

Board of Supervisors
WAYNE COUNTY

RESOLUTIONS NO. 783-13: ADOPTION OF LOCAL LAW AUTHORIZING THE PROBATION DEPARTMENT TO ESTABLISH AND COLLECT FEES FROM INDIVIDUALS SERVING A SUPERVISION TERM FOR THE ADMINISTRATION OF DRUG AND ALCOHOL TESTING COMPLETED BY OR AT THE REQUEST OF THE PROBATION DEPARTMENT

Mr. Plant presented the following:

WHEREAS, A Local Law allowing the assessment and collection of drug and alcohol testing fees set by the County Probation Department pursuant to Article 2 (10) and Article 3 (20) of the Municipal Home Rule Law was presented to the Board of Supervisors on November 19, 2013; and

WHEREAS, a public hearing on the proposed local law was held on December 17, 2013 at 9:10 a.m. in accordance with the notice of hearing duly posted and published in the manner prescribed by law; now, therefore, be it

RESOLVED, that said local law is hereby adopted to read as follows:

COUNTY OF WAYNE - STATE OF NEW YORK
LOCAL LAW NO. 5 FOR THE YEAR 2013

A Local Law allowing the assessment and collection of drug and alcohol testing fees set by the County Probation Department pursuant to Article 2 (10) and Article 3 (20) of the Municipal Home Rule Law.

BE IT ENACTED BY THE BOARD OF SUPERVISORS OF THE COUNTY OF WAYNE, as follows:

SECTION 1. LEGISLATIVE INTENT

It is the intent of this Local Law to defray the costs to the citizens of Wayne County associated with the administration of drug and alcohol testing services provided by the Wayne County Probation Department for individuals who have been convicted of a crime, who are associated with the Wayne County Probation Department as a result of a Juvenile Delinquency Proceeding or Person In Need of Supervision Proceeding, either through Diversion or as an adjudicated Juvenile Delinquent or Person In Need of Supervision, or who have been determined to be a Youthful Offender, and who are currently serving or who will be ordered to serve a sentence of probation supervision or diversion, as defined under the New York State Penal Law or the Family Court Act of the State of New York, and including any individual who is subject to a term of interim probation, or a sentence of Conditional Discharge, where, as a condition of supervision, that individual is required to submit to drug and alcohol testing, by requiring such individuals to pay a drug and alcohol testing fee, as set forth herein, at the onset of their supervision.

SECTION 2. ESTABLISHMENT OF DRUG AND ALCOHOL TESTING FEES

- (a) Every person who has been sentenced to a period of adult probation supervision, as that term is defined under the New York State Penal Law, upon conviction of a crime, or who is subject to supervision by the Wayne County Probation Department under other conditional probation terms, including but not limited to supervision of any period of conditional discharge as defined by the Penal Law of the State of New York, which term of probation supervision or conditional discharge shall include drug and/or alcohol testing requirements, shall pay to the Wayne County Probation Department a drug and alcohol testing fee of One Hundred Dollars (\$100.00) at the onset of their supervision. Alcohol and/or drug testing shall be charged against this One Hundred Dollar (\$100.00) fee at the rate of Ten Dollars (\$10.00) per test for testing administered directly by probation staff. In the event that test validation is required either at the discretion of the probation department staff, or the request of the probationer, and laboratory testing is done which yields a positive result, the One Hundred Dollar (\$100.00) fee payment paid by the probationer shall be assessed a charge of Thirty-Five Dollars (\$35.00). In the event the laboratory test result is negative, there will be no financial charge to the probationer and there shall not be a Thirty-five Dollar (\$35.00) charge against the probationer's One Hundred Dollar (\$100.00) fee payment.
- (b) Every person who has been sentenced to a period of probation supervision as a Youthful Offender, as defined by the Penal Law, or who has been sentenced by the Family Court to a period of probation supervision as a Juvenile Delinquent, or a Person In Need of Supervision, as defined by the Family Court Act, and who shall be required to comply with a condition of drug and/or alcohol testing, shall pay to the Wayne County Probation Department a fee of \$10.00 for each drug or alcohol test administered by probation staff, said fee to be paid at the time the test is administered. This fee shall also apply and be charged to those individuals who are required to submit to drug and/or alcohol testing by the Wayne County Probation Department as a condition of any diversion program, or as a condition of a conditional discharge ordered by a Court upon a Youthful Offender adjudication or a juvenile delinquency adjudication or a finding that a person is a person in need of supervision. In the event that laboratory tests are conducted to verify positive results, there shall be no additional charge to persons serving a term of

