



COUNTY ADVISORY BULLETIN

CAB

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JAIL PAY-FOR-STAY (SUBSTITUTE HOUSE BILL 480)

INTRODUCTION

Prior to the passage of Sub. H.B. 480, existing law provided mechanisms for the reimbursement of confinement from offenders sentenced to local correctional facilities (i.e. county jails, multi-county correctional facilities, community based correctional facilities, and workhouses) for offenses other than minor misdemeanors. The amount of reimbursement was generally determined by a judge at the time of sentencing and was based on the offenders ability to pay. With the exception of certain misdemeanor offenders in multi-jurisdictional facilities or municipal workhouses, local correctional facilities could seek reimbursement for food, clothing, and shelter expenses incurred during the offenders confinement; medical expenses were not included. The reimbursement exception for misdemeanor offenders in multi-jurisdictional facilities (multi-county, municipal-county, and multi-county-municipal correctional centers) and municipal workhouses allowed the facilities to collect up to \$40 a day (sec. 307.93(D), 2947.19(B), and 2929.223). Upon the authorization of the local correctional facility the county prosecuting attorney was authorized to file a civil action within one year of the offender's release to recover the confinement costs from the offender. Any revenue collected went to the general revenue fund(s) of the political subdivision operating the facility. Generally these mechanisms pertained solely to misdemeanor offenders since most felony offenders were sentenced to prison rather than local correctional facilities.

The judicial mechanisms were amended by Am Sub. S.B. 2, the felony sentencing bill, and Am. Sub. S.B. 269, the S.B. 2 corrective bill, which generally took effect on July 1, 1996. As you may recall, S.B. 2 allowed certain felony offenders to be sentenced to local correctional facilities. S.B. 2 also established a number of financial sanctions that a felony offender could be sentenced to including the reimbursement of confinement costs(food, clothing, and shelter expenses). Under S.B. 2, a judge could sentence felony offenders to financial sanctions at either the time of sentencing or at a separate hearing if the judge

felt a separate hearing was necessary. The total amount that could be collected from felony offenders for *all* financial sanctions could not exceed \$10,000 and had to be based on the offenders ability to pay. S.B. 2 required counties and municipal corporations to establish "sanction cost reimbursement funds" for the deposit of reimbursed revenue for the financial sanctions. Revenue in the fund could only be used to fund local sanctions (i.e. jails and intensive supervised probation).

Also prior to the passage of Sub. H.B. 480, many local correctional facilities across the state were deducting fees or co-pays from prisoner's commissary accounts for medical care, dental care, and prescriptions. The fees helped reduce the number of sick calls prisoners were requesting and reduced medical costs for correctional facilities implementing the fee policy. In 1995 an opinion was requested from the Attorney General regarding whether or not a county jail could implement such a fee policy. Following the request, a September 26, 1995 Attorney General Opinion (95-028) stated "county sheriffs have no authority to prescribe a schedule of fees to be collected from the personal funds of a person confined in the county jail for the cost of medical care provided to that person while confined".

Sub. H.B. 480 amended the existing prisoner reimbursement judicial mechanisms including some provisions passed by S.B. 2; established an alternative reimbursement mechanism "in lieu of" the existing judicial method; and authorized local correctional facilities to charge non-indigent prisoners fees for medical treatment or services. The bill also made several other changes relative to the operation of local correctional facilities (see "TABLE 1" below for a summary of the bill). This CAB will focus on the prisoner reimbursement mechanisms and medical fee provisions amended or created by Sub. H.B. 480. The CAB provides a technical summary of the reimbursement programs for the purpose of assisting county commissioners and sheriffs on their decision of whether or not a program should be implemented, what type of program should be implemented, and how such a program might be implemented.

TABLE 1: Summary of Provisions in Sub. H.B. 480

General Jail Provisions

Permits local correctional facilities to administer a program for the reimbursement of confinement costs from inmates and allows the correctional facilities to charge non-indigent inmates fees for medical treatment or services.

Relaxes existing statutory prohibitions related to the processing of juveniles within the “sight and sound” of adult offenders by replacing this with the less restrictive notion “beyond the range of touch”. Note the statutes regarding the housing of bound over juveniles were also changed to “beyond the range of touch” by H.B. 124.

