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BILL ANALYSIS

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House Bill 4742 (Substitute H-1 as passed by the House)
Sponsor: Representative Charles T. LaSata
House Committee: Judiciary
Senate Committee: Judiciary

Date Completed: 9-13-04

CONTENT

The bill would amend Chapter XI (Probation) of the Code of Criminal Procedure to do the following:

- Require a probationer to pay the minimum State cost prescribed by the Code.**
- Require a probationer to pay a probation supervision fee if sentenced in circuit court (rather than if convicted of a felony).**
- Require the circuit court, if sentencing were deferred, to require the probationer to pay a supervision fee as prescribed for a delayed sentence.**
- Authorize a district or municipal court, if sentencing were delayed or deferred, to impose any of the conditions of probation that a court is allowed to impose under the Code.**
- Specify a beginning date for the imposition of drug court participation as a condition of probation.**

Minimum State Cost

Section 771.3 of the Code specifies conditions of probation that a sentence of probation must include, as well as conditions that may be included. Under the bill, the mandatory conditions would include payment of the minimum State cost prescribed by the Code. (This condition was previously enacted by Public Act 101 of 2003. The language was omitted when Public Act 116 of 2004 amended Section 771.3. For more information about the minimum State cost, please see **BACKGROUND.**)

Supervision Fee

Under Section 771.1, in an action in which the court may place the defendant on probation, the court also may delay sentencing for up to one year to give the defendant an opportunity to prove his or her eligibility for probation or other leniency. When sentencing is delayed, the court must enter an order stating the reason for the delay. If a defendant is before the circuit court and the court delays sentencing, the court must order the Department of Corrections to collect a supervision fee of up to \$135 for each month of delay ordered, but not more than 12 months.

Also, as a condition of probation under Section 771.3, if the probationer is convicted of a felony, he or she must pay the probation supervision fee. The bill would require the fee if the probationer were sentenced in circuit court, rather than convicted of a felony. In addition, if sentencing were deferred in the circuit court, the court would have to require the individual placed on probation to pay a supervision fee in the same manner as prescribed for a delayed sentence.

(A sentence may be deferred under various statutes. These include the Public Health Code, for certain drug offenses; the Code of Criminal Procedure, for a domestic assault offense; and the Michigan Penal Code, for parental kidnapping or for the practice of a health profession by someone under the influence.)

Drug Court Participation

Under Section 771.3, a court may impose participation in a drug treatment court as a condition of probation. Under the bill, a court could impose this condition beginning January 1, 2005. (This condition of probation was added by Public Act 219 of 2004, which was part of a package of legislation providing for drug treatment courts. Public Act 219 will take effect on January 1, 2005.)

MCL 771.3

BACKGROUND

Under Section 769.1j of the Code, if a court orders a person convicted of an offense to pay any combination of a fine, costs, or applicable assessments, the court must order the person to pay costs of at least the following amounts:

- \$60 if the defendant is convicted of a felony.
- \$45 if the defendant is convicted of a serious misdemeanor (as defined in the Crime Victim's Rights Act) or a specified misdemeanor (as defined in the crime victim's rights services Act).
- \$40 if the defendant is convicted of any other misdemeanor.

Section 769.1j states that payment of the minimum State cost is a condition of probation under Chapter XI.

The minimum State cost requirement was enacted by Public Act 70 of 2003. That measure was part of a package of legislation increasing revenue for various judiciary- and criminal justice-related entities. The enacted legislation included Public Act 101 of 2003, which amended Section 771.3 of the Code of Criminal Procedure to require that a sentence of probation include payment of the minimum State cost. Subsequently, Public Act 116 of 2004 amended the same section to permit a court to require a probationer to complete his or her high school education or obtain a general education development (GED) certificate, as a condition of probation. That Act, however, omitted the language that had been added by Public Act 101.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on the State and local units of government. Payment of the minimum State cost is a condition of probation under the Revised Judicature Act and the juvenile code. Therefore, this proposed provision probably would not change current practice and would not have a fiscal impact. By requiring probation supervision fees on all circuit court probation sentences rather than only felonies, and in cases of deferred sentences, the bill likely would increase probation supervision fee revenue collected by the Department of Corrections.

Fiscal Analyst: Bethany Wicksall

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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.