

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1279 Costs of Prosecution
SPONSOR(S): Criminal Justice Subcommittee; Kreegel
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1508

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 2 N, As CS	Krol	Cunningham
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Clerks of the circuit court (clerk) must establish and maintain a system of accounts receivable for court-related fees, charges, and costs. The clerk is responsible for collecting these funds in addition to the costs of prosecution. When a partial payment is collected, the clerk distributes these funds in a specific priority, with each tier being paid in full before moving down the list.

CS/HB 1279 requires that when partial payments are received by the clerk of court, the costs of prosecution will be remitted to the state to be deposited in the State Attorneys Revenue Trust Fund in the top priority tier, which presently is limited to the General Revenue Fund of the state.

The bill makes defendants liable for payment of costs of prosecution, including investigative costs, when charges against them are dismissed by the court for the successful completion of a misdemeanor or felony pretrial substance abuse education and treatment intervention program or treatment-based drug court.

The bill adds "costs of prosecution" to the list of:

- Items the clerk may refer to a private attorney or collection agent.
- Costs a clerk is allowed to withhold from the return of a cash bond posted on behalf of a criminal defendant.

The bill also requires:

- The clerk to assign the first of any fees or costs paid by a defendant as payment of the costs of prosecution.
- The clerk of court to collect and dispense cost payments in any case, regardless of whether the case takes place before the judge in open court or in any other manner.
- The court to impose the costs of prosecution and investigation and prohibits these costs from being converted into any form of court-ordered community service in lieu of the financial obligation.
- The costs of prosecution to be assessed from juveniles who have been adjudicated delinquent or have adjudication of delinquency withheld.

This bill appears to have a positive fiscal impact on state attorneys and a negative fiscal impact on the state, the clerk of court, and public defenders.

This bill is effective July 1, 2011.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1279a.CRJS

DATE: 4/1/2011

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Prosecution Costs

Section 938.27, F.S., provides that costs of prosecution may be imposed at the rate of \$50 in misdemeanor or criminal traffic offense cases and \$100 in felony criminal cases unless the prosecutor proves that costs are higher in the particular case before the court.¹ The costs of prosecution are deposited into the State Attorneys Revenue Trust Fund.²

Convicted persons are liable for payment of the costs of prosecution, including any investigative costs incurred by a law enforcement agency, fire department, or the Department of Financial Services and the Office of Financial Regulation of the Financial Services Commission.³ Conviction, for this purpose, includes a determination of guilt, or of violation of probation or community control, which is a result of a plea, trial, or violation proceeding, regardless of whether adjudication is withheld.⁴

Certain defendants facing conviction may be eligible for pretrial intervention programs, such as misdemeanor or felony pretrial substance abuse education and treatment intervention⁵ or treatment-based drug court.⁶ Defendants who successfully complete these programs have the charges against them dismissed by the court.⁷ Because the charges are dismissed by the court, these defendants are not liable for the payment of costs of prosecution.

The clerk of the circuit court (clerk) collects and dispenses cost payments in every case.⁸

Effect of the Bill

The bill makes defendants liable for the payment of costs of prosecution, including investigative costs, when charges against them are dismissed by the court after successfully completing a misdemeanor or felony pretrial substance abuse education and treatment intervention program or treatment-based drug court.

The bill requires the clerk to collect and dispense cost payments in any case regardless of whether the disposition of the case takes place before the judge in open court or in any other manner provided by law.

Notwithstanding any law, court rule, or administrative order, the bill requires the clerk to assign the first of any fees or costs paid by a defendant as payment of the costs of prosecution.

Distribution of Funds

Section 28.246(2), F.S., requires the clerk to establish and maintain a system of accounts receivable for court-related fees, charges, and costs.

The clerk may accept partial payments from a defendant for all fees, charges, and costs in accordance with the terms of an established payment plan.⁹ The clerk may enter into a payment plan with a defendant¹⁰ when the defendant is determined to be indigent for costs by the court.¹¹

¹ Section 938.27(8), F.S.

² *Id.*

³ Section 938.27(1), F.S.

⁴ *Id.*

⁵ Sections 948.16 and 948.08(6), F.S., respectively.

⁶ Section 948.08(6), F.S. *See s. 397.334, F.S.*

⁷ Sections 948.16(2) and 948.08(6)(c), F.S.

⁸ Section 938.27(6), F.S.

⁹ Section 28.246(4), F.S.

¹⁰ A monthly payment amount, calculated based upon all fees and all anticipated costs, is presumed to correspond to the person's ability to pay if the amount does not exceed 2 percent of the person's annual net income, as defined in s. 27.52(1), divided by 12.

