



150788

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
04/26/2011	.	
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The Committee on Judiciary (Thrasher) recommended the following:

1 **Senate Substitute for Amendment (234536) (with title**
2 **amendment)**

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4
5 Delete everything after the enacting clause
6 and insert:

7 Section 1. Section 903.286, Florida Statutes, is amended to
8 read:

9 903.286 Return of cash bond; requirement to withhold unpaid
10 fines, fees, court costs; cash bond forms.—

11 (1) Notwithstanding s. 903.31(2), the clerk of the court
12 shall withhold from the return of a cash bond posted on behalf
13 of a criminal defendant by a person other than a bail bond agent



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14 licensed pursuant to chapter 648 sufficient funds to pay any
15 unpaid costs of prosecution, costs of representation as provided
16 by s. 27.52, court fees, court costs, and criminal penalties. If
17 sufficient funds are not available to pay all unpaid costs of
18 prosecution, costs of representation as provided by s. 27.52,
19 court fees, court costs, and criminal penalties, the clerk of
20 the court shall immediately obtain payment from the defendant or
21 enroll the defendant in a payment plan pursuant to s. 28.246.

22 (2) All cash bond forms used in conjunction with the
23 requirements of s. 903.09 must prominently display a notice
24 explaining that all funds are subject to forfeiture and
25 withholding by the clerk of the court for the payment of costs
26 of prosecution, costs of representation as provided by s. 27.52,
27 court fees, court costs, and criminal penalties on behalf of the
28 criminal defendant regardless of who posted the funds.

29 Section 2. Section 938.27, Florida Statutes, is amended to
30 read:

31 938.27 Judgment for costs on conviction.—

32 (1) In all criminal and violation-of-probation or
33 community-control cases, convicted persons and persons whose
34 cases are disposed of pursuant to s. 948.08(6)(c) or s.
35 948.16(2) are liable for payment of the costs of prosecution,
36 including investigative costs incurred by law enforcement
37 agencies, by fire departments for arson investigations, and by
38 investigations of the Department of Financial Services or the
39 Office of Financial Regulation of the Financial Services
40 Commission, if requested by such agencies. The court shall
41 include these costs in every judgment rendered against the
42 convicted person. For purposes of this section, "convicted"



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43 means a determination of guilt, or of violation of probation or
44 community control, which is a result of a plea, trial, or
45 violation proceeding, regardless of whether adjudication is
46 withheld.

47 (2) (a) Notwithstanding any other provision of law, court
48 rule, or administrative order, the court shall impose the costs
49 of prosecution and investigation. Costs of prosecution and
50 investigation shall not be converted to any form of court-
51 ordered community service in lieu of this statutory financial
52 obligation.

53 (b) (a) The court shall impose the costs of prosecution and
54 investigation notwithstanding the defendant's present ability to
55 pay. The court shall require the defendant to pay the costs
56 within a specified period or in specified installments.

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

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

61 2. Five years after the end of the term of imprisonment
62 imposed, if the court does not order probation or community
63 control; or

64 3. Five years after the date of sentencing in any other
65 case.

66
67 However, in no event shall the obligation to pay any unpaid
68 amounts expire if not paid in full within the period specified
69 in this paragraph.

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



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72 (3) If a defendant is placed on probation or community
73 control, payment of any costs under this section shall be a
74 condition of such probation or community control. The court may
75 revoke probation or community control if the defendant fails to
76 pay these costs.

77 (4) Any dispute as to the proper amount or type of costs
78 shall be resolved by the court by the preponderance of the
79 evidence. The burden of demonstrating the amount of costs
80 incurred is on the state attorney. The burden of demonstrating
81 the financial resources of the defendant and the financial needs
82 of the defendant is on the defendant. The burden of
83 demonstrating such other matters as the court deems appropriate
84 is upon the party designated by the court as justice requires.

