

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 217

Court Costs

SPONSOR(S): Finance & Tax Council; Public Safety & Domestic Security Policy Committee; Eisnaugle

TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Public Safety & Domestic Security Policy Committee	9 Y, 0 N, As CS	Kramer	Kramer
2)	Criminal & Civil Justice Policy Council	12 Y, 0 N	Kramer	Havlicak
3)	Finance & Tax Council	11 Y, 0 N, As CS	Wilson	Langston
4)	Criminal & Civil Justice Appropriations Committee			
5)	Full Appropriations Council on General Government & Health Care			

SUMMARY ANALYSIS

Currently, section 938.10, F.S., provides that if a person pleads guilty or nolo contendere to, or is found guilty of, regardless of adjudication, any offense against a minor in violation of a specified list of criminal statutes, the court must impose a court cost of \$101 against the offender in addition to any other cost or penalty required by law. The section provides that \$100 of the court cost must be deposited into the Department of Children and Family Services' Grants and Donations Trust Fund for disbursement to the Florida Network of Children's Advocacy Centers, Inc., for the purpose of funding children's advocacy centers that are members of the network.

This bill increases the court cost to \$151 and expands the list of criminal statutes referenced to require that the \$151 court cost be imposed against offenders convicted of one of these additional offenses. The court cost will be distributed as follows:

- \$100 will be deposited in the Department of Children and Family Services' Grants and Donations Trust Fund for disbursement to the Florida Network of Children's Advocacy Centers, Inc. for the purpose of funding children's advocacy centers that are members of the network as required by current law;
- \$50 for the Statewide Guardian Ad Litem Office, to support the mechanism for best interest representation for children in Florida who are involved in dependency proceedings;
- \$1 will be retained by the clerk of court as a service charge.

This bill also adds that the clerk of court shall record a certified copy of the court order, which imposes these additional costs, for public record. These records will constitute a lien against any real and personal property owned by a person upon whom the court cost is being imposed.

On February 6, 2009, the Revenue Estimating Conference (REC) adopted a consensus estimate for fiscal year 2009-10 that the increase in court costs would have a positive fiscal impact of \$66,000 to state revenues with a recurring positive fiscal impact of \$71,000. The fiscal year 2009-10 revenues will include \$5,000 to state general revenue and \$61,000 to state trust funds. Also, this bill will have positive fiscal impact of \$200 to local governments.

This bill shall take effect July 1, 2009.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Chapter 938, F.S., sets forth several court costs which must be imposed in criminal cases. Sections 938.01 – 938.06, F.S., relate to mandatory court costs which must be applied in all criminal cases. Sections 938.07 – 938.13, F.S., relate to mandatory court cost which must be assessed in specific types of cases. Section 938.10, F.S., provides that if a person pleads guilty or nolo contendere to, or is found guilty of, regardless of adjudication, any offense against a minor in violation of a specified list of criminal statutes, the court must impose a court costs of \$101 against the offender in addition to any other cost or penalty required by law.

The listed offenses are as follows:

1. Section 784.085, F.S. – relating to battery of a child by throwing, tossing, projecting, or expelling certain fluids or materials.
2. Chapter 787, F.S. – relating to kidnapping, false imprisonment, luring or enticing a child.
3. Chapter 794, F.S. – relating to sexual battery.
4. Section 796.03, F.S. – relating to procuring person under age of 18 for prostitution.
5. Section 800.04, F.S. – relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age.
6. Chapter 827, F.S. – relating to abuse of children.
7. Section 847.0135(5), F.S. – relating to computer pornography.
8. Section 847.0145, F.S. – relating to buying or selling of minors.
9. Section 985.701, F.S. – relating to sexual misconduct.

The section provides that \$100¹ of the court cost must be deposited into the Department of Children and Family Services' Grants and Donations Trust Fund for disbursement to the Florida Network of Children's Advocacy Centers, Inc. for the purpose of funding children's advocacy centers that are members of the network.

Section 39.0935, F.S., provides that in order to be eligible for membership in the Florida Network of Children's Advocacy Centers, a child advocacy center in the state shall:

- (a) Be a private, nonprofit incorporated agency or a governmental entity.

