

**MINUTES OF THE COMMITTEE  
ON  
JUDICIARY**

Thursday, September 11, 2014

8:30 a.m.

Room 521 House Office Building

The House Standing Committee on Judiciary was called to order by the Chair.

Members present: Reps. Cotter, Kesto, Heise, Johnson, LaFontaine, Leonard, Howrylak, Cavanagh, Lipton, Irwin, Clemente.

Members absent/excused: None.

Representative Heise moved to approve the minutes of the June 5, 2014 meeting. There being no objection, the motion prevailed by unanimous consent.

The Chair laid HB 5785 before the committee:

HB 5785 (Walsh) Criminal procedure; sentencing; permissible costs; revise.

Representative Walsh testified in support of his bill. Questions and discussion followed.

Dana Gill, Dennis Van Dam, and Jerry Celmer, all representing the Michigan Association of Counties, testified in support of the bill. Questions and discussion followed.

Noah Smith, representing the Criminal Defense Attorneys of Michigan, and Shelli Weisberg, representing the American Civil Liberties Union of Michigan, testified in opposition to the bill. Questions and discussion followed.

Judge Tom Boyd, representing the Michigan District Judges Association, testified on the bill. Questions and discussion followed.

Steve Duchane, representing the City of Eastpoint, testified in support of the bill.

The Chair laid HB 5678, HB 5679, HB 5680, and HB 5681 before the committee:

HB 5678 (O'Brien) Townships; ordinances; definition of public nudity; clarify that it does not include breastfeeding or expressing of breast milk.

HB 5679 (Haines) Cities; home rule; definition of public nudity; clarify that it does not include breastfeeding or expressing of breast milk.

HB 5680 (Denby) Cities; home rule; definition of public nudity; clarify that it does not include breastfeeding or expressing of breast milk.

HB 5681 (Kowall) Villages; general law; definition of public nudity; clarify that it does not include breastfeeding or expressing of breast milk.

Representative Kesto moved to report HB 5678 with recommendation that the bill be referred to the Committee on Local Government. The motion prevailed 10-0-0.

FAVORABLE ROLL CALL

Yeas: Reps. Cotter, Kesto, Heise, Johnson, LaFontaine, Leonard, Howrylak, Lipton, Irwin, Clemente.

Nays: None.

Pass: None.

Representative Kesto moved to report HB 5679 with recommendation that the bill be referred to the Committee on Local Government. The motion prevailed 10-0-0.

FAVORABLE ROLL CALL

Yeas: Reps. Cotter, Kesto, Heise, Johnson, LaFontaine, Leonard, Howrylak, Lipton, Irwin, Clemente.

Nays: None.

Pass: None.

Representative Kesto moved to report HB 5680 with recommendation that the bill be referred to the Committee on Local Government. The motion prevailed 10-0-0.

FAVORABLE ROLL CALL

Yeas: Reps. Cotter, Kesto, Heise, Johnson, LaFontaine, Leonard, Howrylak, Lipton, Irwin, Clemente.

Nays: None.

Pass: None.

Representative Kesto moved to report HB 5681 with recommendation that the bill be referred to the Committee on Local Government. The motion prevailed 11-0-0.

FAVORABLE ROLL CALL

Yeas: Reps. Cotter, Kesto, Heise, Johnson, LaFontaine, Leonard, Howrylak, Cavanagh, Lipton, Irwin, Clemente.

Nays: None.

Pass: None.

The Chair laid HB 4915 before the committee:

HB 4915 (Lori) Crime victims; other; crime victim's rights fund; extend sunset.

Bruce Timmons, representing himself, submitted a card in opposition to the bill.

The following people submitted a card in support of the bill, but did not wish to speak:

Kurt Kraus and Eileen Worden, representing the Michigan Department of Community Health.

Kathy Hagenian, representing the Michigan Coalition to End Domestic and Sexual Violence.

Barb Smith, representing the Emergency Nurses Association.

Barb Smith, representing the Michigan Trauma Coalition and Beaumont Health of Buttsford.

Tom Wood, representing Michigan Trauma Coalition and MidMichigan Health.

