

TRIAL COURT FUNDING

House Bill 5392 (H-1) as reported from committee

Sponsor: Rep. Sarah L. Lightner

1st Committee: Criminal Justice

2nd Committee: Judiciary

House Bill 5534 (H-1) as reported from committee

Sponsor: Rep. Kelly Breen

Committee: Judiciary

Complete to 4-18-24

SUMMARY:

House Bill 5392 would amend the Code of Criminal Procedure to allow trial courts to continue to impose certain costs on criminal defendants.

Under the code, 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 forth by statute and *may* assess other specified fines, costs, or reimbursements.

Among those allowable assessments,¹ *until May 1, 2024*, the court may assess any cost reasonably related to the actual costs incurred by the trial court, including salaries and benefits for relevant court personnel, goods and services necessary for operation of the court, and necessary expenses for operation and maintenance of court buildings and facilities.

The bill would extend the May 1, 2024 sunset (expiration date) on the ability to impose court operation costs to December 31, 2026.

MCL 769.1k

House Bill 5534 would create a new act, the Trial Court Funding Act of 2024, to require the State Court Administrative Office (SCAO) to analyze certain trial court costs and revenue sources and develop legislative proposals to change trial court funding.

Costs analysis

By May 1, 2026, SCAO, under the direction and supervision of the Michigan Supreme Court, would have to analyze and determine all of 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.²
- The *operational cost* of each trial court, based on a weighted caseload study.
- The funds needed, in addition to *maintenance of effort*, at each trial court to reach the court's operational cost.

¹ The others listed are: any fine or cost authorized by the statute for a violation of which the defendant entered a plea of guilty or no contest or the court determined that the defendant was guilty; the expenses of providing legal assistance to the defendant; any assessment authorized by law; and reimbursement for expenses incurred in responding to certain violations.

² The provision related to assessing court operation costs that House Bill 5392 would amend.

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.

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 below. Court-generated revenue that supports court operational expenditures during the same three-year period would have to be accounted for separately. General fund expenditures would have to be calculated as total court expenditures less any and all court-generated revenue and would not include state and federal funds.

Funding unit would mean either of the following:

- A **local unit of government** that funds a trial court.
- If a trial court is funded by more than one local unit of government, those local units of government, collectively.

Local unit of government would mean a political subdivision of the state, including a county, city, village, or township.

The analysis described above would have to be completed with input from state and local officials and associations, including at least all of the following:

- The Department of Treasury.
- 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

SCAO, under the direction and supervision of the Michigan Supreme Court, 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 comply with the following:

- Be based on expenditures for operating a court, including at least the following:
 - Judicial benefits.
 - Salaries and benefits for the following, regardless of the budget line item associated with those costs:
 - Court operations staff.
 - Court clerks, regardless of whether employed by a court or by the county clerk.
 - Facility staff.
 - Security staff.
 - Court facility operation and maintenance.
 - Preexisting debt on a court facility related to the construction or maintenance of the facility.
 - Indirect costs, such as court supplies, mail, property and liability insurance, and cyber security coverage.

- Court technology, such as case and document management systems, electronic filing systems, internet access and data storage, and computer hardware, such as personal computers, monitors, printers, and scanners.
- Not include any expenditure that is not directly related to operating a trial court, including the following:
 - Prosecution or defense.
 - Local unit of government services not related to the operation of a trial court.

Schedule and standards

SCAO, under the direction and supervision of the Michigan Supreme Court, would have to develop a proposed schedule for each trial court of the appropriate portion of the court's operational costs that may be attributed to an individual's case under current law and provide the trial court with its schedule. The assessment of operational costs to an individual's case 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 the 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 ability to pay in compliance with law.

SCAO, under the direction and supervision of the Michigan Supreme Court, would have to develop proposed standards for how a trial court should determine the amount of reimbursable costs to the local unit of government for law enforcement and prosecution costs for any statute or ordinance that provides for the assessment of the costs to a convicted defendant or person that is responsible for a civil infraction.

Statewide uniform collections system

SCAO, under the direction and supervision of the Michigan Supreme Court, would have to work with the Department of Treasury to develop and propose a statewide uniform collections system for court debt. The system could build on the existing system of court collections. The proposal would have to include at least all of the following:

- The age and type of debt to be centrally collected.
- The method of transmitting funds to the state.
- The disposition of funds received by the state.
- The priority of payments for funds collected from an individual who has a financial obligation to one or more governmental agencies.
- The estimated additional annual cost to the Department of Treasury to operate the proposed system and a proposed source and mechanism to fund the cost.