Allows Sheriffs to hire civilian jail officers and the board of county commissioners, with the consent of the sheriff, to contract for various services (i.e. food and medical services) necessary for the care of county jail inmates.

Allows local correctional facilities to establish a commissary and commissary fund.

MSMJ Provisions

Allows nonviolent fourth and fifth degree felons to be sentenced to a MSMJ and allows sentenced felons to be transferred to a MSMJ. The bill also re-categorizes MSMJs as “minimum security jails”, subjecting them to existing minimum jail standards promulgated by DRC;

Other Provisions of Interest

Clarifies that the recent increase in compensation paid to sheriffs for the impact of S.B. 2 will not be included in the calculation of a sheriff’s “furtherance of justice fund”.

Establishes a Felon Medical Care Committee to study matters related to the liability of political subdivisions for various medical treatment.

Grants investigators of the Bureau of Criminal Identification and Investigation arrest power.

PRISONER REIMBURSEMENT MECHANISMS

Now that the prisoner reimbursement laws have been changed by at least three bills this last year, how do you seek reimbursement? There are three ways: (1) the judicial method; (2) the new alternative mechanism “in lieu of” the judicial method; and (3) charging prisoners fees for medical treatment or service.

1. Judicial Reimbursement Mechanisms

The following bullets summarize how the judicial reimbursement mechanisms operate.

- The guiding statutes for this mechanism are in section 2929.223 (misdemeanor offenders) and section 2929.18 (felony offenders) of the Revised Code.
- In the case of misdemeanor offenders, if the proper authority or board/sheriff of the local correctional facility requires offenders to pay for their costs of confinement, the sentencing judge must hold a reimbursement hearing *after* the offender is released. If the judge is no longer serving the court, then any judge serving in that court shall hold the hearing. Note prior to Sub. H.B. 480 the hearing that determined whether a misdemeanor offender would be required to reimburse confinement costs was held *at the time of sentencing*.
- In the case of felony offenders, the county commissioners or board/sheriff of the local correctional facility may adopt a policy that requires offenders to reimburse their costs of confinement. If such a policy is adopted, any court that sentences a felony offender to a local correctional facility must impose the reimbursement sanction on the offender *at the time of sentencing*. The county commissioners or board of a local correctional facility may also choose to adopt a policy that prohibits a court from imposing such a sanction on felony offenders.
- At the hearings (sentencing hearing for felony offenders or post-confinement hearing for misdemeanor offenders) the judge determines the amount of reimbursement and the offenders ability to pay it. In the case of sentencing a felony offender, the judge may hold a separate hearing to determine the amount of the financial sanctions if it is necessary. In the case of a misdemeanor offender, the amount of reimbursement is determined by a uniformly applied formula or sliding scale based on the offender's ability to pay (see EXAMPLE 2 in the back for examples of sliding scales).
- The offender's ability to pay is generally based on the offender's financial resources, obligations to dependents, and any obligation of restitution to victims.
- Reimbursable expenses include food, clothing, and shelter costs as in pre-existing law. In addition, the local correctional facility may be reimbursed for the costs of dental and medical care; personal hygiene products including toothpaste, toothbrushes, feminine hygiene items and other items; and up to two hours of overtime costs that the sheriff incurred relative to the trial of the offender. However, the amount of all the financial sanctions imposed upon a felony offender can not exceed \$10,000. Also the actual amount misdemeanor offenders can be charged for medical care can not exceed 40% of the total medical expenses. Note: Sub. H.B. 480 repealed the \$40 per diem applicable to misdemeanors in certain multi-jurisdictional facilities or municipal workhouses.

- The judge, at the time of a misdemeanor’s reimbursement hearing, must establish a re-payment schedule for the misdemeanor offender. Each payment of the reimbursement schedule is considered a separate judgement. If the offender fails to meet the payment schedule the prosecuting attorney may execute upon the judgment.
- Each court imposing a financial sanction on a felony offender may designate a court employee, a public agency, or private vendor to collect any monies owed by the offender.
- The revenue collected by misdemeanor offenders using this reimbursement mechanism shall be deposited into the general revenue funds of the political subdivision(s) operating the local correctional facility, while revenue collected from felony offenders shall be deposited into the “sanction cost reimbursement fund”.

