

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Judiciary Committee

BILL: SB 1508

INTRODUCER: Senator Wise

SUBJECT: Costs of Prosecution

DATE: April 22, 2011

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------------------|
| 1. | Cellon | Cannon | CJ | Favorable |
| 2. | Boland | Maclure | JU | Pre-meeting |
| 3. | | | BC | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

I. Summary:

The bill elevates the distribution priority of costs of prosecution to the State Attorneys Revenue Trust Fund to a top tier priority, putting it in the same priority tier as distributions to the General Revenue Fund. Further, the clerk of the circuit court is required to report assessments and collections of costs of prosecution to the state attorney on a monthly basis.

The bill requires costs of prosecution be assessed in pretrial intervention and drug court programs, where they are not currently assessed. The bill prohibits costs of prosecution from being converted to community service hours in lieu of payment. It also requires the assessment of costs of prosecution in juvenile delinquency proceedings.

This bill substantially amends the following sections of the Florida Statutes: 28.246, 903.286, 938.27, and 985.032. The bill also reenacts s. 34.191(1), F.S., for purposes of incorporating the amendment to s. 28.246, F.S.

II. Present Situation:

Costs of Prosecution

Section 938.27, F.S., provides that costs of prosecution may be imposed at the rate of \$50 in misdemeanor or criminal traffic offense cases and \$100 in felony criminal cases, unless the

prosecutor proves that costs are higher in the particular case before the court.¹ The costs of prosecution are deposited into the State Attorneys Revenue Trust Fund.²

Convicted persons are liable for payment of the costs of prosecution, including any investigative costs incurred by a law enforcement agency, fire department, or the Department of Financial Services and the Office of Financial Regulation of the Financial Services Commission.³ Conviction, for this purpose, includes a determination of guilt, or of violation of probation or community control, which is a result of a plea, trial, or violation proceeding, regardless of whether adjudication is withheld.⁴

Certain defendants facing conviction may be eligible for pretrial intervention programs, such as misdemeanor or felony pretrial substance abuse education and treatment intervention⁵ or treatment-based drug court.⁶ Defendants who successfully complete these programs have the charges against them dismissed by the court.⁷ Because the charges are dismissed by the court, these defendants are not liable for the payment of costs of prosecution.

Clerks to Collect and Disburse Funds

Section 28.246(2), F.S., requires the clerk of the circuit court (clerk) to establish and maintain a system of accounts receivable for court-related fees, charges, and costs.

The clerk may accept partial payments for all fees, charges, and costs in accordance with the terms of an established payment plan.⁸ The clerk may enter into a payment plan when an individual is determined to be indigent for costs by the court.⁹

When partial payments are received as part of a payment plan, the clerks distribute the funds in a specific priority, with each tier being paid in full before moving down the list. The received portion of fees, service charges, court costs, and fines are remitted in the following order:

- The state for deposit into the General Revenue Fund.
- The clerk of court or the Clerks of the Court Trust Fund within the Justice Administrative Commission.¹⁰
- Various state trust funds including the State Attorneys Revenue Trust Fund¹¹ and the Indigent Criminal Defense Trust Fund for public defenders.^{12, 13}

¹ Section 938.27(8), F.S.

² *Id.*

³ Section 938.27(1), F.S.

⁴ *Id.*

⁵ Sections 948.16 and 948.08(6), F.S., respectively.

⁶ Section 948.08(6), F.S. *See s. 397.334, F.S.*

⁷ Sections 948.16(2) and 948.08(6)(c), F.S.

⁸ Section 28.246(4), F.S.

⁹ A monthly payment amount, calculated based upon all fees and all anticipated costs, is presumed to correspond to the person's ability to pay if the amount does not exceed 2 percent of the person's annual net income, as defined in s. 27.52(1), divided by 12. Section 28.246(4), F.S.

¹⁰ Section 213.131, F.S.

¹¹ To be used for the purpose of funding the activities of the state attorneys. Section 27.367, F.S.

