

HB 135

2012

1 A bill to be entitled
2 An act relating to costs of prosecution,
3 investigation, and representation; amending s.
4 903.286, F.S.; providing for the withholding of unpaid
5 costs of prosecution and representation from the
6 return of a cash bond posted on behalf of a criminal
7 defendant; requiring a notice on bond forms of such
8 possible withholding; amending s. 938.27, F.S.;
9 providing liability for the cost of prosecution and
10 investigation for persons whose cases are disposed of
11 under specified provisions; requiring courts to impose
12 the costs of prosecution and investigation;
13 prohibiting the court from converting the costs of
14 prosecution and investigation to any form of community
15 service; clarifying the types of cases that are
16 subject to the collection and dispensing of cost
17 payments by the clerk of the court; amending s.
18 938.29, F.S.; providing liability for attorney's fees
19 and costs for persons whose cases are disposed of
20 under specified provisions; amending s. 985.032, F.S.;
21 providing for assessment of costs of prosecution
22 against a juvenile who has been adjudicated delinquent
23 or has adjudication of delinquency withheld; providing
24 an effective date.

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26 Be It Enacted by the Legislature of the State of Florida:

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28 Section 1. Section 903.286, Florida Statutes, is amended

29 to read:

30 903.286 Return of cash bond; requirement to withhold
 31 unpaid fines, fees, court costs; cash bond forms.—

32 (1) Notwithstanding s. 903.31(2), the clerk of the court
 33 shall withhold from the return of a cash bond posted on behalf
 34 of a criminal defendant by a person other than a bail bond agent
 35 licensed pursuant to chapter 648 sufficient funds to pay any
 36 unpaid costs of prosecution, costs of representation as provided
 37 by s. 27.52, court fees, court costs, and criminal penalties. If
 38 sufficient funds are not available to pay all unpaid costs of
 39 prosecution, costs of representation as provided by s. 27.52,
 40 court fees, court costs, and criminal penalties, the clerk of
 41 the court shall immediately obtain payment from the defendant or
 42 enroll the defendant in a payment plan pursuant to s. 28.246.

43 (2) All cash bond forms used in conjunction with the
 44 requirements of s. 903.09 must prominently display a notice
 45 explaining that all funds are subject to forfeiture and
 46 withholding by the clerk of the court for the payment of costs
 47 of prosecution, costs of representation as provided by s. 27.52,
 48 court fees, court costs, and criminal penalties on behalf of the
 49 criminal defendant regardless of who posted the funds.

50 Section 2. Section 938.27, Florida Statutes, is amended to
 51 read:

52 938.27 Judgment for costs of prosecution and investigation
 53 ~~on conviction.~~—

54 (1) In all criminal and violation-of-probation or
 55 community-control cases, convicted persons and persons whose
 56 cases are disposed of pursuant to s. 948.08(6)(c) or s.

57 948.16(2) are liable for payment of the costs of prosecution,
 58 including investigative costs incurred by law enforcement
 59 agencies, by fire departments for arson investigations, and by
 60 investigations of the Department of Financial Services or the
 61 Office of Financial Regulation of the Financial Services
 62 Commission, if requested by such agencies. The court shall
 63 include these costs in every judgment rendered against the
 64 convicted person. For purposes of this section, "convicted"
 65 means a determination of guilt, or of violation of probation or
 66 community control, which is a result of a plea, trial, or
 67 violation proceeding, regardless of whether adjudication is
 68 withheld.

69 (2) (a) Notwithstanding any other law, court rule, or
 70 administrative order, the court shall impose upon the defendant
 71 the costs of prosecution and investigation. The costs of
 72 prosecution and investigation may not be converted to any form
 73 of court-ordered community service to be served in lieu of the
 74 obligation to pay the costs of prosecution and investigation.

75 (b) (a) The court shall impose the costs of prosecution and
 76 investigation notwithstanding the defendant's present ability to
 77 pay. The court shall require the defendant to pay the costs
 78 within a specified period or in specified installments.

