



836988

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/12/2011	.	
	.	
	.	
	.	

The Committee on Criminal Justice (Dockery) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsections (5) and (6) of section 28.246, Florida Statutes, are amended to read:

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

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



836988

13 priority:

14 (a) That portion of fees, service charges, court costs, and
15 fines to be remitted to the state for deposit into the General
16 Revenue Fund and that portion of the costs of prosecution to be
17 remitted to the state shall be deposited into the State
18 Attorneys Revenue Trust Fund, allocated on a pro rata basis
19 among the authorized funds if the total collection amount is
20 insufficient to fully fund such funds as provided by law.

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

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

30 (d) That portion of fees, service charges, court costs, and
31 fines payable to counties, municipalities, or other local
32 entities, allocated on a pro rata basis among the various
33 authorized recipients if the total collection amount is
34 insufficient to fully fund all such recipients as provided by
35 law.

36
37 To offset processing costs, clerks may impose either a per-month
38 service charge pursuant to s. 28.24(26) (b) or a one-time
39 administrative processing service charge at the inception of the
40 payment plan pursuant to s. 28.24(26) (c).

41 (6) A clerk of court shall pursue the collection of any



836988

42 fees, service charges, fines, court costs, costs of prosecution,
43 and liens for the payment of attorney's fees and costs pursuant
44 to s. 938.29 which remain unpaid after 90 days by referring the
45 account to a private attorney who is a member in good standing
46 of The Florida Bar or collection agent who is registered and in
47 good standing pursuant to chapter 559. In pursuing the
48 collection of such unpaid financial obligations through a
49 private attorney or collection agent, the clerk of the court
50 must have attempted to collect the unpaid amount through a
51 collection court, collections docket, or other collections
52 process, if any, established by the court, find this to be cost-
53 effective and follow any applicable procurement practices. The
54 collection fee, including any reasonable attorney's fee, paid to
55 any attorney or collection agent retained by the clerk may be
56 added to the balance owed in an amount not to exceed 40 percent
57 of the amount owed at the time the account is referred to the
58 attorney or agent for collection. The clerk shall give the
59 private attorney or collection agent the application for the
60 appointment of court-appointed counsel regardless of whether the
61 court file is otherwise confidential from disclosure.

62 Section 2. Section 903.286, Florida Statutes, is amended to
63 read:

64 903.286 Return of cash bond; requirement to withhold unpaid
65 fines, fees, court costs; cash bond forms.-

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



836988

71 criminal penalties. If sufficient funds are not available to pay
72 all unpaid costs of prosecution, court fees, court costs, and
73 criminal penalties, the clerk of the court shall immediately
74 obtain payment from the defendant or enroll the defendant in a
75 payment plan pursuant to s. 28.246.

76 (2) All cash bond forms used in conjunction with the
77 requirements of s. 903.09 must prominently display a notice
78 explaining that all funds are subject to forfeiture and
79 withholding by the clerk of the court for the payment of costs
80 of prosecution, court fees, court costs, and criminal penalties
81 on behalf of the criminal defendant regardless of who posted the
82 funds.

83 Section 3. Section 938.27, Florida Statutes, is amended to
84 read:

85 938.27 Judgment for costs on conviction.—

86 (1) In all criminal and violation-of-probation or
87 community-control cases, convicted persons and persons whose
88 cases are disposed of pursuant to s. 948.08(6)(c) or s.
89 948.16(2) are liable for payment of the costs of prosecution,
90 including investigative costs incurred by law enforcement
91 agencies, by fire departments for arson investigations, and by
92 investigations of the Department of Financial Services or the
93 Office of Financial Regulation of the Financial Services
94 Commission, if requested by such agencies. The court shall
95 include these costs in every judgment rendered against the
96 convicted person. For purposes of this section, "convicted"
97 means a determination of guilt, or of violation of probation or
98 community control, which is a result of a plea, trial, or
99 violation proceeding, regardless of whether adjudication is



836988

100 withheld.