2. Alternative Prisoner Reimbursement Mechanism “In Lieu of” Judicial Method

The following bullets summarize how the alternative reimbursement mechanism operates.

- The guiding statutes for the “in lieu of” reimbursement mechanism can be found in sections 307.93 (E), 341.06(A), 341.14(C), 341.19(B), 341.23(D), 2301.56(C), and 2947.19(C) of the Revised Code.
- Before using the alternative reimbursement mechanism “in lieu of” the judicial method a reimbursement policy must be established by the county commissioners or board/sheriff of the local correctional facility. If this reimbursement mechanism is used, then a policy that prohibits courts from imposing a confinement reimbursement requirement on felony offenders should also be adopted (see section 2929.18(4)(A)). If such a prohibition is not adopted then the judicial mechanism may be put into action by the judge at the time of sentencing, which would conflict with the “in lieu of” method.
- The expenses that are recoverable under this mechanism include: a maximum \$60 per diem fee for room and board or actual costs whichever is less; actual charges for medical and dental care; and the costs of any damage to government property the inmate caused while confined.
- Rates would be charged on a sliding scale determined by the county commissioners or board of the correctional facility (see “EXAMPLE 2” in the back for examples of sliding scales). The rates are to be based on the offender’s ability to pay and on consideration of any legal obligations (i.e. spouse and child support). Generally the total costs could be recovered via a payment plan established upon the inmate’s release.
- A billing statement must be submitted to the offender upon release.

- The board/sheriff of the local correctional facility may appoint a reimbursement coordinator to administer the reimbursement policy. The coordinator, or any other person designated by the person(s) in charge of the facility, could investigate the financial status by means that could include contacting employers and reviewing income tax records. The coordinator may work with the confined person to create a payment plan to be implemented upon the offenders release.
- The reimbursement coordinator or another appointed person may collect unpaid expenses. The coordinator or board of county commissioners may also contract with public agencies and private vendors to collect the unpaid expenses.
- Within 12 months after the offender is released the prosecuting attorney could file a civil action to seek reimbursement from the released offender for any billing amount that remains unpaid.
- All recovered expenses would be credited to the general fund of the political subdivision that bore the expense and used for general fund purposes.

3. Mechanism for the Collection of Medical Fees

In addition to charging inmates medical expenses via a reimbursement mechanism, Sub. H.B. 480 authorizes local correctional facilities to deduct medical fees from non-indigent inmates' commissary accounts. Thus, the bill nullifies Attorney General Opinion 95-028 which prohibited local correctional facilities from deducting such fees for medical services. The following bullets summarize how the medical fee mechanism operates.

- The guiding statutes for the medical fees mechanism can be found in sections 307.93(F), 341.06(B), 341.14(C), 341.19(B), 341.21(C), 341.23(E), 2301.56(D), and 2947.19(D) of the Revised Code.
- Upon the commencement of requested medical treatment, local correctional facilities may assess a reasonable fee upon non-indigent prisoners.
- The payment of the required fee could be automatically deducted from the prisoners account record in the facility's business office.
- If there are no funds in the prisoner's account, a deduction could be made at a later date during the prisoner's confinement if funds become available.
- If the prisoner is released from the facility and has an unpaid balance of fees, they may be billed for payment using one of the reimbursement mechanisms discussed above.
- Indigent prisoners can not be required to pay the fees and no person can be denied

medical care because of their inability to pay the fees.

- All fees collected under this mechanism must be distributed to the facility's commissary fund. If the facility does not have a commissary fund the fee revenue must be distributed into the treasuries of the political subdivisions that incurred the expenses. Thus, if a multi-jurisdictional board operates the facility, fees must be allocated among the political subdivisions in the same proportion as they incurred the expenses.
- If a local correctional facility operates a commissary they must establish a commissary fund. Revenue in the commissary fund must be managed in accordance with procedures promulgated by the Auditor of State's Office. **(A subsequent CAB will be sent out regarding the bill's provisions on commissaries and commissary funds).**
- Any fees collected must be deducted from a prisoner's total medical expenses. For example, if a prisoner visits the doctor once for a total cost of \$50 and the facility charges and collects a \$5 fee from the prisoner for the visit; then the facility can only seek \$45 in reimbursement from the prisoner once they are released.

