

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 135 Costs of Prosecution, Investigation, and Representation

SPONSOR(S): Ray

TIED BILLS: None **IDEN./SIM. BILLS:** SB 210

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 2 N	Krol	Cunningham
2) Justice Appropriations Subcommittee	10 Y, 2 N, As CS	McAuliffe	Jones Darity
3) Judiciary Committee			

SUMMARY ANALYSIS

Currently, convicted persons are liable for costs of prosecution, as well as costs of representation. These costs may be imposed at a rate of \$50 in misdemeanor or criminal traffic offense cases and \$100 in felony criminal cases. The court may set a higher amount upon showing of sufficient proof of higher fees or costs incurred.

The bill makes defendants whose charges are dismissed by the court after the successful completion of a misdemeanor or felony pretrial substance abuse education and treatment intervention program or treatment-based drug court liable for payment of costs of prosecution and costs of representation.

The bill adds the costs of prosecution and representation to the list of costs a clerk of the court is allowed to withhold from the return of a cash bond posted on behalf of a criminal defendant.

The bill also requires:

- The clerk of the court to collect and dispense cost payments in any case, regardless of whether the case takes place before the judge in open court or in any other manner.
- The costs of prosecution to be assessed from juveniles who have been adjudicated delinquent or have adjudication of delinquency withheld.

This bill appears to have a positive fiscal impact on state attorneys and public defenders. However, the impact is indeterminate because the number of affected offenders and their ultimate level of payment is unknown.

This bill is effective July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Costs of Prosecution

Section 938.27, F.S., provides that convicted persons¹ are liable for payment of the costs of prosecution, including any investigative costs incurred by a law enforcement agency, fire department, the Department of Financial Services, or the Office of Financial Regulation of the Financial Services Commission.²

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.³ The costs of prosecution are deposited into the State Attorneys Revenue Trust Fund.⁴

The clerk of the court (clerk) collects and dispenses cost of prosecution payments in every case.⁵

Costs of Representation

Section 938.29, F.S., provides that convicted persons⁶ are liable for payment of the \$50 public defender application fee under s. 27.52(1)(b), F.S.,⁷ and attorney's fees and costs if he or she received assistance from the public defender's office, a special assistant public defender, the office of criminal conflict and civil regional counsel, or a private conflict attorney, or who has received due process services after being found indigent for costs.⁸

Costs of representation may be imposed at the rate of \$50 in misdemeanor or criminal traffic offense cases and \$100 in felony criminal cases.⁹ The court may set a higher amount upon showing of sufficient proof of higher fees or costs incurred.¹⁰ The costs of representation are deposited into the Indigent Criminal Defense Trust Fund.¹¹

The court may order payment of the assessed application fee and attorney's fees and costs as a condition of probation, of suspension of sentence, or of withholding the imposition of sentence.¹² The clerk within the county where the defendant was tried or received services from a public defender is responsible for enforcing, satisfying, compromising, settling, subordinating, releasing or otherwise disposing of any debt or lien imposed.¹³

¹ Conviction, for the purposes of costs of prosecution, 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. Section 937.27(1), F.S.

² Section 938.27(1), F.S.

³ Section 938.27(8), F.S.

⁴ *Id.*

⁵ Section 938.27(6), F.S.

⁶ Conviction, for the purposes of costs of representation, 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. Section 937.29(1)(a), F.S.

⁷ Section 27.52(1), F.S., provides that a person seeking the appointment of a public defender under s. 27.51, F.S., based upon an inability to pay, must apply to the clerk of the court for a determination of indigent status.

⁸ Section 938.29(1)(a), F.S.

⁹ This includes proceedings in which the underlying offense was a violation of probation or community control. Section 938.29(1), F.S.

¹⁰ *Id.*

¹¹ Section 27.562, F.S.

¹² Section 938.29(1)(c), F.S.

¹³ Section 938.29(3), F.S.

Pretrial Intervention Programs

Defendants charged with certain offenses may be eligible for pretrial intervention programs, such as misdemeanor or felony pretrial substance abuse education and treatment intervention¹⁴ or treatment-based drug court.¹⁵ Defendants who successfully complete these programs have the charges against them dismissed by the court.¹⁶ Because the charges are dismissed by the court, these defendants are not liable for the payment of costs of prosecution or representation.

