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LEGISLATIVE ACTION

Senate	.	House
Comm: RE	.	
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           Delete everything after the enacting clause  
5 and insert:

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

8           903.286 Return of cash bond; requirement to withhold unpaid  
9 fines, fees, court costs; cash bond forms.-

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



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

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

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

30 938.27 Judgment for costs on conviction.—

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



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

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

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

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

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

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

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

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

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

71 (3) If a defendant is placed on probation or community



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

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

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

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

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



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101 and Investigative Support Trust Fund under s. 943.362.

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

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

118 938.29 Legal assistance; lien for payment of attorney's  
119 fees or costs.—

120 (1) (a) A defendant who is convicted of a criminal act or a  
121 violation of probation or community control or whose case is  
122 disposed of pursuant to s. 948(6)(c) or s. 948.16(2) and who has  
123 received the assistance of the public defender's office, a  
124 special assistant public defender, the office of criminal  
125 conflict and civil regional counsel, or a private conflict  
126 attorney, or who has received due process services after being  
127 found indigent for costs under s. 27.52, shall be liable for  
128 payment of the assessed application fee under s. 27.52 and  
129 attorney's fees and costs. Attorney's fees and costs shall be



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

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

144 985.032 Legal representation for delinquency cases.—

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

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

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

151  
152 ===== T I T L E A M E N D M E N T =====

153 And the title is amended as follows:

154  
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.