

Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536

**SFA****BILL ANALYSIS**

Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

House Bill 5047 (as reported without amendment)  
Sponsor: Representative Glenn S. Anderson  
House Committee: Civil Law and the Judiciary  
Senate Committee: Judiciary

Date Completed: 6-17-02

### **RATIONALE**

When a person accused of a crime posts bail or bond, he or she obtains release from custody in exchange for promising to appear for court proceedings in the case. If the accused fails to appear in court, the money posted is forfeited. In the case of a person arrested on a warrant issued in another jurisdiction, if the arrested person has the money to post bond, local police departments typically communicate with the jurisdiction that issued the warrant, collect and process the bail or bond money, and forward it to the appropriate treasurer or clerk of the county or court that has jurisdiction over the person.

For some local police departments, however, that procedure has caused problems because costs are incurred in collecting and processing the money. Reportedly, the Allen Park Police Department arrested more than 700 people from other jurisdictions during fiscal year 2000-01 at a cost of \$16,800, and the City of Westland spent about \$23,000 in 2000 for costs associated with the arrest of 899 individuals from other jurisdictions. In Westland, however, the police department, for several years, evidently had imposed an additional fee when it collected bail or bond money from those arrested. The City of Livonia also recently considered imposing a bail or bond administrative fee, but a question was raised as to whether a local law enforcement agency legally could collect such fees. The question was posed to the Attorney General, who opined that "...a police department may not charge and collect an administrative fee for receiving a bond ordered by a judge" (Attorney General Opinion No. 7070 (2001)). Some people believe that the law should explicitly allow a law enforcement agency to collect an

administrative fee on bail or bond money, in order to defray the cost of collecting and forwarding bail or bond. (Please see **BACKGROUND** for further information on the Attorney General Opinion.)

### **CONTENT**

The bill would amend Chapter 5 (Bail) of the Code of Criminal Procedure to allow a law enforcement agency to collect up to \$10, in addition to bail or bond money, when it obtained bail or bond money from or on behalf of a person arrested pursuant to a warrant issued by a court.

The law enforcement agency promptly would have to deposit the money collected into an account created for that purpose in the treasury of the agency's governing body. The governing body could spend money in that account to defray the expense of receiving, depositing, and delivering bail or bond money.

MCL 765.12a

### **BACKGROUND**

Representative Laura M. Toy formally asked the Attorney General whether a police department may charge and collect an administrative fee for receiving a bond ordered by a judge.

In addressing that question, the Attorney General pointed out that a police department is part of a local government and that local units of government have no inherent powers. Local units have only the limited powers granted to them by the State Constitution or by acts of the Legislature. The Attorney

General also specified that common law allows no right to collect fees in court proceedings.

The Attorney General's research disclosed no statute authorizing a police department to impose any administrative fee upon collecting court-ordered bond. The Attorney General stated: "In the absence of an authorizing statute, it must be concluded that a police department lacks authority to impose an administrative fee for collecting a court-ordered bond."

## **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**

By authorizing a law enforcement agency to collect up to \$10 in addition to bail or bond money, the bill would help those agencies to cover the expense of collecting and processing bail or bond. When a person is arrested, the police department for the jurisdiction in which an arrest warrant or bench warrant was issued collects bail or bond money. If a person named in a warrant is arrested in another jurisdiction, however, the arresting agency typically will collect and process the bail or bond money and transmit it to the law enforcement agency of the jurisdiction in which the warrant was issued, since that procedure generally is more efficient and less time-consuming than transporting the arrested person to the issuing jurisdiction.

Using that procedure, however, also involves expenses to the law enforcement agency collecting the bail or bond. Reportedly, the Allen Park Police Department claims that arrests of people pursuant to warrants issued by other jurisdictions involved an average of one hour of work by a police officer. Based on the hourly rate of pay for police officers, the department estimated that the cost of processing over 700 of these arrests in FY 2000-01 was \$16,800. In addition, the City of Westland reportedly incurred clerical staff costs involved with processing bail or bond money and forwarding checks to the issuing jurisdictions. In 2000, Westland apparently had costs of approximately \$23,000 related to this procedure. While the \$10 maximum administrative fee proposed by the bill would not recoup all of the expense incurred by a

local police department in processing bail or bond, it would allow law enforcement agencies to defray at least some of those costs.

**Response:** The bill appears to propose a solution that is broader than the problem it purports to address. The bill would allow a law enforcement agency to collect up to \$10 for collecting and processing bail or bond money from any arrest. It is not restricted to arrests based on warrants from jurisdictions other than the one in which an arrest was made.

### **Opposing Argument**

Since collection of the administration fee under the bill would be discretionary, there is a danger that it would be enforced indiscriminately. For example, the fee could be imposed on residents of one city but not residents of another. If that happened, the bill could give rise to claims that use of the bail administrative fee would violate equal protection or due process rights.

Legislative Analyst: Patrick Affholter

## **FISCAL IMPACT**

The bill would provide additional revenue to State and local law enforcement agencies to defray their costs of receiving, depositing, and delivering bail or bond money. The level of revenue received would depend upon the number of arrests and the number of arrestees who would qualify for bail, for which Statewide data are not available. The Department of State Police, based on fiscal year 1999-2000 arrest data, could expect revenue collected under the bill to range between \$360,000 and \$500,000 annually.

Fiscal Analyst: Bruce Baker

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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.