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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/12/2011	.	
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The Committee on Criminal Justice (Dean) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 28.246, Florida Statutes, is amended to read:

28.246 Payment of court-related fees, charges, ~~and costs,~~ costs of prosecution, and costs of defense; partial payments; distribution of funds.—

(1) The clerk of the circuit court shall report the following information to the Legislature and the Florida Clerks of Court Operations Corporation on a form developed by the



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13 Department of Financial Services:

14 (a) The total amount of mandatory fees, service charges,
15 and costs; the total amount actually assessed; the total amount
16 discharged, waived, or otherwise not assessed; and the total
17 amount collected.

18 (b) The amount of discretionary fees, service charges, and
19 costs assessed; the total amount discharged; and the total
20 amount collected.

21 (c) The total amount of mandatory fines and other monetary
22 penalties; the total amount assessed; the total amount
23 discharged, waived, or otherwise not assessed; and the total
24 amount collected.

25 (d) The amount of discretionary fines and other monetary
26 penalties assessed; the amount discharged; and the total amount
27 collected.

28
29 If provided to the clerk of court by the judge, the clerk, in
30 reporting the amount assessed, shall separately identify the
31 amount assessed pursuant to s. 938.30 as community service;
32 assessed by reducing the amount to a judgment or lien; satisfied
33 by time served; or other. The form developed by the Chief
34 Financial Officer shall include separate entries for recording
35 these amounts. The clerk shall submit the report on an annual
36 basis 60 days after the end of the county fiscal year.

37 (2) The clerk of the circuit court shall establish and
38 maintain a system of accounts receivable for court-related fees,
39 charges, and costs.

40 (3) Court costs, fines, and other dispositional assessments
41 shall be enforced by order of the courts, collected by the



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42 clerks of the circuit and county courts, and disbursed in
43 accordance with authorizations and procedures as established by
44 general law.

45 (4) The clerk of the circuit court shall accept partial
46 payments for court-related fees, service charges, costs, and
47 fines in accordance with the terms of an established payment
48 plan. An individual seeking to defer payment of fees, service
49 charges, costs, or fines imposed by operation of law or order of
50 the court under any provision of general law shall apply to the
51 clerk for enrollment in a payment plan. The clerk shall enter
52 into a payment plan with an individual who the court determines
53 is indigent for costs. A monthly payment amount, calculated
54 based upon all fees and all anticipated costs, is presumed to
55 correspond to the person's ability to pay if the amount does not
56 exceed 2 percent of the person's annual net income, as defined
57 in s. 27.52(1), divided by 12. The court may review the
58 reasonableness of the payment plan.

59 (5) When receiving partial payment of fees, service
60 charges, court costs, costs of prosecution, costs of defense,
61 and fines, clerks shall distribute funds according to the
62 following order of priority:

63 (a) That portion of fees, service charges, court costs, and
64 fines to be remitted to the state for deposit into the General
65 Revenue Fund.

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

70 (c) That portion of the costs of prosecution to be remitted



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71 to the state shall be deposited into the State Attorneys Revenue
72 Trust Fund, allocated on a pro rata basis among the authorized
73 funds if the total collection amount is insufficient to fully
74 fund such funds as provided by law.

75 (d) That portion of the costs of defense to be remitted to
76 the state shall be deposited into the Indigent Criminal Defense
77 Trust Fund, allocated on a pro rata basis among the authorized
78 funds if the total collection amount is insufficient to fully
79 fund such funds as provided by law.

80 (e) ~~(e)~~ That portion of fees, service charges, court costs,
81 and fines payable to state trust funds, allocated on a pro rata
82 basis among the various authorized funds if the total collection
83 amount is insufficient to fully fund all such funds as provided
84 by law.

85 (f) ~~(d)~~ That portion of fees, service charges, court costs,
86 and fines payable to counties, municipalities, or other local
87 entities, allocated on a pro rata basis among the various
88 authorized recipients if the total collection amount is
89 insufficient to fully fund all such recipients as provided by
90 law.

91
92 To offset processing costs, clerks may impose either a per-month
93 service charge pursuant to s. 28.24(26) (b) or a one-time
94 administrative processing service charge at the inception of the
95 payment plan pursuant to s. 28.24(26) (c).