¹¹ *Id.*

When partial payments are received as part of a payment plan, the clerks distribute the funds in a specific priority, with each tier being paid in full before moving down the list. The received portion of fees, service charges, court costs, and fines are remitted in the following order:

- 1) The state for deposit into the General Revenue Fund.
- 2) The clerk of court or the Clerks of the Court Trust Fund within the Justice Administrative Commission.¹²
- 3) Various state trust funds including the State Attorneys Revenue Trust Fund and the Indigent Criminal Defense Trust Fund for public defenders.^{13,14}
- 4) Counties and municipalities, or other local entities.^{15,16}

Accounts unpaid after 90 days are referred to a private attorney¹⁷ or a collection agent¹⁸ to collect any remaining fees, charges, fines, court costs,¹⁹ and liens for the payment of defense attorney's fees and costs.²⁰

Effect of the Bill

The bill requires that the portion of costs of prosecution be remitted to the state to be deposited into the State Attorneys Revenue Trust Fund in the top priority tier. The bill provides that the partial payment made to the first tier will be allocated on a pro rata basis among the two funds if the total collection amount is insufficient to fully fund both funds.

The bill adds "costs of prosecution" to the list of unpaid fees, charges, fines, and costs that can be referred to a private attorney or collection agent for collection.

Costs Converted into Community Service

Section 938.30(2), F.S., authorizes a judge to convert any statutory financial obligation into a court-ordered obligation to perform community service after examining a person under oath and determining a person's inability to pay.

In FY 09-10, \$8,610,731 in court-related fees, charges, costs, fines, and other monetary penalties were converted into community service under s. 938.30, F.S.²¹

Effect of the Bill

Notwithstanding any other provision or law, court rule, or administrative order, the bill requires the court to impose the costs of prosecution and investigation and prohibits these costs from being converted into any form of court-ordered community service in lieu of the financial obligation.

¹² Section 213.131, F.S.

¹³ Section 27.525, F.S., to be used for the purposes of indigent criminal defense as appropriated by the Legislature to the public defender or the office of criminal conflict and civil regional counsel.

¹⁴ If the total collection amount is insufficient to fully pay all the entities within this payment distribution tier, the funds are distributed on a pro rata basis. Section 28.246(5), F.S.

¹⁵ *Id.*

¹⁶ Section 28.246(5), F.S.

¹⁷ The private attorney must be a member in good standing of The Florida Bar. Section 28.246(6), F.S.

¹⁸ The collection agent must be registered and in good standing pursuant to ch. 559, F.S. Section 28.246(6), F.S.

¹⁹ Pursuant to s. 938.29, F.S.

²⁰ Section 28.246(6), F.S.

²¹ "PAYMENT OF COURT-RELATED FEES, CHARGES, COSTS, FINES and OTHER MONETARY PENALTIES, Section 28.246(1), Florida Statutes ANNUAL REPORT." The Florida Association of Court Clerks and Comptrollers. FISCAL YEAR: October 1, 2009 to September 30, 2010.

Cash Bonds

Section 903.286, F.S., authorizes the clerk to withhold the return of a cash bond posted on behalf of a criminal defendant by a person other than a bail bond agent²² to pay the following:

- Court fees,
- Court costs, and
- Criminal penalties.

If sufficient funds are not available to pay the above costs, the clerk will immediately obtain payment from the defendant or enroll the defendant in a payment plan pursuant to s. 28.246, F.S.

All cash bond forms must prominently display a notice explaining that all funds are subject to forfeiture and withholding by the clerk for the payment of the above costs on behalf of the criminal defendant regardless of who posted the funds.

Effect of the Bill

The bill adds the “costs of prosecution” to the list of costs:

- A clerk is allowed to withhold from the return of a cash bond posted on behalf of a criminal defendant by a person other than a bail bond agent.
- A clerk may obtain payment from a defendant or, if sufficient funds are not available, require the defendant to enroll in a payment plan.
- That must be displayed on the notice of all cash bond forms.

Delinquency Cases

Currently juveniles who are adjudicated delinquent or have had adjudication of delinquency withheld are not required to pay the costs of prosecution.

Effect of the Bill

The bill requires that costs of prosecution²³ be assessed from juveniles who have been adjudicated delinquent or have adjudication of delinquency withheld.

B. SECTION DIRECTORY:

Section 1. Amends s. 28.246, F.S., relating to payment of court-related fees, charges, and costs; partial payments; distribution of funds.

Section 2. Amends s. 903.286, F.S., relating to return of cash bond; requirement to withhold unpaid fines, fees, court costs; cash bond forms.

Section 3. Amends s. 938.27, F.S., relating to judgment for costs on conviction.

