

By Senator Wise

5-01179-11

20111508

1 A bill to be entitled
2 An act relating to costs of prosecution; amending s.
3 28.246, F.S.; requiring the clerk of the court to
4 distribute the funds received from a defendant
5 according to a specified order of priority when the
6 defendant makes a partial payment to the clerk of
7 costs of prosecution; requiring that a portion of the
8 costs of prosecution be remitted to the State
9 Attorneys Revenue Trust Fund; amending s. 903.286,
10 F.S.; requiring that the clerk of the court withhold
11 from the return of a cash bond sufficient funds to pay
12 unpaid costs, including the costs of prosecution;
13 amending s. 938.27, F.S.; imposing certain costs on
14 persons whose cases are disposed of under a pretrial
15 intervention program or pretrial substance abuse
16 intervention program; requiring the court to impose
17 the costs of prosecution and investigation on the
18 defendant; prohibiting the court from converting such
19 costs to court-ordered community service; clarifying
20 the types of cases from which the clerk of the court
21 must collect and dispense cost payments; requiring
22 that the clerk of the court separately record each
23 assessment and payment of costs of prosecution and
24 provide a monthly report to the state attorney of such
25 assessments and payments; requiring the clerk of the
26 court to assign the first of any fees collected as
27 payment for costs of prosecution; amending s. 985.032,
28 F.S.; requiring that a juvenile who is adjudicated
29 delinquent or has adjudication of delinquency withheld

5-01179-11

20111508

30 be assessed costs of prosecution; reenacting s.
31 34.191(1), F.S., relating to the disposition of fines
32 and forfeitures, to incorporate the amendment made to
33 s. 28.246, F.S., in a reference thereto; providing an
34 effective date.

35
36 Be It Enacted by the Legislature of the State of Florida:

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38 Section 1. Section 28.246, Florida Statutes, is amended to
39 read:

40 28.246 Payment of court-related fees, charges, costs of
41 prosecution, and costs; partial payments; distribution of
42 funds.—

43 (1) The clerk of the circuit court shall report the
44 following information to the Legislature and the Florida Clerks
45 of Court Operations Corporation on a form developed by the
46 Department of Financial Services:

47 (a) The total amount of mandatory fees, service charges,
48 and costs; the total amount actually assessed; the total amount
49 discharged, waived, or otherwise not assessed; and the total
50 amount collected.

51 (b) The amount of discretionary fees, service charges, and
52 costs assessed; the total amount discharged; and the total
53 amount collected.

54 (c) The total amount of mandatory fines and other monetary
55 penalties; the total amount assessed; the total amount
56 discharged, waived, or otherwise not assessed; and the total
57 amount collected.

58 (d) The amount of discretionary fines and other monetary

5-01179-11

20111508

59 penalties assessed; the amount discharged; and the total amount
60 collected.

61

62 If provided to the clerk of court by the judge, the clerk, in
63 reporting the amount assessed, shall separately identify the
64 amount assessed pursuant to s. 938.30 as community service;
65 assessed by reducing the amount to a judgment or lien; satisfied
66 by time served; or other. The form developed by the Chief
67 Financial Officer shall include separate entries for recording
68 these amounts. The clerk shall submit the report on an annual
69 basis 60 days after the end of the county fiscal year.

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

73 (3) Court costs, fines, and other dispositional assessments
74 shall be enforced by order of the courts, collected by the
75 clerks of the circuit and county courts, and disbursed in
76 accordance with authorizations and procedures as established by
77 general law.

78 (4) The clerk of the circuit court shall accept partial
79 payments for court-related fees, service charges, costs, and
80 fines in accordance with the terms of an established payment
81 plan. An individual seeking to defer payment of fees, service
82 charges, costs, or fines imposed by operation of law or order of
83 the court under any provision of general law shall apply to the
84 clerk for enrollment in a payment plan. The clerk shall enter
85 into a payment plan with an individual who the court determines
86 is indigent for costs. A monthly payment amount, calculated
87 based upon all fees and all anticipated costs, is presumed to

5-01179-11

20111508__

88 correspond to the person's ability to pay if the amount does not
89 exceed 2 percent of the person's annual net income, as defined
90 in s. 27.52(1), divided by 12. The court may review the
91 reasonableness of the payment plan.

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

96 (a) That portion of fees, service charges, court costs, and
97 fines to be remitted to the state for deposit into the General
98 Revenue Fund, and that portion of the costs of prosecution to be
99 remitted to the state shall be deposited into the State
100 Attorneys Revenue Trust Fund.