96 (6) A clerk of court shall pursue the collection of any
97 fees, service charges, fines, costs of prosecution, costs of
98 defense, court costs, and liens for the payment of attorney's
99 fees and costs pursuant to s. 938.29 which remain unpaid after



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100 90 days by referring the account to a private attorney who is a
101 member in good standing of The Florida Bar or collection agent
102 who is registered and in good standing pursuant to chapter 559.
103 In pursuing the collection of ~~such~~ unpaid financial obligations
104 through a private attorney or collection agent, the clerk of the
105 court must have attempted to collect the unpaid amount through a
106 collection court, collections docket, or other collections
107 process, if any, established by the court, find this to be cost-
108 effective and follow any applicable procurement practices. The
109 collection fee, including any reasonable attorney's fee, paid to
110 any attorney or collection agent retained by the clerk may be
111 added to the balance owed in an amount not to exceed 40 percent
112 of the amount owed at the time the account is referred to the
113 attorney or agent for collection. The clerk shall give the
114 private attorney or collection agent the application for the
115 appointment of court-appointed counsel regardless of whether the
116 court file is otherwise confidential from disclosure.

117 Section 2. Section 903.286, Florida Statutes, is amended to
118 read:

119 903.286 Return of cash bond; requirement to withhold unpaid
120 fines, fees, court costs, costs of prosecution, costs of
121 defense; cash bond forms.—

122 (1) Notwithstanding s. 903.31(2), the clerk of the court
123 shall withhold from the return of a cash bond posted on behalf
124 of a criminal defendant by a person other than a bail bond agent
125 licensed pursuant to chapter 648 sufficient funds to pay any
126 unpaid court fees, court costs, costs of prosecution, costs of
127 defense, and criminal penalties. If sufficient funds are not
128 available to pay all unpaid court fees, court costs, costs of



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129 prosecution, costs of defense, and criminal penalties, the clerk
130 of the court shall immediately obtain payment from the defendant
131 or enroll the defendant in a payment plan pursuant to s. 28.246.

132 (2) All cash bond forms used in conjunction with the
133 requirements of s. 903.09 must prominently display a notice
134 explaining that all funds are subject to forfeiture and
135 withholding by the clerk of the court for the payment of court
136 fees, court costs, costs of prosecution, costs of defense, and
137 criminal penalties on behalf of the criminal defendant
138 regardless of who posted the funds.

139 Section 3. Section 938.27, Florida Statutes, is amended to
140 read:

141 938.27 Judgment for costs on conviction or diversion.—

142 (1) In all criminal and violation-of-probation or
143 community-control cases, convicted persons and persons whose
144 cases are disposed of pursuant to s. 948.08 or s. 948.16 are
145 liable for payment of the costs of prosecution, costs of
146 defense, including investigative costs incurred by law
147 enforcement agencies, by fire departments for arson
148 investigations, and by investigations of the Department of
149 Financial Services or the Office of Financial Regulation of the
150 Financial Services Commission, if requested by such agencies.
151 The court shall include these costs in every judgment rendered
152 against the convicted person. For purposes of this section,
153 “convicted” means a determination of guilt, or of violation of
154 probation or community control, which is a result of a plea,
155 trial, or violation proceeding, regardless of whether
156 adjudication is withheld.

157 (2) Notwithstanding any other law, court rule, or



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158 administrative order, the court shall impose the costs of
159 prosecution, defense, and investigation on the defendant. The
160 costs of prosecution, defense, and investigation may not be
161 converted to any form of court-ordered community service in lieu
162 of this financial obligation.

163 (a) The court shall impose the costs of prosecution,
164 defense, and investigation notwithstanding the defendant's
165 present ability to pay. The court shall require the defendant to
166 pay the costs within a specified period or in specified
167 installments.

168 (b) The end of such period or the last such installment may
169 ~~shall~~ not be later than:

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

172 2. Five years after the end of the term of imprisonment
173 imposed, if the court does not order probation or community
174 control; or

175 3. Five years after the date of sentencing in any other
176 case.

177
178 However, in no event shall the obligation to pay any unpaid
179 amounts expire if not paid in full within the period specified
180 in this paragraph.

181 (c) If not otherwise provided by the court under this
182 section, costs shall be paid immediately.

183 (3) If a defendant is placed on probation or community
184 control, payment of any costs under this section shall be a
185 condition of such probation or community control. The court may
186 revoke probation or community control if the defendant fails to



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187 pay these costs.

