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DATE: February 22, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUDICIAL OVERSIGHT
ANALYSIS**

BILL #: HB 223
RELATING TO: Court Costs in Domestic Violence Cases
SPONSOR(S): Representative Henriquez

TIED BILL(S):

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

- (1) JUDICIAL OVERSIGHT YEAS 8 NAYS 0
- (2) FISCAL POLICY AND RESOURCES
- (3) COUNCIL FOR SMARTER GOVERNMENT
- (4)
- (5)

I. SUMMARY:

HB 223 provides for the imposition of an additional court cost of \$36 against individuals pleading guilty or nolo contendere to, or those found guilty or convicted of, an act of domestic violence. This cost may be waived by the court on the record. Funds from this assessment collected by the clerks of court are to be forwarded for deposit in the Domestic Violence Trust Fund for use in funding domestic violence centers.

The bill creates s. 938.14, Florida Statutes.

The bill has an effective date of October 1, 2001.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|------------------------------|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |

For any principle that received a "no" above, please explain:

The bill provides for the assessment of an additional court cost in domestic violence cases in specified circumstances.

B. PRESENT SITUATION:

Definition of Domestic Violence

Section 741.28, Florida Statutes, defines "domestic violence" as "any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family member or household member by another, who is or was residing in the same single dwelling unit".

Domestic Violence Centers and Funding

Domestic violence centers were established by the Legislature to provide services to victims of domestic violence and there are currently 38 such centers statewide. Centers are certified under s. 39.905, Florida Statutes, and are required to offer a wide range of services to and on behalf of victims of domestic violence, their minor children, and other dependents of victims of domestic violence. Those services include, but are not limited to, information and referral services, counseling and case management services, temporary emergency shelter for more than 24 hours, a 24-hour hotline, training for law enforcement personnel, assessment and appropriate referral of resident children, and educational services for community awareness.

Monies collected and appropriated for domestic violence centers are distributed annually by the Department of Children and Family Services to districts for certified domestic violence centers utilizing an allocation formula developed by the department. In developing this formula, the department must consider population, a rural and geographical area factor, and the incidence of domestic violence. Funding to be distributed includes federal funds through the Family Violence Prevention and Services Act; Temporary Assistance for Needy Families (TANF) funding for the Diversion Program for victims of Domestic Violence (s. 414.157, Florida Statutes); general revenue funds; and fees collected and deposited into the Domestic Violence Trust Fund. Domestic violence centers are required by statute to receive at least 25% of their funding from other public or private, local, municipal or county sources. In kind contributions may be counted as a part of the required local funding.

Section 741.01(2), Florida Statutes, provides that the "Executive Office of the Governor shall establish a Domestic Violence Trust Fund for the purpose of collecting and disbursing funds generated from the increase in the marriage license fee". Generated funds are to be directed to the Department of Children and Family Services for the specific purpose of funding domestic violence centers. Funds deposited into the Domestic Violence Trust Fund include a \$30 fee charged for each marriage license issued (s. 741.01(2), Florida Statutes), an \$18 charge on each petition for a dissolution of marriage (s. 28.101(1)(c), Florida Statutes), and fines that may be assessed for violation of a protective injunction pursuant to s. 741.30(8)(a), Florida Statutes

For fiscal year 2000-2001, a total of \$20,738,459 from all sources was appropriated to the Department of Children and Family Services for domestic violence centers. This includes a one-time appropriation of \$4,000,000 in TANF funds. Of this total amount, \$5,630,466 was budgeted from the Domestic Violence Trust Fund. Additionally, \$250,000 of the total appropriated funding is allocated for a designated domestic violence center and not made available through the allocation process.

Costs and Fees Required of Domestic Violence Perpetrators

Individuals who have been found guilty of, have had adjudication withheld on, or have pled nolo contendere to a crime of domestic violence are ordered by the court to a minimum term of 1 year probation and to attend a batterer's intervention program, pursuant to s. 741.281, Florida Statutes. Batterer's intervention programs are user-funded, requiring participants to pay an initial fee of \$30 to the Department of Corrections (s. 945.76, Florida Statutes), and a weekly fee to the program. That fee is based on a sliding scale ranging from zero to \$50 weekly for 29 weeks. The average weekly fee is usually \$15 to \$20. The cost of supervision required to be paid by an individual on probation varies depending on whether the offense was a misdemeanor or felony and may vary from county to county. Section 775.089, Florida Statutes, requires that any court ordered monetary costs for victim restitution be ordered as a condition of probation.

In addition to fees, there are court costs and fines assessed in the process of prosecuting criminal offenses. These costs also vary across circuits and counties. Pursuant to s. 775.083, Florida Statutes, the court may impose a fine in addition to or in lieu of any punishment and the maximum amounts of such fines are specified in statute. Conviction of a first degree misdemeanor could result in a maximum \$1,000 fine, whereas conviction of a first or second degree felony could result in a maximum \$10,000 fine.

