

STORAGE NAME: h1381s1.ft

DATE: March 23, 1998

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
FINANCE AND TAXATION
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 1381

RELATING TO: Comprehensive Court Enforcement Program

SPONSOR(S): Crime & Punishment, Rep.'s Heyman, Crist, Brown, Villalobos & Turnbull

COMPANION BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) CRIME AND PUNISHMENT YEAS 6 NAYS 0
 - (2) FINANCE AND TAXATION
 - (3) CRIMINAL JUSTICE APPROPRIATIONS
 - (4)
 - (5)
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I. SUMMARY:

The bill creates the Comprehensive Court Enforcement Program, a civil proceeding designed to recover court costs and fines imposed in conjunction with a criminal conviction, but which were not collected via the criminal proceedings.

Under the bill, a judge may summons a convicted defendant to court for a hearing on his or her ability to pay the court ordered fines, costs and restitution. Failure to appear will result in a capias for the convicted's arrest. Failure to appear could result in contempt of court and incarceration.

The court may order that any nonexempt property of the person which is in the hands of another be applied toward satisfying the obligation.

The court may refer any proceeding to a special master for recommendations.

The Uniform Fraudulent Transfer Act may be applied to collect any court-imposed financial obligation.

Court-imposed financial obligations may be referred by the county commission to a private attorney or collection agency.

The act shall take effect "upon becoming a law."

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Sentences Of Fines, Court Costs & Restitution

Florida's criminal courts often impose financial obligations in the form of fines, court costs and restitution as sentences for crimes. See, Sections 775.089(1)(a), 775.083 & 938.05, F.S.

Probation

Ordinarily, offenders are placed on a period of probation whereupon they are required to make monthly payments toward satisfaction of the financial portion of their sentence. If an offender fails to make the necessary payments, he or she is reported to the court by their supervising probation officer and a hearing is conducted to determine whether the offender's failure to pay is an intentional failure to pay. See Chapter 948, F.S. If it is determined the offender refuses to pay, he may be committed to, or returned to, prison. If it is determined the offender has no ability to pay, he may not be punished with incarceration for that inability. See, *Coxon v. State*, 365 So.2d 1067 (Fla. 2d DCA 1979). America has no debtors' prison. See, also, Article I, Section 11 of the Florida Constitution ("No person shall be imprisoned for debt, except in cases of fraud.") In this event, the court may enter a "civil restitution lien" against the offender which may be collected in civil court if the offender should ever acquire wealth. See, Sections 960.29, et. seq., F.S.

Delinquent Sentences

As explained above, no sentence should be left outstanding, or delinquent, from the criminal court, unless it has been determined that the offender does not have the ability to pay, in which case the debt should have been converted to a civil restitution lien in an effort to close and dispose of the case. If a defendant asserts an inability to pay court costs, fines or restitution, it is exceedingly difficult to disprove. Most criminal defendants are indigent and may not be incarcerated for their poverty.

B. EFFECT OF PROPOSED CHANGES:

New Court Collections Program

The bill creates the Comprehensive Court Enforcement Program, a civil proceeding designed to recover court costs and fines imposed in conjunction with a criminal conviction, but which were not collected via the criminal proceedings.

Failure To Pay Results In Contempt

Under the bill, a judge may summons a convicted defendant to court for a hearing on his or her ability to pay the court ordered fines, costs and restitution. Failure to appear will result in a *caus* for the convicted's arrest. Failure to appear or refusal to pay the outstanding balance could result in contempt of court and incarceration.

New Methods For Collections / Efficiency

- The court may assess administrative fees, new court costs, and attorney's fees as it deems necessary to offset the costs of the program.
- The court may order that any nonexempt property of the person which is in the hands of another be applied toward satisfying the obligation.
- The court may refer any proceeding to a special master for recommendations.
- The Uniform Fraudulent Transfer Act may be applied to collect any court-imposed financial obligation. Chapter 726 provides remedies for creditors to reach the assets of debtors who transfer those assets to another for the purpose of evading the debt.
- Court-imposed financial obligations may be referred by the county commission to a private attorney or collection agency.

New Reporting Requirements

The clerk of the court will make a quarterly report of all court-imposed financial obligations collected under the program to the chief judge of the circuit.

Effective Date

The act shall take effect "upon becoming a law."

C. APPLICATION OF PRINCIPLES:

1. Less Government:

- a. Does the bill create, increase or reduce, either directly or indirectly:

- (1) any authority to make rules or adjudicate disputes?

Yes. The bill increases the authority of magistrates to resolve outstanding debts for fines and court costs resulting from criminal convictions.

- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. The existing court system shall conduct these new hearings with the existing court personnel.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

Yes. The bill mandates the imposition and collection of a \$10 fee for each person brought before the court under this program.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

Yes. See, c. above.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Sections 26.59 and 34.191, F.S.

E. SECTION-BY-SECTION RESEARCH:

See Effects of Proposed Changes.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See, Fiscal Comments.

2. Recurring Effects:

See, Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See, Fiscal Comments.

4. Total Revenues and Expenditures:

See, Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See, Fiscal Comments.

2. Recurring Effects:

See, Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

See, Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

See, Fiscal Comments.

2. Direct Private Sector Benefits:

See, Fiscal Comments.

3. Effects on Competition, Private Enterprise and Employment Markets:

See, Fiscal Comments.

D. FISCAL COMMENTS:

The bill is intended to generate new revenues for the court system. For example, the Fifteenth Judicial Circuit Collections Court (Palm Beach County) has collected \$84,473 in one year of operation of a similar program.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill is intended to generate new revenues for the court system and is not mandated if courts believe the revenues generated will be exceeded by the costs of implementation.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce revenue raising authority.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the state tax shared with counties and municipalities.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The bill was passed by the Committee on Crime and Punishment on March 11, 1998, with one amendment which is reflected in this research statement. The bill was made a committee substitute.

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by:

Legislative Research Director:

Jamie Spivey

J. Willis Renuart

AS REVISED BY THE COMMITTEE ON FINANCE AND TAXATION:

Prepared by:

Legislative Research Director:

George T. Levesque

Keith G. Baker, Ph.D.