188 (4) Any dispute as to the proper amount or type of costs
189 shall be resolved by the court by the preponderance of the
190 evidence. The burden of demonstrating the amount of costs
191 incurred is on the state attorney. The burden of demonstrating
192 the financial resources of the defendant and the financial needs
193 of the defendant is on the defendant. The burden of
194 demonstrating such other matters as the court deems appropriate
195 is upon the party designated by the court as justice requires.

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

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

202 (7) Investigative costs that are recovered shall be
203 returned to the appropriate investigative agency that incurred
204 the expense. Such costs include actual expenses incurred in
205 conducting the investigation and prosecution of the criminal
206 case; however, costs may also include the salaries of permanent
207 employees. Any investigative costs recovered on behalf of a
208 state agency must be remitted to the Department of Revenue for
209 deposit in the agency operating trust fund, and a report of the
210 payment must be sent to the agency, except that any
211 investigative costs recovered on behalf of the Department of Law
212 Enforcement shall be deposited in the department's Forfeiture
213 and Investigative Support Trust Fund under s. 943.362.

214 (8) Costs for the state attorney shall be set in all cases
215 at no less than \$50 per case when a misdemeanor or criminal



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216 traffic offense is charged and no less than \$100 per case when a
217 felony offense is charged, including a proceeding in which the
218 underlying offense is a violation of probation or community
219 control. The court may set a higher amount upon a showing of
220 sufficient proof of higher costs incurred. Costs recovered on
221 behalf of the state attorney under this section shall be
222 deposited into the State Attorneys Revenue Trust Fund to be used
223 during the fiscal year in which the funds are collected, or in
224 any subsequent fiscal year, for actual expenses incurred in
225 investigating and prosecuting criminal cases, which may include
226 the salaries of permanent employees, or for any other purpose
227 authorized by the Legislature.

228 Section 4. Section 985.032, Florida Statutes, is amended to
229 read:

230 985.032 Legal representation for delinquency cases.—

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

233 (2) A juvenile who is adjudicated delinquent or who has
234 adjudication of delinquency withheld shall be assessed the costs
235 of prosecution as provided in s. 938.27 and the costs of defense
236 as provided in s. 938.29.

237 Section 5. For the purpose of incorporating the amendment
238 made by this act to s. 28.246, Florida Statutes, in a reference
239 thereto, subsection (1) of s. 34.191, Florida Statutes, is
240 reenacted to read:

241 34.191 Fines and forfeitures; dispositions.—

242 (1) All fines and forfeitures arising from offenses tried
243 in the county court shall be collected and accounted for by the
244 clerk of the court and, other than the charge provided in s.



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245 318.1215, disbursed in accordance with ss. 28.2402, 34.045,
246 142.01, and 142.03 and subject to the provisions of s. 28.246(5)
247 and (6). Notwithstanding the provisions of this section, all
248 fines and forfeitures arising from operation of the provisions
249 of s. 318.1215 shall be disbursed in accordance with that
250 section.

251 Section 6. This act shall take effect July 1, 2011.

252
253 ===== T I T L E A M E N D M E N T =====

254 And the title is amended as follows:

255
256 Delete everything before the enacting clause
257 and insert:

258 A bill to be entitled
259 An act relating to the costs of prosecution and costs
260 of defense; amending s. 28.246, F.S.; requiring the
261 clerk of the court to distribute the funds received
262 from a defendant according to a specified order of
263 priority when the defendant makes a partial payment to
264 the clerk of costs of prosecution and defense;
265 requiring that a portion of the costs of prosecution
266 be deposited into the State Attorneys Revenue Trust
267 Fund; requiring that a portion of the costs of defense
268 be deposited into the Indigent Criminal Defense Trust
269 Fund; amending s. 903.286, F.S.; requiring the clerk
270 of the court to withhold from the return of a cash
271 bond sufficient funds to pay unpaid costs, including
272 the costs of prosecution and defense; amending s.
273 938.27, F.S.; imposing certain costs on persons whose



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274 cases are disposed of under a pretrial intervention
275 program or pretrial substance abuse intervention
276 program; requiring the court to impose the costs of
277 prosecution, defense, and investigation on the
278 defendant; prohibiting the court from converting such
279 costs to court-ordered community service; amending s.
280 985.032, F.S.; requiring that a juvenile who is
281 adjudicated delinquent or has adjudication of
282 delinquency withheld be assessed costs of prosecution
283 and defense; reenacting s. 34.191(1), F.S., relating
284 to the disposition of fines and forfeitures, to
285 incorporate the amendment made to s. 28.246, F.S., in
286 a reference thereto; providing an effective date.