Bruce A Timmons
May 12, 2015

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

Re: **SB 191** – Amending MCL 769.1f to allow court to order a person convicted of criminal contempt or retail fraud to reimburse a local unit of government for costs incurred in the investigation and prosecution of the crime and to include transportation among the costs incurred.

One understands the dilemma of local government with scarce financial resources and their desire to avoid costs or have someone else assume or share the burden of a service where that is possible. That appears to be the motivation behind SB 191.

Every bill of this type tends to be viewed in its own context, not in the context of other criminal penalties and obligations of defendants to pay. The current bill adds one more financial penalty on those who are convicted of crimes – on top of a growing list of fines, costs, assessments, restitution, reimbursements, and fees. My concern is not out of sympathy for criminals but whether legislation is exceeding the bounds of reasonable consequences for that activity and beyond the ability of many offenders to pay. It can also create a credibility problem for the trial courts that impose obligations to pay which are not collected or collectible – and that can make our courts look bad by creating unrealistic expectations (and dashboard measures). The Legislature ought to consider which of these financial obligations are both worthy and collectible and whether some may do more harm than good.

The following are among the monetary sanctions that courts now may or must impose on criminals:

A. **Fines**. (Retained locally – libraries, city/twp whose ordinance is violated, court funding units.)

B. **Court costs**. Recently addressed by 2014 PA 352 (HB 5785), amending MCL 769.1k, in response to MSC decision in People v Cunningham: "any cost reasonably related to the actual costs incurred by the trial court" (10/17/2017 "sunset"). (SCAO is to report data on imposition and collection.)

C. MCL 769.1j(1) – **State minimum costs** (added 2003, increased since), paid to state:
(a) **$68.00**, if the defendant is convicted of a felony.
(b) **$50.00**, if the defendant is convicted of a misdemeanor or ordinance violation.

D. MCL 780.905 – **Crime Victim Rights Assessment** (added 1989, increased since), paid to state:
(a) If the offense is a felony, **$130.00**.
(b) If the offense is any misdemeanor or ordinance violation, **$75.00**.

Note: In 1969 there was a $3 "judgment fee" in district court; no such charge in felonies. Today "state minimum costs" and the CVR assessment impose $198 for felonies and $125 for any misdemeanor.

E. Mandatory **Victim Restitution** – MCL 769.1a (added by 1985 PA 89). Also Crime Victim Rights Act.

F. **MCL 769.1f (Reimbursement for expenses incurred by government)** (new in '98, 5 additions since): For operating motor vehicles, ORVs, snowmobiles, watercraft, planes, or locomotives under the influence of alcohol or drugs [(1)(a) to (g)]; false report of crime or report of medical or other emergency; and criminal contempt for violation of DV or stalking PPO – to which **SB 191** would add:

(J) A VIOLATION OR ATTEMPTED VIOLATION OF SECTION 356C OR 356D OF THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.356C AND 750.356D. [Retail fraud/shoplifting.]

(K) A FINDING OF GUILT FOR CRIMINAL CONTEMPT FOR FAILING TO APPEAR IN COURT AS ORDERED BY THE COURT. [Not limited to criminal cases; presumably applies to injunctions, PPOs.]

(2) The **expenses** for which reimbursement may be ordered under this section ... :

(a) The salaries or wages, including overtime pay, of law enforcement personnel for time spent responding to the incident from which the conviction arose, arresting the person convicted, processing the person after the arrest, preparing reports on the incident, investigating the incident, [**SB 191** would add **"TRANSPORTATION COSTS,"**] and collecting and analyzing evidence, including, but not limited to, determining bodily alcohol content and determining the presence of and identifying controlled substances in the blood, breath, or urine.

(b) The salaries, wages, or other compensation, including overtime pay, of fire department and emergency medical service personnel, including volunteer fire fighters or volunteer emergency medical service personnel, for time spent in responding to and providing fire fighting, rescue, and emergency medical services in relation to the incident from which the conviction arose.

(c) The cost of medical supplies lost or expended by fire department and emergency medical service personnel, including volunteer fire fighters or volunteer emergency medical service personnel, in providing services in relation to the incident from which the conviction arose.

