

MUSKEGON COUNTY BOARD OF COMMISSIONERS

ORDINANCE NO. 2011-393

PROSECUTOR RECOVERY COSTS

APPROVAL DATE: AUGUST 9, 2011

PUBLISH DATE: SEPTEMBER 28, 2011

An Ordinance requiring the payment of costs incurred by the County of Muskegon in prosecuting persons convicted of certain offenses, as authorized by Act 372 of the Public Acts of 2000, as amended, MCLA 769.1f et seq., providing for the manner of collection of such costs and providing for the effective date of this ordinance.

THE COUNTY OF MUSKEGON, STATE OF MICHIGAN, ORDAINS:

Section 1: PURPOSE: The Board of Commissioners of the County of Muskegon has determined that it is in the best interests of the citizens of Muskegon County to provide for the recovery costs associated with the prosecution of certain offenses by the Muskegon County Prosecutor's Office, as permitted by Act 372 of the Public Acts of 2000, as amended, MCLA 769.1f et seq.

Section 2: DEFINITIONS: The term "costs of prosecution" shall mean the salaries, wages or other compensation, including but not limited to, overtime compensation of personnel of the Muskegon County Prosecutor's Office for the time spent investigating and prosecuting the crime or crimes resulting in conviction, and the actual costs and expenses incurred by the Muskegon County Prosecutor's Office in the prosecution of a case.

**Section 3: LIABILITY FOR COSTS OF PROSECUTION FOR CERTAIN SPECIFIED OFFENSES:**

(1) Following conviction of any of the following offenses, the person convicted shall reimburse the County of Muskegon for the cost of prosecution, as provided in this section:

(a) A violation or attempted violation of section 601d (Moving violation causing death or serious impairment), 625(1), (3), (4), (5), (6), or (7) (Operating while intoxicated or Operating while visibly impaired), section 625m (Operating a commercial vehicle with any BAC), or section 626(3) or (4) (Reckless Driving Causing Serious Impairment or Death) of the Michigan vehicle code, 1949 PA 300, MCL 257.625d, 257.625, 257.625m, and 257.626.

(b) A violation or attempted violation of MCL 750.321 (Manslaughter) or MCL 750.316 (First Degree Premeditated Murder), 750.316(1)(b) (Felony Murder), 750.317 (Second Degree Murder), or 750.91 (Attempted Murder), resulting from the operation of a motor vehicle, snowmobile, ORV, aircraft, vessel, or locomotive engine while the person was impaired by or under the influence of intoxicating liquor or a controlled substance, as defined in section 7104 of the public health code, 1978 PA 368, MCL 333.7104, or a combination of intoxicating liquor and a controlled substance, or had an unlawful blood alcohol content.

(c) A violation or attempted violation of section 82127 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.82127 (Operation of a snowmobile under the influence of intoxicating liquor or controlled substance).

(d) A violation or attempted violation of section 81134 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.81134 (Operation of an off-road vehicle or "ORV" while under influence of intoxicating liquor or controlled substance) and 324.81135 (Operation of an off-road vehicle or "ORV" while visibly impaired due to intoxicating liquor or controlled substance).

(e) A violation or attempted violation of section 185 of the aeronautics code of the State of Michigan, 1945 PA 327, MCL 259.185 (Operation of aircraft while under the influence of intoxicating liquor, controlled substances, or drugs or combinations of drugs that incapacitate operation).

(f) A violation or attempted violation of section 80176(1), (3), (4), or (5) of the natural resources and environmental protection act, 1994 PA 451, MCL 324.80176 (Operating a vessel under the influence of intoxicating liquor or a controlled substance).

(g) A violation or attempted violation of section 353 of the railroad code of 1993, 1993 PA 354, MCL 462.353 (Operation of locomotive engine while impaired by or under influence of alcoholic liquor, controlled substance, or combination).

(h) A violation or attempted violation of section 411a(2) of the Michigan penal code, 1931 PA 328, MCL 750.411a (False reporting of threats).

(i) A finding of guilt for criminal contempt for a violation of a personal protection order issued under section 2950 or 2950a of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950 and 600.2950a, or for a violation of a foreign protection order that satisfies the conditions for validity provided in section 2950i of the revised judicature act of 1961, 1961 PA 236, MCL 600.2950i.

(2) The expenses for which reimbursement may be obtained under this

Ordinance include all of the salaries, wages, or other compensation, including but not limited to, overtime pay of prosecution personnel for time spent investigation and prosecuting the crime or crimes resulting in conviction and the actual costs and expenses incurred by the Muskegon County Prosecutor's Office in the prosecution of a case.

