

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government and Ensures Lower Taxes: This bill authorizes counties to require court imposition of a court cost against persons committing certain offenses to provide funding for drug court programs.

B. EFFECT OF PROPOSED CHANGES:

Background

Drug Courts

Dade County created the first drug court in Florida in 1989 as a response to a federal mandate to reduce the inmate population or lose federal funding. The focus of the Dade County Drug Court was to provide treatment for offenders and to reduce recidivism. Rather than simply sentencing offenders for short periods of incarceration or probation, the court supervised offenders by holding random drug tests, requiring frequent court appearances, imposing sanctions for continued drug use, and providing incentives to maintain sobriety.¹

Drug courts operate in each of Florida's 20 judicial circuits. As of February 2006, there were a total of 46 adult, 30 juvenile, 19 family dependency, and 2 other types of drug courts operating in 46 counties within the state.

Drug court programs typically provide services and monitoring in the pretrial stage. The programs extend the pretrial stage and use the threat of a criminal prosecution and conviction to encourage offender compliance. Drug courts operate on a reward and punishment system. Offenders successfully completing a drug court program receive a reduced charge or possibly even dismissal of the charge. For those that fail to comply with the program, the punishment is typically jail time, plus continuation of the criminal process and possible additional jail time upon conviction.

Funding

Section 397.334, F.S., authorizes counties to fund treatment-based drug court programs and requires such counties to include therapeutic jurisprudence principles, but limits the amount of state funding that can be used for these purposes. Section 397.334(5), F.S., reads:

“If a county chooses to fund a treatment-based drug court program, the county must secure funding from sources other than the state for those costs not otherwise assumed by the state pursuant to s. 29.004, [F.S.]”

Section 29.004(10)(d), F.S., indicates that the state will supply funds for “service referral, coordination, monitoring, and tracking for treatment-based drug court programs,” but will not fund the “costs associated with the application of therapeutic jurisprudence principles by the courts.”

Court Costs

¹ Report on Florida's Drug Courts, July 2004, http://www.flcourts.org/gen_public/family/bin/dcreport.pdf, accessed March 2006.

As set forth in ch. 938, F.S., there are four categories of court costs. There are mandatory court costs in all cases, mandatory court costs in specific cases, mandatory court costs authorized by local governmental entities, and discretionary court costs in specific types of cases. In each category there are certain court costs related to drug offenses.

Mandatory court costs applying in all cases:

- \$3 cost (authorized under s. 938.01, F.S.) for any person convicted for violation of a state penal or criminal statute or a municipal or county ordinance;
- \$50 cost (authorized under s. 938.03, F.S.) for any person pleading guilty or nolo contendere to, or being convicted of, or adjudicated delinquent for, any felony, misdemeanor, delinquent act, or criminal traffic offense;²
- \$200 cost (authorized under s. 938.05, F.S.) for persons pleading guilty or nolo contendere to, or being convicted of, or adjudicated delinquent for, any felony, \$50 for each misdemeanor or criminal traffic offense;
- 5% surcharge (authorized under s. 938.04, F.S.) imposed on any fine for any criminal offense by law, including a criminal traffic offense; and,
- \$20 surcharge (authorized under s. 938.06, F.S.) on any fine prescribed by law for any criminal offense.

Mandatory court costs in specific cases:

- \$135 fine (authorized under s. 938.07, F.S.) for driving or boating under the influence; and,
- \$15 court cost (authorized under s. 938.13, F.S.) for any person found guilty of any misdemeanor in which the unlawful use of drugs or alcohol is involved.

Mandatory costs authorized by local governmental entities:

- Up to \$65 (authorized under s. 939.185, F.S.) for persons pleading guilty or nolo contendere to, or being convicted of, or adjudicated delinquent for, any felony, misdemeanor or criminal traffic offense to be used only in the county in which the offense occurred; and,
- In counties with a teen court, a \$3 cost (authorized under s. 938.19, F.S.) against each person pleading guilty or nolo contendere to or who is convicted of, regardless of adjudication, a violation of a criminal law, a municipal or county ordinance, or pays a fine or civil penalty for any violation of chapter 316, F.S.

Discretionary costs:

- As authorized under ss. 938.21 and 938.23, F.S., a defendant may be charged an amount up to, or an amount equal to, the authorized fine for those persons convicted for driving under the influence, disorderly intoxication, open house parties, or for a violation of any section under chapter 893, F.S., (drug abuse and prevention control), chapter 562, F.S., (beverage law enforcement), chapter 567, F.S., (liquor), or chapter 568, F.S., (intoxicating liquors in counties where prohibited);
- \$100 fine (authorized under s.938.25, F.S.) against any defendant who pleads guilty or nolo contendere to, or is convicted of, a violation of any provision of s. 893.13, F.S., which makes it

² Fla. Stat. 938.03

unlawful to sell, manufacture, deliver, or possess with the intent to sell, manufacture, or deliver, a controlled substance; and,

- As authorized under s. 938.27, F.S., a convicted criminal defendant is required to pay the documented costs of prosecution if so requested.

Effect of Bill

This bill authorizes counties to adopt an ordinance requiring circuit and county courts to impose a \$6 fee against any person who pleads guilty to, or pleads nolo contendere to, or is convicted of, regardless of adjudication, a violation of ch. 893, F.S., (substance abuse and controlled substances); or a municipal ordinance, a county ordinance, or any provision of ch. 316, F.S., (state uniform traffic control laws) involving the use of alcohol or abuse of other substances resulting in the payment of a fine or civil penalty. This mandatory cost would be in addition to any fine, civil penalty or other applicable court cost.

The funds generated by this mandatory cost would be administered by the court administrator under the direction of an advisory committee appointed by the chief judge for the circuit in which the county is located. Clerks would retain eight percent of the revenue generated as fee income.

C. SECTION DIRECTORY:

Section 1. Creates s. 938.20, F.S., relating to court costs for drug court programs, authorizing county and circuit courts to impose a fee upon adoption of an ordinance by the county.

Section 2. Provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The clerks of court would collect additional revenue; however, since this revenue is court-related, a portion of it ultimately accrues to the state (see Fiscal Impact on Local Governments below).

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Positive recurring impact, but of an indeterminate amount, since the number of counties authorizing this fee and the number of persons subject to this cost is unknown.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Should a county adopt an ordinance under the provisions of this bill, applicable persons would pay an additional \$6 in court fees.

D. FISCAL COMMENTS:

The total amount of revenue for drug courts generated by imposition of this fee depends on the number of persons subject to it. No money is generated unless the county adopts the applicable ordinance. Of each \$6 mandatory cost, the drug court program would receive \$5.52 and the Clerk of the Court \$0.48.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not reduce the percentage of state tax shared with municipalities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The Finance and Tax Committee adopted one amendment on March 31, 2006. This amendment conformed the House bill to SB 940. The amendment did the following:

- Removed the assessment of the \$6 fee for violations of s. 318.14(9) or (10), F.S. Violations under this section were removed because they involved non-substance abuse violations.
- Allowed for the assessment of the fee against any parking violation related to substance abuse.