

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 288

INTRODUCER: Judiciary Committee and Senator Bradley

SUBJECT: Costs of Prosecution, Investigation, and Representation

DATE: April 9, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Favorable
2.	Shankle	Cibula	JU	Fav/CS
3.			ACJ	
4.			AP	
5.				
6.				

Please see Section VIII. for Additional Information:

- A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes
- B. AMENDMENTS..... Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

I. Summary:

CS/SB 288 adds costs of prosecution and costs of representation to the fees, costs, and penalties to be withheld from cash bond posted on behalf of a defendant. The bill provides clarification regarding the collection of cost payments in certain traffic cases. The bill also requires the assessment of costs of prosecution in juvenile delinquency proceedings. The bill substitute allows a court to the court to order the juvenile to complete community service in lieu of paying the cost of prosecution if the court finds that the juvenile is unable to pay the cost.

This bill substantially amends the following sections of the Florida Statutes: 903.286, 938.27, 985.032, and 988.455.

II. Present Situation:

Costs of Prosecution

Section 938.27, F.S., provides that convicted persons are liable for costs of prosecution 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.¹ The costs of prosecution are deposited into the State Attorneys Revenue Trust Fund.²

Convicted persons are also liable for payment of investigative costs incurred by a law enforcement agency, fire department, or the Department of Financial Services and the Office of Financial Regulation of the Financial Services Commission.³ Conviction, for this purpose, 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.”⁴

Costs of Representation

Section 938.29, F.S., provides that convicted persons are liable for payment of the \$50 public defender application fee under s. 27.52(1)(b), F.S., 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.

Costs of representation may be imposed at the 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 costs of representation are deposited into the Indigent Criminal Defense Trust Fund.⁵

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.⁶ 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.⁷

Clerks to Collect and Disburse Funds

Section 28.246(2), F.S., requires the clerk of the circuit court (clerk) to establish and maintain a system of accounts receivable for court-related fees, charges, and costs.

The clerk may accept partial payments for all fees, charges, and costs in accordance with the terms of an established payment plan.⁸ The clerk may enter into a payment plan when an individual is determined to be indigent for costs by the court.⁹

¹ Section 938.27(8), F.S.

² *Id.*

³ Section 938.27(1), F.S.

⁴ *Id.*

⁵ Section 27.562, F.S.

⁶ Section 938.29(1)(c), F.S.

⁷ Section 938.29(3), F.S.

⁸ Section 28.246(4), F.S.

⁹ “A monthly payment amount, calculated based upon all fees and all anticipated costs, is presumed to correspond to the person’s ability to pay if the amount does not exceed 2 percent of the person’s annual net income, as defined in s. 27.52(1), divided by 12.” Section 28.246(4), F.S.

Criminal Traffic Case Disposition

The clerk of the court is authorized by s. 318.14, F.S., to dispose of certain misdemeanor criminal traffic violations in which the defendant shows the clerk that he or she is in compliance with the law under which the charge was made prior to the court date. Examples of these traffic offenses include operating a motor vehicle without a valid registration under s. 320.131, F.S., and presenting invalid proof of insurance under s. 316.646, F.S. The clerk is statutorily authorized to accept a nolo contendere plea, waive the misdemeanor fines, and assess costs listed in s. 318.14(10)(b), F.S.

Cash Bond Used to Pay Fines, Costs, and Fees

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 agent¹⁰ to pay the following:

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

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

Clerks are not currently authorized to withhold costs of prosecution or costs of representation.

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.

Delinquency Cases Exempt

Currently, juveniles who are adjudicated delinquent or who have had the adjudication of delinquency withheld are not required to pay the costs of prosecution although they can be required to pay for the costs of representation.¹¹ A lien-enforcement procedure is currently available which allows the clerk to collect the costs of representation from the parents or guardians of the child.¹²

III. Effect of Proposed Changes:

The bill adds the costs of prosecution and the costs of representation by the public defender to the list of costs that a clerk is required 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 such payments are not made from the cash bond, the clerk is required to obtain payment from a defendant, or if sufficient funds are not available, require the defendant to enroll in a payment plan. Cash bond

¹⁰ Licensed under ch. 648, F.S.

¹¹ Sections 27.52 (6) and 938.29(2)(a)2., F.S.

¹² *Id.*

forms must display notice of the funds being subject to forfeiture for payment of costs of prosecution as well as other costs, fees, and fines.

The bill requires the clerk to collect and disburse costs of prosecution in all cases, regardless of whether the cases are disposed of before a judge in open court. These particular cases may include criminal traffic violations disposed of pursuant to s. 318.14(10), F.S.¹³ (See the Technical Deficiencies section below.)

The bill also requires that costs of prosecution be assessed for juveniles who have been adjudicated delinquent or have adjudication of delinquency withheld. Although current law provides for a lien against the child's parents to aid in collecting costs of representation, there is no such provision in the bill for costs of prosecution. If the juvenile is found by the court to be unable to pay, the bill allows the court to order the juvenile to complete community service in lieu of paying the cost.

The bill takes effect July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Costs of prosecution will be assessed by the court in delinquency cases, which is a new cost not previously assessed. This assessment may be paid by the delinquent child if he or she has the ability to pay.

¹³ In these cases, the defendant may elect to show proof of compliance to the clerk of the court and enter a plea of nolo contendere. The clerk is authorized by s. 318.14(10), F.S., to assess certain fees. The assessment and collection of costs of prosecution are not specified in s. 318.14(10), F.S. Although s. 938.27(6), F.S., requires the clerk to "collect and dispense cost payments in any case," which would include costs of prosecution and investigation listed in s. 938.27(8), F.S., state attorneys report that the costs are not being collected in the criminal traffic cases disposed of pursuant to ch. 318, F.S.

C. Government Sector Impact:

This bill appears to have a positive fiscal impact on state attorneys and public defenders because:

1. The costs of prosecution and costs of representation will 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 provision is likely to result in a positive fiscal impact for state attorneys and public defenders.
2. The costs of prosecution will now be assessed from juveniles who have been adjudicated delinquent or have adjudication of delinquency withheld. This will likely result in a positive fiscal impact as these costs were not assessed in these specific cases in the past.
3. The state attorney may experience a positive fiscal impact from the costs of prosecution collected by the clerks of court in certain traffic violation cases.

VI. Technical Deficiencies:

State attorneys have reported that costs of prosecution are not being collected in criminal traffic cases that are disposed of by the clerk of the court prior to a court appearance by the defendant as authorized in s. 318.14, F.S. If the bill is intended to address this issue, clarity could be gained by adding a cross-reference to s. 938.27(6), F.S., as amended by the bill, within s. 318.14(10), F.S.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on April 8, 2013:

The committee substitute allows a court to order the juvenile to complete community service in lieu of paying the cost of prosecution if the court finds that the juvenile is unable to pay the cost. The committee substitute also makes a number of minor technical changes.

- B. **Amendments:**

None.