

HOUSE BILL No. 4705

March 26, 2009, Introduced by Reps. Cushingberry and Tlaib and referred to the Committee on Judiciary.

A bill to amend 1927 PA 175, entitled
"The code of criminal procedure,"
by amending sections 6 and 15 of chapter V (MCL 765.6 and
765.15), section 6 as amended by 2004 PA 167 and section 15 as
amended by 1993 PA 343, and by adding section 3d to chapter XI.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

CHAPTER V

Sec. 6. (1) Except as otherwise provided by law, a person
accused of a criminal offense is entitled to bail. The amount of
bail shall not be excessive. The court in fixing the amount of
the bail shall consider and make findings on the record as to
each of the following:

- (a) The seriousness of the offense charged.
- (b) The protection of the public.

1 (c) The previous criminal record and the dangerousness of
2 the person accused.

3 (d) The probability or improbability of the person accused
4 appearing at the trial of the cause.

5 (2) If the court fixes a bail amount under subsection (1)
6 and allows for the posting of a 10% deposit bond, the person
7 accused may post bail by a surety bond in an amount equal to 1/4
8 of the full bail amount fixed under subsection (1) and executed
9 by a surety approved by the court.

10 (3) If a person is arrested for an ordinance violation or a
11 misdemeanor and if the defendant's operator's or chauffeur's
12 license is not expired, suspended, revoked, or cancelled, the
13 court may require the defendant, in place of other security for
14 the defendant's appearance in court for trial or sentencing or,
15 as a condition for release of the defendant on personal
16 recognizance, to surrender to the court his or her operator's or
17 chauffeur's license. The court shall issue to the defendant a
18 receipt for the license, as provided in section 311a of the
19 Michigan vehicle code, 1949 PA 300, MCL 257.311a. If the trial
20 date is set at the arraignment, the court shall specify on the
21 receipt the date on which the defendant is required to appear for
22 trial. If a trial date is not set at the arraignment, the court
23 shall specify on the receipt a date on which the receipt expires.
24 By written notice the court may extend the expiration date of the
25 receipt, as needed, to secure the defendant's appearance for
26 trial and sentencing. The written notice shall instruct the
27 person to whom the receipt was issued to attach the notice to the

1 receipt. Upon its attachment to the receipt, the written notice
2 shall be considered a part of the receipt for purposes of
3 determining the expiration date. At the conclusion of the trial
4 or imposition of sentence, as applicable, the court shall return
5 the license to the defendant unless other disposition of the
6 license is authorized by law.

7 **(4) A SURCHARGE OF 5% OF THE AMOUNT FIXED UNDER SUBSECTION**
8 **(1) SHALL BE INCLUDED IN THE AMOUNT OF BAIL REQUIRED OF THE**
9 **PERSON. ALL SURCHARGES COLLECTED UNDER THIS SUBSECTION SHALL BE**
10 **TRANSMITTED MONTHLY BY THE CLERK OF THE COURT TO THE STATE**
11 **TREASURER FOR DEPOSIT IN THE INDIGENT DEFENSE COUNSEL FUND**
12 **CREATED IN THE STATE TREASURY UNDER SECTION 177 OF THE REVISED**
13 **JUDICATURE ACT OF 1961, 1961 PA 236, MCL 600.177.**

14 Sec. 15. (1) If bond or bail is forfeited, the court shall
15 enter an order upon its records directing the disposition of the
16 cash, check, or security within 45 days of the order. The
17 treasurer or clerk, upon presentation of a certified copy of ~~such~~
18 **THE** order, shall dispose of the cash, check, or security pursuant
19 to the order. The court shall set aside the forfeiture and
20 discharge the bail or bond, within 1 year from the time of the
21 forfeiture judgment, in accordance with subsection (2) if the
22 person who forfeited bond or bail is apprehended, the ends of
23 justice have not been thwarted, and the county has been repaid
24 its costs for apprehending the person.

25 (2) If bond or bail is discharged, the court shall enter an
26 order with a statement of the amount to be returned to the
27 depositor. If the court ordered the defendant to pay a fine,

1 costs, restitution, assessment, or other payment, the court shall
2 order the fine, costs, restitution, assessment, or other payment
3 collected out of cash bond or bail personally deposited by the
4 defendant under this chapter, and the cash bond or bail used for
5 that purpose shall be allocated as provided in section 22 of
6 chapter XV. **THE COURT SHALL ORDER THAT THE SURCHARGE IMPOSED**
7 **UNDER SECTION 6(4) OF THIS CHAPTER BE COLLECTED AND TRANSMITTED**
8 **BY THE CLERK OF THE COURT IN THE MANNER PRESCRIBED IN THAT**
9 **SECTION.** Upon presentation of a certified copy of the order, the
10 treasurer or clerk having the cash, check, or security shall pay
11 or deliver it as provided in the order to the person named in the
12 order or to that person's order.

