Report on Public Policy Position

Name of Committee:
Criminal Jurisprudence and Practice Committee

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Bill Number:
HB 4629 (Sak) Criminal procedure; sentencing; cost of prosecution; require payment in certain circumstances. Amends secs. 1f & 3, ch. IX, sec. 3, ch. XI, sec. 8, ch. XII & sec. 22, ch. XIV of 1927 PA 175 (MCL 769.1f et seq.).

Date position was adopted:
June 16, 2005

Process used to take the ideological position:
Committee meeting

Number of members in the decision-making body:
12

Number who voted in favor and opposed to the position:
11 opposed and 1 in favor

Position:
The Committee opposes this bill, which allows judges to order reimbursement for virtually any and all costs associated with the prosecution of any crime subject to a defendant's ability to pay.

The text (may be provided by hyperlink) of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report:
http://www.legislature.mi.gov/mileg.asp?page=getObject&objName=2005-HB-4629

RECOMMEND STATE BAR ACTION ON THIS ISSUE:

Arguments for the position:
Opposition to this proposal was primarily based on the unfairness of having criminal defendants, most of whom are indigent, threatened with the possibility of having to pay the costs associated when they exert their constitutional rights to trial. This monetary mechanism could be used to coerce criminal defendants into giving up their rights for fear of the financial burdens that may be imposed if they are unsuccessful at trial. The proposal raises many concerns about the fairness of such a system where decisions about how to proceed on a case, whether to file motions or contest guilt at all, may be driven by monetary considerations. This Committee has in the past taken the position that it is unreasonable and has a potentially chilling effect if required to pay appointed counsel and this proposal extends that proposition to areas over which the defendant has no control. Enforcing this provision will be burdensome on the courts and will result in additional hearings on the costs of prosecution and the reasonableness of those costs. The prosecutorial function is a governmental function that is funded by general taxes and should not be funded by those who are prosecuted and convicted, regardless of their innocence, and payment should not be premised upon the extent to which one exercises his or her constitutional rights.

Arguments against the position (if any):
1 person was in favor of the legislation because it has an ability to pay provision and a provision that if ordered to pay and circumstances change then the defendant can petition for relief of the ordered payments.

If this legislation passes, then the ability to pay provisions are critical provisions to maintain.

If the State Bar currently has a position on this subject matter, state the position, and an analysis of whether the recommended position and the current State Bar position are in conflict.
At its September 21, 2005 meeting, the State Bar of Michigan's Board of Commissioners unanimously voted to oppose in principle HB 4629.

Fiscal implications of the recommended policy to the State Bar of Michigan:
None.

FOR LEGISLATIVE ISSUES ONLY:

This position falls within the following Keller-permissible category:

- **The regulation and discipline of attorneys**
- ✓ **The improvement of the functioning of the courts**
- **The availability of legal services to society**
- **The regulation of attorney trust accounts**
- **The regulation of the legal profession, including the education, the ethics, the competency, and the integrity of the profession.**

Keller- permissible explanation:
This proposal imposes an impermissible chill that cuts at the heart of a criminal defendant's exercising of his constitutional rights. It also impacts the judiciary's responsibility to ensure that constitutional rights are protected because the judge may order payment for the prosecutor, the officers, the investigators, etc... who had any part in the prosecutorial function.