¹ One dollar from the \$101 is retained by the clerk of the court as a service charge. s. 938.10(2), F.S.

- (b) Be a child protection team, or by written agreement incorporate the participation and services of a child protection team, with established community protocols which meet all of the requirements of the National Network of Children's Advocacy Centers, Inc.
- (c) Have a neutral, child-focused facility where joint department [Department of Children and Family Services] and law enforcement interviews take place with children in appropriate cases of suspected child sexual abuse or physical abuse. All multidisciplinary agencies shall have a place to interact with the child as investigative or treatment needs require.
- (d) Have a minimum designated staff that is supervised and approved by the local board of directors or governmental entity.
- (e) Have a multidisciplinary case review team that meets on a regularly scheduled basis or as the caseload of the community requires. The team shall consist of representatives from the Office of the State Attorney, the department, the child protection team, mental health services, law enforcement, and the child advocacy center staff. Medical personnel and a victim's advocate may be part of the team.
- (f) Provide case tracking of child abuse cases seen through the center. A center shall also collect data on the number of child abuse cases seen at the center, by sex, race, age, and other relevant data; the number of cases referred for prosecution; and the number of cases referred for mental health therapy. Case records shall be subject to the confidentiality provisions of s. 39.202.
- (g) Provide referrals for medical exams and mental health therapy. The center shall provide follow up on cases referred for mental health therapy.
- (h) Provide training for various disciplines in the community that deal with child abuse.
- (i) Have an interagency commitment, in writing, covering those aspects of agency participation in a multidisciplinary approach to the handling of child sexual abuse and serious physical abuse cases.

The section provides that a child advocacy center within this state may not receive the funds generated pursuant to s. 938.10, F.S., unless all of the standards set forth in the section are met. The Florida Network of Children's Advocacy Centers, Inc. has the responsibility for tracking and documenting compliance with the section for any of the funds it administers to member child advocacy centers.

The bill increases the court cost which must be imposed from \$101 to \$151. The bill adds several sections of statute to the list of offenses for which the court cost must be imposed including the following offenses committed against a minor:

1. Section 796.035, F.S. – relating to selling or buying of minors into sex trafficking or prostitution.
2. Section 847.012, F.S. – relating to sale of harmful materials to minors or use of minors in production in harmful materials.
3. Section 847.0133, F.S. – relating to the prohibition of certain acts in connection with obscenity.
4. Section 847.0138, F.S. – relating to transmission of material harmful to minors to a minor by electronic device or equipment.
5. Section 893.147(3), F.S. – relating to use, possession, manufacture, delivery, transportation, or advertisement of drug paraphernalia.

The court cost must also be imposed for a violation of any of the following sections:

1. Section 775.21, F.S. – relating to the Florida Sexual Predators Act.
2. Section 847.0125, F.S. – relating to the retail display of materials harmful to minors.
3. Section 847.0134, F.S. - relating to the prohibition of an adult entertainment establishment that displays, sells, or distributes materials harmful to minors within 2,500 feet of a school.
4. Section 943.0435, F.S. – relating to sexual offenders.

The court cost will be distributed as follows:

- \$100 will be deposited in the Department of Children and Family Services' Grants and Donations Trust Fund for disbursement to the Florida Network of Children's Advocacy Centers, Inc. for the purpose of funding children's advocacy centers that are members of the network as required by current law;
- \$50 for the Statewide Guardian Ad Litem Office, to support the mechanism for best interest representation for children in Florida who are involved in dependency proceedings;

- \$1 will be retained by the clerk of court as a service charge.

This bill also amends s. 939.185, F.S., to add that the clerk of court shall record a certified copy of the court order, which imposes these additional costs, for public record. These records will constitute a lien against any real and personal property owned by a person upon whom the court cost is being imposed. A lien created by these records will not attach to, or make subject to execution of levy or foreclosure, any real or personal property otherwise exempt under s. 4, Art. X of the State Constitution.

B. SECTION DIRECTORY:

Section 1. Amends s. 938.10, F.S., relating to additional court cost imposed in cases of certain crimes against minors.

