



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



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

House Bill 4031 (Substitute H-2 as passed by the House)
House Bill 4032 (Substitute H-2 as passed by the House)
Sponsor: Representative Tommy Brann
House Committee: Judiciary
Senate Committee: Judiciary and Public Safety

Date Completed: 10-23-19

CONTENT

House Bill 4301 (H-2) would amend the Code of Criminal Procedure to modify the maximum supervision fee the Department of Corrections (MDOC) must collect for supervising a youthful trainee who was placed on probation, and for supervising certain individuals found guilty or convicted of a crime who were placed on probation.

House Bill 4302 (H-2) would amend the Corrections Code to modify the maximum supervision fee the MDOC must collect for supervising a person who was transferred to the State pursuant to an interstate compact, and for supervising an individual who was placed on parole.

Each bill would take effect 90 days after its enactment. The bills are tie-barred.

House Bill 4031 (H-2)

Under Section 13 of Chapter II (Courts) of the Code of Criminal Procedure, a court may commit a person assigned youthful trainee status to probation for not more than three years subject to probation conditions provided in Chapter XI (Probation) of the Code.

Section 1 of Chapter XI of the Code specifies that in all prosecutions for felonies, misdemeanors, or ordinance violations other than murder, treason, criminal sexual conduct in the first or third degree, armed robbery, or major controlled substance offense, if the defendant has been found guilty upon verdict or plea and the court determines that the she or he is not likely again to engage in an offensive or criminal course of conduct and that the public good does not require that she or he suffer the penalty imposed by law, a court may place the defendant on probation under the charge and supervision of a probation officer. In an action in which the court may place the defendant on probation, it may delay sentencing the defendant up to one year to give him or her an opportunity to prove to the court his or her eligibility or leniency compatible with the ends of justice and the defendant's rehabilitation. When the sentencing is delayed, the court must enter an order stating the reason for the delay upon the court's record.

Under both situations described above, the court must include in each probation order or delayed sentence order that the MDOC must collect a supervision fee of up to \$135 multiplied by the number of months of probation ordered, but not more than 36 months (not more than 12 months for an individual placed on probation under Section 1). Additionally, under Section

3c of Chapter XI, a circuit court must include in each order for probation for a defendant convicted of a crime that the MDOC collect a probation supervision fee of up to \$135 multiplied by the number of months of probation ordered, but not more than 60 months.

Under each of the provisions described above, in determining the amount of the fee, the court must consider the probationer's projected income and financial resources. The court must use a prescribed table of projected monthly income in determining the amount of the fee to be ordered. The court may order a higher amount than indicated by the table, up to the maximum described above, if it determines that the probationer has sufficient assets or other financial resources to warrant the higher amount. If the court orders a higher amount, the amount and the reasons for ordering that amount must be stated in the order.

Under the bill, instead of a supervision fee of up to \$135, the MDOC would have to collect a supervision fee of \$30 multiplied by the number of months of probation ordered, if the individual were placed on probation supervision without an electronic monitoring device. If the individual were placed on probation supervision with an electronic monitoring device, the court would have to issue its order of probation that the MDOC collect a probation fee of \$60 multiplied by the number of months on probation ordered. The bill would retain the 36, 12, and 60 month caps described above. ("Electronic monitoring device" would include any electronic device or instrument that was used to track the location of the individual, enforce a curfew, or detect the presence of alcohol in an individual's body.)

The Court could waive a supervision fee if it determined that the supervised individual was indigent.

The bill also would delete the provisions pertaining to the projected monthly income table and ordering a higher fee amount than indicated in the table.

House Bill 4302 (H-2)

Section 25a of the Corrections Code requires the MDOC to collect supervision fees ordered under Section 13 of Chapter II or Sections 1 or 3c of Chapter XI of the Code of Criminal Procedure. The Department must collect a supervision fee of up to \$135 per month for each month of supervision in Michigan for an individual who is transferred to the State under an interstate compact. The Department must waive any applicable supervision fee for a person who is transferred to another state under the interstate compact entered into pursuant to Public Act (PA) 89 or 1935 (which allows Michigan to enter into interstate compacts pertaining to probation, parole, prevention of crime, and enforcement of penal laws) or the Interstate Compact for Adult Offender Supervision for the months during which he or she is in another state.

