

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 allocation of funds in certain circumstances; providing
6 for collection of costs of prosecution; amending s.
7 903.286, F.S.; providing for the withholding of unpaid
8 costs of prosecution from the return of a cash bond posted
9 on behalf of a criminal defendant; requiring a notice on
10 bond forms of such possible withholding; amending s.
11 938.27, F.S.; providing liability for the cost of
12 prosecution for persons whose cases are disposed of under
13 specified provisions; requiring courts to impose the costs
14 of prosecution and investigation; requiring that costs of
15 prosecution and investigation not be converted to any form
16 of court-ordered community service; clarifying the types
17 of cases from which the clerk of the court must collect
18 and dispense cost payments; requiring the clerk of the
19 court to assign the first of any fees or costs collected
20 as payment for costs of prosecution; amending s. 985.032,
21 F.S.; providing for assessment of costs of prosecution
22 against a juvenile who has been adjudicated delinquent or
23 has adjudication of delinquency withheld; providing an
24 effective date.

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

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28 Section 1. Subsections (5) and (6) of section 28.246,

29 Florida Statutes, are amended to read:

30 28.246 Payment of court-related fees, charges, costs of
 31 prosecution, and costs; partial payments; distribution of
 32 funds.—

33 (5) When receiving partial payment of fees, service
 34 charges, court costs, costs of prosecution, and fines, clerks
 35 shall distribute funds according to the following order of
 36 priority:

37 (a) That portion of fees, service charges, court costs,
 38 and fines to be remitted to the state for deposit into the
 39 General Revenue Fund and that portion of the costs of
 40 prosecution to be remitted to the state shall be deposited into
 41 the State Attorneys Revenue Trust Fund, allocated on a pro rata
 42 basis among the authorized funds if the total collection amount
 43 is insufficient to fully fund such funds as provided by law.

44 (b) That portion of fees, service charges, court costs,
 45 and fines which are required to be retained by the clerk of the
 46 court or deposited into the Clerks of the Court Trust Fund
 47 within the Justice Administrative Commission.

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

53 (d) That portion of fees, service charges, court costs,
 54 and fines payable to counties, municipalities, or other local
 55 entities, allocated on a pro rata basis among the various
 56 authorized recipients if the total collection amount is

CS/HB 1279

2011

57 | insufficient to fully fund all such recipients as provided by
58 | law.

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

64 | (6) A clerk of court shall pursue the collection of any
65 | fees, service charges, fines, court costs, costs of prosecution,
66 | and liens for the payment of attorney's fees and costs pursuant
67 | to s. 938.29 which remain unpaid after 90 days by referring the
68 | account to a private attorney who is a member in good standing
69 | of The Florida Bar or collection agent who is registered and in
70 | good standing pursuant to chapter 559. In pursuing the
71 | collection of such unpaid financial obligations through a
72 | private attorney or collection agent, the clerk of the court
73 | must have attempted to collect the unpaid amount through a
74 | collection court, collections docket, or other collections
75 | process, if any, established by the court, find this to be cost-
76 | effective and follow any applicable procurement practices. The
77 | collection fee, including any reasonable attorney's fee, paid to
78 | any attorney or collection agent retained by the clerk may be
79 | added to the balance owed in an amount not to exceed 40 percent
80 | of the amount owed at the time the account is referred to the
81 | attorney or agent for collection. The clerk shall give the
82 | private attorney or collection agent the application for the
83 | appointment of court-appointed counsel regardless of whether the
84 | court file is otherwise confidential from disclosure.

85 Section 2. Section 903.286, Florida Statutes, is amended
 86 to read:

87 903.286 Return of cash bond; requirement to withhold
 88 unpaid fines, fees, court costs; cash bond forms.—

89 (1) Notwithstanding s. 903.31(2), the clerk of the court
 90 shall withhold from the return of a cash bond posted on behalf
 91 of a criminal defendant by a person other than a bail bond agent
 92 licensed pursuant to chapter 648 sufficient funds to pay any
 93 unpaid costs of prosecution, court fees, court costs, and
 94 criminal penalties. If sufficient funds are not available to pay
 95 all unpaid costs of prosecution, court fees, court costs, and
 96 criminal penalties, the clerk of the court shall immediately
 97 obtain payment from the defendant or enroll the defendant in a
 98 payment plan pursuant to s. 28.246.

99 (2) All cash bond forms used in conjunction with the
 100 requirements of s. 903.09 must prominently display a notice
 101 explaining that all funds are subject to forfeiture and
 102 withholding by the clerk of the court for the payment of costs
 103 of prosecution, court fees, court costs, and criminal penalties
 104 on behalf of the criminal defendant regardless of who posted the
 105 funds.

