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House Bills 5392 and 5534 (Substitute H-1 as passed by the House)

Sponsor: Representative Sarah Lightner (H.B. 5392)

Representative Kelly Breen (H.B. 5534)

House Committee: Judiciary

Senate Committee: Committee of the Whole

Date Completed: 4-23-24

INTRODUCTION

The bills would enact a new law to require the State Court Administrative Office (SCAO) to analyze trial court costs and revenue sources by May 1, 2026, and use this information to develop a new statewide court debt collection system and new systems to fund courts' capital improvement and operational costs. The bills also would extend to May 1, 2026, the sunset on a trial court's authority to impose actual costs of court operations and facility maintenance on a defendant that is found or pleads guilty.

Additionally, the SCAO would have to work with the Department of Treasury (DoT) to develop proposals to fund the court facilities' capital improvement costs and through those proposals create the Trial Court Fund. The SCAO also would have to develop legislative proposals for schedules and standards to meet the bills' requirements.

The bills are tie-barred.

PREVIOUS LEGISLATION

(This section does not provide a comprehensive account of previous legislative efforts on this subject matter.)

House Bill 5392 and House Bill 5534 are companion bills to Senate Bill 815 and Senate Bill 814, respectively.

BRIEF FISCAL IMPACT

The bills would preserve existing revenue streams for the State and local governments from court cost assessments on criminal defendants for two years while the SCAO develops a new court funding model intended for statewide application. The new model, when implemented, would likely have a mixed fiscal impact on local units of government. The cost to the SCAO to develop the new model could be absorbed with current appropriation amounts.

MCL 769.1k (H.B. 5392)

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CONTENT

House Bill 5392 (H-1) would amend Section 1k of Chapter IX (Judgement and Sentence) of the Code of Criminal Procedure to extend, from May 1, 2024, to December 31, 2026, the authority of trial courts to impose actual costs of court operations and facility maintenance on a defendant that is found or pleads guilty.

House Bill 5534 (H-1) would enact the "Trial Court Funding Act of 2024" to do the following:

- Require the SCAO, under the direction and supervision of the Michigan Supreme Court (MSC), to analyze and determine certain costs and revenues of trial courts by May 1, 2026, and report such information to the Legislature.
- Require the SCAO, under the direction and supervision of the MSC, to develop and propose a statewide uniform collection system for court debt.
- Require the SCAO to work together with the DoT to develop and propose a statewide system to distribute court revenue based on its analysis of courts' costs and revenues and develop proposals for funding the court facilities' capital improvement costs.
- Create the Trial Court Fund to receive and distribute court revenue and prescribe funding and expenditure requirements.

House Bill 5392 (H-1)

Under the Code of Criminal Procedure, if a defendant enters a plea of guilty or no contest, or if the court determines after a hearing or trial that the defendant is guilty, the court must impose the minimum State costs as set by statute. The Code also allows the court to impose any of the following:

- Any fine authorized by statute.
- Any cost authorized by the statute
- The expenses of providing legal assistance to the defendant.
- Any assessment authorized by law.
- Reimbursement for expenses incurred while responding to certain violations.

In addition, until May 1, 2024, the court may impose any cost reasonably related to the actual costs incurred by the trial court without separately calculating those costs involved in the particular case, including salaries and benefits for relevant court personnel, goods and services necessary for the operation of the court, and necessary expenses for the operation and maintenance of court buildings and facilities. The bill would extend the authority to impose these related costs until December 31, 2026.

House Bill 5534 (H-1)

Cost and Revenue Analysis

By May 1, 2026, the SCAO, under direction and supervision of the MSC, would have to analyze and determine all the following:

- The revenue potential lost by each trial court from the elimination of the cost under Section 1k (1) (b) (iii) of Chapter IX of the Code of Criminal Procedure.¹
- Based on a weighted caseload study, the operational cost of each trial.
- The funds needed, in addition to maintenance of effort, at each trial court to reach the court's operational cost.

"Maintenance of effort" would mean the average of the funding unit's general fund expenditures for trial court operations over the three-year period immediately preceding the creation of the Trial Court Fund described under Statewide Distribution of Court Revenue. Court generated revenue that supported a courts operational cost would have to be accounted for separately. General fund expenditures would have to be calculated as total court expenditures less all court-generated revenue and would not include Federal funds.