The bill, instead, would require the MDOC to collect a supervision fee of \$30 per month for each month of supervision in Michigan for an offender transferred to the State under an interstate compact who was being supervised without an electronic monitoring device. If the offender were being supervised with an electronic monitoring device the MDOC could collect a supervision fee of \$60 per month. "Electronic monitoring device" would include any electronic device or instrument that was used to track the location of an individual, enforce a curfew, or detect the presence of alcohol in an individual's body.

Under Section 36a of the Code, the Parole Board must include in each order of parole that the MDOC collect a parole supervision of up to \$135 multiplied by the number of months on parole, but not more than 60 months. The Department must waive any applicable supervision fee for a person who is transferred to another state under the interstate compact entered into

pursuant to PA 89 or 1935 or the Interstate Compact for Adult Offender Supervision for the months during which he or she is in another state.

Instead, under the bill, the Parole Board would have to include in each order that the MDOC collect a parole supervision fee of \$30 multiplied by the number of months on parole ordered, but not more than 60 months if the individual were placed on parole supervision without an electronic monitoring device. If the individual were placed on parole supervision with an electronic monitoring device, the Parole Board would have to include in each order that the MDOC collect a parole supervision fee of \$60 multiplied by the number of months of parole ordered, but not more than 60 months.

Under both situations described above, in determining the amount of the fee, the Code requires the court to consider the offender's projected income and financial resources. The court must use a prescribed table of projected monthly income in determining the amount of the fee to be ordered. The Department may collect a higher amount than indicated in the table, up to the maximum of \$135 for each month of supervision in Michigan, if the MDOC determines that the probationer has sufficient assets or other financial resources to warrant the higher amount. If the MDOC collects a higher amount, the amount and the reasons for ordering that amount must be stated in the Department order. The bill would delete these provisions.

The Code specifies that if a person has not paid the full amount of a supervision fee upon being discharged from probation, upon termination of the period of delayed sentence for a person subject to a delayed sentence, or upon termination from parole, the MDOC must review and compare the actual income of the person during the period of probation, delayed sentence, or parole with the income amount projected when the supervision fee ordered. If the Department determines that the parolee's actual income did not equal or exceed the projected income, the MDOC must waive any unpaid fees in excess of the total amount that the person would have been ordered to pay if his or her income had been accurately projected, unless the order states that a higher amount was ordered due to available assets or other financial resources.

Instead, under the bill, if a person has not paid the full amount of a supervision fee upon being discharged from probation, upon termination of the period of delayed sentence for a person subject to a delayed sentence, including a person under supervision on the bill's effective date, or upon termination from parole, including a parolee being supervised on parole on the bill's effective date, the Department would have to waive any amount in excess of the aggregate of \$30 per month for each month a person was being supervised without an electronic monitoring device and \$60 per month for each month the parolee was supervised with an electronic monitoring device.

Under the bill, the MDOC would have to waive any applicable supervision fee for a person was transferred to another state under an interstate compact entered into pursuant to PA 89 or the Interstate Compact for Adult Offender Supervision, if the Department determined that the offender was indigent.

The Department also could not collect any fees for offenders for electronic monitoring other than those fees required to be collected (described above).

The Code requires an individual who is sentenced to lifetime electronic monitoring to wear or otherwise carry an electronic monitoring device as determined by the MDOC under the Lifetime Electronic Monitoring Program in the manner prescribed in the Program. The individual must reimburse the Department or its agent for the actual cost of electronically monitoring the individual. Instead, the bill would require the individual to reimburse the

Department or its agent as provided in the bill for an individual placed on parole, and at the rate of \$60 per month after the individual was discharged from parole but was still subject to electronic monitoring.

MCL 762.13 et al. (H.B. 4031)
791.225a et al. (H.B. 4032)

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

House Bill 4031 (H-2) & 4032 (H-2)

The bills could have an indeterminate fiscal impact on State and local government. The bills would reduce the monitoring fees charged to individuals on probation or parole. The fees would be decreased from up to \$135 per month of supervision to \$30 per month for supervision without an electronic monitoring device or \$60 per month for supervision with an electronic monitoring device.

The Department of Corrections has indicated that it currently collects at most 10% of the fees assessed for offenders in any given year with an estimated annual revenue averaging \$5.8 million per year. Lowering the fees assessed for supervision could result in lower collections for the Department; however, the lower fees could result in higher collection rates than the current 10%, which also could result in an increase in revenue. The change in revenue is indeterminate and would depend on the actual collection rates that resulted from the proposed changes.

Fiscal Analyst: Joe Carrasco

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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.