106 Section 3. Section 938.27, Florida Statutes, is amended to
 107 read:

108 938.27 Judgment for costs on conviction.—

109 (1) In all criminal and violation-of-probation or
 110 community-control cases, convicted persons and persons whose
 111 cases are disposed of pursuant to s. 948.08(6)(c) or s.
 112 948.16(2) are liable for payment of the costs of prosecution,

113 including investigative costs incurred by law enforcement
 114 agencies, by fire departments for arson investigations, and by
 115 investigations of the Department of Financial Services or the
 116 Office of Financial Regulation of the Financial Services
 117 Commission, if requested by such agencies. The court shall
 118 include these costs in every judgment rendered against the
 119 convicted person. For purposes of this section, "convicted"
 120 means a determination of guilt, or of violation of probation or
 121 community control, which is a result of a plea, trial, or
 122 violation proceeding, regardless of whether adjudication is
 123 withheld.

124 (2) (a) Notwithstanding any other provision of law, court
 125 rule, or administrative order, the court shall impose the costs
 126 of prosecution and investigation. Costs of prosecution and
 127 investigation shall not be converted to any form of court-
 128 ordered community service in lieu of this statutory financial
 129 obligation.

130 (b) (a) The court shall impose the costs of prosecution and
 131 investigation notwithstanding the defendant's present ability to
 132 pay. The court shall require the defendant to pay the costs
 133 within a specified period or in specified installments.

134 (c) (b) The end of such period or the last such installment
 135 shall not be later than:

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

138 2. Five years after the end of the term of imprisonment
 139 imposed, if the court does not order probation or community
 140 control; or

141 3. Five years after the date of sentencing in any other
142 case.

143
144 However, in no event shall the obligation to pay any unpaid
145 amounts expire if not paid in full within the period specified
146 in this paragraph.

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

149 (3) If a defendant is placed on probation or community
150 control, payment of any costs under this section shall be a
151 condition of such probation or community control. The court may
152 revoke probation or community control if the defendant fails to
153 pay these costs.

154 (4) Any dispute as to the proper amount or type of costs
155 shall be resolved by the court by the preponderance of the
156 evidence. The burden of demonstrating the amount of costs
157 incurred is on the state attorney. The burden of demonstrating
158 the financial resources of the defendant and the financial needs
159 of the defendant is on the defendant. The burden of
160 demonstrating such other matters as the court deems appropriate
161 is upon the party designated by the court as justice requires.

162 (5) Any default in payment of costs may be collected by
163 any means authorized by law for enforcement of a judgment.

164 (6) The clerk of the court shall collect and dispense cost
165 payments in any case, regardless of whether the disposition of
166 the case takes place before the judge in open court or in any
167 other manner provided by law.

168 (7) Investigative costs that are recovered shall be
169 returned to the appropriate investigative agency that incurred
170 the expense. Such costs include actual expenses incurred in
171 conducting the investigation and prosecution of the criminal
172 case; however, costs may also include the salaries of permanent
173 employees. Any investigative costs recovered on behalf of a
174 state agency must be remitted to the Department of Revenue for
175 deposit in the agency operating trust fund, and a report of the
176 payment must be sent to the agency, except that any
177 investigative costs recovered on behalf of the Department of Law
178 Enforcement shall be deposited in the department's Forfeiture
179 and Investigative Support Trust Fund under s. 943.362.

180 (8) Costs for the state attorney shall be set in all cases
181 at no less than \$50 per case when a misdemeanor or criminal
182 traffic offense is charged and no less than \$100 per case when a
183 felony offense is charged, including a proceeding in which the
184 underlying offense is a violation of probation or community
185 control. The court may set a higher amount upon a showing of
186 sufficient proof of higher costs incurred. Costs recovered on
187 behalf of the state attorney under this section shall be
188 deposited into the State Attorneys Revenue Trust Fund to be used
189 during the fiscal year in which the funds are collected, or in
190 any subsequent fiscal year, for actual expenses incurred in
191 investigating and prosecuting criminal cases, which may include
192 the salaries of permanent employees, or for any other purpose
193 authorized by the Legislature.

CS/HB 1279

2011

194 (9) Notwithstanding any law, court rule, or administrative
195 order, the clerk shall assign the first of any fees or costs
196 paid by a defendant as payment of the costs of prosecution.

197 Section 4. Section 985.032, Florida Statutes, is amended
198 to read:

199 985.032 Legal representation for delinquency cases.—

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

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

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