"Funding unit" would mean either a local unit of government that funds a trial court or if a trial court is funded by more than one local unit of government, those local unit of governments, collectively.

The SCAO would have to complete the analysis described above with input from State and local officials and associations, including the all the following:

- The DoT.
- The Department of Technology, Management, and Budget.
- The Department of Health and Human Services.
- The Michigan Municipal League.
- The Michigan Townships Association.
- The Michigan Association of Counties.
- The Michigan Association of County Clerks.

Maintenance of Effort Costs

The SCAO, under direction and supervision of the MSC, would have to work with local units of government to determine the maintenance of effort. The allocation of costs used to determine the maintenance of effort would have to be based on expenditures for operating a court, including the following:

- Judicial benefits.
- Regardless of the budget line item associated with the following costs, court operation staff, county clerks, whether employed by a court or the county clerk, facility staff, and security staff salaries and benefits.
- Court facility operation and maintenance.
- Preexisting debt on a court facility related to the construction or maintenance of the facility.
- Indirect costs including court supplies, mail, property and liability insurance, and cybersecurity coverage.
- Court technology, including case and document management systems, electronic filing systems, court recording systems, video conferencing systems, computer hardware including personal computers, monitors, printers, and scanners, and the cost of internet and data storage.

¹ Section 1k(1)(b)(iii) allows a trial court to impose on a defendant who pleads or is found guilty any cost reasonably related to the actual costs incurred by the court without separately calculating those costs involved in the particular case, including the salaries and benefits of court personnel, the goods and services necessary for court operation, and the necessary expenses of court buildings' operation and maintenance.

Additionally, the allocation of costs used to determine the maintenance of effort could not include any expenditure that was not directly related to operating a trial court, including prosecution or defense or local unit of government services not related to the operation of a trial court.

Proposed Schedule for Operational Costs

The Act would require the SCAO, under direction and supervision of the MSC, to develop a proposed schedule for each trial court of the appropriate portion of the court's operational costs that could be attributed to an individual's case under current law. The assessment of operational costs would have to be as close as practical to the actual cost of an average case of the individual's criminal case type and could not include additional costs based on length of time required for the case or related to the exercise of a constitutional right. A schedule would have to include uniform standards for the trial court to determine an individual's indigency and the ability to pay in compliance with the law.

"Operational cost" would mean the total costs needed to operate an individual trial court over the course of a fiscal year based on the workload and case volume of each court.

The SCAO, under direction and supervision of the MSC would have to develop standards for how a trial court could determine the amount of reimbursable costs to the local unit of government for law enforcement and prosecution costs for any statute or ordinance that provided for the assessment of the costs to a convicted defendant or person that was responsible for a civil infraction.

Statewide Uniform Court Debt Collection System

The SCAO, under direction and supervision of the MSC, would have to work with the DoT to develop and propose a statewide uniform collection system for court debt. The proposed system could build on the existing system of court collection. The proposal would have to include at least the following:

- The age and type of debt to be centrally collected.
- The method of transmittal of funds to the State.
- The disposition of funds received by the State.
- The priority of payments for funds collected from an individual who had a financial obligation to at least one governmental agency.
- The estimated additional annual cost to the DoT to operate the proposed system and a proposed source and mechanism to fund the cost.

The DoT could collaborate, as appropriate, with the SCAO to develop and execute a pilot program for the DoT to collect all or most of a court's debt. The DoT could use the courts that the DoT currently collected court debt for or any other court as the pilot courts in the program. The goals of the program would have to include assisting in the determination of the cost to increase the DoT's capacity to manage all trial court debt collections and assisting in the development of a statewide approach to the relationship between local units of government and the DoT, related to collection of court debt.

Statewide Distribution of Court Revenue

Under the Act, the SCAO, under direction and supervision of the MSC, would have to work with the DoT to develop and propose a statewide system to distribute court revenue to each funding unit by determining the difference between the operational cost and maintenance effort for each court. The proposal would have to include all the following:

- The creation of a Trial Court Fund to receive and distribute court revenue.
- An estimated range of State General Fund expenditures that could be required to address a shortfall in the Trial Court Fund's ability to fund the difference between the aggregate operational costs and aggregate maintenance of effort of all trial courts.
- The estimated additional annual cost to the DoT to operate the system and a proposed source and mechanism to fund the cost.

