

STORAGE NAME: h0781a.cp

DATE: March 30, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME AND PUNISHMENT
ANALYSIS**

BILL #: HB 781

RELATING TO: Court Imposed Financial Obligations in Criminal Cases

SPONSOR(S): Representative Heyman

COMPANION BILL(S): SB 936

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

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

The bill amends s. 938.30, F.S. by allowing a judge to convert a person's court-ordered obligation to pay court costs to an obligation to perform community service after examining the person under oath and determining his or her inability to pay.

The bill also amends the provision of s. 938.30 which authorizes the assessment of administrative cost in enforcing compliance by specifying that the court may assess reimbursement for the costs of processing bench warrants and pickup orders.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Fines, Court Costs and Restitution

Florida's criminal courts often impose financial obligations in the form of fines, court costs and restitution as part of a criminal sentence. See, sections 775.089(1)(a), 775.083, 775.0835 and 938.05, F.S. For example, chapter 938 categorizes court costs in five parts as follows: (1) mandatory costs in all cases; (2) mandatory costs in specific types of cases; (3) mandatory court costs authorized by local governmental entities; (4) discretionary costs in specific types of cases and (5) miscellaneous provisions. An example of a mandatory costs that is to be imposed in all cases is a fifty dollar court cost which is collected for the Crimes Compensation Trust Fund administered by the Department of Legal Affairs.

Violation of Probation for Failing to Pay Court Costs

Ordinarily, a convicted felon is placed on probation after the incarceration portion of the sentence or in lieu of a prison sanction. During this time, the probationer is usually required to make monthly payments toward his or her financial obligations. If the probationer fails to keep up with the payment schedule, the probation officer can file an affidavit of violation of probation. The trial court then holds a hearing to determine whether the probationer has intentionally refused to pay or has an inability to pay. If the trial court determines that the probationer does not have the ability to pay, the probationer cannot be returned to prison for failing to pay. Vincent v. State, 699 So.2d 806 (Fla. 1st DCA 1997).

Comprehensive Court Enforcement Program Act

In 1998, HB 1381 was passed which created section 938.30 of the Florida Statutes. This statute provides a civil proceeding designed to recover court costs and fines imposed in conjunction with a criminal conviction. Section 938.30 provides that any person who has been ordered to pay any financial obligation in a criminal case may be required by the trial court to appear and be examined under oath concerning the person's financial ability to pay the obligation. Any person failing to attend may be arrested and held in contempt. The court is permitted to reduce a person's court ordered financial obligation based on the trial court's determination of the person's inability to pay the obligation.

Conversion of Court Costs to Community Service

There is no provision currently in the Florida Statutes which authorizes the court to impose community service in lieu of court costs when a defendant is indigent and unable to pay.

Section 27.3455(1), F.S. (1985) provided that a trial court could impose community service in lieu of payment of court costs for indigent defendants. Each hour of community service was credited against the costs imposed by the court at a rate equivalent to the minimum wage. This authorization was deleted from the statutes in 1986 and appellate courts subsequently ruled that a trial court no longer had the authority to impose community service in lieu of court costs. Ch. 86-154, Law of Fla.

Administrative Costs Incurred in Enforcing Compliance

Section 938.30 provides that a trial court may assess administrative costs incurred in enforcing compliance with this section. Such costs may include postage, copying, docketing fees, service fees and court reporter's fees as well as reasonable attorney's fees.

B. EFFECT OF PROPOSED CHANGES:

Converting Obligation to Pay Court Costs to Obligation to Perform Community Service

The bill gives the trial judge the ability to convert a person's court ordered obligation to pay court costs to an obligation to perform community service after examining the person under oath and

determining the person's inability to pay. The bill does not appear to give the trial court the authority to convert other court ordered financial obligations such as restitution to an obligation to perform community service.

Administrative Costs Incurred in Enforcing Compliance

The bill adds costs for processing bench warrants and "pickup orders" to the list of administrative costs which can be assessed against the person who has the court-imposed financial obligation.

A "pick-up order" is the term commonly used in juvenile proceedings to describe the orders to take into custody that are authorized by section 985.207, Florida Statutes. A.M.W. v. Portesy, 714 So.2d 1170, 1171 (Fla. 2nd DCA 1998). A bench warrant is a process issued by a trial court for the attachment or arrest of a person, usually issued in a case of contempt or to bring in a witness who fails to obey a subpoena.

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?

No.

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

No.

(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?

No.

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?

No.

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:

Section 938.30.

E. SECTION-BY-SECTION ANALYSIS:

Section 1: Provides that a judge may convert the court-ordered obligation to pay court costs to a court-ordered obligation to perform community service after examining the person under oath and determining the person's inability to pay. Also provides that the administrative costs of processing bench warrants and pickup orders can be assessed against the person with the financial obligation.

Section 2: Provides effective date of July 1, 1999.

III. FISCAL ANALYSIS & 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:

This bill would not have any fiscal impact on the Department of Corrections. The bill will allow the trial court to convert a defendant's obligation to pay court costs into an obligation to perform community service upon a finding that the defendant has an inability to pay. Converting financial obligations owed the court to community service has no real fiscal impact if the court has truly determined that the defendant was unable to pay. However, if the person who was obligated could have paid some percentage of the fees owed, there would be a corresponding fiscal impact, the amount of which would be indeterminate.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require local governments to expend funds or to take any action requiring the expenditure of funds. Therefore, it is exempt from the provisions of Article VII, Section 18 of the Florida Constitution.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce anyone's 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:

The bill does not supply a judge with guidelines as to how to convert the costs into an obligation to perform community service. In other words, a court is not guided as to how many hours of community service should be imposed for a given amount of monetary obligation.

As discussed earlier, the court cost statute previously authorized the court to impose community service in lieu of payment for indigent defendants. s. 27.3455(1), F.S. (1985). In Johnson v. State, 495 So.2d 188 (Fla. 2d DCA 1986), the court rejected a challenge claiming that the statute violated equal protection. The Court held that community service is different from incarceration and thus the statute does not subject an indigent person to incarceration because of his or her indigent status. The court stated that the statute was "a means through which the state meets its goals of punishment and deterrence as is permitted under Bearden v. Georgia, 461 U.S. 660, 103 S.Ct. 2064 (1983)."

In State v. Yost, 507 So.2d 1099 (Fla. 1987), the Florida Supreme Court held that the statute, by imposing community service on indigents unable to pay the fees and court costs, "clearly disadvantage[d] prisoners whose crimes were committed prior to the effective date of the statute" and thus violated the ex post facto clause of the Florida and United States Constitutions when applied to defendants who committed crimes before the statute's effective date. Thus, it is unlikely that HB 781 probably could be applied retroactively to impact a defendant who committed his or her offense prior to the effective date of the bill.

In Royster v. State, 657 So.2d 36 (Fla. 4th DCA 1995), the court reversed the portion of the order of probation providing that the defendant could perform community service hours in lieu of paying the cost of supervision if the defendant did not have the ability to pay the costs. The court reasoned as follows:

A trial court no longer has the authority to require a defendant to perform community service hours as an alternative to paying the costs of supervision. Although the provision is couched in permissive language, the only alternative to an indigent defendant, who is unable to pay the cost, would be to perform community service. Because a defendant's due process rights would be implicated if forced to pay court-imposed costs if the defendant can show an inability to pay, it follows that a defendant may not be required to perform community service hours in lieu thereof if unable to make such payment.....

This line of reasoning has not yet been addressed or followed by the other District Courts of Appeal or the Florida Supreme Court.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

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