Section 4. Amends s. 985.032, F.S., relating to legal representation for delinquency cases.

Section 5. Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill appears to have a positive impact on state attorneys for many reasons:

²² Licensed pursuant to ch. 648, F.S.

²³ As provided in s. 938.27, F.S.

- 1) Partial payments collected by the clerk of court from defendants on payment plans will be paid to the state attorneys in the first tier priority instead of their previous third tier level. This will result in the state attorney receiving payment faster and before of the clerk of court, an entity it was previously behind.
- 2) The costs of prosecution will now be able to be collected by private attorneys or collection agents when payment plan accounts remain unpaid for 90 days. This may result in more costs of prosecution being collected and paid to state attorneys.
- 3) The clerk is required to collect and dispense cost payments in any case regardless of whether the disposition of the case takes place before the judge in open court or in any other manner provided by law. This may result in more costs of prosecution being collected and paid to state attorneys.
- 4) Notwithstanding any law, court rule, or administrative order, the bill requires the clerk to assign the first of any fees or costs paid by a defendant as payment of the costs of prosecution. This will ensure that the state attorneys are compensated for the costs of prosecution before any other entity, including victims receiving restitution.
- 5) The costs of prosecution and investigation will be prohibited from being converted into court-ordered community service. This may result in more costs of prosecution being collected and paid to state attorneys.
- 6) The costs of prosecution are now allowed to be withheld by the clerk from the return of a cash bond posted on behalf of a criminal defendant by a person other than a bail bond agent. This will likely result in a positive fiscal impact as the cost of prosecution will be deducted from any cash bonds posted on behalf of a criminal defendant.
- 7) The costs of prosecution will now be assessed from defendants who successfully complete pretrial intervention programs and juveniles who have been adjudicated delinquent or have adjudication of delinquency withheld. This will likely result in a positive fiscal impact as these costs were not assessed in these specific cases in the past.

Partial payments collected by the clerk of court from defendants on payment plans are currently paid first to the state, second to the clerk of court, third to state trust funds, including trust funds for the state attorney and the public defender. By moving the State Attorneys Revenue Trust Fund up to the top tier of the distribution schedule with the state, payments will first be split between the state and the state attorneys. Until those two entities are paid, none of the entities below them will receive funds from the partial payments.

This will have a negative fiscal impact on the state, the clerk of court, and public defenders.

The Association of Court Clerks and Comptrollers states that the conflict between the General Revenue Fund and the State Attorneys Revenue Trust Fund will have an indeterminate negative fiscal impact on the state. In addition, the clerk of court will incur an indeterminate negative fiscal impact as it will now receive funds after the state attorney.²⁴

The Florida Public Defender Association states that while 60 percent of collections paid to the Indigent Criminal Defense Trust Fund come from the public defender application fee,²⁵ this change in the clerk's distribution of partial payments could reduce collections paid to the trust fund by \$3 million to as much as \$5 million statewide.²⁶

²⁴ Phone conversation with Randy Long. Florida Association of Court Clerks and Comptrollers. March 25, 2011.

²⁵ Section 27.52, F.S.

²⁶ E-mail from Sheldon Gusky. Florida Public Defender Association, Inc. March 24, 2011. (On file with Criminal Justice Subcommittee staff).

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Defendants who successfully complete pretrial intervention programs and juveniles who have been adjudicated delinquent or have adjudication of delinquency withheld will now be assessed costs of prosecution.

The bill prohibits costs of prosecution from being converted into court-ordered community service. Defendants may now be responsible for paying this cost as oppose to working the debt off through community service.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to spend funds or take any action requiring the expenditure of funds; reduce the authority that municipalities or counties have to raise revenue in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 938.27, F.S., is amended to prohibit the costs of prosecution and investigation from being converted into any form of court-ordered community service in lieu of the financial obligation. This change may be more aptly made in s. 938.30, F.S., which provides the court with this kind of discretion.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 29, 2011, the Criminal Justice Subcommittee adopted a strike-all amendment to the bill and reported the bill favorably as a Committee Substitute. The amendment:

- Specifies that the costs of prosecution be remitted *to the state* for deposit in the State Attorneys Revenue Trust Fund;
- Requires that the clerk of court collect and dispense cost payments in any case, regardless of whether the case takes place before the judge in open court or in any other manner;
- Requires that the clerk will assign the first of any fees or costs paid by a defendant as payment of the costs of prosecution; and
- Allows for the allocation of partial payments on a pro rata basis among the authorized funds in the first tier if the total collected is not enough to fully fund both as provided by law.

This analysis is drafted to the Committee Substitute.