SHOULD YOUR COUNTY CHARGE MEDICAL FEES?

The medical fee mechanism should be implemented by every local correctional facility. In addition to collecting revenue, charging non-indigent prisoners a fee for medical care and prescriptions will decrease frivolous visits by inmates and should decrease medical expenses. If you implement a fee policy then two questions will likely be asked; what is a non-indigent offender and what is a reasonable fee? A non-indigent prisoner in the context of the fee mechanism is a prisoner that has funds in his or her commissary account. Thus, if there is money in a prisoner's account it is fair game. A reasonable fee can vary, however, most local correctional facilities around the state have been charging between \$3 to \$10 for medical and dental care and prescriptions.

SHOULD YOUR COUNTY IMPLEMENT A REIMBURSEMENT PROGRAM?

Although there are many successful prisoner reimbursement programs around the country they can be misleading due to demographics and available resources including the number of employees and the technology being utilized. Thus, making the decision to implement a prisoner reimbursement program may not be simple. Please see "MACOMB COUNTY, MICHIGAN A PLAN THAT WORKS" in the back for a summary of the reimbursement program in Macomb County, Michigan.

Note before your county chooses to implement a reimbursement program it is a good idea to first meet with the judges of the courts of common pleas, municipal and county courts to communicate your intentions. As stated previously, if your judges are requiring

reimbursement under the judicial method and your county jail is requiring reimbursement via the “in lieu of” method the mechanisms will conflict. Meeting with the judges should minimize the possibility of reimbursement mechanisms conflicting.

WHICH REIMBURSEMENT MECHANISM SHOULD BE IMPLEMENTED?

Once your county has decided to implement a reimbursement program which method should be utilized? We feel the “in lieu of” mechanism will work best for most counties. The remainder of this CAB focuses on similarities and differences between the reimbursement methods that you should know before deciding on a program; why the “in lieu of” reimbursement method will likely work best for you; and how your county may want to implement such a program.

Similarities between the mechanisms

- Once a judgment is made against an offender to reimburse the costs of confinement or the offender is given a billing statement, the reimbursement mechanisms operate very similar in terms of collection. For example a court can appoint a collection officer or private vendor and a local correctional facility can appoint a reimbursement coordinator or contract with a private vendor. Both mechanisms also allow civil actions or procedures such as garnishment of wages.

Differences between the mechanisms

- The judicial method requires courts to sentence a felony offender to the reimbursement sanction at the time of sentencing, while the amount a misdemeanor offender pays is decided at a post-confinement hearing. The “in lieu of” method requires the local correctional facility to issue all offenders, whether felony or misdemeanor offenders, a billing statement at the time of their release. Using the judicial method for misdemeanor offenders could require thousands of extra hearings to be held in municipal and county courts which would prove time consuming and costly. In comparison, the “in lieu of” method may require some technological updates and additional paperwork by the correctional facility.
- The judicial method may potentially be used as a condition of probation whereas the “in lieu of” method is strictly civil in nature. However, putting an offender back in jail for failing to meet their conditions of probation would likely increase costs even more.
- The judicial method limits the amount of recoverable medical expenses from misdemeanor offenders to 40% of total costs and limits the amount of all financial sanctions to \$10,000 for felony offenders. The “in lieu of” method limits the amount of recoverable expenses for room and board to \$60 per day.

- The judicial method allows you to charge offenders up to two hours of overtime for the costs incurred by the sheriff relative to the offender's trial. The "in lieu of" method does not have a specific provision relative to the reimbursement of sheriff overtime.
- The "in lieu of" method allows you to charge offenders for damages to government property while they are confined. The judicial method does not have a specific provision relative to the reimbursement of damages.
- The judicial method requires revenue collected from felony offenders to be deposited into the county "sanction cost reimbursement fund" while revenue collected from misdemeanor offenders is deposited into general revenue funds. All revenue collected under the "in lieu of" method is deposited into general revenue funds.

Please see "EXAMPLE 1" in the back for a summary of how the two prisoner reimbursement mechanisms might work on a specific inmate.