13 (3) If the cash, check, or security is in the hands of the
14 sheriff or any officer other than the treasurer or clerk, the
15 officer holding it shall dispose of the cash, check, or security
16 as the court orders upon presentation of a certified copy of the
17 court's order.

18 CHAPTER XI

19 **SEC. 3D. (1) THE COURT SHALL INCLUDE IN EACH ORDER OF**
20 **PROBATION FOR A DEFENDANT CONVICTED OF A CRIME THAT THE CLERK OF**
21 **THE COURT SHALL COLLECT AN INDIGENT DEFENSE COUNSEL FEE OF NOT**
22 **MORE THAN \$135.00. THE FEE IS PAYABLE WHEN THE PROBATION ORDER IS**
23 **ENTERED, BUT THE FEE MAY BE PAID IN MONTHLY INSTALLMENTS IF THE**
24 **COURT APPROVES INSTALLMENT PAYMENTS FOR THAT PROBATIONER. IN**
25 **DETERMINING THE AMOUNT OF THE FEE, THE COURT SHALL CONSIDER THE**
26 **PROBATIONER'S PROJECTED INCOME AND FINANCIAL RESOURCES. THE COURT**
27 **SHALL USE THE FOLLOWING TABLE OF PROJECTED MONTHLY INCOME IN**

1 DETERMINING THE AMOUNT OF THE FEE TO BE ORDERED:

2	PROJECTED MONTHLY INCOME	AMOUNT OF FEE
3	\$ 0-249.99	\$ 5.00
4	\$ 250.00-499.99	\$10.00
5	\$ 500.00-749.99	\$25.00
6	\$ 750.00-999.99	\$40.00
7	\$ 1,000.00 OR MORE	5% OF PROJECTED MONTHLY INCOME,
8		BUT NOT MORE THAN \$135.00

9 THE COURT MAY ORDER A HIGHER AMOUNT THAN INDICATED BY THE TABLE,
 10 UP TO THE MAXIMUM OF \$135.00, IF THE COURT DETERMINES THAT THE
 11 PROBATIONER HAS SUFFICIENT ASSETS OR OTHER FINANCIAL RESOURCES TO
 12 WARRANT THE HIGHER AMOUNT. IF THE COURT ORDERS A HIGHER AMOUNT,
 13 THE AMOUNT AND THE REASONS FOR ORDERING THAT AMOUNT SHALL BE
 14 STATED IN THE COURT ORDER. ALL FEES SUBMITTED TO THE CLERK OF THE
 15 COURT UNDER THIS SECTION SHALL BE TRANSMITTED MONTHLY BY THE
 16 CLERK TO THE STATE TREASURER FOR DEPOSIT IN THE INDIGENT DEFENSE
 17 COUNSEL FUND CREATED IN THE STATE TREASURY UNDER SECTION 177 OF
 18 THE REVISED JUDICATURE ACT OF 1961, 1961 PA 236, MCL 600.177.

19 (2) IF A PERSON WHO IS SUBJECT TO AN INDIGENT DEFENSE
 20 COUNSEL FEE IS ALSO SUBJECT TO ANY COMBINATION OF FINES, COSTS,
 21 RESTITUTION ORDERS, ASSESSMENTS, OR PAYMENTS ARISING OUT OF THE
 22 SAME CRIMINAL PROCEEDING, THE ALLOCATION OF MONEY COLLECTED FOR
 23 THOSE OBLIGATIONS SHALL BE AS OTHERWISE PROVIDED IN SECTION 22 OF
 24 CHAPTER XV.

25 (3) THIS SECTION DOES NOT APPLY TO A JUVENILE PLACED ON
 26 PROBATION AND COMMITTED UNDER SECTION 1(3) OR (4) OF CHAPTER IX
 27 TO AN INSTITUTION OR AGENCY DESCRIBED IN THE YOUTH REHABILITATION

1 **SERVICES ACT, 1974 PA 150, MCL 803.301 TO 803.309.**

2 Enacting section 1. This amendatory act does not take effect
3 unless Senate Bill No. _____ or House Bill No. 4706 (request no.
4 01438'09 a) of the 95th Legislature is enacted into law.