Debbie Falkenberg, representing the Michigan Trauma Coalition.  
Sarah Poole, representing the American Heart Association.  
Paige Fults, representing the Michigan Health and Hospital Association.  
Sean Gehle, representing Ascension Health-Michigan.

Representative LaFontaine moved to report HB 4915 with recommendation. The motion prevailed 9-0-2.

FAVORABLE ROLL CALL

Yeas: Reps. Cotter, Kesto, Heise, Johnson, LaFontaine, Leonard, Cavanagh, Lipton, Clemente.

Nays: None.

Pass: Reps. Howrylak, Irwin.

The Chair laid SB 705 before the committee:

SB 705 (Jones) Courts; records; recording of hearing involving minor; require to be maintained pursuant to supreme court rules.

Representative LaFontaine moved to report SB 705 with recommendation. The motion prevailed 10-0-1.

FAVORABLE ROLL CALL

Yeas: Reps. Cotter, Kesto, Heise, Johnson, LaFontaine, Leonard, Cavanagh, Lipton, Irwin, Clemente.

Nays: None.

Pass: Rep. Howrylak.

The Chair laid SB 857 before the committee:

SB 857 (Schuitmaker) Torts; liability; administration of a drug in response to a drug overdose; provide protection from civil liability.

Rio Vale, representing the Michigan Psychiatric Society, submitted a card in support of the bill, but did not wish to speak.

Representative LaFontaine moved to report SB 857 with recommendation. The motion prevailed 11-0-0.

FAVORABLE ROLL CALL

Yeas: Reps. Cotter, Kesto, Heise, Johnson, LaFontaine, Leonard, Howrylak, Cavanagh, Lipton, Irwin, Clemente.

Nays: None.

Pass: None.

The Chair returned to HB 5785.

Bruce Timmons, representing himself, testified with a neutral position on the bill.

The following people submitted a card in support of the bill, but did not wish to speak:

Scott Erbisch, representing Marquette County.  
Judy Allen, representing the Michigan Townships Association.  
Nikki Brown, representing the Michigan Municipal League.  
Cami Pendell, representing the Michigan Judges Association.  
Jim Miller, representing Ottawa County.  
Marty Fittante, representing Senator Casperson's office.  
Tom Robertson, representing the Prosecuting Attorneys Association of Michigan.

The following people submitted a card in opposition to the bill, but did not wish to speak:

Lois DeMott, representing the Citizens for Prison Reform.  
Monica Tahner, representing ARRO – Reentry Services.

Joe Baumann, representing the State Court Administrators Office, submitted a card with a neutral position, but did not wish to speak.

Representative Irwin offered the following amendment:

1. Amend page 3, following line 17, by inserting:  
**"(8) ALL OF THE FOLLOWING APPLY TO THE IMPOSITION OF FINES, COSTS, OR ASSESSMENTS UNDER THIS CHAPTER, AS APPLICABLE:**
  - (A) THE COURT SHALL NOT REQUIRE A DEFENDANT TO PAY COSTS UNDER THIS SECTION UNLESS THE DEFENDANT IS OR WILL BE ABLE TO PAY THOSE COSTS. IN DETERMINING THE AMOUNT AND METHOD OF PAYMENT OF COSTS UNDER THIS SECTION, THE COURT SHALL TAKE INTO ACCOUNT THE DEFENDANT'S EMPLOYMENT STATUS, EARNING ABILITY, FINANCIAL RESOURCES, THE BURDEN THAT PAYMENT OF COSTS WILL IMPOSE ON THE DEFENDANT, WITH DUE REGARD TO HIS OR HER OTHER OBLIGATIONS, AND ANY OTHER SPECIAL CIRCUMSTANCES THAT MAY HAVE A BEARING ON THE DEFENDANT'S ABILITY TO PAY.**
  - (B) A DEFENDANT WHO IS REQUIRED TO PAY COSTS UNDER THIS SECTION AND WHO IS NOT IN WILLFUL DEFAULT OF THE PAYMENT OF THOSE COSTS MAY PETITION THE SENTENCING JUDGE OR HIS OR HER SUCCESSOR AT ANY TIME FOR A REMISSION OF THE PAYMENT OF ANY UNPAID PORTION OF THOSE COSTS.**
  - (C) IF THE COURT DETERMINES THAT PAYMENT OF THE AMOUNT DUE WILL IMPOSE A MANIFEST HARDSHIP ON THE DEFENDANT OR HIS OR HER IMMEDIATE FAMILY, THE COURT MAY REMIT ALL OR PART OF THE AMOUNT DUE IN COSTS OR MODIFY THE PAYMENT TO THE EXTENT PERMITTED BY LAW.**
  - (D) A COURT SHALL NOT ORDER THE IMPRISONMENT OF ANY PERSON, WHO LACKS THE PRESENT ABILITY TO PAY FINES, COSTS, OR ASSESSMENTS UNDER THIS CHAPTER, TO A JAIL, CORRECTIONAL FACILITY, OR OTHER PLACE OF CONFINEMENT FOR THE FAILURE TO PAY FINES, COSTS, OR ASSESSMENTS UNLESS THE COURT FIRST FINDS THE DEFENDANT IN CONTEMPT OF COURT FOR A WILLFUL FAILURE TO PAY. HOWEVER, IN NO CASE MAY A COURT IMPRISON ANY PERSON WHERE NO IMPRISONMENT IS PROVIDED FOR IN THE UNDERLYING VIOLATION OF WHICH THE DEFENDANT ENTERED A PLEA OF GUILTY OR NOLO**

