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May 7, 2013

The Honorable Kurt Heise, Chair, House Committee on Criminal Justice  
Members of the House Committee on Criminal Justice

Regarding **HB 4083** (Crimestoppers; create assessment to fund)

Crimestoppers has provided a valuable public service for several years and is to be commended for its efforts to apprehend suspects and fugitives. My comments below concern the proposed funding mechanism and in no way are intended to detract from the good work that Crimestoppers has done and will continue to do.

The proposed "assessment", however, raises several concerns:

1. It is contrary to the policy established by the Legislature in 2003 to do away with multiple individual charges, fees, costs, or assessments in criminal cases and traffic civil infraction actions intended to fund separate programs or funding streams.
2. The bill creates a direct, unresolved conflict with existing statutes as to the priority of payments made by criminal defendants.
3. To the extent the bill purports to tie the proposed new "assessment" to the constitutional crime victim's assessment, there is a nonetheless a constitutional question.

First Concern: The Legislature in the early 1960's created a "surcharge" on penal fines to fund the Michigan Law Enforcement Officers Training Council, now known as MCOLES. The Michigan Court of Appeals struck down that surcharge as a violation of the constitutional provision requiring penal fines to go to county libraries. People v Barber, 14 Mich App 395 (1965). When the District Court was created by 1968 PA 154, a last-minute "judgment fee" of \$3 – to be charged against the defendant for any conviction in district court – was added. After becoming aware of Barber, the Legislature eliminated that "judgment fee" and replaced it with a "minimum cost" provision, whereby the state claimed the first \$3 (soon \$4, later \$9 with about half to the court equity fund) off the top of any costs assessed in criminal cases in district court.

When 1987-88 HJR P (creating the victim's rights amendment to the Michigan Constitution, Art I, Sec. 24), was under consideration, specific language was added to authorize the Legislature to "provide for an assessment against convicted defendants to pay for crime victims' rights". That provision was added out of particular concern for the Barber Case and to preclude any similar challenge to the legality of the intended assessment to pay for the services already provided by law under the Crime Victim's Rights Act, 1985 PA 87, MCL 780.751 et seq. After the voters approved HJR P in 1988, the Legislature enacted 1989 PA 196, MCL 780.901 et seq, to create the crime victim's assessment (MCL 780.905) to provide for crime victim's rights services. The two statutes mentioned and HJR P had a common sponsor – William VanRegenmorter.

Beginning in the mid 1990's until 2003 the Legislature began to create various "assessments" to fund a myriad of programs like DNA profiling, forensic lab testing, secondary road patrol, highway safety, criminal justice training, and jail reimbursement. The last four were added to traffic tickets but the first two were imposed in criminal cases. The related legislation went through different committees at different times. The civil infraction assessments avoided Barber because the cases were not criminal.

In 2003, in conjunction with an SCAO proposal to increase court revenue to offset Gov. Granholm's proposed cuts to GF/GP funding for the Judiciary, SCAO proposed to eliminate the

multiple "assessments" in criminal and infraction cases. A key consideration was the administrative and inefficient headache of each criminal and infraction case requiring the collection of multiple fines, costs, charges, and assessments that in turn required separate distributions and audit trails.

The resultant legislation eliminated the individual amounts and captured for the state a higher "minimum cost" in criminal cases (whether felony or misdemeanor) and juvenile adjudications with those "minimum costs" being paid to the state justice system fund created by MCL 600.181. For traffic civil infractions, the district (and municipal) court would assess a "justice system assessment" of \$40.00. MCL 257.907. The revenue paid into the justice system fund is distributed by formula under MCL 600.181 that provides the same expected revenue for the previous beneficiaries of the separate funds. Since then additional "destinations" have been added. (Note: That package also eliminated multiple distributions of civil filing fee revenue.)

So the end result of the 2003 package was increased court revenue, preservation of funding for programs previously benefitting from earmarked fees or assessment, and administrative efficiency for court clerks. Surely one must note that this mechanism was a form of "reverse revenue sharing" whereby the state captured money for state-determined programs (even though much of the money was and is distributed locally) and lessened the money available for funding local courts and programs of local choosing.

Nonetheless, HB 4083 runs counter to that decade-old policy against separate "assessments". HB 4083 would not add a state-based program that could be accommodated by amending the current justice system fund statutes, because this is to be a locally-based program. It would require courts to revise computer programs and keep a separate fund and audit trail in some 300 court locations. SCAO has repeatedly stated that it takes at least 6 months to fully implement a fee/revenue change like this because multiple vendors and different software programs are involved in local courts.

