



More Guilty Verdicts Mean More Cash for Local Courts

By Kahryn A. Riley

Summary

Making criminal defendants pay court costs is a constitutionally questionable act that also threatens the integrity of the justice system.

Main text word count: 673

In May, the Michigan Supreme Court is expected to hear oral arguments about whether it should take a case that challenges trial courts' practice of assigning a portion of their costs to convicted criminal defendants. "Costs" refer to the operating expenses associated with running a trial court, and criminal defendants who are found guilty are generally made to pay a sum roughly equal to the court's average expense per criminal case. One such defendant, Shawn Loveto Cameron, objects to being made to pay these costs, alleging that they are actually an illegal tax. Even if the high court takes the case and rules that this fee is legally permissible, continuing to impose it is a bad policy.

Adequate funding for Michigan trial courts became an urgent problem in 2014 after the state Supreme Court ruled in *People v. Cunningham* that courts can "impose only those costs that the Legislature has separately authorized by statute." The ruling invalidated some categories of costs that courts had been levying on defendants for decades, striking a \$100 million blow to their funding for the year.

The Legislature nullified the ruling's effect by quickly passing a law explicitly authorizing courts to continue imposing these costs — but only until October 2017. When no solution had been found by June 2017, the Legislature voted to extend the stopgap another three years. "We put a Band-Aid on it," explained Rep. Rob VerHeulen, R-Walker, who introduced the bills which extended the authorization and created the Trial Court Funding Commission, a body legislators told to figure out how to adequately fund the courts. "But," he added, "the issues that gave rise to *Cunningham* are still there." The primary issue being, of course, many groups' opposition to the idea that it is palatable or practical to fund our courts on the backs of criminal defendants.

The biggest problem is introducing the profit motive to courts, whose neutrality ought to be sacrosanct. Judges only assign court costs when they enter guilty verdicts: They do not require payments from defendants who are found not guilty, or from prosecutors when they fail to make their case. Judges are, by definition, neutral and detached, so it is inappropriate to make their pay depend, even in part, on whether the defendants in their courtrooms are found guilty. This possibility should be a serious concern for people who care about due process, even if we assume that officers of the court are all honest individuals.



Don't make courts depend on guilty verdicts for their funding.

Another issue is that it's simply impractical to ask courts to recoup their expenses from a class of people so unlikely to pay. Criminal defendants are frequently indigent, and people involved in the criminal justice system usually face a host of fines, fees, bail payments, victim compensation payments and lost wages — further diminishing their financial capacity. Wealthy people are less likely to incur court costs because they are less likely to commit crimes in the first place and more likely to afford effective legal representation when they do. Even when wealthy people are convicted, they are more likely to recover financially from a monetary penalty. Indigent convicts, on the other hand, may be a single fine or jail stay away from being thrust into the joblessness or poverty that is at the root of so much crime.

VerHeulen's legislation extended the statutory stopgap until 2020, and the Funding Commission's recommendation is due in 2019. With this latest case, it looks like the question will finally get the attention it deserves. Some will argue in favor of the status quo, likening criminal defendants' costs to user fees that are the natural consequence of wrongdoing. But we must all remember that the true beneficiary and primary "user" of the criminal justice system is society at large. It's neither appropriate nor practical to ask courts to fund themselves by shifting their costs to the people least able to bear them and most likely to incur them again if pushed to do so. It's time for Michigan to sustainably fund its courts by using reliable and justifiable revenue sources.

#####

Kahryn A. Riley is a policy analyst and director of the criminal justice reform initiative at the Mackinac Center for Public Policy, a research and educational institute headquartered in Midland, Michigan. Permission to reprint in whole or in part is hereby granted, provided that the author and the Mackinac Center are properly cited.

The biggest problem is introducing the profit motive to courts, whose neutrality ought to be sacrosanct.

Attention Editors and Producers

Viewpoint commentaries are provided for reprint in newspapers and other publications. Authors are available for print or broadcast interviews. Electronic text is available for this Viewpoint at mackinac.org/pubs/viewpoints.

Please contact:

HOLLY WETZEL

Communications Coordinator

140 West Main Street

P.O. Box 568

Midland, Mich. 48640

Phone: 989-631-0900

Fax: 989-631-0964

wetzel@mackinac.org

Mackinac.org

Facebook.com/MackinacCenter

Twitter.com/MackinacCenter