**CONTENDERE OR THE COURT DETERMINED THAT THE DEFENDANT WAS GUILTY.**

**(E) THE COURT SHALL NOT FIND A DEFENDANT IN CONTEMPT OF COURT FOR WILLFUL FAILURE TO PAY UNLESS THE COURT FIRST MAKES FINDINGS ON THE RECORD THAT THE DEFENDANT HAS THE ABILITY TO COMPLY WITH THE COURT'S ORDER TO PAY THE FINE, COST, OR ASSESSMENT AND THE DEFENDANT HAS NOT MADE A GOOD-FAITH EFFORT TO COMPLY WITH THE ORDER.**

**(F) A DEFENDANT'S FAILURE TO PAY IS NOT WILLFUL IF HE OR SHE LACKS THE PRESENT ABILITY TO PAY.**

**(G) A DEFENDANT WHO IS INDIGENT, AS ESTABLISHED UNDER THE MICHIGAN INDIGENT DEFENSE COMMISSION ACT, 2013 PA 93, MCL 780.981 TO 780.1003, IS PRESUMED TO LACK THE MEANS TO PAY COSTS IMPOSED UNDER THIS SECTION."**

Representative Irwin moved to adopt the amendment to HB 5785. The motion did not prevail 5-6-0.

**UNFAVORABLE ROLL CALL**

Yeas: Reps. Howrylak, Cavanagh, Lipton, Irwin, Clemente.

Nays: Reps. Cotter, Kesto, Heise, Johnson, LaFontaine, Leonard.

Pass: None.

Representative Irwin offered the following amendment:

1. Amend page 2, following line 26, by inserting:

**"(4) COSTS IMPOSED ON A DEFENDANT UNDER SUBSECTIONS (1) AND (2) ARE LIMITED TO COSTS ASSOCIATED WITH THE PROSECUTION OF THE DEFENDANT, BUT SHALL NOT INCLUDE COSTS ASSOCIATED WITH THE MAINTENANCE AND OPERATION OF GOVERNMENTAL AGENCIES THAT ARE BORNE BY THE PUBLIC REGARDLESS OF ANY PARTICULAR VIOLATION OF LAW."** and renumbering the remaining subsections.

Representative Irwin moved to adopt the amendment to HB 5785. The motion did not prevail 5-6-0.

**UNFAVORABLE ROLL CALL**

Yeas: Reps. Howrylak, Cavanagh, Lipton, Irwin, Clemente.

Nays: Reps. Cotter, Kesto, Heise, Johnson, LaFontaine, Leonard.

Pass: None.