(d) The salaries, wages, or other compensation, including, but not limited to, overtime pay of prosecution personnel for time spent investigating and prosecuting the crime or crimes resulting in conviction.

(e) The cost of extraditing a person from another state to this state including, but not limited to, all of the following:

(i) Transportation costs.

(ii) The salaries or wages of law enforcement and prosecution personnel, including overtime pay, for processing the extradition and returning the person to this state.

. . . . . .

(9) As part of the sentence for a conviction of any violation or attempted violation of chapter XXXIII, section 327, 327a, 328, or 436, or chapter LXXXIII-A of the Michigan penal code, 1931 PA 328, MCL 750.200 to 750.212a, 750.327, 750.327a, 750.328, and 750.436, and 750.543a to 750.543z, in addition to any other penalty authorized by law, the court shall order the person convicted to reimburse any government entity for expenses incurred in relation to that incident including, but not limited to, expenses for an emergency response and expenses for prosecuting the person, as provided in subsections (2) to (8). As used in this subsection, "government entity" means this state, a local unit of government, or the United States government. [Explosives or terrorism felonies.]

HB 4045, in House Judiciary, would add the following to MCL 769.1f:

"(4) IF A LOCAL GOVERNMENT INCURS COSTS FOR EXECUTING A BENCH WARRANT TO EFFECTUATE THE ARREST OF A PERSON, THE COURT MAY ORDER THE PERSON CONVICTED TO REIMBURSE THE LOCAL UNIT OF GOVERNMENT FOR EXPENSES INCURRED IN RELATION TO THAT BENCH WARRANT."

However, there are several additional MCL sections that similarly provide for reimbursements for expenses incurred in relation to the violation in the same manner as in MCL 769.1f:

28.754 (false report of child abduction)

750.145d (use of internet or computer system; prohibited conduct; violation; penalty; jurisdiction; order to reimburse state or local governmental unit)

750.411a (false report of crime or report of medical or other emergency)

750.411s (posting message through electronic medium)

750.462j (providing or obtaining labor or services by force, fraud, or coercion as crime; penalty; recruiting, harboring, transporting, providing, or obtaining person for involuntary servitude or debt bondage as crime) – earlier human trafficking statute. [Note: **HB 5234** would repeal this section and replace it with a comparable provision in 750.462f.]

750.543x (Anti-terrorism; restitution; reimbursement)

752.797 (Fraudulent access to computers, computer systems, and computer networks)

752.1084 (Organized retail crime act)

A couple of these are directly reflected in MCL 769.1f, like anti-terrorism and 750.411a.

G. Other reimbursement provisions (to benefit of government agencies):

1. **MCL 769.1g(1)(b)** (Offenses related to riots or civil disorder on college campuses):

"The court may order the individual to reimburse the public community college, public college, or public university, or this state, or a local unit of government of this state for expenses incurred as a result of the riot, incitement to riot, unlawful assembly, or civil disorder. The amount shall be reasonable and shall not exceed the individual's pro rata share of the costs...."

2. Also, in **MCL 769.1k** (imposition of fines and costs): "... the court may order the defendant to pay any additional costs incurred in compelling the defendant's appearance."

3. Expense of providing **legal assistance**. E.g., MCL 769.1k and 771.3(5).

H. **Costs imposed for services or programs**, including:

MCL 771.3c – Probation supervision fee (added in 1989) (collected by and for MDOC):

1. "Sec. 3c. (1) The circuit court shall include in each order of probation for a defendant convicted of a crime that the department of corrections shall collect a probation supervision fee of not more than $135.00 multiplied by the number of months of probation ordered, but not more than 60 months. The fee is payable when the probation order is entered, but the fee may be paid in monthly installments if the court approves installment payments for that probationer. In determining the amount of the fee, the court shall consider the probationer's projected income and financial resources. The court shall use the following table of projected monthly income in determining the amount of the fee to be ordered:

Projected Monthly Income	Amount of Fee
$ 0-249.99	$ 0.00
$ 250.00-499.99	$10.00
$ 500.00-749.99	$25.00
$ 750.00-999.99	$40.00
$1,000.00 or more	5% of projected monthly income, but not more than $135.00

The court may order a higher amount than indicated by the table, up to the maximum of $135.00 multiplied by the number of months of probation ordered, but not more than 60 months, if the court determines that the probationer has sufficient assets or other financial resources to warrant the higher amount. . . .".

