



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bill 1046 (Substitute S-3 as reported)
Senate Bill 1047 (Substitute S-3 as reported)
Senate Bill 1048 (Substitute S-2 as reported)
Senate Bill 1049 (Substitute S-1 as reported)
Senate Bill 1050 (Substitute S-2 as reported)
Senate Bill 1051 (Substitute S-2 as reported)
Sponsor: Senator Roger Victory (S.B. 1046)
 Senator Jeff Irwin (S.B. 1047)
 Senator Sylvia Santana (S.B. 1048)
 Senator Stephanie Chang (S.B. 1049)
 Senator Michael D. MacDonald (S.B. 1050)
 Senator Ed McBroom (S.B. 1051)

Committee: Judiciary and Public Safety

CONTENT

Senate Bill 1046 (S-3) would amend the Code of Criminal Procedure to do the following:

- Modify a provision allowing a police officer to issue and serve upon a person an appearance ticket and release them from custody if he or she has been arrested without a warrant for a misdemeanor or ordinance violation, for which the maximum permissible penalty does not exceed 93 days in jail or a fine, or both, to refer to any misdemeanor or ordinance violation.
- Require a police officer to issue to and serve upon a person an appearance ticket and release the person from custody if he or she had been arrested for certain misdemeanors or ordinance violations.
- Allow a police officer to take an arrested person before a magistrate instead of issuing an appearance ticket if one or more specified circumstances applied.
- Require a police officer to specify the reason for not issuing a citation in an arrest report if he or she determined that one of the specified circumstances applied and he or she arrested the person instead of issuing an appearance ticket and require the officer to forward the report to the appropriate prosecuting authority for review.
- Require an arrested person taken into custody instead of being issued an appearance ticket to be charged or released by 3 p.m. the immediately following day during which arraignment could be performed.
- Specify that the bill would not create a right to the issuance of an appearance ticket in lieu of arrest.
- Allow an arrested person to appeal the legality of his or her arrest

Senate Bill 1047 (S-3) would amend the Code of Criminal Procedure to do the following:

- Require a court to arraign a person and set his or her case for the next step of criminal proceeding if a judicial officer were available to arraign the person on a warrant within two hours of his or her appearance, and require a court to recall the warrant and schedule the case for future arraignment if a judicial officer were not available within that time.

- Require a clerk or magistrate to issue a summons instead of a warrant, in certain circumstances.
- Specify that, if a defendant failed to appear for a court hearing and it was his or her first failure to appear in the case, there would be a rebuttable presumption that the court would have to wait 48 hours before issuing a bench warrant to allow the defendant to appear voluntarily.
- Prohibit a court from revoking a release order or declaring bail or a surety bond forfeited when it delayed the issuance of a warrant.
- Allow a court to overcome the rebuttable presumption and issue an immediate bench warrant if it had a specific, articulable reason to suspect that certain conditions applied.
- Specify that, if a defendant failed to appear for a court hearing within the time an appearance ticket was returnable and it was the defendant's first failure to appear in the case, there would be a rebuttable presumption to require a court to issue an order to show cause why a defendant failed to appear rather than issue a bench warrant or an arrest warrant.
- Allow a court to overcome the rebuttable presumption and issue a warrant if it had a specific, articulable reason to suspect that one or more specified conditions applied.

Senate Bill 1048 (S-2) would amend the Code of Criminal Procedure to do the following:

- Specify that there would be a rebuttable presumption that a court would have to sentence an individual convicted of a misdemeanor, other than a serious misdemeanor, with a fine, community service, or other nonjail or nonprobation sentence.
- Allow a court to depart from the presumption if it found reasonable grounds for the departure and stated on the record the grounds for the departure.
- Allow a court to issue an order for a person to show cause why he or she should not be held in contempt for not comply with a sentence, if it found that the person had not complied with his or her sentence.
- Modify provisions allowing a court to depart from a sentence range established under the sentencing guidelines of Chapter 17 (Sentencing Guidelines) of the Code if it has substantial and compelling reason for that departure to refer to a *reasonable* departure instead of a substantial and compelling reason.

Senate Bill 1049 (S-1) would amend the Code of Criminal Procedure to modify provisions allowing individuals who plead guilty to criminal offenses committed at certain specified ages to be assigned youthful trainee status.

Senate Bill 1050 (S-2) would amend the Code of Criminal Procedure to do the following:

- Modify provisions allowing a defendant who has completed one-half of his or her probation period to be eligible for early discharge.
- Specify that a probationer could not be considered ineligible for early release because of an inability to pay the conditions of his or her probation, or for outstanding court-ordered financial obligations so long as he or she had made good-faith efforts to make payments.
- Allow a court to grant an early discharge from probation without holding a hearing, except as otherwise provided, if it determined that the probationer's behavior warranted a reduction in the probationary term.
- Require a court to hold a hearing if it determined that the probationer's behavior did not warrant an early discharge and allow the probationer to present his or her case on the record.
- Modify and delete certain reporting provisions.
- Include certain crimes for which a defendant would not be eligible for reduced probation.
- Allow a court to sanction a probationer to jail or revoke the probation if the probationer had the ability to pay and had not made a good-faith effort to comply with the order.

