

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 709 Court Costs for Drug Court Programs
SPONSOR(S): Quinones and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 940

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Judiciary Committee</u>	<u>12 Y, 0 N</u>	<u>Poblete</u>	<u>Hogge</u>
2) <u>Finance & Tax Committee</u>	<u></u>	<u></u>	<u></u>
3) <u>Judiciary Appropriations Committee</u>	<u></u>	<u></u>	<u></u>
4) <u>Justice Council</u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

In response to the large volume of drug crimes, increasingly overcrowded jails, and risk of federal court-imposed sanctions, Dade county officials created the first drug court in Florida in 1989. A total of 46 adult drug courts, 30 juvenile drug courts, 19 family dependency drug courts, and 2 other types, operate in 46 counties within the state, with at least one drug court in each of Florida's 20 judicial circuits. Drug courts typically extend the pretrial stage and use the threat of a criminal prosecution and conviction to encourage offender compliance.

Under legislative implementation of Revision 7 to Article V of Florida's Constitution in 2003, the state agreed to use state revenues to pay "service referral, coordination, monitoring, and tracking for treatment-based drug court programs" However, the state expressly excluded state funding for "costs associated with the application of therapeutic jurisprudence principles by the courts." The Legislature also specifically prohibited county use of state revenue sources to fund drug court costs not assumed by the state.

For the purpose of funding the "operation and administration" of drug court programs within counties, this bill would authorize counties to adopt an ordinance requiring circuit and county courts to impose a \$6 court cost against any person who pleads guilty to, or pleads nolo contendere to, or is convicted of, regardless of adjudication, certain specified offenses involving the use of alcohol or abuse of other substances resulting in the payment of a fine or civil penalty. This new court cost would be in addition to numerous other statutorily and judicially imposed mandatory and discretionary court costs.

Although resulting from adoption of county ordinance, the funds generated by this mandatory cost would not be administered by the county, but by the trial 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.

The extent of any positive impact on state revenues depends on whether or not these revenues supplant existing revenues or are in addition to existing budgeted amounts.

The bill takes effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

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

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

Statistics show that over 60 percent of all persons arrested are either under the influence of, or have committed the crime to gain access to drugs and alcohol.¹ Substance abuse also causes or contributes to seven out of ten cases of child mistreatment and one fourth to one half of all men who commit acts of domestic violence also have substance abuse problems.²

In response to the large volume of drug crimes, increasingly overcrowded jails, and risk of federal court-imposed sanctions, Dade county officials created the first drug court in Florida in 1989.³ The focus of the Miami-Dade County Drug Court was to provide treatment for offenders. It was the first of its kind in the nation. 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.

Drug courts operate in each of Florida's 20 judicial circuits.⁴ As of February 14, 2006, a total of 46 adult drug courts, 30 juvenile drug courts, 19 family dependency drug courts, and 2 other types, operate in 46 counties within the state.⁵ They have been established in all fifty states, England, Australia, Canada, Bermuda, Puerto Rico, Guam and South America.⁶ As of that same date, 10,632 drug court clients were being served in Florida, with graduates totaling 23,566 since the first drug court was established.

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.

¹ *Id.* at 5.

² *Id.*

³ Office of the State Courts Administrator, Survey response submitted to the National Drug Court Institute, amended February 14, 2006.

⁴ See http://www.flcourts.org/gen_public/family/drug_court/map.shtml.

⁵ Report on Florida's Drug Courts, July 2004, http://www.flcourts.org/gen_public/family/bin/dcreport.pdf, accessed March 2006.

⁶ *Id.* at 8.

However, in 2003, as part of the implementation of Constitutional Revision 7 to Article V⁷ and the overall policy shift in court and court-related funding responsibilities, the Legislature redirected certain revenue sources to state use to fund state responsibilities and specifically prohibited county use of state revenue sources to fund drug court costs not assumed by the state. As part of that policy change, the state agreed to use state revenues to pay certain case management costs such as “(s)ervice referral, coordination, monitoring, and tracking for treatment-based drug court programs...,”⁸ in effect leaving it to counties to fund “costs associated with the application of therapeutic jurisprudence principles by the courts.”⁹

The Legislature has provided that a civil penalty of \$500 for persons engaged in prostitution be directed to trial court administrators to pay the administrative costs of treatment-based drug court programs.¹⁰

Court Costs

As set forth in Chapter 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.