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

Distribution of court revenue

SCAO, under the direction and supervision of the Michigan Supreme Court, would have to work with the Department of Treasury 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 of effort for each court. The proposal would have to include all of the following:

- The creation of a Trial Court Fund to receive and distribute court revenue.
- An estimated range of state general fund expenditures that may 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 for all trial courts.
- The estimated additional annual cost to the Department of Treasury 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.

Capital improvement costs

SCAO, under the direction and supervision of the Michigan Supreme Court, would have to work with the Department of Treasury to develop proposals for funding court facilities' capital improvement costs. These proposals would have to consider all other legislative proposals recommended under the bill and address all of 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 ceases 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

SCAO, under the direction and supervision of the Michigan Supreme Court, would have to develop legislative proposals to effectuate the provisions described above concerning the schedules and standards, the statewide uniform collections system, the distribution of court revenue, and the capital improvement costs. The proposals would have to include a recommendation on how to provide trial courts with the funds to cover their operational costs without revenue lost from the elimination of the cost under section 1k(1)(b)(iii) of Chapter IX of the Code of Criminal Procedure. The proposals also would have to include a recommendation on how to fund the estimated annual cost to the Department of Treasury to operate the system that is consistent with the proposals described above.

Report

By May 1, 2026, SCAO, under the direction and supervision of the Michigan Supreme Court, would have to submit a report on the costs analysis and legislative proposals described above to the governor, the legislature, the House and Senate standing committees and appropriations subcommittees responsible for legislation concerning the judiciary, and the House and Senate Fiscal Agencies. The report would have to include the median cost of judicial benefits provided by all trial court funding units.

Neither bill could take effect unless both bills were enacted.

FISCAL IMPACT:

House Bill 5392 would amend section 1k of Chapter IX of the Code of Criminal Procedure to extend the sunset provision on imposing costs related to actual costs incurred by trial courts for court operations. The sunset would be extended from May 1, 2024, to December 31, 2026. Extending the sunset would allow trial courts to continue to impose costs reasonably related to actual costs incurred by the courts for operation.

The bill would have no fiscal impact on the state but would have a fiscal impact on local courts. Without extension of the sunset provision, trial courts would lose a significant amount of revenue. Below is a table that shows the amount of costs imposed and amount of revenue collected for the last seven fiscal years, according to reports submitted by the State Court Administrative Office. It is worth noting the fluctuation in amounts over the years. Much of the fluctuation since 2019 can be attributed to the COVID-19 pandemic.

<u>Fiscal Year</u>	<u>Costs Imposed</u>	<u>Revenue Collected</u>
2016	\$56.3 million	\$38.0 million
2017	\$58.0 million	\$39.3 million
2018	\$54.9 million	\$39.6 million
2019	\$49.3 million	\$40.9 million
2020	\$31.1 million	\$27.4 million
2021	\$38.0 million	\$29.3 million
2022	\$36.5 million	\$25.8 million

House Bill 5534 would have an indeterminate fiscal impact on the State Court Administrative Office. As described above, SCAO would be responsible for doing all of the following under the bill:

- Analyzing and determining revenue loss to trial courts from eliminating the ability to impose on criminal defendants costs that are reasonably related to actual costs incurred by trial courts.
- Completing an analysis and developing a schedule for each trial court of operational costs that may be attributed to individuals' cases.
- Developing uniform standards for trial courts to determine individuals' indigency and ability to pay.
- Developing standards for how trial courts are to determine the amount of reimbursable costs for law enforcement and prosecution costs for any statute that provides for the assessment of costs to convicted defendants or persons responsible for civil infractions.
- Working with the Department of Treasury to develop and propose a statewide system for distributing court revenue to each funding unit.
- Working with the Department of Treasury to develop proposals for funding court facilities' capital improvement costs.
- Developing legislative proposals to effectuate requirements of the bill, including a recommendation on how to provide trial courts with the funds to cover operational costs.
- Preparing a report on the analysis of costs and the legislative changes proposed.

According to SCAO, any costs resulting from completing responsibilities required of them under the bill would be absorbed by existing appropriations included in the Judiciary appropriations act.

The bill also is likely to increase costs for the Department of Treasury by requiring the department to collaborate with SCAO to complete an analysis of potential costs and revenues of trial courts as specified in the bill, develop a statewide uniform collections system for court debt, develop proposals for courts' capital improvement costs, and develop a statewide system to distribute court revenue. The extent of these cost increases is unclear and likely to vary by time and personnel involved.

POSITIONS:

Representatives of the following entities testified in support of the bills

- State Court Administrative Office (3-6-24 and 3-13-24)
- Michigan Association of Counties (3-6-24)
- Michigan Townships Association (3-6-24)
- Michigan Municipal League (3-6-24)

The Criminal Defense Attorneys of Michigan indicated support for the bills. (3-6-24)

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■ 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.