The 'in lieu of' mechanism will likely work best for you

Most offenders will not be able to pay for their total confinement cost, thus, the differences between the programs in regard to collectible expenses will not matter much. However, we believe the "in lieu of" method is the most cost effective method to seek reimbursement from offenders. The post-confinement hearing for misdemeanors as required under the judicial method will prove costly and time consuming, as it would increase judges' dockets. In addition, the local correctional facility still has to come up with a billing statement under the judicial method. The "in lieu of" method takes a step out of the process by avoiding a court hearing.

Should you implement the "in-lieu of" program in-house or contract out

The answer to this question really depends on the demographic make-up of your county and the resources you have. For example, if there is a low unemployment rate in your county it is more likely that your revenues may exceed the costs of operating a reimbursement program in-house. On the other hand, if most of your offenders are unemployed then the costs of operating an in-house program may exceed revenues. If you are not sure whether such a program would be successful, the safest way to implement a program would be to contract it out. Although private vendors generally keep between 25% to 50% of the revenue collected, your county should not incur any significant costs. However, the most successful programs around the country generally have both an in-house program (one to three full-time employees) and contract with private vendor(s). In-house programs are used to collect from offenders that are making payments while private vendors are used to collect on dead accounts. The benefit of having at least a small in-house program, such as having a reimbursement coordinator, is that records from other

county departments may be utilized by the coordinator to find offenders who are delinquent on their payments. Private vendors generally will not have access to other county departments. Also a coordinator may have the opportunity to talk with the offenders before they leave and get information that will help collect revenue later. Please see “MACOMB COUNTY, MICHIGAN A PLAN THAT WORKS” in the back for a summary of the reimbursement program in Macomb County, Michigan.

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If you have any questions regarding pay-for-stay or other provisions of Sub. H.B. 480, please contact Mike Toman, CCAO Research Associate at (614) 221-5627.

EXAMPLE 1: REIMBURSEMENT MECHANISMS AT WORK

Name: Joe Inmate **Days Served:** 10 days **Per Diem Rate:** \$50 **Crime:** Misdemeanor

Incarceration Costs: \$500 (10 days x \$50 per diem)

Medical Expenses: \$100 (Joe went to the doctor once and had one prescription filled)

Damages: \$50 (Joe scratched his name all over his cell, it needs a new coat of paint)

Sheriff Overtime: \$100 (4 hours of overtime at \$25 per hour for the Sheriff to take Joe to trial)

Total Costs of Joe’s Stay: \$750

COMPARING REIMBURSEMENT MECHANISMS				
Subject	Judicial Mechanism	“Joe” Under Judicial Mechanism	In Lieu of Judicial Mechanism	“Joe” In Lieu of Judicial Mechanism
Reimbursement Procedure	At the time of sentencing for felony offenders and at a post confinement judicial hearing for misdemeanor offenders		Post confinement administrative procedure via coordinator or other designee of local correctional facility	
Room & Board Expenses	Actual costs of confinement not to exceed \$10,000 for felony offenders	\$500	A maximum \$60 per diem fee or actual costs whichever is less	\$500
Medical Expenses*	Actual costs for felons; can not exceed 40% of costs for misdemeanants	\$40 minus any medical fees already deducted from commissary account	Actual costs	\$100 minus any medical fees already deducted from commissary account
Damages to Property	No specific provisions relative to damages	May be able to charge as part of room & board expenses	Actual costs	\$50

Sheriff Overtime	Up to two hours may be recovered	\$50	No specific provisions relative to overtime	May be able to charge as part of room & board expenses
Disposition of Recovered Expenses	Revenue collected from felony offenders goes to the county "sanction cost reimbursement fund"; revenue recovered from misdemeanor offenders go to GRFs		Revenue recovered from felony and misdemeanor offenders go to GRFs	
Total Collectible Expenses: \$750	\$590		\$650	

* Medical fees can be collected under both mechanisms. For example a correctional facility might charge Joe's commissary account a \$5 medical fee for his doctor visit and a \$3 medical fee for his prescription.

EXAMPLE 2: SLIDING SCALES FOR PRISONER REIMBURSEMENT

The tables below provide examples of sliding scales based on an offender's hourly wage and a \$50 per diem rate for incarceration costs. The first example is a sliding scale that might be utilized for offenders serving a regular jail term while the second example is a sliding scale that might be utilized for offenders in a work release program. Note these are just examples, your county may adopt sliding scales with higher daily rates.