- Specify that a probationer who committed a technical violation would be subject to certain periods of incarceration in jail as a sanction.
- Allow a jail sanction to be extended by a maximum of 45 days if the probationer were awaiting placement in a treatment facility and did not have a safe alternative location to await treatment.
- Prohibit a court from revoking probation on the basis of a technical probation violation unless a probationer had already been sanctioned for three or more technical probation violations and committed a new technical probation violation, subject to exceptions.
- Specify that there would be a rebuttable presumption that the court could not issue a warrant for arrest for a technical probation violation and, instead, would have to issue to the probationer a summons or other order to show cause.

Senate Bill 1051 (S-2) would amend the Corrections Code to do the following:

- Allow a parole order to be amended to adjust conditions as the Parole Board determined was appropriate.
- Require the conditions of parole to be individualized, to specifically address the assessed risks and needs of the parolee, be designed to reduce recidivism, and to consider the needs of the victim, if applicable.

MCL 764.9c & 764.9f (S.B. 1046)
 764.1 et al. (S.B. 1047)
 769.5 et al. (S.B. 1048)
 762.11 (S.B. 1049)
 771.2 et al. (S.B. 1050)
 791.236 (S.B. 1051)

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

The bills would have a negative fiscal impact on the State and local courts in the short-term, but likely would have positive fiscal impact in the long-term. Senate Bill 1046 (S-3) would have a minimal fiscal impact on State and local police agencies.

The bills are part of a larger reform package based upon the recommendations of the Michigan Joint Task Force on Jail and Pretrial Incarceration. On January 10, 2020, the Task Force issued its recommendations intended to reduce pretrial jail incarceration rates and eliminate jail time for certain nonviolent offenders who are also not a flight risk.¹

If enacted, there likely would be indeterminate costs associated with restructuring procedures and implementing the reforms; there also could be reduced revenue. Michigan Compiled Laws 801.83 authorizes counties to charge no more than \$60 per day to house a prisoner overnight. While county jails are authorized to charge jail inmates for overnight stays, and many do, jails are most often unable to recoup their expenses from these fees typically because jail inmates are often indigent and cannot afford to pay them. According to a June 2018 survey by the Mackinac Center for Public Policy,² most counties were unable to collect even 10 percent of housing fees assessed for overnight jail stays. The only exception noted in the survey was Ingham County, which managed to collect 48% of assessed fees.

¹ Michigan Joint Task Force on Jail and Pretrial Incarceration, "Report and Recommendations", 1-10-2020.

² Riley, Kahryn, "Neither Inmates Nor Counties Get Out of Jail Free", *Viewpoint on Public Issues*, Mackinac Center for Public Policy, www.mackinac.org, 7-9-2018. Retrieved on 9-22-2020.

Senate Bills 1048 (S-2) and 1049 (S-1) could result in a decrease in the number of individuals sentenced to a MDOC facility. As a result, the Department could incur lower costs; however, it is unknown how many people would be affected under the bill's provisions. The average cost to State government for felony probation supervision is approximately \$3,100 per probationer per year. For any increase in prison intakes, in the short term, the marginal cost to State government is approximately \$5,400 per prisoner per year.

In the long-term, decreased pretrial incarceration rates would mean reduced operating costs for jails and an indirect benefit to communities through reduced job losses for offenders awaiting trial. According to the Task Force, operating costs for county jails and corrections were \$478.0 million in 2017, a figure that does not include spending on capital projects, such as construction of new jail facilities.³ According to the Task Force, jails account for nearly a quarter of county-level spending on public safety and justice systems, which together are the third largest expenditure at the county level, behind health care and public works.⁴

Within the past decade alone, multiple scholarly articles have been published citing the financial benefits, including indirect benefits, that may result for states that reduce pretrial incarceration rates and times.⁵ While a direct cost of incarceration to a detainee may include a loss of income or property, the indirect costs to State and local government include such items as lost tax revenue. The *Boston University Law Review* article cites several figures that can be informative; for example, the average annual state tax lost for each incarcerated individual, per year, is \$1,249.⁶

With a variety of factors that would influence direct, indirect, short-term, and long-term costs and benefits, the fiscal impact on State and local units of government is largely indeterminate; though it is likely that lost revenue and slightly increased costs may be quantifiable in the short term, the overall fiscal impact to State and local government long term likely would be positive.

Date Completed: 10-8-20

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³ Note 1, p. 18.

⁴ *Id.*

⁵ See, e.g., Baughman, Shima, "Costs of Pretrial Detention", *Boston University Law Review*, p. 1, 2017.

⁶ *Id.* at 17. This figure is based on a 1997 study of inmates in the Northern District of California.