C. EFFECT OF PROPOSED CHANGES:

HB 223 requires the court to impose a \$36 court cost in cases where an individual pleads guilty or nolo contendere to, or is convicted of, an act of domestic violence as defined in s. 741.28, Florida Statutes. The cost is to be assessed in addition to any other cost or penalty required by law, however the court may waive the cost on the record. Moneys collected are to be transferred for deposit into the Domestic Violence Trust Fund to be used in funding domestic violence centers.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Creates s. 938.14, Florida Statutes, relating to additional court costs in domestic violence cases. The section provides for the imposition of a \$36 court cost, in addition to any other required cost or penalty, in cases where a person pleads guilty or nolo contendere to, or is found guilty or convicted of, an act of domestic violence. The court may waive the cost on the record. The section also provides for collection of the \$36 by the clerk of court and monthly transfer of monies collected for deposit in the Domestic Violence Trust Fund.

Section 2. Provides for an effective date of October 1, 2001.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See fiscal comments.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See fiscal comments.

D. FISCAL COMMENTS:

The Department of Children and Family Services cannot estimate the significance of the court cost provided for in the bill and pointed out that, historically, the courts do not always impose fees provided for in statute and are not always successful in collecting fees that are imposed.

The Office of the State Courts Administrator (OSCA) reports that no fiscal impact is indicated for the State Courts System. All administrative costs associated with assessing, collecting, and remitting this cost to the trust fund will be borne by the clerks of court. In addition, OSCA reports that it is nearly impossible to estimate the revenue impact of the bill due to the fact that the State Courts System does not collect data on the number of crimes of violence which occur among those individuals who reside or have resided in the same dwelling unit; prosecutions in domestic violence are typically under reported; and, while there is some evidence that fees assessed related to misdemeanors are collected at a higher rate than costs in felony cases, there is no way to determine what percentage of these fees, if assessed, would actually be collected. OSCA also recommends that this additional court cost be examined in light of the existing costs and the 1998 amendment to Article V of the Florida Constitution which requires the state to take increased funding responsibilities for Article V entities and requires the Clerks of Court to be substantially funded through filing fees, service charges and costs.

A similar bill filed during the 2000 legislative session, provided for \$1 of the \$36 to remain with the clerk of court as a service charge for processing the fee. The Florida Association of Court Clerks reported at that time, that this would be sufficient to cover their costs. This bill does not have that provision.

The Florida Department of Law Enforcement (FDLE), in its semi-annual report (January – June, 2000), reports a total of 60,279 domestic violence incidents and 30,840 arrests. Information on the disposition of these cases is not provided. The department also reports that while offenses can be identified as an act of domestic violence, data on subsequent convictions is not categorized in a manner that allows for the number of persons pleading guilty or nolo contendere to, or found guilty or convicted of, an act of domestic violence to be identified at this time. Therefore, the level of revenue that would potentially be generated by this additional court cost cannot be determined.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill will not reduce the authority of municipalities and counties to raise revenues.

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

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

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

While this \$36 assessment is created as a court cost, the monies collected are not retained by the clerk of court for costs associated with prosecuting cases. They are instead transferred for deposit in the Domestic Violence Trust Fund for funding domestic violence centers. Chapter 938, Florida Statutes, relating to court costs does contain other provisions for collecting court costs and transferring them to other depositories and trust funds for other purposes.

As a point of statutory construction, the bill creates a new section in chapter 938, Part II, Florida Statutes, *Mandatory Costs in Specific Types of Cases*. Since the assessment can be waived by the court on the record, the new section might better be placed in Part IV, *Discretionary Costs in Specific Types of Cases*.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On February 22, 2001, the **Committee on Judicial Oversight** adopted a strike everything amendment which:

M Provides for the clerk of the court to transfer \$35 of costs collected for deposit in the Domestic Violence Trust Fund and retain \$1 as a service charge.

M Specifies that monies collected are to be used only to provide legal assistance and legal clearinghouse services to victims of domestic violence that are serviced by certified domestic violence centers.

M Provides that the Department of Children and Family Services (the department) must contract with a statewide nonprofit association to provide the specified assistance and services.

M Provides that the department must develop outcome measures to evaluate the effectiveness of services provided.

M Provides that the department must determine what services will be provided, what outcome measures will be used and the standards and adjust each on an annual basis.

M Provides the department with rulemaking authority.

M Requires that the department's annual report on the status of domestic violence include information on the use of the monies collected.

VII. SIGNATURES:

COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

Staff Director:

Carol Preston

Lynne Overton