Section 4. IMPOSITION OF COSTS BY COURT: Nothing contained herein shall prohibit or restrict the Muskegon County Circuit Court, the Muskegon County District Court, or the Muskegon County Juvenile Court from imposing the costs of prosecution as part of a sentence following conviction of any of the offenses listed in Section 3, as authorized by MCLA 769.1f(1), provided, however, that the County of Muskegon shall

not be fully reimbursed more than once for the expenses incurred in the prosecution of an offense.

Section 5. PROCEDURES FOR DETERMINATION AND RECOVERY COSTS:

The costs of prosecution for the offenses listed in Section 3 shall be determined and recovered in the following manner:

(a) Charge Against Person: The expenses incurred by the County as a result of a prosecution for an offense set forth in Section 3 charged to the person liable for the expenses under the terms of this Ordinance. The charge constitutes a debt of that person and is collectible by the County in the same manner as in the case of an obligation under a contract, expressed or implied.

(b) Cost Recovery Schedule: The Board of Commissioners may, by resolution, adopt a schedule of costs specifying the expenses associated with a prosecution of an offense set forth in Section 3, or may recover actual costs. Any schedule adopted pursuant to this section shall be available to the public from either the Muskegon County Clerk or the Muskegon County Prosecutor or his/her designee. The schedule adopted by the Muskegon County Board of Commissioners may be a flat fee based upon the average of costs sustained in making a prosecution for the listed offense.

(c) Billing: The Muskegon County Prosecutor, or his/her designee, may, within thirty (30) days of receiving itemized costs, or any part thereof, incurred for a prosecution and conviction, submit a bill for the costs by first class mail or personal service to the person liable for the expenses as enumerated under this Ordinance. The bill(s) shall "require payment in full" thirty (30) days from the date of mailing or personal service.

(d) Failure to Pay; Procedure to Recover Costs: Any failure by the person described in this Ordinance as liable for the expense of a prosecution for an offense listed in Section 3, to pay the bill within thirty (30) days of service shall be considered a default. In case of default, the County of Muskegon may commence a civil suit to recover the expenses and any costs allowed by law, or may contract with a collection agency to recover said expenses and costs in the name of the County of Muskegon.

Section 6. CONFLICT WITH CRIMINAL LAWS; COORDINATION OF COLLECTION EFFORTS:

Nothing in this section shall be construed to conflict, contravene, enlarge or reduce any criminal liability or responsibility, including fines imposed by a judge for any criminal offense under Michigan law. If recovery of the costs of prosecution are required as part of a criminal sentence, the Muskegon County Accounting Department shall work with the relevant court to coordinate recovery of the cost of prosecution.

Section 7. SEVERABILITY: The phrases, sentences, sections and provisions of this Ordinance are severable and the finding that any portion hereof is unconstitutional or otherwise unenforceable shall not detract from or affect the enforceability of the remainder of this Ordinance.

Section 8. REPEAL OF CONFLICTING ORDINANCES: All other Ordinances, parts of Ordinances, or amendments thereto, any of which are in conflict with the provisions of this Ordinance, are hereby repealed in their entirety to the extent of such conflict.

Motion by Commissioner Collins, second by Commissioner Engle, carried, to adopt the foregoing resolution at a regular meeting of the Muskegon County Board of Commissioners held on August 9, 2011 at 3:30 PM.

Ayes: Collins, Cross, Derezinski, Engle, Jager, Longmire, Mahoney, Plummer, Scolnik, Snider, Wilkins

**CERTIFICATION**

I, Nancy A. Waters, Clerk of Muskegon County, State of Michigan, do hereby certify that the above is a true and correct copy of an ordinance adopted by the Muskegon County Board of Commissioners at the August 9, 2011, regular meeting, in testimony whereof, I have hereunto set my hand and affixed the seal of my office, this 22 day of September 2011.

Nancy A. Waters  
Nancy A. Waters, Muskegon County Clerk

ATTACHMENT A  
MUSKEGON COUNTY BOARD OF COMMISSIONERS  
ORDINANCE NO. 2011-393  
APPROVAL DATE: AUGUST 9, 2011  
**COST OF PROSECUTION REIMBURSEMENT BILLING**  
**OWI BILLING GUIDELINES:**

- Misdemeanor pleads at arraignment (ticket cases only) \$0

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- Misdemeanor pleads at arraignment (warrant cases) \$50  
**Level 1**

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- Misdemeanor pleads at pre-trial/final pre-trial \$75  
**Level 2**

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- Misdemeanor plea on date of trial \$100  
**Level 3**

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- Misdemeanor trial was held with guilty verdict \$250  
**Level 4**

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