

By the Committee on Criminal Justice; and Senator Wise

591-01858-12

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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       clarifying the types of cases that are subject to the  
10      collection and dispensing of cost payments by the  
11      clerk of the court; amending s. 985.032, F.S.;  
12      providing for assessment of costs of prosecution  
13      against a juvenile who has been adjudicated delinquent  
14      or has adjudication of delinquency withheld; providing  
15      an effective date.

16  
17 Be It Enacted by the Legislature of the State of Florida:

18  
19       Section 1. Section 903.286, Florida Statutes, is amended to  
20 read:

21       903.286 Return of cash bond; requirement to withhold unpaid  
22 fines, fees, court costs; cash bond forms.-

23       (1) Notwithstanding s. 903.31(2), the clerk of the court  
24 shall withhold from the return of a cash bond posted on behalf  
25 of a criminal defendant by a person other than a bail bond agent  
26 licensed pursuant to chapter 648 sufficient funds to pay any  
27 unpaid costs of prosecution, costs of representation as provided  
28 by s. 27.52, court fees, court costs, and criminal penalties. If  
29 sufficient funds are not available to pay all unpaid costs of

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30 prosecution, costs of representation as provided by s. 27.52,  
31 court fees, court costs, and criminal penalties, the clerk of  
32 the court shall immediately obtain payment from the defendant or  
33 enroll the defendant in a payment plan pursuant to s. 28.246.

34 (2) All cash bond forms used in conjunction with the  
35 requirements of s. 903.09 must prominently display a notice  
36 explaining that all funds are subject to forfeiture and  
37 withholding by the clerk of the court for the payment of costs  
38 of prosecution, costs of representation as provided by s. 27.52,  
39 court fees, court costs, and criminal penalties on behalf of the  
40 criminal defendant regardless of who posted the funds.

41 Section 2. Section 938.27, Florida Statutes, is amended to  
42 read:

43 938.27 Judgment for costs of prosecution and investigation  
44 ~~on conviction.~~

45 (1) In all criminal and violation-of-probation or  
46 community-control cases, convicted persons are liable for  
47 payment of the costs of prosecution, including investigative  
48 costs incurred by law enforcement agencies, by fire departments  
49 for arson investigations, and by investigations of the  
50 Department of Financial Services or the Office of Financial  
51 Regulation of the Financial Services Commission, if requested by  
52 such agencies. The court shall include these costs in every  
53 judgment rendered against the convicted person. For purposes of  
54 this section, "convicted" means a determination of guilt, or of  
55 violation of probation or community control, which is a result  
56 of a plea, trial, or violation proceeding, regardless of whether  
57 adjudication is withheld.

58 (2) (a) The court shall impose the costs of prosecution and

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59 investigation notwithstanding the defendant's present ability to  
60 pay. The court shall require the defendant to pay the costs  
61 within a specified period or in specified installments.

62 (b) The end of such period or the last such installment  
63 shall not be later than:

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

66 2. Five years after the end of the term of imprisonment  
67 imposed, if the court does not order probation or community  
68 control; or

69 3. Five years after the date of sentencing in any other  
70 case.

71  
72 However, in no event shall the obligation to pay any unpaid  
73 amounts expire if not paid in full within the period specified  
74 in this paragraph.

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

77 (3) If a defendant is placed on probation or community  
78 control, payment of any costs under this section shall be a  
79 condition of such probation or community control. The court may  
80 revoke probation or community control if the defendant fails to  
81 pay these costs.

82 (4) Any dispute as to the proper amount or type of costs  
83 shall be resolved by the court by the preponderance of the  
84 evidence. The burden of demonstrating the amount of costs  
85 incurred is on the state attorney. The burden of demonstrating  
86 the financial resources of the defendant and the financial needs  
87 of the defendant is on the defendant. The burden of

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88 demonstrating such other matters as the court deems appropriate  
89 is upon the party designated by the court as justice requires.

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

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

96 (7) Investigative costs that are recovered shall be  
97 returned to the appropriate investigative agency that incurred  
98 the expense. Such costs include actual expenses incurred in  
99 conducting the investigation and prosecution of the criminal  
100 case; however, costs may also include the salaries of permanent  
101 employees. Any investigative costs recovered on behalf of a  
102 state agency must be remitted to the Department of Revenue for  
103 deposit in the agency operating trust fund, and a report of the  
104 payment must be sent to the agency, except that any  
105 investigative costs recovered on behalf of the Department of Law  
106 Enforcement shall be deposited in the department's Forfeiture  
107 and Investigative Support Trust Fund under s. 943.362.

108 (8) Costs for the state attorney shall be set in all cases  
109 at no less than \$50 per case when a misdemeanor or criminal  
110 traffic offense is charged and no less than \$100 per case when a  
111 felony offense is charged, including a proceeding in which the  
112 underlying offense is a violation of probation or community  
113 control. The court may set a higher amount upon a showing of  
114 sufficient proof of higher costs incurred. Costs recovered on  
115 behalf of the state attorney under this section shall be  
116 deposited into the State Attorneys Revenue Trust Fund to be used

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117 during the fiscal year in which the funds are collected, or in  
118 any subsequent fiscal year, for actual expenses incurred in  
119 investigating and prosecuting criminal cases, which may include  
120 the salaries of permanent employees, or for any other purpose  
121 authorized by the Legislature.

122 Section 3. Section 985.032, Florida Statutes, is amended to  
123 read:

124 985.032 Legal representation for delinquency cases.-

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

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

130 Section 4. This act shall take effect July 1, 2012.