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LEGISLATIVE ACTION

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| Senate | . | House |
| Comm: RCS | . | |
| 04/09/2013 | . | |
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The Committee on Judiciary (Bradley) recommended the following:

1 **Senate Substitute for Amendment (700548) (with title**
2 **amendment)**

3
4 Delete everything after the enacting clause
5 and insert:

6 Section 1. Section 903.286, Florida Statutes, is amended to
7 read:

8 903.286 Return of cash bond; requirement to withhold unpaid
9 fines, fees, court costs; cash bond forms.-

10 (1) Notwithstanding s. 903.31(2), the clerk of the court
11 shall withhold from the return of a cash bond posted on behalf
12 of a criminal defendant by a person other than a bail bond agent
13 licensed pursuant to chapter 648 sufficient funds to pay any



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14 unpaid costs of prosecution, costs of representation as provided
15 by ss. 27.52 and 938.29, court fees, court costs, and criminal
16 penalties. If sufficient funds are not available to pay all
17 unpaid costs of prosecution, costs of representation as provided
18 by ss. 27.52 and 938.29, court fees, court costs, and criminal
19 penalties, the clerk of the court shall immediately obtain
20 payment from the defendant or enroll the defendant in a payment
21 plan pursuant to s. 28.246.

22 (2) All cash bond forms used in conjunction with the
23 requirements of s. 903.09 must prominently display a notice
24 explaining that all funds are subject to forfeiture and
25 withholding by the clerk of the court for the payment of costs
26 of prosecution, costs of representation as provided by ss. 27.52
27 and 938.29, court fees, court costs, and criminal penalties on
28 behalf of the criminal defendant regardless of who posted the
29 funds.

30 Section 2. Section 938.27, Florida Statutes, is amended to
31 read:

32 938.27 Judgment for costs of prosecution and investigation
33 ~~on conviction.~~-

34 (1) In all criminal and violation-of-probation or
35 community-control cases, convicted persons are liable for
36 payment of the costs of prosecution, including investigative
37 costs incurred by law enforcement agencies, by fire departments
38 for arson investigations, and by investigations of the
39 Department of Financial Services or the Office of Financial
40 Regulation of the Financial Services Commission, if requested by
41 such agencies. The court shall include these costs in every
42 judgment rendered against the convicted person. For purposes of



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43 this section, "convicted" means a determination of guilt, or of
44 violation of probation or community control, which is a result
45 of a plea, trial, or violation proceeding, regardless of whether
46 adjudication is withheld.

47 (2) (a) The court shall impose the costs of prosecution and
48 investigation notwithstanding the defendant's present ability to
49 pay. The court shall require the defendant to pay the costs
50 within a specified period or pursuant to a payment plan under s.
51 28.246(4).

52 (b) The end of such period or the last such installment
53 must not be later than:

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

56 2. Five years after the end of the term of imprisonment
57 imposed, if the court does not order probation or community
58 control; or

59 3. Five years after the date of sentencing in any other
60 case.

61
62 However, the obligation to pay any unpaid amounts does not
63 expire if not paid in full within the period specified in this
64 paragraph.

65 (c) If not otherwise provided by the court under this
66 section, costs must ~~shall~~ be paid immediately.

67 (3) If a defendant is placed on probation or community
68 control, payment of any costs under this section shall be a
69 condition of such probation or community control. The court may
70 revoke probation or community control if the defendant fails to
71 pay these costs.



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72 (4) Any dispute as to the proper amount or type of costs
73 shall be resolved by the court by the preponderance of the
74 evidence. The burden of demonstrating the amount of costs
75 incurred is on the state attorney. The burden of demonstrating
76 the financial resources of the defendant and the financial needs
77 of the defendant is on the defendant. The burden of
78 demonstrating such other matters as the court deems appropriate
79 is upon the party designated by the court as justice requires.

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

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

86 (7) Investigative costs that are recovered must ~~shall~~ be
87 returned to the appropriate investigative agency that incurred
88 the expense. Such costs include actual expenses incurred in
89 conducting the investigation and prosecution of the criminal
90 case; however, costs may also include the salaries of permanent
91 employees. Any investigative costs recovered on behalf of a
92 state agency must be remitted to the Department of Revenue for
93 deposit in the agency operating trust fund, and a report of the
94 payment must be sent to the agency, except that any
95 investigative costs recovered on behalf of the Department of Law
96 Enforcement must ~~shall~~ be deposited in the department's
97 Forfeiture and Investigative Support Trust Fund under s.
98 943.362.

99 (8) Costs for the state attorney must ~~shall~~ be set in all
100 cases at no less than \$50 per case when a misdemeanor or



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101 criminal traffic offense is charged and no less than \$100 per
102 case when a felony offense is charged, including a proceeding in
103 which the underlying offense is a violation of probation or
104 community control. The court may set a higher amount upon a
105 showing of sufficient proof of higher costs incurred. Costs
106 recovered on behalf of the state attorney under this section
107 must ~~shall~~ be deposited into the State Attorneys Revenue Trust
108 Fund to be used during the fiscal year in which the funds are
109 collected, or in any subsequent fiscal year, for actual expenses
110 incurred in investigating and prosecuting criminal cases, which
111 may include the salaries of permanent employees, or for any
112 other purpose authorized by the Legislature.

113 Section 3. Section 985.032, Florida Statutes, is amended to
114 read:

115 985.032 Legal representation for delinquency cases.—

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

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

121 Section 4. Paragraph (d) is added to subsection (1) of
122 section 985.455, Florida Statutes, to read:

123 985.455 Other dispositional issues.—

124 (1) The court that has jurisdiction over an adjudicated
125 delinquent child may, by an order stating the facts upon which a
126 determination of a sanction and rehabilitative program was made
127 at the disposition hearing:

128 (d) Order the child, upon a determination of the child's
129 inability to pay, to perform community service in lieu of all



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130 court costs assessed against the delinquent child, including
131 costs of prosecution, public defender application fees, and
132 costs of representation.

133 Section 5. This act shall take effect July 1, 2013.

134

135 ===== T I T L E A M E N D M E N T =====

136 And the title is amended as follows:

137 Delete everything before the enacting clause
138 and insert:

139 A bill to be entitled
140 An act relating to costs of prosecution,
141 investigation, and representation; amending s.
142 903.286, F.S.; providing for the withholding of unpaid
143 costs of prosecution and representation from the
144 return of a cash bond posted on behalf of a criminal
145 defendant; requiring a notice on bond forms of such
146 possible withholding; amending s. 938.27, F.S.;

147 clarifying the types of cases that are subject to the
148 collection and dispensing of cost payments by the
149 clerk of the court; amending s. 985.032, F.S.;

150 providing for assessment of costs of prosecution
151 against a juvenile who has been adjudicated delinquent
152 or has adjudication of delinquency withheld; amending
153 s. 985.455, F.S.; providing that a child adjudicated
154 delinquent may perform community service in lieu of
155 certain costs and fees; providing an effective date.