

COURT COSTS: REVISE ALLOWABLE COSTS

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House Bill 5785 (Substitute H-1)

Sponsor: Rep. John Walsh

Committee: Judiciary

Complete to 9-17-14

A SUMMARY OF HOUSE BILL 5785 AS REPORTED BY COMMITTEE 9-11-14

House Bill 5785 would amend the Code of Criminal Procedure (MCL 769.1k), generally speaking, to allow a court to impose *any reasonable cost* on a defendant found guilty of a crime, in addition to currently authorized costs, fines, and assessments. These costs typically would be imposed at sentencing. The bill states that it is a curative measure addressing the authority of courts to impose costs under Section 1k of the Code before the issuance of the Michigan Supreme Court opinion in *People v Cunningham*, (No. 147437), issued June 18, 2014.

The bill would apply to all fines, costs, and assessments ordered or assessed under Section 1k before June 18, 2014, (the date of the *Cunningham* ruling) and those imposed after the bill's effective date.

Under the bill, *reasonable costs* could include, but would not be limited to, the following:

- The salaries and benefits for relevant court personnel;
- Goods and services necessary for the operation of the court; and/or
- Necessary expenses for the operation and maintenance of the court buildings and facilities.

Beginning January 1, 2015, the court would have to make available to the general public and to a defendant information about any fine, cost, or assessment imposed, including an explanation of any reasonable cost imposed under the bill. However, the explanation would not have to include the calculation of the costs involved in a particular case.

Court costs, assessments, fines, and reimbursements. A court orders, or imposes, costs, assessments, reimbursements, and fines when a defendant enters a plea of guilty or no contest (*nolo contendere*). If after a trial or hearing the court finds a defendant guilty, the costs, assessments, fines, and reimbursements are ordered at sentencing or at the time entry of judgment of guilt is deferred or delayed under certain statutes.

A court currently **must** impose a minimum state cost (\$68 for a felony, \$50 for a misdemeanor or ordinance violation). In addition, a court currently **may** impose other specifically allowable fines, costs, reimbursements, and assessments as follows:

- Any fine or cost (the bill would clarify that this applies to a cost or fine *authorized by the statute for a violation of which the defendant entered a plea of guilty or nolo contendere or the court determined that the defendant was guilty*).
- The expenses of providing legal assistance to the defendant.
- Any assessment authorized by law.
- Reimbursement under Section 1f of Chapter 9 (Judgment and Sentence). Section 1f allows a defendant to be ordered to reimburse the state or local units of government for expenses incurred related to the incident, such as costs of prosecution or emergency response.

FISCAL IMPACT:

A fiscal analysis is in process.

BRIEF DISCUSSION OF THE ISSUES:

Generally speaking, the bill would allow courts to charge costs to certain criminal defendants that many courts had been charging prior to a recent Michigan Supreme Court decision.

Current language in Section 1k(b)(ii) of the Code of Criminal Procedure added by Public Act 316 of 2005 that permits a court to impose on a criminal defendant "any cost in addition to the minimum state cost" (\$68 for a felony, \$50 for a misdemeanor) has been interpreted by the trial courts as meaning that a court could require a defendant, at sentencing or earlier under certain circumstances, to pay a part of the court's overhead costs. A 2012 Michigan Court of Appeals case ruled that such operational costs had to have a reasonable relationship between any costs imposed on a defendant and the actual costs incurred. *People v Sanders*, 296 Mich App 710 (2012) However, the appeals ruling said a court could impose, say, a flat fee based on the average cost to prosecute a felony or a misdemeanor rather than calculating the actual costs specific to a particular defendant.

On June 18, 2014, the state Supreme Court overruled the *Sanders* decision, at least as how it relates to interpreting Section 1k(b)(ii) as providing courts with independent authority to impose "any cost." Instead, the Supreme Court held in *Cunningham* that the provision in question "provides courts with the authority to impose only those costs that the Legislature has separately authorized by statute." For example, some criminal penalties include specific language allowing a court to require a defendant to pay the costs of prosecution, including the costs to investigate the case, or to pay the cost of any emergency responders such as ambulances, fire fighters, or SWAT called to the crime scene.

The effect of this ruling is that courts may no longer impose operational costs on criminal defendants. The impact is that budgets for local governments, which include funding for court operations, have already been finalized for the next fiscal year and have included in those budgets as a source of revenue the collection of such "costs" to criminal defendants.

By some accounts, the loss of revenue to court funding units (counties or, in some instances, cities) equals 10 percent or more of their budget for any given year. Thus, unless House Bill 5785 is enacted to overturn the *Cunningham* decision, many local governments may experience budget shortfalls not just next year, but in future years as well, that could affect services to their residents beyond court operations. This has led to concerns that the burden to replace the lost revenue may fall on local residents rather than on those using the criminal justice system.

Many agree that the *Cunningham* decision highlights shortcomings in the way that courts are funded in Michigan, but due to the complexities of the system, all also agree that a workable revision could take as much as a decade to accomplish. Some have proposed that a commission or task force be established to study the issue of court funding. Meanwhile, some see House Bill 5785 as a temporary solution to extend the status quo while other options are considered.

Opponents, however, maintain there are some worrisome weaknesses in the bill. For instance, failure to pay these "reasonable costs" can land a defendant in jail, even if the defendant had no ability to pay, even if the defendant was willing to pay, and even if the underlying crime had no associated jail time to begin with. Suggestions for improvements include amending the bill to require that the ability to pay be evaluated and that alternatives, such as community service, be offered for indigent or low-income defendants. The bill language also does not reflect the severity of the crime; for example, a person who pleads guilty or no contest to a minor misdemeanor or less serious felony does not use as much of the court's resources as a defendant who is subject to a lengthy jury trial for a murder or a complex financial fraud case.

Other suggestions for improvement include capping the costs that may be assessed under the "reasonable cost" provision and sunseting the bill so that the issue will continue to be studied rather than being forgotten once immediate budgetary concerns are satisfied. Lastly, the bill's language as to what exactly constitutes a "reasonable cost" continues to be vague since only a few things are listed, potentially leading to more lawsuits to determine what can and what cannot be included as a reasonable cost. For instance, where the bill is clear that staff salaries and benefits can be included, it isn't clear if adding an addition to the courthouse or erecting a statue would be.

POSITIONS:

Representatives of the Michigan Association of Counties testified in support of the bill. (9-11-14)

A representative of the City of Eastpointe and Macomb Communities for Regional Opportunities (MACRO) testified in support of the bill. (9-11-14)

The Michigan Judges Association indicated support for the bill. (9-11-14)

The Michigan Townships Association indicated support for the bill. (9-11-14)

The Michigan Municipal League indicated support for the bill. (9-11-14)

A representative of Ottawa County indicated support for the bill. (9-11-14)

A representative of Marquette County indicated support for the bill. (9-11-14)

The Prosecuting Attorneys Association of Michigan indicated support for the bill. (9-11-14)

The Supreme Court Administrative Office (SCAO) indicated a neutral position.

A representative of the Michigan District Judges Association testified but did not indicate a formal position. (9-11-14)

A representative of the Criminal Defense Attorneys of Michigan (CDAM) testified in opposition to the bill. (9-11-14)

A representative of the ACLU Michigan testified in opposition to the bill. (9-11-14)

ARRO-Rentry Services indicated opposition to the bills. (9-11-14)

Citizens for Prison Reform indicated opposition to the bill. (9-11-14)

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Robin Risko

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.