

Legislative Analysis



CORRECTIONS SUPERVISION FEES

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4031 (H-2) as reported from committee
House Bill 4032 (H-2) as reported from committee
Sponsor: Rep. Tommy Brann
Committee: Judiciary
Complete to 4-29-19

Analysis available at
<http://www.legislature.mi.gov>

(Enacted as Public Acts 164 and 165 of 2019)

BRIEF SUMMARY: House Bill 4031 would amend the Code of Criminal Procedure to revise probation supervision fees, while House Bill 4032 would amend the Corrections Code to mirror those fee changes and to revise Department of Corrections (DOC) procedures regarding unpaid supervision fees.

FISCAL IMPACT: House Bills 4031 and 4032 would have an indeterminate fiscal impact on the state and on local units of government. (See **Fiscal Information**, below, for a detailed discussion.)

THE APPARENT PROBLEM:

Currently under the Code of Criminal Procedure, courts can place certain defendants on probation in certain circumstances. If a defendant is placed on probation, DOC collects a probation supervision fee of up to \$135, multiplied by the number of months of probation ordered, up to 36 months. The amount collected is calculated on a scale based on the probationer's projected monthly income. However, the fees can easily accumulate to over \$1,000 per year per person. Any unpaid fees at the end of the probation period are sent to collections.

According to DOC, the department currently has a 6% to 10% fee collection success rate, and once the unpaid fees are sent to collections, DOC has an even harder time collecting the full fee amount owed. Some believe that the amount of fees sent to collections would decrease and compliance rates would increase if the supervision fees were more manageable for probationers. A more manageable fee, in turn, would help returning citizens reach self-sufficiency and find jobs without having a collections debt. Legislation has been proposed to modify supervision fee amounts and procedures.

THE CONTENT OF THE BILLS:

House Bill 4031 would set a new probation supervision fee, as follows:

- \$30, multiplied by the number of months of probation ordered, for an individual placed on probation supervision without an *electronic monitoring device*.
- \$60, multiplied by the number of months of probation ordered, for an individual placed on probation supervision with an *electronic monitoring device*.

Electronic monitoring device would mean any electronic device or instrument that is used to track the location of an individual, enforce a curfew, or detect the presence of alcohol in an individual's body.

The court could waive these fees if it determined the supervised individual to be indigent.

MCL 762.13 et seq.

House Bill 4032 would amend the Corrections Code of 1953 to similarly revise the supervision fees collected by DOC for inmates, parolees, and individuals under the Lifetime Electronic Monitoring Program and to revise procedures regarding unpaid fees.

Currently, DOC and the parole board can collect a supervision fee of up to \$135 per month, calculated on a scale based on the individual's projected monthly income. A fee higher than \$135 per month can be collected only if DOC or the parole board determines that the offender or parolee has sufficient assets or other financial resources to warrant the higher amount and the reasons for collecting a higher amount are stated in the DOC records or parole order.

House Bill 4032 would amend the fee schedule to set the set the supervision fees as follows:

- \$30 per month for offenders or parolees being supervised without an ***electronic monitoring device***.
- \$60 per month for offenders, parolees, and individuals under the Lifetime Electronic Monitoring Program being supervised with an ***electronic monitoring device***.

Electronic monitoring device would be generally defined as any electronic device or instrument that is used to track the location of an individual, enforce a curfew, or detect the presence of alcohol, but only for offenders and parolees.

However, the current definition of ***electronic monitoring device*** would remain applicable to individuals under the Lifetime Electronic Monitoring Program, namely a device by which, through global positioning system (GPS) satellite or other means, an individual's movement and location are tracked and recorded.

If DOC determined the offender or parolee to be indigent, DOC would have to waive the above supervision fees. Additionally, DOC could not collect any fees for offenders or parolees other than as described above.

Unpaid supervision fees

Currently, if a person has not paid the full amount of a supervision fee when he or she is discharged from parole or probation or the period of a delayed sentence ends, DOC reviews and compares the person's actual income during the period of parole or probation or delayed sentence with the income that was projected at the time the fee was ordered. If the person's actual income fell short of projected income, DOC must waive any unpaid amount that exceeds the total amount the person would have paid if his or her income had been accurately projected.

House Bill 4032 would instead require that if a person has not paid the full amount of a supervision fee when he or she is discharged from parole or probation or the period of a delayed sentence ends (including a person under supervision on the effective date of the bill), DOC must waive any amount over the aggregate sum of \$30 per month for each month the person was supervised without an electronic monitoring device and \$60 per month for each month the person was monitored with one.

MCL 791.225a et seq.

Each bill would take effect 90 days after it is enacted. The bills are tie-barred to one another, which means that neither could take effect unless both were enacted.

FISCAL INFORMATION:

House Bills 4031 and 4032 would have an indeterminate fiscal impact on the state and on local units of government. Under the bills, fees assessed to offenders for parole and probation supervision would be reduced. However, it is anticipated that the amount of fees collected would remain steady and potentially could increase over time.

Currently, according to the Department of Corrections, the department collects between 6% and 10% of the fees that are assessed while offenders are under supervision. Annually, the department collects an average of \$5.8 million in fee revenue. In order to maintain this level of revenue collection, the department estimates that it would need a compliance rate of between 20% and 25%. Though this compliance rate range is much higher than the current compliance rate range, the department believes that it can enforce the collection of fees more easily with the simplified fee structure in place and that the majority of offenders could better afford to pay the reduced amount of fees. Reducing parole and probation supervision fees would result in more disposable income for offenders, enabling them to pay other fees collected by the courts and/or victim restitution.

If, by chance, the amount of fee revenue collected declined and, subsequently, fee amounts were not increased, revenue used by the department would be reduced.

ARGUMENTS:

For:

Supporters of the bills argue that lowering the supervision fee rates would ultimately result in higher collections rates of those fees. If returning citizens were faced with manageable fees, they would be more likely to pay the fees. Additionally, manageable fees would result in more self-sufficient returning citizens, which would in turn decrease their likelihood of reoffending.

Against:

Critics of the bills argue that a retroactivity clause should be included for probationers who are currently paying supervision fees. Without this clause, it could ultimately be harder to collect the fees from individuals who are currently required to pay \$135 per month, as there is less incentive for them to pay the higher amount while knowing that others are paying a maximum of \$30 per month.

POSITIONS:

A representative of the Michigan Department of Corrections testified in support of the bills. (3-12-19)

The following organizations indicated support for the bills (4-23-19):

- American Civil Liberties Union (ACLU) of Michigan
- Criminal Defense Attorneys of Michigan

Legislative Analyst: Emily S. Smith

Fiscal Analyst: Robin Risko

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.