Representative Clemente offered the following amendment:

1. Amend page 2, line 9, after **"(iii)"** by striking out **"ANY"** and inserting **"UNTIL 15 MONTHS AFTER THE DATE THE AMENDATORY ACT THAT ADDED SUBSECTION (7) IS ENACTED INTO LAW, ANY"**.

Representative Clemente moved to adopt the amendment to HB 5785. The motion did not prevail 5-6-0.

**UNFAVORABLE ROLL CALL**

Yeas: Reps. Howrylak, Cavanagh, Lipton, Irwin, Clemente.  
Nays: Reps. Cotter, Kesto, Heise, Johnson, LaFontaine, Leonard.  
Pass: None.

Representative Cotter offered the following amendments:

1. Amend page 3, line 10, after "(7)" by striking out "**THE**" and inserting "**BEGINNING ON JANUARY 1, 2015, THE**".
2. Amend page 3, line 15, after "**CASE.**" by striking out the balance of the subsection.
3. Amend page 3, following line 17, by inserting:  
"Enacting section 1. This amendatory act applies to all fines, costs, and assessments ordered or assessed under section 1k of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.1k, before June 18, 2014, and after the effective date of this amendatory act.  
Enacting section 2. This amendatory act is a curative measure that addresses the authority of courts to impose costs under section 1k of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.1k, before the issuance of the supreme court opinion in People v Cunningham (No. 147437), issued June 18, 2014."

Representative Kesto moved to adopt the amendments to HB 5785. The motion prevailed 7-3-1.

#### FAVORABLE ROLL CALL

Yeas: Reps. Cotter, Kesto, Heise, Johnson, LaFontaine, Leonard, Howrylak.  
Nays: Reps. Cavanagh, Lipton, Irwin.  
Pass: Rep. Clemente.

Representative Lipton offered the following amendment:

1. Amend page 2, following line 26, by inserting:  
**"(4) COSTS IMPOSED UNDER SUBSECTIONS (1) AND (2) SHALL NOT EXCEED THE FOLLOWING:  
(A) FOR EACH FELONY CONVICTION, \$1,000.00.  
(B) FOR EACH MISDEMEANOR CONVICTION, \$500.00."** and renumbering the remaining subsections.

Representative Lipton moved to adopt the amendment to HB 5785. The motion did not prevail 4-6-1.

#### UNFAVORABLE ROLL CALL

Yeas: Reps. Cavanagh, Lipton, Irwin, Clemente.  
Nays: Reps. Cotter, Kesto, Heise, Johnson, LaFontaine, Leonard.  
Pass: Rep. Howrylak.

Representative Lipton offered the following amendments:

1. Amend page 2, line 9, after "(iii)" by striking out "**ANY**" and inserting "**UNTIL JANUARY 1, 2019, ANY**".
2. Amend page 3, following line 17, by inserting:  
**"(8) THE GOVERNOR SHALL CREATE A COMMISSION TO CONDUCT A COMPREHENSIVE REVIEW OF THE MANNER IN WHICH THE COURTS OF THIS STATE ARE FUNDED. THIS REVIEW SHALL BE FINITE IN TIME AND FOCUSED ON**

**THE STABILITY OF FUNDING WHILE PRESERVING LOCAL CONTROL OF COURT MANAGEMENT."**

Representative Lipton moved to adopt the amendments to HB 5785. The motion did not prevail 5-6-0.

**UNFAVORABLE ROLL CALL**

Yeas: Reps. Howrylak, Cavanagh, Lipton, Irwin, Clemente.

Nays: Reps. Cotter, Kesto, Heise, Johnson, LaFontaine, Leonard.

Pass: None.

Representative Heise moved to report HB 5785 with recommendation, as amended, as substitute (H-1). The motion prevailed 6-3-2.

**FAVORABLE ROLL CALL**

Yeas: Reps. Cotter, Kesto, Heise, Johnson, LaFontaine, Leonard.

Nays: Reps. Howrylak, Lipton, Irwin.

Pass: Reps. Cavanagh, Clemente.

There being no further business before the committee, the Chair adjourned the meeting at 10:23 a.m.

**Representative Kevin Cotter, Chair** \_\_\_\_\_

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