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

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

91 (7) Investigative costs that are recovered shall be
92 returned to the appropriate investigative agency that incurred
93 the expense. Such costs include actual expenses incurred in
94 conducting the investigation and prosecution of the criminal
95 case; however, costs may also include the salaries of permanent
96 employees. Any investigative costs recovered on behalf of a
97 state agency must be remitted to the Department of Revenue for
98 deposit in the agency operating trust fund, and a report of the
99 payment must be sent to the agency, except that any
100 investigative costs recovered on behalf of the Department of Law



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101 Enforcement shall be deposited in the department's Forfeiture
102 and Investigative Support Trust Fund under s. 943.362.

103 (8) Costs for the state attorney shall be set in all cases
104 at no less than \$50 per case when a misdemeanor or criminal
105 traffic offense is charged and no less than \$100 per case when a
106 felony offense is charged, including a proceeding in which the
107 underlying offense is a violation of probation or community
108 control. The court may set a higher amount upon a showing of
109 sufficient proof of higher costs incurred. Costs recovered on
110 behalf of the state attorney under this section shall be
111 deposited into the State Attorneys Revenue Trust Fund to be used
112 during the fiscal year in which the funds are collected, or in
113 any subsequent fiscal year, for actual expenses incurred in
114 investigating and prosecuting criminal cases, which may include
115 the salaries of permanent employees, or for any other purpose
116 authorized by the Legislature.

117 Section 3. Paragraph (a) of subsection (1) of section
118 938.29, Florida Statutes, is amended to read:

119 938.29 Legal assistance; lien for payment of attorney's
120 fees or costs.—

121 (1) (a) A defendant who is convicted of a criminal act or a
122 violation of probation or community control or whose case is
123 disposed of pursuant to s. 948.08(6)(c) or s. 948.16(2) and who
124 has received the assistance of the public defender's office, a
125 special assistant public defender, the office of criminal
126 conflict and civil regional counsel, or a private conflict
127 attorney, or who has received due process services after being
128 found indigent for costs under s. 27.52, shall be liable for
129 payment of the assessed application fee under s. 27.52 and



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130 attorney's fees and costs. Attorney's fees and costs shall be
131 set in all cases at no less than \$50 per case when a misdemeanor
132 or criminal traffic offense is charged and no less than \$100 per
133 case when a felony offense is charged, including a proceeding in
134 which the underlying offense is a violation of probation or
135 community control. The court may set a higher amount upon a
136 showing of sufficient proof of higher fees or costs incurred.
137 For purposes of this section, "convicted" means a determination
138 of guilt, or of violation of probation or community control,
139 which is a result of a plea, trial, or violation proceeding,
140 regardless of whether adjudication is withheld. The court shall
141 include these fees and costs in every judgment rendered against
142 the convicted person.

143 Section 4. Section 985.032, Florida Statutes, is amended to
144 read:

145 985.032 Legal representation for delinquency cases.—

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

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

151 Section 5. This act shall take effect July 1, 2011.
152

153 ===== T I T L E A M E N D M E N T =====

154 And the title is amended as follows:

155 Delete everything before the enacting clause
156 and insert:

157 A bill to be entitled

158 An act relating to costs of prosecution; amending s.



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159 903.286, F.S.; providing for the withholding of unpaid
160 costs of prosecution and representation from the
161 return of a cash bond posted on behalf of a criminal
162 defendant; requiring a notice on bond forms of such
163 possible withholding; amending s. 938.27, F.S.;
164 providing liability for the cost of prosecution for
165 persons whose cases are disposed of under specified
166 provisions; requiring courts to impose the costs of
167 prosecution and investigation; requiring that costs of
168 prosecution and investigation not be converted to any
169 form of court-ordered community service; clarifying
170 the types of cases from which the clerk of the court
171 must collect and dispense cost payments; amending s.
172 938.29, F.S.; providing liability for attorney's fees
173 and costs for persons whose cases are disposed of
174 under specified provisions; amending s. 985.032, F.S.;
175 providing for assessment of costs of prosecution
176 against a juvenile who has been adjudicated delinquent
177 or has adjudication of delinquency withheld; providing
178 an effective date.