2. MCL 769.4a (Domestic violence; allow discharge and dismissal of first offense)

(3) ... The court may order the accused to pay the reasonable costs of the mandatory counseling program. ....

3. MCL 771.3e (Jail release to attend work or school; tether)

(1) ... The installation, maintenance, monitoring, and removal costs of the electronic monitoring device shall be paid for by the individual.

Caveat: Under **MCL 771.3**, which governs **probation** generally, there appears to be some restraint as to what the sentencing court can impose as costs as a condition of probation:

"(5) If the court requires the probationer to pay costs under subsection (2), the costs shall be limited to expenses specifically incurred in prosecuting the defendant or providing legal assistance to the defendant and supervision of the probationer.".

And in subsection (6):

"(a) The court shall not require a probationer to pay costs under subsection (2) unless the probationer is or will be able to pay them during the term of probation. In determining the amount and method of payment of costs under subsection (2), the court shall take into account the probationer's financial resources and the nature of the burden that payment of costs will impose, with due regard to his or her other obligations."

I. Forfeiture statutes:

RJA, Chapter 47, MCL 600.4701 et seq. (which depends upon a conviction).

PHC, Part 75, MCL 333.7501 et seq. (which does not depend upon a conviction).

In addition to court-imposed sanctions:

MCL 257.732a - Driver responsibility fee:
- $1,000 for 2 years for driving vehicle ORV, or snowmobile under the influence or causing death of serious impairment by driving under the influence or as result of moving violation; fleeing or eluding.
- $500 for 2 years for impaired driving, reckless driving, driving while license suspended, or uninsured.
- $100 for accumulating 7 or more points on his or her driving record within a 2-year period, plus $50 for each additional point over 7 – for each year points reach 7 or more.

Note: Being phased out per 2014 PA 250 with no DR fee applied to violations after Oct. 1, 2019.

Reimbursements for the cost of incarceration:

1935 PA 253, MCL 800.401 et seq – Civil action against prison inmates for reimbursement to state for cost of care in state correctional facilities. See MCL 800.404. Per MCL 800.401a: "Cost of care" means the cost to the department for providing transportation, room, board, clothing, security, medical, and other normal living expenses of prisoners, and the cost to the department for providing college-level classes or programs to prisoners, as determined by the department.

1984 PA 118, MCL 801.81 et seq – Civil action against jail inmate for reimbursement to county for cost of maintaining in the county jail a sentenced prisoner or a pretrial detainee whose prosecution resulted in conviction for a felony. See MCL 801.83 & 801.87.

MCL 801.5a – Reimbursement for medical expenses while in jail. Recovery may be from insurance company, health care company, 'other sources' or "[F]rom the prisoner or person charged.".

2006 PA 88, MCL 801.311 et seq – Lock-ups; inmate reimbursement to municipalities for maintenance and support of inmates; including medical treatment, prescription drugs, and dental care.

Final Observations:

Some of these sanctions or reimbursements are more collectible than others. Some may be more justifiable than others. Some are up to the discretion of the court or department and tailored to an ability to pay. Some are mandatory. Others are contrived mechanisms for the state to balance its budget, like the driver responsibility fee and doubling the CVR assessment to pay for a statewide trauma center.

One could also note that Const 1963, Art VI, §17, and Art VIII, §9, in part, were included to remove institutional monetary incentives to conviction of the accused. Have we re-created some of that old incentive? There is no claim here that any judge anywhere in the state consciously or subconsciously does that. Nonetheless, we know perception has significance. How does it look from the defendant's perspective that so much of the court and criminal justice system is dependent upon his or her conviction for their support?

Thank you for the opportunity to submit this statement.

Respectfully,

Bruce A. Timmons

15sb191-051215-bt