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SFA



BILL ANALYSIS

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Senate Bill 102 (as passed by the Senate)
Sponsor: Senator Joanne G. Emmons
Committee: Judiciary

Date Completed: 2-25-97

RATIONALE

Under the Uniform Criminal Extradition Act, the county in which a crime allegedly was committed is required to pay the expenses of extradition. Although trial courts have ordered convicted persons to pay restitution to counties for extradition costs, the Court of Appeals has overturned those orders, first because there was no specific statute providing that a criminal is responsible for the cost of his or her own extradition to Michigan and later because application of the Crime Victim's Rights Act when the victim was the county violated the ex post facto clause of the State Constitution of 1963. Although one Court of Appeals case suggests that convicted persons may be ordered to pay extradition expenses because the Crime Victim's Rights Act has been amended to include a governmental entity within its definition of "victim", some people believe that Michigan law should expressly authorize courts to assess a criminal for the costs of his or her extradition to the State. (See **BACKGROUND** for a discussion of relevant court cases.)

CONTENT

The bill would amend the Code of Criminal Procedure to allow a court to order an individual who was extradited to Michigan for committing a crime and was convicted of that crime to pay the actual and reasonable costs of the extradition.

Proposed MCL 776.13a

BACKGROUND

In an unpublished 1995 Court of Appeals case (*People v Hall*, Docket No. 164620), the defendant had pleaded no contest to charges of embezzlement, larceny, and absconding on a felony bond. At sentencing, in addition to various prison terms, "the court ordered restitution in the

amount of \$15,179.86 which included \$630 in extradition costs". The defendant appealed his sentence on various grounds, including that the restitution order for the costs of extradition was improper. On the question of extradition costs, the Court of Appeals agreed with the defendant that "the trial court exceeded its authority in imposing payment of extradition costs as part of restitution" and vacated that portion of the sentence.

In another unpublished 1995 Court of Appeals opinion (*People v Shook*, Docket No. 173808), the defendant had pleaded guilty to larceny in a building. The defendant was sentenced to prison and ordered to pay restitution of \$10,930.06, which included \$730.40 in extradition costs. The defendant appealed his sentence on various grounds, including that the restitution order for the costs of extradition was improper. The Court of Appeals ruled that "it was improper for the trial court to order defendant to pay restitution to the county for extradition costs". The Court held that the county was not a victim under Michigan's restitution statutes and was "therefore not entitled to restitution from defendant".

In a published 1996 Court of Appeals decision, (*People v Slocum*, 213 Mich App 239), a trial court's order that a convicted habitual offender pay restitution to the county for extradition expenses was ruled improper on the ground that it violated the ex post facto clause of the Michigan Constitution. In supporting the assessment of extradition costs, the prosecutor argued that, by including a governmental entity in the restitution statute's definition of "victim", the recently amended Crime Victim's Rights Act provides for restitution to counties for extradition expenses (MCL 780.766). The prosecutor acknowledged that the Crime Victim's Rights Act was amended after the defendant's conviction, but argued that "the statute

only governs procedural matters and thus may be applied retroactively". The Court of Appeals disagreed, but stated: "Examining the law here in question, it is clear that the amendment would make the statute apply to defendant's extradition, and that action occurred before the amendment of the statute. Thus, it must only be determined whether applying the statute to defendant would disadvantage him." The Court of Appeals ruled that, since restitution is a form of punishment and the test for determining whether a criminal law may be applied retroactively includes an evaluation of whether the law increases a punishment, the restitution order for extradition costs violated the ex post facto clause.

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 bill would make it clear in statute that a convicted criminal is responsible for the costs of bringing him or her to justice in Michigan when he or she absconds on bond and flees the State or leaves Michigan after committing a crime. Although the Uniform Criminal Extradition Act specifies that the county in which a crime allegedly was committed is responsible for the costs of extradition, trial courts have expressed a willingness to order that convicted criminals pay the costs of their own extradition. Also, the trend in Michigan in recent years has been to hold criminals accountable for their actions through restitution and assessment of costs. Indeed, Public Act 341 of 1993 amended the Crime Victim's Rights Act to expand that Act's definition of "victim" to include a governmental entity, and Public Act 121 of 1996 amended the same Act to require restitution to the Crime Victims Compensation Board or to other persons or entities that have compensated a victim or victim's estate for a loss incurred by the victim. In allowing a court to order compensation to a county for its extradition expenses, the bill would continue the recent practice of holding criminals financially accountable.

Opposing Argument

The bill may be unnecessary. Although the *Slocum* panel of the Court of Appeals vacated the trial court's order of restitution for extradition expenses, it did so on the ground that the conviction preceded the inclusion of a governmental entity in the Crime Victim's Rights Act's definition of "victim" and, thus, violated the Constitution's ex post facto clause,

rather than on the ground that no statutory authority to order restitution existed. Referring to that amendment to the Crime Victim's Rights Act, the *Slocum* Court stated: "...it is clear that the amendment would make the statute apply to defendant's extradition...". It appears that, by including a governmental entity in the Crime Victim's Rights Act's definition of "victim", the Legislature accomplished what this bill proposes.

Response: Although the *Slocum* court may have interpreted compensation of a victim to include restitution for extradition expenses, that part of the opinion might be considered dictum and not binding on other panels. Also, the Michigan Supreme Court could reach a different conclusion. The bill would state explicitly that a sentencing court could order restitution for those costs.

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bill could result in increased court revenues. There would be no fiscal impact on the State.

Fiscal Analyst: M. Ortiz

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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.