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LEGISLATIVE ACTION

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

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

(1) Notwithstanding s. 903.31(2), the clerk of the court
shall withhold from the return of a cash bond posted on behalf
of a criminal defendant by a person other than a bail bond agent
licensed pursuant to chapter 648 sufficient funds to pay any
unpaid costs of prosecution, court fees, court costs, and



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14 criminal penalties. If sufficient funds are not available to pay
15 all unpaid costs of prosecution, court fees, court costs, and
16 criminal penalties, the clerk of the court shall immediately
17 obtain payment from the defendant or enroll the defendant in a
18 payment plan pursuant to s. 28.246.

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

26 Section 2. Section 938.27, Florida Statutes, is amended to
27 read:

28 938.27 Judgment for costs on conviction.—

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



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43 withheld.

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

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

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

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

58 2. Five years after the end of the term of imprisonment
59 imposed, if the court does not order probation or community
60 control; or

61 3. Five years after the date of sentencing in any other
62 case.

63
64 However, in no event shall the obligation to pay any unpaid
65 amounts expire if not paid in full within the period specified
66 in this paragraph.

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

69 (3) If a defendant is placed on probation or community
70 control, payment of any costs under this section shall be a
71 condition of such probation or community control. The court may



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72 revoke probation or community control if the defendant fails to
73 pay these costs.

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

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

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

88 (7) Investigative costs that are recovered shall be
89 returned to the appropriate investigative agency that incurred
90 the expense. Such costs include actual expenses incurred in
91 conducting the investigation and prosecution of the criminal
92 case; however, costs may also include the salaries of permanent
93 employees. Any investigative costs recovered on behalf of a
94 state agency must be remitted to the Department of Revenue for
95 deposit in the agency operating trust fund, and a report of the
96 payment must be sent to the agency, except that any
97 investigative costs recovered on behalf of the Department of Law
98 Enforcement shall be deposited in the department's Forfeiture
99 and Investigative Support Trust Fund under s. 943.362.

100 (8) Costs for the state attorney shall be set in all cases



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

114 Section 3. Section 985.032, Florida Statutes, is amended to
115 read:

116 985.032 Legal representation for delinquency cases.—

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

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

122 Section 4. This act shall take effect July 1, 2011.

123
124 ===== T I T L E A M E N D M E N T =====

125 And the title is amended as follows:

126 Delete everything before the enacting clause
127 and insert:

128 A bill to be entitled

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



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130 903.286, F.S.; providing for the withholding of unpaid
131 costs of prosecution from the return of a cash bond
132 posted on behalf of a criminal defendant; requiring a
133 notice on bond forms of such possible withholding;
134 amending s. 938.27, F.S.; providing liability for the
135 cost of prosecution for persons whose cases are
136 disposed of under specified provisions; requiring
137 courts to impose the costs of prosecution and
138 investigation; requiring that costs of prosecution and
139 investigation not be converted to any form of court-
140 ordered community service; clarifying the types of
141 cases from which the clerk of the court must collect
142 and dispense cost payments; amending s. 985.032, F.S.;
143 providing for assessment of costs of prosecution
144 against a juvenile who has been adjudicated delinquent
145 or has adjudication of delinquency withheld; providing
146 an effective date.