101 (2) (a) Notwithstanding any other provision of law, court
102 rule, or administrative order, the court shall impose the costs
103 of prosecution and investigation. Costs of prosecution and
104 investigation shall not be converted to any form of court-
105 ordered community service in lieu of this statutory financial
106 obligation.

107 (b) (a) The court shall impose the costs of prosecution and
108 investigation notwithstanding the defendant's present ability to
109 pay. The court shall require the defendant to pay the costs
110 within a specified period or in specified installments.

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

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

115 2. Five years after the end of the term of imprisonment
116 imposed, if the court does not order probation or community
117 control; or

118 3. Five years after the date of sentencing in any other
119 case.

120
121 However, in no event shall the obligation to pay any unpaid
122 amounts expire if not paid in full within the period specified
123 in this paragraph.

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

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



836988

129 revoke probation or community control if the defendant fails to
130 pay these costs.

131 (4) Any dispute as to the proper amount or type of costs
132 shall be resolved by the court by the preponderance of the
133 evidence. The burden of demonstrating the amount of costs
134 incurred is on the state attorney. The burden of demonstrating
135 the financial resources of the defendant and the financial needs
136 of the defendant is on the defendant. The burden of
137 demonstrating such other matters as the court deems appropriate
138 is upon the party designated by the court as justice requires.

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

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

145 (7) Investigative costs that are recovered shall be
146 returned to the appropriate investigative agency that incurred
147 the expense. Such costs include actual expenses incurred in
148 conducting the investigation and prosecution of the criminal
149 case; however, costs may also include the salaries of permanent
150 employees. Any investigative costs recovered on behalf of a
151 state agency must be remitted to the Department of Revenue for
152 deposit in the agency operating trust fund, and a report of the
153 payment must be sent to the agency, except that any
154 investigative costs recovered on behalf of the Department of Law
155 Enforcement shall be deposited in the department's Forfeiture
156 and Investigative Support Trust Fund under s. 943.362.

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



836988

158 at no less than \$50 per case when a misdemeanor or criminal
159 traffic offense is charged and no less than \$100 per case when a
160 felony offense is charged, including a proceeding in which the
161 underlying offense is a violation of probation or community
162 control. The court may set a higher amount upon a showing of
163 sufficient proof of higher costs incurred. Costs recovered on
164 behalf of the state attorney under this section shall be
165 deposited into the State Attorneys Revenue Trust Fund to be used
166 during the fiscal year in which the funds are collected, or in
167 any subsequent fiscal year, for actual expenses incurred in
168 investigating and prosecuting criminal cases, which may include
169 the salaries of permanent employees, or for any other purpose
170 authorized by the Legislature.

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

174 Section 4. Section 985.032, Florida Statutes, is amended to
175 read:

176 985.032 Legal representation for delinquency cases.—

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

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

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

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

186 And the title is amended as follows:



836988

187 Delete everything before the enacting clause
188 and insert:

189 A bill to be entitled
190 An act relating to costs of prosecution; amending s.
191 28.246, F.S.; providing for remittance of the costs of
192 prosecution to a specified trust fund; providing for
193 allocation of funds in certain circumstances;
194 providing for collection of costs of prosecution;
195 amending s. 903.286, F.S.; providing for the
196 withholding of unpaid costs of prosecution from the
197 return of a cash bond posted on behalf of a criminal
198 defendant; requiring a notice on bond forms of such
199 possible withholding; amending s. 938.27, F.S.;
200 providing liability for the cost of prosecution for
201 persons whose cases are disposed of under specified
202 provisions; requiring courts to impose the costs of
203 prosecution and investigation; requiring that costs of
204 prosecution and investigation not be converted to any
205 form of court-ordered community service; clarifying
206 the types of cases from which the clerk of the court
207 must collect and dispense cost payments; requiring the
208 clerk of the court to assign the first of any fees or
209 costs collected as payment for costs of prosecution;
210 amending s. 985.032, F.S.; providing for assessment of
211 costs of prosecution against a juvenile who has been
212 adjudicated delinquent or has adjudication of
213 delinquency withheld; providing an effective date.