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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/26/2011	.	
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The Committee on Judiciary (Joyner) 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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14 Department of Financial Services:

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

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

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

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

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

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

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



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

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

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

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

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

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



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

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

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

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

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

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



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

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

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

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



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

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

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

142 938.27 Judgment for costs on conviction or diversion.—

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

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



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

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

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

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

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

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

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

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

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



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188 pay these costs.

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

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

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

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

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



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

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

231 985.032 Legal representation for delinquency cases.—

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

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

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

242 34.191 Fines and forfeitures; dispositions.—

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



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

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

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

255 And the title is amended as follows:

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
274 cases are disposed of under a pretrial intervention



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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.