

1 A bill to be entitled
 2 An act relating to costs of prosecution; amending s.
 3 28.246, F.S.; providing for remittance of the costs of
 4 prosecution to a specified trust fund; providing for
 5 collection of costs of prosecution; amending s. 903.286,
 6 F.S.; providing for the withholding of unpaid costs of
 7 prosecution from the return of a cash bond posted on
 8 behalf of a criminal defendant; requiring a notice on bond
 9 forms of such possible withholding; amending s. 938.27,
 10 F.S.; providing liability for the cost of prosecution for
 11 persons whose cases are disposed of under specified
 12 provisions; requiring courts to impose the costs of
 13 prosecution and investigation; requiring that costs of
 14 prosecution and investigation not be converted to any form
 15 of court-ordered community service; amending s. 985.032,
 16 F.S.; providing for assessment of costs of prosecution
 17 against a juvenile who has been adjudicated delinquent or
 18 has adjudication of delinquency withheld; providing an
 19 effective date.

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 21 Be It Enacted by the Legislature of the State of Florida:

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 23 Section 1. Subsections (5) and (6) of section 28.246,
 24 Florida Statutes, are amended to read:
 25 28.246 Payment of court-related fees, charges, and costs;
 26 partial payments; distribution of funds.—
 27 (5) When receiving partial payment of fees, service
 28 charges, court costs, and fines, clerks shall distribute funds

29 | according to the following order of priority:

30 | (a) That portion of fees, service charges, court costs,
 31 | and fines to be remitted to the state for deposit into the
 32 | General Revenue Fund and that portion of costs of prosecution to
 33 | be remitted to the State Attorneys Revenue Trust Fund.

34 | (b) That portion of fees, service charges, court costs,
 35 | and fines which are required to be retained by the clerk of the
 36 | court or deposited into the Clerks of the Court Trust Fund
 37 | within the Justice Administrative Commission.

38 | (c) Except as provided in paragraph (a), that portion of
 39 | fees, service charges, court costs, and fines payable to state
 40 | trust funds, allocated on a pro rata basis among the various
 41 | authorized funds if the total collection amount is insufficient
 42 | to fully fund all such funds as provided by law.

43 | (d) That portion of fees, service charges, court costs,
 44 | and fines payable to counties, municipalities, or other local
 45 | entities, allocated on a pro rata basis among the various
 46 | authorized recipients if the total collection amount is
 47 | insufficient to fully fund all such recipients as provided by
 48 | law.

49 |
 50 | To offset processing costs, clerks may impose either a per-month
 51 | service charge pursuant to s. 28.24(26) (b) or a one-time
 52 | administrative processing service charge at the inception of the
 53 | payment plan pursuant to s. 28.24(26) (c).

54 | (6) A clerk of court shall pursue the collection of any
 55 | fees, service charges, fines, court costs, costs of prosecution,
 56 | and liens for the payment of attorney's fees and costs pursuant

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57 | to s. 938.29 which remain unpaid after 90 days by referring the
58 | account to a private attorney who is a member in good standing
59 | of The Florida Bar or collection agent who is registered and in
60 | good standing pursuant to chapter 559. In pursuing the
61 | collection of such unpaid financial obligations through a
62 | private attorney or collection agent, the clerk of the court
63 | must have attempted to collect the unpaid amount through a
64 | collection court, collections docket, or other collections
65 | process, if any, established by the court, find this to be cost-
66 | effective and follow any applicable procurement practices. The
67 | collection fee, including any reasonable attorney's fee, paid to
68 | any attorney or collection agent retained by the clerk may be
69 | added to the balance owed in an amount not to exceed 40 percent
70 | of the amount owed at the time the account is referred to the
71 | attorney or agent for collection. The clerk shall give the
72 | private attorney or collection agent the application for the
73 | appointment of court-appointed counsel regardless of whether the
74 | court file is otherwise confidential from disclosure.

75 | Section 2. Section 903.286, Florida Statutes, is amended
76 | to read:

77 | 903.286 Return of cash bond; requirement to withhold
78 | unpaid fines, fees, court costs; cash bond forms.—

79 | (1) Notwithstanding s. 903.31(2), the clerk of the court
80 | shall withhold from the return of a cash bond posted on behalf
81 | of a criminal defendant by a person other than a bail bond agent
82 | licensed pursuant to chapter 648 sufficient funds to pay any
83 | unpaid costs of prosecution, court fees, court costs, and
84 | criminal penalties. If sufficient funds are not available to pay

85 all unpaid costs of prosecution, court fees, court costs, and
 86 criminal penalties, the clerk of the court shall immediately
 87 obtain payment from the defendant or enroll the defendant in a
 88 payment plan pursuant to s. 28.246.

89 (2) All cash bond forms used in conjunction with the
 90 requirements of s. 903.09 must prominently display a notice
 91 explaining that all funds are subject to forfeiture and
 92 withholding by the clerk of the court for the payment of costs
 93 of prosecution, court fees, court costs, and criminal penalties
 94 on behalf of the criminal defendant regardless of who posted the
 95 funds.

96 Section 3. Subsections (1) and (2) of section 938.27,
 97 Florida Statutes, are amended to read:

98 938.27 Judgment for costs on conviction.—

99 (1) In all criminal and violation-of-probation or
 100 community-control cases, convicted persons and persons whose
 101 cases are disposed of pursuant to s. 948.08(6)(c) or s.
 102 948.16(2) are liable for payment of the costs of prosecution,
 103 including investigative costs incurred by law enforcement
 104 agencies, by fire departments for arson investigations, and by
 105 investigations of the Department of Financial Services or the
 106 Office of Financial Regulation of the Financial Services
 107 Commission, if requested by such agencies. The court shall
 108 include these costs in every judgment rendered against the
 109 convicted person. For purposes of this section, "convicted"
 110 means a determination of guilt, or of violation of probation or
 111 community control, which is a result of a plea, trial, or
 112 violation proceeding, regardless of whether adjudication is

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113 withheld.

114 (2) (a) Notwithstanding any other provision of law, court
115 rule, or administrative order, the court shall impose the costs
116 of prosecution and investigation. Costs of prosecution and
117 investigation shall not be converted to any form of court-
118 ordered community service in lieu of this statutory financial
119 obligation.

120 (b) ~~(a)~~ The court shall impose the costs of prosecution and
121 investigation notwithstanding the defendant's present ability to
122 pay. The court shall require the defendant to pay the costs
123 within a specified period or in specified installments.

124 (c) ~~(b)~~ The end of such period or the last such installment
125 shall not be later than:

126 1. The end of the period of probation or community
127 control, if probation or community control is ordered;

128 2. Five years after the end of the term of imprisonment
129 imposed, if the court does not order probation or community
130 control; or

131 3. Five years after the date of sentencing in any other
132 case.

133

134 However, in no event shall the obligation to pay any unpaid
135 amounts expire if not paid in full within the period specified
136 in this paragraph.

137 (d) ~~(e)~~ If not otherwise provided by the court under this
138 section, costs shall be paid immediately.

139 Section 4. Section 985.032, Florida Statutes, is amended
140 to read:

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141 985.032 Legal representation for delinquency cases.—

142 (1) For cases arising under this chapter, the state
143 attorney shall represent the state.

144 (2) A juvenile who has been adjudicated delinquent or has
145 adjudication of delinquency withheld shall be assessed costs of
146 prosecution as provided in s. 938.27.

147 Section 5. This act shall take effect July 1, 2011.