Section 2. Amends s. 939.185(2)(d), F.S., concerning liens relating to additional court costs imposed in cases of certain crimes against minors.

Section 3. Provides effective date of July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

On February 6, 2009, the Revenue Estimating Conference (REC) adopted a consensus estimate for fiscal year 2009-10 that the increase in court costs would have a positive fiscal impact of \$66,000 to state revenues with a recurring positive fiscal impact of \$71,000. These revenues would include \$5,000 to general revenue and \$61,000 to state trust funds.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

On February 6, 2009, the Revenue Estimating Conference (REC) adopted a consensus estimate for fiscal year 2009-10 that the increase in court costs bill will have positive fiscal impact of \$200 to local governments.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill increases court costs which must be assessed against a person who is convicted of certain criminal offenses.

The bill may result in increased revenue for children's advocacy centers.

D. FISCAL COMMENTS:

The bill will require the imposition of a \$151 court cost against defendants convicted of certain criminal offenses. Of these funds, \$100 will be deposited into the Department of Children and Family Services' Grants and Donations Trust Fund for disbursement to the Florida Network of Children's Advocacy Centers, Inc. for the purpose of funding children's advocacy centers that are members of the network. Additionally, \$50 of these funds are designated for the Statewide Guardian Ad Litem Office, to support the mechanism for best interest representation for children in Florida who are involved in dependency proceedings \$1 will be retained by the clerk of court as a service charge.

According to the Florida Network of Children's Advocacy Centers, since 2004, \$196,698 has been deposited in total into the trust fund for disbursement to the children's advocacy centers.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 2 amends the proceeds of the court cost in s. 938.10, F.S., to be distributed, less \$1 for the clerks surcharge, between the Florida Network of Children's Advocacy Centers, Inc. and the Statewide Guardian Ad Litem Office. However, the provisions in s. 938.10(2), F.S., only transfer the proceeds of the court costs to the Department of Revenue for the Children and Family Services Grants and Donations Trust Fund. This trust fund does not distribute funds to the Statewide Guardian Ad Litem Office. The Statewide Guardian Ad Litem Office receives distributions from the Statewide Guardian Ad Litem's Grants and Donations Trust Fund. The appropriate fund distribution path should be clarified.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

The Public Safety & Domestic Security Committee adopted an amendment which clarified that the court cost must be imposed for any offense committed in violation of sections 775.21, 823.07, 847.0125, 847.0134, or 943.0435 F.S.

The amendment also increased the court cost to \$151 and provides for distribution of the court cost as follows:

- \$100 will be deposited in the Department of Children and Family Services' Grants and Donations Trust Fund for disbursement to the Florida Network of Children's Advocacy Centers, Inc. for the purpose of funding children's advocacy centers that are members of the network as required by current law;
- \$40 will be deposited in the State Courts Revenue Trust Fund;
- \$5 will be deposited in the State Attorneys Revenue Trust Fund;
- \$5 will be deposited in the Public Defenders Revenue Trust Fund;
- \$1 will be retained by the clerk of court as a service charge.

The Finance and Tax Council adopted three amendments. The second amendment adopted changed the distribution of the court cost as follows:

- \$100 will be deposited in the Department of Children and Family Services' Grants and Donations Trust Fund for disbursement to the Florida Network of Children's Advocacy Centers, Inc. for the purpose of funding children's advocacy centers that are members of the network as required by current law;
- \$50 for the Statewide Guardian Ad Litem Office, to support the mechanism for best interest representation for children in Florida who are involved in dependency proceedings;
- \$1 will be retained by the clerk of court as a service charge.

The second amendment adopted amends s. 939.185, F.S., to add that the clerk of court shall record a certified copy of the court order, which imposes these additional costs, for public record. These records will constitute a lien against any real and personal property owned by a person who the court cost is being imposed. A lien created by these records will not attach to, or make subject to execution of levy or foreclosure, any real or personal property otherwise exempt under s. 4, Art. X of the State Constitution. The third amendment adopted removes Section 823.07, F.S. relating to abandonment of iceboxes, refrigerators, deep-freeze lockers, clothes washers, clothes dryers, or airtight units from the additional court costs in an offense against a minor. This analysis reflects the above changes.