

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 936

SPONSOR: Senator Gutman

SUBJECT: Court-imposed financial obligations in criminal cases

DATE: March 5, 1999

REVISED: 03/10/99 _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|--------------|----------------|-----------|------------------|
| 1. | <u>Gomez</u> | <u>Cannon</u> | <u>CJ</u> | <u>Favorable</u> |
| 2. | _____ | _____ | _____ | _____ |
| 3. | _____ | _____ | _____ | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |

I. Summary:

This bill amends s. 938.30, F.S., the Comprehensive Court Enforcement Program Act, by allowing a judge to convert a person's obligation to pay court costs to an obligation to perform community service. The bill specifies that the court may convert costs to community service after examining a person under oath and determining a person's inability to pay.

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

This bill shall take effect on July 1, 1999.

This bill substantially amends the following sections of the Florida Statutes: 938.30.

II. Present Situation:

A. Court costs and other fines and fees imposed in criminal cases

The 1997 Legislature created ch. 938, F.S., to consolidate and categorize all the court costs imposed on offenders. In the past, these provisions were scattered throughout various chapters. ch. 97-271, L.O.F. Chapter 938, F.S. was designed to assist "the judiciary and other court participants to identify and locate applicable law relating to court costs and thereby facilitating the uniform imposition and collection of court costs." s.1, ch. 97-271, L.O.F. Chapter 938, F.S., 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 the court costs provided for in ch. 938, F.S., is the Crime Compensation Trust Fund, mandatory in all cases. This is a \$50 cost which is deposited in the Crimes Compensation Trust Fund administered by the Department of Legal Affairs.

Apart from court costs, a defendant incurs other financial obligations. For example, a defendant is assessed a \$40 application fee when he or she requests a public defender and is subject to pay the costs of his or her attorneys fees. See ss. 27.521 and 938.29, F.S. Further, in all criminal cases, the costs of prosecution, including investigative costs incurred by law enforcement agencies may be entered in a judgment rendered against the defendant. s. 938.27, F.S.

B. Court costs, fines, or fees may be reduced to a civil judgment; prison as sanction not authorized

Ordinarily, offenders are placed on a period of probation and 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 the supervising probation officer and a hearing is conducted to determine whether the offender's failure to pay is an intentional failure to pay. See ch. 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). The United States has no debtors' prison. Article I, Section 11 of the Florida Constitution provides that: "No person shall be imprisoned for debt, except in cases of fraud."

"Execution on a sentence imposing a fine may be issued in the same manner as execution of a judgment in a civil action whether or not the sentence also imposes imprisonment." s. 922.02, F.S. In *State v. Yost*, 507 So. 2d 1099 (Fla. 1987), the Court held that, where properly assessed, a judgment for court costs may be enforced as a civil judgment. A determination as to a defendant's ability to pay does not have to be made prior to the assessment of statutorily mandated costs. Such determinations are required when the state seeks to enforce collection of the costs. See *State v. Beasley*, 580 So. 2d 139 (Fla. 1991).

C. Supplementary proceedings

Section 56.29, F.S., provides proceedings supplementary to the legal process of enforcing a judgment, directed to discovery of the debtor's property and its application to the debt. The court is authorized to require a defendant to appear before the court or to a special master at a time and place specified in the order. s. 56.29(2), F.S. Section 56.29, F.S. details the procedures applicable to supplementary proceedings.

D. Palm Beach County Collections Court established

A recent study by the National Center for State Courts revealed significantly increased rates of collection for fines and court costs when the judiciary engages in concerted and consistent enforcement efforts. With this in mind, Palm Beach County recently started a collections court designed to enforce payment of these debts through the civil proceedings supplementary statute contained in s. 56.29, F.S. In May, 1996, the Florida Supreme Court approved a local rule creating the circuit-wide Palm Beach County Collections Court. [C.J. Ciklin, *Full Court Press*,

“The Search for Accountability in an Overburdened Court System,” p. 9 (official newsletter of the state courts system of Florida, published by the Office of the State Courts Administrator)(on file with comm.)] Delinquent defendants are provided a payment deadline and told not to appear at a future court hearing, provided payment is made. Special masters are employed to “encourage, pressure, push and cajole delinquent defendants to pay.” *Id.* Ultimately, warrants are issued for failure to pay or appear.

E. Comprehensive Court Enforcement Program Act

Responding to the Palm Beach County experiment, the 1998 Legislature created the Comprehensive Court Enforcement Program Act. Chapter 98-247, Laws of Fla., codified in s. 938.30, F.S. The Act contains legislative intent which states: “Uncollected fines, fees, and court costs are more than lost revenue; they represent a court order ignored, an unobeyed sentence, and the punished going unpunished.” *Id.* The Act provides that a court cost enforcement program may be implemented as supplementary proceedings at the option of the chief judge of each circuit. The Act contains numerous provisions the most significant of which is that it authorizes the court to require a person who has been ordered to pay any financial obligation in any criminal case 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 may be held in civil contempt.

F. Conversion of court costs to community service

There is no current provision in ch. 938, F.S., which authorizes the court to impose community service in lieu of court costs when a defendant is indigent and unable to pay. For a short time beginning in 1985, the court costs statute which provides for certain costs in all criminal cases, expressly authorized the court to impose community service in lieu of payment for indigent defendants. *See* s. 27.3455(1), F.S. (1985), now transferred to s. 938.05(1), F.S. This authorization was deleted from the statutes in 1986. s.1, ch. 86-154, Law of Fla; *Sims v. State*, 520 So. 2d 675 (Fla. 1988). However, s. 948.0345, F.S., currently allows for community service as an alternative to a fine in cases where a defendant charged with a drug offense is sentenced to a community residential drug punishment center pursuant to s. 948.034(1) and (2), F.S.

III. Effect of Proposed Changes:

This bill amends s. 938.30, F.S., the Comprehensive Court Enforcement Program Act, by allowing a judge to convert a person’s obligation to pay court costs to an obligation to perform community service. The bill specifies that the court may convert costs to community service after examining a person under oath and determining a person’s inability to pay.

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

This bill shall take effect on July 1, 1999.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

This bill authorizes the court to convert court costs to community service after determining that a person is unable to pay. At one point, the court costs statute which provides for certain costs in all criminal cases, expressly authorized the court to impose community service in lieu of payment for indigent defendants. *See* s. 27.3455(1), F.S. (1985). That statute was subjected to constitutional challenges on the grounds that it violated an indigent person's equal protection rights and that it could not be retroactively applied. One challenge failed and another succeeded.

First, in *Johnson v. State*, 495 So.2d 188, (Fla. 2d DCA 1986), the court rejected a challenge alleging the statute violated the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution. The Court reasoned 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. *Id.* 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, 76 L.Ed. 221 (1983)." *Id.* at 189.

Second, the Florida Supreme Court held that the statute, by imposing a period of 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 both the United States and Florida Constitutions when applied to those who committed crimes before the statute's effective date. *State v. Yost*, 507 So.2d 1099 (Fla. 1987).

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Criminal defendants subject to the provisions of s. 938.30, F.S., will be required to reimburse for the costs of processing bench warrants and pickup orders issued against them.

C. Government Sector Impact:

To the extent that the bill's provision authorizing reimbursement for the costs of processing bench warrants and pickup orders will generate revenue, the counties will experience an indeterminate but positive fiscal impact.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.