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

- 81 1. The end of the period of probation or community
- 82 control, if probation or community control is ordered;
- 83 2. Five years after the end of the term of imprisonment
- 84 imposed, if the court does not order probation or community

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85 control; or

86 3. Five years after the date of sentencing in any other
87 case.

88

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

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

94 (3) If a defendant is placed on probation or community
95 control, payment of any costs under this section shall be a
96 condition of such probation or community control. The court may
97 revoke probation or community control if the defendant fails to
98 pay these costs.

99 (4) Any dispute as to the proper amount or type of costs
100 shall be resolved by the court by the preponderance of the
101 evidence. The burden of demonstrating the amount of costs
102 incurred is on the state attorney. The burden of demonstrating
103 the financial resources of the defendant and the financial needs
104 of the defendant is on the defendant. The burden of
105 demonstrating such other matters as the court deems appropriate
106 is upon the party designated by the court as justice requires.

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

109 (6) The clerk of the court shall collect and dispense cost
110 payments in any case regardless of whether the disposition of
111 the case takes place before the judge in open court or in any
112 other manner provided by law.

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113 (7) Investigative costs that are recovered shall be
114 returned to the appropriate investigative agency that incurred
115 the expense. Such costs include actual expenses incurred in
116 conducting the investigation and prosecution of the criminal
117 case; however, costs may also include the salaries of permanent
118 employees. Any investigative costs recovered on behalf of a
119 state agency must be remitted to the Department of Revenue for
120 deposit in the agency operating trust fund, and a report of the
121 payment must be sent to the agency, except that any
122 investigative costs recovered on behalf of the Department of Law
123 Enforcement shall be deposited in the department's Forfeiture
124 and Investigative Support Trust Fund under s. 943.362.

125 (8) Costs for the state attorney shall be set in all cases
126 at no less than \$50 per case when a misdemeanor or criminal
127 traffic offense is charged and no less than \$100 per case when a
128 felony offense is charged, including a proceeding in which the
129 underlying offense is a violation of probation or community
130 control. The court may set a higher amount upon a showing of
131 sufficient proof of higher costs incurred. Costs recovered on
132 behalf of the state attorney under this section shall be
133 deposited into the State Attorneys Revenue Trust Fund to be used
134 during the fiscal year in which the funds are collected, or in
135 any subsequent fiscal year, for actual expenses incurred in
136 investigating and prosecuting criminal cases, which may include
137 the salaries of permanent employees, or for any other purpose
138 authorized by the Legislature.

139 Section 3. Paragraph (a) of subsection (1) of section
140 938.29, Florida Statutes, is amended to read:

141 938.29 Legal assistance; lien for payment of attorney's
 142 fees or costs.—

143 (1) (a) A defendant who is convicted of a criminal act or a
 144 violation of probation or community control or whose case is
 145 disposed of pursuant to s. 948.08(6)(c) or s. 948.16(2) and who
 146 has received the assistance of the public defender's office, a
 147 special assistant public defender, the office of criminal
 148 conflict and civil regional counsel, or a private conflict
 149 attorney, or who has received due process services after being
 150 found indigent for costs under s. 27.52, shall be liable for
 151 payment of the assessed application fee under s. 27.52 and
 152 attorney's fees and costs. Attorney's fees and costs shall be
 153 set in all cases at no less than \$50 per case when a misdemeanor
 154 or criminal traffic offense is charged and no less than \$100 per
 155 case when a felony offense is charged, including a proceeding in
 156 which the underlying offense is a violation of probation or
 157 community control. The court may set a higher amount upon a
 158 showing of sufficient proof of higher fees or costs incurred.
 159 For purposes of this section, "convicted" means a determination
 160 of guilt, or of violation of probation or community control,
 161 which is a result of a plea, trial, or violation proceeding,
 162 regardless of whether adjudication is withheld. The court shall
 163 include these fees and costs in every judgment rendered against
 164 the convicted person.

165 Section 4. Section 985.032, Florida Statutes, is amended
 166 to read:

167 985.032 Legal representation for delinquency cases.—
 168 (1) For cases arising under this chapter, the state

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169 attorney shall represent the state.

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

173 Section 5. This act shall take effect July 1, 2012.