101 (b) That portion of fees, service charges, court costs,
102 costs of prosecution, and fines which are required to be
103 retained by the clerk of the court or deposited into the Clerks
104 of the Court Trust Fund within the Justice Administrative
105 Commission.

106 (c) That portion of fees, service charges, court costs,
107 costs of prosecution, and fines payable to state trust funds,
108 allocated on a pro rata basis among the various authorized funds
109 if the total collection amount is insufficient to fully fund all
110 such funds as provided by law.

111 (d) That portion of fees, service charges, court costs,
112 costs of prosecution, and fines payable to counties,
113 municipalities, or other local entities, allocated on a pro rata
114 basis among the various authorized recipients if the total
115 collection amount is insufficient to fully fund all such
116 recipients as provided by law.

5-01179-11

20111508

117
118 To offset processing costs, clerks may impose either a per-month
119 service charge pursuant to s. 28.24(26) (b) or a one-time
120 administrative processing service charge at the inception of the
121 payment plan pursuant to s. 28.24(26) (c).

122 (6) A clerk of court shall pursue the collection of any
123 fees, service charges, fines, costs of prosecution, court costs,
124 and liens for the payment of attorney's fees and costs pursuant
125 to s. 938.29 which remain unpaid after 90 days by referring the
126 account to a private attorney who is a member in good standing
127 of The Florida Bar or collection agent who is registered and in
128 good standing pursuant to chapter 559. In pursuing the
129 collection of ~~such~~ unpaid financial obligations through a
130 private attorney or collection agent, the clerk of the court
131 must have attempted to collect the unpaid amount through a
132 collection court, collections docket, or other collections
133 process, if any, established by the court, find this to be cost-
134 effective and follow any applicable procurement practices. The
135 collection fee, including any reasonable attorney's fee, paid to
136 any attorney or collection agent retained by the clerk may be
137 added to the balance owed in an amount not to exceed 40 percent
138 of the amount owed at the time the account is referred to the
139 attorney or agent for collection. The clerk shall give the
140 private attorney or collection agent the application for the
141 appointment of court-appointed counsel regardless of whether the
142 court file is otherwise confidential from disclosure.

143 Section 2. Section 903.286, Florida Statutes, is amended to
144 read:

145 903.286 Return of cash bond; requirement to withhold unpaid

5-01179-11

20111508

146 fines, fees, court costs; cash bond forms.-

147 (1) Notwithstanding s. 903.31(2), the clerk of the court
148 shall withhold from the return of a cash bond posted on behalf
149 of a criminal defendant by a person other than a bail bond agent
150 licensed pursuant to chapter 648 sufficient funds to pay any
151 unpaid costs of prosecution, court fees, court costs, and
152 criminal penalties. If sufficient funds are not available to pay
153 all unpaid costs of prosecution, court fees, court costs, and
154 criminal penalties, the clerk of the court shall immediately
155 obtain payment from the defendant or enroll the defendant in a
156 payment plan pursuant to s. 28.246.

157 (2) All cash bond forms used in conjunction with the
158 requirements of s. 903.09 must prominently display a notice
159 explaining that all funds are subject to forfeiture and
160 withholding by the clerk of the court for the payment of costs
161 of prosecution, court fees, court costs, and criminal penalties
162 on behalf of the criminal defendant regardless of who posted the
163 funds.

164 Section 3. Section 938.27, Florida Statutes, is amended to
165 read:

166 938.27 Judgment for costs on conviction.-

167 (1) In all criminal and violation-of-probation or
168 community-control cases, convicted persons and persons whose
169 cases are disposed of pursuant to s. 948.08(6) or s. 948.16(1)
170 are liable for payment of the costs of prosecution, including
171 investigative costs incurred by law enforcement agencies, by
172 fire departments for arson investigations, and by investigations
173 of the Department of Financial Services or the Office of
174 Financial Regulation of the Financial Services Commission, if

5-01179-11

20111508

175 requested by such agencies. The court shall include these costs
176 in every judgment rendered against the convicted person. For
177 purposes of this section, "convicted" means a determination of
178 guilt, or of violation of probation or community control, which
179 is a result of a plea, trial, or violation proceeding,
180 regardless of whether adjudication is withheld.

