisoners. (There are a number of counties that do not offer programming in the county jails because of the typical short-term stay.) As part of FY 2016-17 budget negotiations, the program ended October 1, 2016, saving the state approximately \$3.2 million.

SB 50 would have an indeterminate fiscal impact on the state and on local units of government. At a reimbursement rate of \$35 per day per prisoner, the total annual cost to the department per prisoner would be \$12,775. In FY 2016, the cost to house a prisoner in a state correctional facility, in a Level I security setting, was roughly \$29,400. So, the bill could produce a savings for the state if there were enough counties participating with available bed space and an ample number of prisoners who were eligible for the program to enable the department to close one of its Level I security facilities. It is not known how many or which counties would participate under the provisions in the bill. Also, it is not known what the actual per day costs are to counties for housing offenders. The costs of local incarceration in county jails vary by jurisdiction.

***ARGUMENTS:***

***For:***

Proponents argued that the use of "virtual prisons," in which county jails effectively function as prisons for the DOC, has the potential to ease prison crowding and save the

DOC money. While the average cost of housing a Level 1 offender in a DOC facility is \$80/day, housing a prisoner in a county jail may cost as little as \$35/day.

***Response:***

As noted above, the DOC would only realize these savings if enough counties participate in the program to close a Level 1 security facility. The maximum bed capacity in participating counties was 391 in the program's previous iteration; the average size of facilities that house large numbers of Level 1 security prisoners is approximately 1,770.

***For:***

This program would bring funds to counties, argue proponents, stimulating growth at a local, rather than state, level.

***Against:***

As noted above in ***Fiscal Information***, this program was previously in place from February 2012 to September 2016. Opponents argue that the program was phased out at the request of the Department of Corrections, and see no reason it should be re-instituted mere months later. They argue that the program perversely punishes the lowest security prisoners with a far more restrictive environment, less access to visits, mail, and telephone calls, and less access to rehabilitative services.

Although advanced as "virtual prisons," county jails are designed for pretrial detention and sentences of less than one year—typically 30, 60, or 90 days. Accordingly, they were simply not designed and are not operated for long-term detention. While prisons offer education and job skills training, work release opportunities, and recreational outlets, access to these services and programs are extremely limited in the county jails.

Access to visits, mail, and telephone calls from friends and family is also far more restrictive in county jails.

***Vetoed 3-30-17:***

In his veto message, Governor Snyder wrote: "The issues that result from the housing of MDOC [Michigan Department of Corrections] prisoners in county jail beds are not offset by any clear benefit from this program. The MDOC has sufficient capacity in existing state facilities to house the prisoners that would be eligible under this program, and removing those prisoners would not have a significant impact on the department's population, operation, or costs. In fact, implementing a new County Jail Bed Savings Program would actually increase costs for the state... Simply put, having the Department design and manage a program they will not utilize due to its inconsistent nature with our current efforts to promote offender success and smart justice, and that could potentially cost taxpayers more money, are the primary reasons why I will not be signing this bill."

Legislative Analyst: Jenny McInerney  
Fiscal Analyst: Robin Risko

---

■ 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.