"Court revenue" would mean all funds collected by trial courts except those paid in restitution to an identified victim of crime.

Funding for Capital Improvement Costs

The SCAO would have to work with the DoT to develop proposals for funding the court facilities' capital improvement costs. The proposals would have to consider all other recommended legislative proposals under the Act and address all the following:

- A local unit of government's preexisting debt for a court facility.
- A local unit of government with no debt for a court facility.
- A local unit of government that ceased to have debt for a court facility.
- Future court facility capital improvement and maintenance needs.

"Preexisting debt" would mean construction or maintenance debt that is outstanding for a court facility constructed before the creation of the Trial Court Fund.

Legislative Proposals and Reports

The Act would require the SCAO, under direction and supervision of the MSC, to develop legislative proposals to effectuate the provisions under Proposed Schedule for Operational Costs, Statewide Uniform Court Debt Collection System, Statewide Distribution of Court Revenue, and Funding for Capital Improvement Costs. The legislative proposals would have to include a recommendation on how to provide trial courts with the funds to cover operational costs based on the weighted caseload study without revenue lost by each trial court from the elimination of the cost of Section 1k of Chapter IX of the Code of Criminal Procedure and a recommendation on how to fund the DoT operations consistent with the estimated additional annual cost to operate and fund the DoT and the estimated annual cost to operate and fund the statewide distribution of court revenue.

By May 1, 2026, the SCAO would have to prepare a report on the costs analysis and proposed legislative changes. The report would have to include the median cost of judicial benefits provided by all trial-court funding units. The report would have to be submitted to the Governor, the Legislature, the House and Senate standing committees and appropriations subcommittees that were responsible for the legislation concerning the judicial branch, and the House and Senate Fiscal Agencies.

BACKGROUND

The initial sunset provision under Section 1k of the Code of Criminal was set on October 17, 2017, by Public Act (PA) 352 of 2014. Public Act 64 of 2017, extended the sunset to October 17, 2020, and PA 199 of 2022 extended the sunset to May 1, 2024.

Legislative Analyst: Eleni Lionas

FISCAL IMPACT

The bills would have a negative fiscal impact on the SCAO and would preserve locally distributed revenue for local units of government for two years while the SCAO, as per the language of House Bill 5534 (H-1), developed legislative proposals for the creation of a new trial court funding model. The negative fiscal impact on the SCAO is related to the data collection, analysis, and proposal development it would undertake as per the language of the bill; the SCAO indicated these costs could be absorbed with current level appropriations.

The constitutionality of Section 1k of Chapter IX of the Code of Criminal Procedure has been challenged via criminal appeals for several decades. The MSC has issued several opinions and statements indicating that a change is necessary. These issues and some of these court cases were discussed in the final report of Trial Court Funding Commission in 2019.² The three main issues to be addressed by a new trial court funding structure are: 1) any real or perceived conflicts of interest between a judge's impartiality and the obligation to use the courts to generate operating revenue; 2) inadequate funding from revenue sources due to excessive dependence on local government funding; and 3) unequal access to justice, due to the variance of court cost assessment statewide.

The long-term solution to trial court funding would likely standardize assessments of court costs for criminal defendants across the State, potentially removing any real or perceived judicial bias and providing equal access to justice. This standardization, if implemented, would have a mixed fiscal impact on local governments. It would likely reduce operating expenditures for courts for some local units, while reducing court-generated revenue for others. Which local units would be affected, and how much, would be determined by the new proposals developed by the SCAO over the next two years.

House Bill 5534 (H-1) also would have a minor negative fiscal impact on the State and local government units. This impact would be due to minor administrative costs of these reports. It would have a negative fiscal impact on the DoT. Under the bill, the DoT would have to develop a uniform collections system for court debt and a statewide distribution system for court revenue. This would include operation of a court debt collection pilot program and collaborating with the SCAO on data collection, analysis, and systems design. The magnitude of these costs cannot be determined at this time. The duties described in the bill could require the appropriation of one or more additional full-time equivalents (FTEs) to meet staffing needs. The average annual cost of an FTE is approximately \$137,500.

² See Trial Court Funding Commission Final Report, 09/06/19 at: https://www.michigan.gov/-/media/Project/Websites/treasury/Reports/TCFC_Final_Report_962019_9-16-2019.pdf?rev=1fedbe221d224bf5978880216acbb06d

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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.