- Counties and municipalities, or other local entities.^{14, 15}

Accounts unpaid after 90 days are referred to a private attorney¹⁶ or a collection agent¹⁷ to collect any remaining fees, charges, fines, court costs, and liens for the payment of defense attorney's fees and costs.^{18, 19}

Community Service in Lieu of Payment

Section 938.30(2), F.S., authorizes a judge to convert any statutory financial obligation into a court-ordered obligation to perform community service after examining a person under oath and determining a person's inability to pay.

In FY 09-10, \$8,610,731 in court-related fees, charges, costs, fines, and other monetary penalties were converted into community service under s. 938.30, F.S.²⁰

Cash Bond Used to Pay Fines, Costs, and Fees

Section 903.286, F.S., authorizes the clerk to withhold the return of a cash bond posted on behalf of a criminal defendant by a person other than a bail bond agent²¹ to pay the following:

- Court fees;
- Court costs; and
- Criminal penalties.

If sufficient funds are not available to pay the above costs, the clerk will immediately obtain payment from the defendant or enroll the defendant in a payment plan pursuant to s. 28.246, F.S.

All cash bond forms must prominently display a notice explaining that all funds are subject to forfeiture and withholding by the clerk for the payment of the above costs on behalf of the criminal defendant regardless of who posted the funds.

¹² To be used for the purposes of indigent criminal defense as appropriated by the Legislature to the public defender or the office of criminal conflict and civil regional counsel. Section 27.525, F.S.

¹³ If the total collection amount is insufficient to fully pay all the entities within this payment distribution tier, the funds are distributed on a pro rata basis. Section 28.246(5), F.S.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ The private attorney must be a member in good standing of The Florida Bar. Section 28.246(6), F.S.

¹⁷ The collection agent must be registered and in good standing pursuant to ch. 559, F.S. Section 28.246(6), F.S.

¹⁸ Pursuant to s. 938.29, F.S.

¹⁹ Section 28.246(6), F.S.

²⁰ Fla. Association of Court Clerks and Comptrollers, *Florida Clerks of the Circuit Court, Payment of Court-related Fees, Charges, Costs, Fines and Other Monetary Penalties*, Fiscal Year: October 1, 2009 to September 30, 2010, available at http://www.flclerks.com/Pub_info/Assessment_Collections_Reports/Main_Worksheet_2010-Final.pdf (last visited April 19, 2011).

²¹ Licensed pursuant to ch. 648, F.S.

Delinquency Cases Exempt

Currently juveniles who are adjudicated delinquent or have had adjudication of delinquency withheld are not required to pay the costs of prosecution.

III. Effect of Proposed Changes:

The bill makes defendants liable for the payment of costs of prosecution, including investigative costs, when charges against them are dismissed by the court after successfully completing a misdemeanor or felony pretrial substance abuse education and treatment intervention program or treatment-based drug court.

The bill requires that the portion of costs of prosecution be remitted to the State Attorneys Revenue Trust Fund in the top priority tier with the General Revenue Fund.

The bill adds “costs of prosecution” to the list of unpaid fees, charges, fines, and costs that can be referred to a private attorney or collection agent for collection.

Notwithstanding any other provision or law, court rule, or administrative order, the bill requires the court to impose the costs of prosecution and investigation and prohibits these costs from being converted into any form of court-ordered community service in lieu of the financial obligation.

The bill adds the “costs of prosecution” to the list of costs a clerk is required to withhold from the return of a cash bond posted on behalf of a criminal defendant by a person other than a bail bond agent. If such payments are not made from the cash bond, the clerk is required to obtain payment from a defendant or, if sufficient funds are not available, require the defendant to enroll in a payment plan. Cash bond forms must display notice of the funds being subject to forfeiture for payment of costs of prosecution as well as other costs, fees, and fines.

The clerk is required to collect and disburse costs of prosecution in all cases, regardless of whether the cases are disposed of before a judge in open court.

The bill requires that costs of prosecution be assessed in each case number before the court. It further requires additional bookkeeping and a monthly reporting of assessments and payments recorded to the state attorney by the clerk.