Effect of the Bill

The bill makes defendants liable for the payment of costs of prosecution, including investigative costs, and costs of representation when charges 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 the clerk to collect and dispense cost of prosecution payments in any case regardless of whether the disposition of the case takes place before the judge in open court or in any other manner provided by law.

Cash Bonds

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 agent¹⁷ to pay the following:

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

If sufficient funds are not available to pay the above costs, the clerk must immediately obtain payment from the defendant or enroll the defendant in a payment plan pursuant to s. 28.246, F.S.¹⁸

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.¹⁹

Effect of the Bill

The bill adds the “costs of prosecution, costs of representation”²⁰ to the list of costs a clerk is allowed 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 sufficient funds are not available to pay such costs, the bill requires the clerk to obtain payment from a defendant or require the defendant to enroll in a payment plan. The bill also requires the cash bond form to include a notice that the costs of prosecution and representation are funds that are subject to forfeiture and withholding.

Delinquency Cases

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

Effect of the Bill

¹⁴ Sections 948.16 and 948.08(6), F.S., respectively.

¹⁵ Section 948.08(6), F.S. See s. 397.334, F.S.

¹⁶ Sections 948.16(2) and 948.08(6)(c), F.S.

¹⁷ Licensed pursuant to ch. 648, F.S.

¹⁸ Section 903.286(1), F.S.

¹⁹ Section 903.286(2), F.S.

²⁰ As provided by s. 27.52, F.S.

The bill requires that costs of prosecution²¹ be assessed against juveniles who have been adjudicated delinquent or have adjudication of delinquency withheld.

B. SECTION DIRECTORY:

Section 1. Amends s. 903.286, F.S., relating to return of cash bond; requirement to withhold unpaid fines, fees, court costs; cash bond forms.

Section 2. Amends s. 938.27, F.S., relating to judgment for costs on conviction.

Section 3. Amends s. 938.29, F.S., relating to legal assistance; lien for payment of attorney's fees or costs.

Section 4. Amends s. 985.032, F.S., relating to legal representation for delinquency cases.

Section 5. Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill appears to have a positive impact on state attorneys and public defenders for the following reasons:

- 1) The clerk is required to collect and dispense cost payments in any case, regardless of whether the disposition of the case takes place before the judge in open court or in any other manner provided by law. This may result in more costs of prosecution being collected and paid to state attorneys.
- 2) The costs of prosecution will be assessed against juveniles who have been adjudicated delinquent or have adjudication of delinquency withheld. This will likely result in a positive fiscal impact on state attorneys as these costs were not assessed in these specific cases in the past.
- 3) The costs of prosecution and representation 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 for state attorneys and public defenders as the cost of prosecution and representation will be deducted from any cash bonds posted on behalf of a criminal defendant.
- 4) The costs of prosecution and representation will be assessed against defendants who successfully complete pretrial intervention programs. This will likely result in a positive fiscal impact for state attorneys and public defenders as these costs were not assessed in these specific cases in the past.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

²¹ As provided in s. 938.27, F.S.
STORAGE NAME: h0135d.JUAS
DATE: 11/16/2011

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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 and representation.

D. FISCAL COMMENTS:

This bill appears to have a positive fiscal impact on state attorneys and public defenders. However, the impact is indeterminate because the number of affected offenders and their ultimate level of payment is unknown.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

The bill makes defendants liable for the payment of costs of prosecution, including investigative costs, and costs of representation when charges 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. Article I, Section 19 of the Florida Constitution states that a person charged with a crime cannot be compelled to pay costs before a judgment of conviction becomes final. However, because a person must volunteer to participate in a misdemeanor or felony pretrial substance abuse education and treatment intervention program or treatment-based drug court, he or she cannot be compelled to pay costs.²²

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 1 of the bill allows the clerk to withhold costs of representation "as provided by s. 27.52, F.S.," from the return of a cash bond. Section 27.52, F.S., only references the \$50 application fee for court-appointed counsel. If the intent was to include all costs of representation, such as attorney's fees, the reference should be changed to s. 938.29, F.S.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On November 16, 2011, the Justice Appropriation Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment deleted the provision in the bill prohibiting the court from converting prosecution and investigation costs into community service in lieu of the financial obligation.

²² Sections 948.16(1)(a), F.S., and 948.08(6)(a), F.S.