Scale 1	
Inmate's Hourly Wage	Daily Rate
Min. Wage - \$6.51	\$6.00
\$6.51 - \$7.50	\$7.00
\$7.51 - \$8.50	\$8.00
\$8.51 - \$9.50	\$9.00
\$9.51 - \$10.50	\$10.00
" "	" "
\$45.51 - \$46.50	\$46.00
\$46.51 - \$47.50	\$47.00
\$47.51 - \$48.50	\$48.00
\$48.51 - \$49.50	\$49.00
\$49.51 - \$50.50	\$50.00

Or

Scale 2	
Inmate's Hourly Wage	Daily Rate
Min. Wage - \$6.51	\$12.00
\$6.51 - \$7.50	\$14.00
\$7.51 - \$8.50	\$16.00
\$8.51 - \$9.50	\$18.00
\$9.51 - \$10.50	\$20.00
" "	" "
\$20.51 - \$21.50	\$42.00
\$21.51 - \$22.50	\$44.00
\$22.51 - \$23.50	\$46.00
\$23.51 - \$24.50	\$48.00
\$24.51 - \$25.50	\$50.00

MACOMB COUNTY, MICHIGAN A PLAN THAT WORKS:

Sub. H.B. 480 was largely modeled after Michigan's laws on pay-for-stay. One reason for copying Michigan's pay-for-stay laws can be attributed to the success of pay-for-stay in Macomb County, Michigan (Population--720,000). The Macomb County pay-for-stay program has been one of the most successful programs in Michigan as well as in the United States. Macomb County operates a program almost identical to the "in lieu of" mechanism available to counties in Ohio. Macomb County began their pay-for-stay program in 1985 and has since collected over \$5 million in prisoner reimbursement revenue. In 1996, Macomb County collected approximately \$900,000. Note Macomb County also charges a \$10 fee for each doctor or dental visit and a \$3 fee for prescriptions. The fees are deducted from the offender's commissary accounts. The revenue from fees collected for medical treatments and service is included in the \$900,000 figure.

Why has Macomb County been successful?

A great deal of Macomb County's success can be attributed to the demographics of the county. Macomb County is located northeast of Detroit. Many automobile manufacturers are located in the county region. The socioeconomic status of the neighboring counties, Wayne and Oakland, range from being one of the poorest in Michigan to one of the wealthiest in the United States, with Macomb County falling somewhere in between. The Macomb County Jail has an average daily population of 1,200 offenders. Of the 1,200 offenders, approximately 80 offenders are in their work release program. The work release program releases offenders during the day so that they may report to their jobs. These are jobs that the offenders had prior to being adjudicated. Macomb County is in the process of constructing another 200 bed facility for the work release program. Macomb County also operates a weekend program for approximately 20 offenders. Offenders in the weekend program are employed during the week and are incarcerated on the weekend. Thus, a great number of the offenders being sentenced to the Macomb County Jail are employed. Offenders in the work-release and weekend programs are charged twice as much as the other offenders serving normal jail time. The offenders' rates are based on a sliding scale and they must pay their rates or they are taken off the program and required to serve a normal jail term. Of the \$900,000 collected in 1996, over 50% was collected from offenders in the work-release and weekend programs.

The other reason for Macomb County's success is an aggressive reimbursement staff. Macomb County hired a reimbursement coordinator in 1984 on a six month contract with no benefits. In 1984 the jail's average daily population was only 400 inmates. The program lost money the first year but showed promise. Today the program staff consists of three employees with an annual operation cost of \$150,000. The staff completes a financial survey on every offender sentenced to jail, utilizes the records of other county departments to find offenders that have delinquent accounts, and turns over dead accounts and outside hospital expenses directly to four private vendors for collection. Upon release, the county sends out a billing statement within one month. The county generally places offender's on a weekly payment plan based on their ability to pay. The county sends out 700 billing statements a month and files an estimated 230 civil actions annually. If a civil action is filed and the county gets a judgment they garnish wages, place liens on vehicles,

file against offender's state income tax returns, and attach financial statements to an offender's credit profile. As aggressive as the reimbursement staff and vendors are, the county only collects approximately 6% of the total amount billed. The county collects something from approximately 15% of the offenders while the vendors collect something from about 3% of the offenders, however, they are collecting on dead accounts.