The bill requires that costs of prosecution²² be assessed from juveniles who have been adjudicated delinquent or have adjudication of delinquency withheld.

The bill provides an effective date of July 1, 2011.

²² As provided in s. 938.27, F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Defendants who successfully complete pretrial intervention programs and juveniles who have been adjudicated delinquent or have adjudication of delinquency withheld will now be assessed costs of prosecution.

The bill prohibits costs of prosecution from being converted into court-ordered community service. Defendants will now be responsible for paying this cost as opposed to working the debt off through community service.

C. Government Sector Impact:

This bill appears to have a positive impact on state attorneys for many reasons:

- 1) Partial payments collected by the clerk of court from defendants on payment plans will be paid to the state attorneys in the first tier priority instead of their previous third tier priority. This will result in the state attorney receiving payment faster and before of the clerk of court, an entity it was previously behind.
- 2) The costs of prosecution will now be able to be collected by private attorneys or collection agents when payment plan accounts remain unpaid for 90 days. This may result in more costs of prosecution being collected and paid to state attorneys.
- 3) The costs of prosecution and investigation will be prohibited from being converted into court-ordered community service. This may result in more costs of prosecution being collected and paid to state attorneys.

- 4) The costs of prosecution under the bill are allowed to be withheld by the clerk from the return of a cash bond posted on behalf of a criminal defendant by a person other than a bail bond agent. This will likely result in a positive fiscal impact as the cost of prosecution will be deducted from any cash bonds posted on behalf of a criminal defendant.
- 5) The costs of prosecution will now be assessed from defendants who successfully complete pretrial intervention programs and juveniles who have been adjudicated delinquent or have adjudication of delinquency withheld. This will likely result in a positive fiscal impact as these costs were not assessed in these specific cases in the past.

Partial payments collected by the clerk of court from defendants on payment plans are currently paid first to the state, second to the clerk of court, third to state trust funds, including trust funds for the state attorney and the public defender, and fourth to local governments. By moving the State Attorneys Revenue Trust Fund up to the top tier of the distribution schedule with the state, payments will first be split between the state and the state attorneys. Until those two entities are paid, none of the entities below them will receive funds from the partial payments.

This could have a negative fiscal impact on the state, the clerk of court, public defenders, and local governments.

The Florida Association of Court Clerks and Comptrollers states that the conflict between the General Revenue Fund and the State Attorneys Revenue Trust Fund will have an indeterminate negative fiscal impact on the state. In addition, the clerk of court will incur an indeterminate negative fiscal impacts as it will now receive funds after the state attorney.²³

The Florida Public Defender Association states that while 60 percent of collections paid to the Indigent Criminal Defense Trust Fund come from the public defender application fee,²⁴ this change in the clerk's distribution of partial payments could reduce collections paid to the trust fund by \$3 million to as much as \$5 million statewide.²⁵

VI. Technical Deficiencies:

The bill requires that when partial payments of fees, charges, costs, and fines are received by the clerk of court, costs of prosecution will be remitted to the State Attorneys Revenue Trust Fund in the top priority tier. The top tier is currently occupied by the state with payments deposited into the General Revenue fund. Language will need to be added to specify how the portion of fees, charges, costs, and fines will be divided between the two funds. Current language in statute for tiers occupied by two or more funds requires that the portions be:

²³ Information provided by Randy Long. Florida Association of Court Clerks and Comptrollers. March 25, 2011.

²⁴ Section 27.52, F.S.

²⁵ E-mail from Sheldon Gusky, Florida Public Defender Association, Inc., March 24, 2011 (on file with the Senate Criminal Justice Committee).

allocated on a pro rata basis among the various authorized funds if the total collection amount is insufficient to fully fund all such funds as provided by law.

Section 938.27, F.S., is amended to prohibit the costs of prosecution and investigation from being converted into any form of court-ordered community service in lieu of the financial obligation. This change may be more aptly made in s. 938.30, F.S., which provides the court with this kind of discretion.

VII. Related Issues:

None.

VIII. Additional Information:

A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. **Amendments:**

None.