Of the first category—mandatory court costs applying in all cases—the different types include a:

- \$3 cost for any person convicted for violation of a state penal or criminal statute or a municipal or county ordinance;¹¹
- \$50 cost 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;¹²
- \$200 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;¹³
- 5% surcharge imposed on any fine for any criminal offense by law, including a criminal traffic offense;¹⁴ and,
- \$20 surcharge on any fine prescribed by law for any criminal offense.¹⁵

In the second category—mandatory court costs in specific cases—there are two costs associated with drug offenses:

- \$135 cost for driving or boating under the influence;¹⁶ and,
- \$15 court cost for any person found guilty of any misdemeanor in which the unlawful use of drugs or alcohol is involved.¹⁷

⁷ Fla. Const. art. V, s. 14.

⁸ Fla. Stat. 29.004(10)(d) (2005).

⁹ Fla. Stat. 29.004(10) (2005).

¹⁰ Fla. Stat. 796.07(6) (2005).

¹¹ Fla. Stat. 938.01 (2005).

¹² Fla. Stat. 938.03 (2005).

¹³ Fla. Stat. 938.05 (2005).

¹⁴ Fla. Stat. 938.04 (2005).

¹⁵ Fla. Stat. 938.06 (2005).

¹⁶ Fla. Stat. 938.07 (2005).

¹⁷ Fla. Stat. 938.13 (2005).

Under the third category—mandatory costs authorized by local governmental entities—there are two such costs:

- Up to \$65 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;¹⁸ and,
- In counties with a teen court, a \$3 cost against each person pleading guilty or nolo contendere to or is convicted of, regardless of adjudication, a violation of a criminal law, a municipal or county ordinance, or paying a fine or civil penalty for any violation of chapter 316, F.S.¹⁹

The final type—discretionary costs—are optional with the court. There are several of relevance to drug offenses:

- 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);²⁰
- \$100 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 unlawful to sell, manufacture, deliver, or possess with the intent to sell, manufacture, or deliver, a controlled substance;²¹ and,
- Require a convicted criminal defendant to pay the documented costs of prosecution.²²

Effect of Bill

For the purpose of funding the “operation and administration” of drug court programs within counties, this bill would authorize counties to adopt an ordinance requiring circuit and county courts to impose a \$6 court cost 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 additional mandatory cost could not be imposed for violations of a state statute, county ordinance, or municipal ordinance relating to vehicle parking, except violations pertaining to handicapped parking.

This mandatory cost also would be in addition to any fine, civil penalty or other applicable court cost. It could not be deducted from the proceeds of that portion of any fine or civil penalty received by a county or municipality in accordance with certain provisions of the State Uniform Traffic Control laws. The clerk of the court would collect this additional mandatory cost and, on a monthly basis, deposit the funds into an account specifically designated for the operation and administration of the drug court program.

Although resulting from adoption of a county ordinance, the funds generated by this mandatory cost would not be administered by the county, but by the trial court administrator under the direction of an

¹⁸ Fla. Stat. 939.185 (2005).

¹⁹ Fla. Stat. 938.19 (2005).

²⁰ Fla. Stat. 938.21 and 938.23 (2005).

²¹ Fla. Stat. 938.25 (2005).

²² Fla. Stat. 938.27 (2005).

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., to authorize counties to require court imposition of an additional court cost to fund drug court programs administered by the trial court administrators.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not appear to have a significant fiscal impact on state revenues. See D. Fiscal Comments.

2. Expenditures:

This bill does not appear to have a significant fiscal impact on state expenditures. See D. Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Positive recurring impact, but of an indeterminate amount since 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, those persons subject to this court cost would pay an additional \$6.

D. FISCAL COMMENTS:

This bill does not indicate whether or not the revenues generated from this additional court cost would supplant existing state revenues expended on these programs or be in addition to current expenditures. The extent of any positive impact on state revenues depends on whether or not these revenues supplant existing revenues or are in addition to existing budgeted amounts. Regardless of whether or not this bill positively impacts state revenues, it will consume court cost capacity available to the state for other court funding purposes, since presumably there is some limit on the extent of court costs a defendant can be required to bear.

The total amount of revenue for drug courts generated by imposition of this mandatory cost depends on the number of persons subject to this additional court cost. 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:

Not applicable because this bill does not require counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority of counties or cities to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or cities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable under this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.