probation supervision or conditional discharge as either a Youthful Offender or as a Juvenile Delinquent or a Person In Need of Supervision.

- (c) The Wayne County Probation Department may waive all or part of the drug and alcohol testing fees required herein where, because of indigence of the offender/probationer, the payment of such fee would work an unreasonable hardship on the person serving the period of probation supervision or conditional discharge, his or her immediate family, or any other person who is dependent upon such person for financial support. The Wayne County Probation Department shall also have the right to demand further deposits of money to be held as a reserve against which will be charged the cost of drug and/or alcohol testing in the event that the initial One Hundred Dollar (\$100.00) fee payment is exhausted.
- (d) Money collected pursuant to this Section shall be deposited by the Wayne County Probation Department with the County Treasurer and shall be utilized for drug and alcohol testing services administered by or at the request of the Wayne County Probation Department.

SECTION 3. COLLECTION

Section 420.10, subdivision 6, of the Criminal Procedure Law shall govern the collection of this fee, but payment of the drug and alcohol testing fee shall not constitute a condition of any probation sentence or term of probation supervision. In the event of non-payment of any fees which have not been waived by the local probation department, the county may seek to enforce payment in any manner permitted by law for the enforcement of a debt. The Wayne County Probation Department shall be empowered to seek a court order directing payment of any drug and/or alcohol testing fees which have not been paid, and to file said Order with the County Clerk. Such Order upon filing with the County Clerk shall be treated as a judgment in a civil action, in accordance with Criminal Procedure Law, Section 420.10(6).

SECTION 4. AGREEMENT

Every person liable to pay a drug and/or alcohol testing fee hereunder shall be informed and shall be required to review a Payment Notification and Agreement in such form as the Probation Director prescribes. A signature of the individual assessed for the fee is not required on the form.

SECTION 5. RULES AND REGULATIONS

The Director of Probation is empowered to adopt departmental policies and procedures necessary to implement this Local Law.

SECTION 6. AMENDMENT OF FEES

In the event that the drug and/or alcohol fee requires an amendment, the Wayne County Board of Supervisors may, by resolution, amend any portion of the local law prescribed herein.

SECTION 7. AID AND REIMBURSEMENT

All drug and/or alcohol testing fees collected hereunder shall be excluded from consideration by the Division of Probation when it determines state aid reimbursement pursuant to Section 246 of the Executive Law.

SECTION 8. SEVERABILITY

If any section, subsection, sentence, clause, phrase or other portion of this Local Law is for any reason declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable and such unconstitutionality or invalidation shall not affect the validity of the remaining portions of this law, which shall remain in full force and effect.

SECTION 9. EFFECTIVE DATE

This Local Law shall take effect immediately upon filing in the Office of the New York Secretary of State, pursuant to §27 (3) of the Municipal Home Rule Law.

Mr. LeRoy moved the adoption of the resolution. Seconded by Mrs. Bender. Upon roll call, adopted.

WAYNE COUNTY
Board of Supervisors
LYONS, NEW YORK

This is to Certify that I, the undersigned, Clerk of the Board of Supervisors of the County of Wayne, have compared the foregoing copy of resolution with the original resolution now on file in this office and which was duly adopted by the Board of Supervisors of said County at a session held on the 17th day of December 2013 and that the same is a true copy of said original and of the whole thereof.

In Witness Whereof, I have hereunto subscribed my name and affixed the official seal of the Board of Supervisors of the County of Wayne, this 17th day of December 2013.

Clerk of the Board