181 (2) (a) Notwithstanding any other law, court rule, or
182 administrative order, the court shall impose the costs of
183 prosecution and investigation on the defendant. Costs of
184 prosecution and investigation may not be converted to any form
185 of court-ordered community service in lieu of this financial
186 obligation.

187 (b) (a) The court shall impose the costs of prosecution and
188 investigation notwithstanding the defendant's present ability to
189 pay. The court shall require the defendant to pay the costs
190 within a specified period or in specified installments.

191 (c) (b) The end of such period or the last such installment
192 may shall not be later than:

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

195 2. Five years after the end of the term of imprisonment
196 imposed, if the court does not order probation or community
197 control; or

198 3. Five years after the date of sentencing in any other
199 case.

200

201 However, in no event shall the obligation to pay any unpaid
202 amounts expire if not paid in full within the period specified
203 in this paragraph.

5-01179-11

20111508

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

206 (3) If a defendant is placed on probation or community
207 control, payment of any costs under this section shall be a
208 condition of such probation or community control. The court may
209 revoke probation or community control if the defendant fails to
210 pay these costs.

211 (4) Any dispute as to the proper amount or type of costs
212 shall be resolved by the court by the preponderance of the
213 evidence. The burden of demonstrating the amount of costs
214 incurred is on the state attorney. The burden of demonstrating
215 the financial resources of the defendant and the financial needs
216 of the defendant is on the defendant. The burden of
217 demonstrating such other matters as the court deems appropriate
218 is upon the party designated by the court as justice requires.

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

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

225 (a) The clerk of the court shall separately record each
226 assessment and payment of costs of prosecution. Costs of
227 prosecution must be assessed with respect to each case number
228 before the court.

229 (b) The clerk shall provide a monthly report to the state
230 attorney of the assessments and payments recorded.

231 (7) Investigative costs that are recovered shall be
232 returned to the appropriate investigative agency that incurred

5-01179-11

20111508

233 the expense. Such costs include actual expenses incurred in
234 conducting the investigation and prosecution of the criminal
235 case; however, costs may also include the salaries of permanent
236 employees. Any investigative costs recovered on behalf of a
237 state agency must be remitted to the Department of Revenue for
238 deposit in the agency operating trust fund, and a report of the
239 payment must be sent to the agency, except that any
240 investigative costs recovered on behalf of the Department of Law
241 Enforcement shall be deposited in the department's Forfeiture
242 and Investigative Support Trust Fund under s. 943.362.

243 (8) Costs for the state attorney shall be set in all cases
244 at no less than \$50 per case when a misdemeanor or criminal
245 traffic offense is charged and no less than \$100 per case when a
246 felony offense is charged, including a proceeding in which the
247 underlying offense is a violation of probation or community
248 control. The court may set a higher amount upon a showing of
249 sufficient proof of higher costs incurred. Costs recovered on
250 behalf of the state attorney under this section shall be
251 deposited into the State Attorneys Revenue Trust Fund to be used
252 during the fiscal year in which the funds are collected, or in
253 any subsequent fiscal year, for actual expenses incurred in
254 investigating and prosecuting criminal cases, which may include
255 the salaries of permanent employees, or for any other purpose
256 authorized by the Legislature. Notwithstanding any law, court
257 rule, or administrative order, the clerk shall assign the first
258 of any fees or costs paid by a defendant as payment of the costs
259 of prosecution.

260 Section 4. Section 985.032, Florida Statutes, is amended to
261 read:

5-01179-11

20111508

262 985.032 Legal representation for delinquency cases; costs
263 of prosecution.—

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

266 (2) A juvenile who is adjudicated delinquent or who has
267 adjudication of delinquency withheld shall be assessed costs of
268 prosecution as provided by s. 938.27.

269 Section 5. For the purpose of incorporating the amendment
270 made by this act to section 28.246, Florida Statutes, in a
271 reference thereto, subsection (1) of section 34.191, Florida
272 Statutes, is reenacted to read:

273 34.191 Fines and forfeitures; dispositions.—

274 (1) All fines and forfeitures arising from offenses tried
275 in the county court shall be collected and accounted for by the
276 clerk of the court and, other than the charge provided in s.
277 318.1215, disbursed in accordance with ss. 28.2402, 34.045,
278 142.01, and 142.03 and subject to the provisions of s. 28.246(5)
279 and (6). Notwithstanding the provisions of this section, all
280 fines and forfeitures arising from operation of the provisions
281 of s. 318.1215 shall be disbursed in accordance with that
282 section.

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