Second Concern: Who gets the money first? If the defendant only has limited resources to pay fines, court costs, minimum costs, oversight fees, restitution, crime victim's assessment, and the proposed crimestoppers assessment, who gets the money? **Does Crimestoppers get money before victims get restitution? Or is this assessment at the bottom of the distribution chain?** What are the expectations of the proponents and of the Committee?

This issue of priority was a big problem before 2003. It was also addressed, so there is current law on this subject – with which HB 4083 may conflict. The Crime Victim's Rights Act (MCL 780.766a, 780.826a, and 780.794a) and companion statutes provide that any money paid by a convicted defendant is split with one-half going to crime "victim payments" (defined as victim restitution and the crime victim's rights assessment, citing MCL 780.905) and one-half to all other fines, costs, supervision fees, and assessments – with state minimum costs first, followed in priority by other costs, then fines, next supervision fees, and lastly payment of "assessments and other payments". See e.g. MCL 780.766a(3)(e).

HB 4083 invites a conflict not unlike the situation involving the Detroit Zoo millage. If the bill were interpreted to give this new assessment a priority over other payments, it would trump restitution to victims. If the bill were interpreted as I believe MCL 780.766a(3) intends, the crimestoppers assessment would be at the bottom of the list to collect – seriously minimizing any expected revenue. Criminals often do not have the resources to pay all the monetary sanctions imposed, especially felons – and the circuit court typically does not collect its receivables as well as district court often does. The bill leaves this issue hanging.

Third Concern: The statement in HB 4083, page 4, lines 22-24, that the proposed assessment is authorized by Const 1963, Art I, Sec. 24, certainly acknowledges that there may be a constitutional issue with regard to this proposed assessment but does not necessarily resolve that issue.

Noted earlier was the connection between Art I, Sec. 24, the CVRA, and the crime victim assessment. Note also that **MCL 780.901(b)** defines "crime victim's rights services" as "services required to implement fully the William VanRegenmorter crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834, and services prescribed under this act". The "rights" provided under 1985 PA 87 directly impact a victim's rights to be informed of the criminal process involving the case that affects them or a deceased victim – when proceedings occur, when a victim has the right to make an impact statement, and when a victim is entitled to notice (including release of a prisoner from jail or prison) – and to receive restitution.

HB 4083 is now the third attempt to piggy-pack general law enforcement and health care programs to the assessment authorized by Art I, Sec. 24. MCL 780.904 was amended in 2008 to raid the crime victim rights fund to balance the state police budget for two years. Any connection to victim's rights services was attenuated at best – more related to prosecution of the offense than "victim services" – and was driven more by expediency than principle.

In 2010 MCL 780.905 was amended to increase the crime victim assessment from \$75 to \$130 for felonies and from \$50 for a "serious misdemeanor or a specified misdemeanor" to \$60 for ALL misdemeanors (like MIP) to accommodate the additional demand on the CVRF to allow funding, up to \$3.5 million annually, from the fund's surplus, if any, for the establishment and maintenance of a statewide trauma system (including staff support and related emergency medical services program activities) through FY 2013-14. The amount for a statewide trauma system would be reduced by half after October 1, 2014, "unless the amount expended is reasonably proportional to crime victims' utilization of the statewide trauma system". The 2010 amendment does not say who makes that determination. (By hospitals who want the money?) Note that trauma centers serve people who fall off ladders, have single-car crashes, and near-drowning instances that involve no victim at all. That is not what Art I, Sec. 24, intended.

To this HB 4083 would now add another "exception" to provide funding services typically viewed as law enforcement functions – location and apprehension of criminals. Some crimes have victims but all crimes are against society as a whole; the party bringing a criminal case against an alleged criminal is "the People", not any particular victim. The location and apprehension of criminals are to enforce the law. Query whether any of the services to be covered in Section 6 are related to the enumerated rights contained in Art I, Sec. 24, and whether page 4, lines 22-24, can make them so. The Constitution authorizes an assessment to fund crime victim's rights, not just anything the Legislature finds it convenient to pay for. Expediency can set precedents with unforeseen consequences.

Thank you for the opportunity to submit these remarks.

Respectfully,

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