

By the Committee on Judiciary; and Senator Bradley

590-03886-13

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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; amending
15 s. 985.455, F.S.; providing that a child adjudicated
16 delinquent may perform community service in lieu of
17 certain costs and fees; providing an effective date.

18
19 Be It Enacted by the Legislature of the State of Florida:

20
21 Section 1. Section 903.286, Florida Statutes, is amended to
22 read:

23 903.286 Return of cash bond; requirement to withhold unpaid
24 fines, fees, court costs; cash bond forms.—

25 (1) Notwithstanding s. 903.31(2), the clerk of the court
26 shall withhold from the return of a cash bond posted on behalf
27 of a criminal defendant by a person other than a bail bond agent
28 licensed pursuant to chapter 648 sufficient funds to pay any
29 unpaid costs of prosecution, costs of representation as provided

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30 by ss. 27.52 and 938.29, court fees, court costs, and criminal
31 penalties. If sufficient funds are not available to pay all
32 unpaid costs of prosecution, costs of representation as provided
33 by ss. 27.52 and 938.29, court fees, court costs, and criminal
34 penalties, the clerk of the court shall immediately obtain
35 payment from the defendant or enroll the defendant in a payment
36 plan pursuant to s. 28.246.

37 (2) All cash bond forms used in conjunction with the
38 requirements of s. 903.09 must prominently display a notice
39 explaining that all funds are subject to forfeiture and
40 withholding by the clerk of the court for the payment of costs
41 of prosecution, costs of representation as provided by ss. 27.52
42 and 938.29, court fees, court costs, and criminal penalties on
43 behalf of the criminal defendant regardless of who posted the
44 funds.

45 Section 2. Section 938.27, Florida Statutes, is amended to
46 read:

47 938.27 Judgment for costs of prosecution and investigation
48 ~~on conviction.~~

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

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59 violation of probation or community control, which is a result
60 of a plea, trial, or violation proceeding, regardless of whether
61 adjudication is withheld.

62 (2) (a) The court shall impose the costs of prosecution and
63 investigation notwithstanding the defendant's present ability to
64 pay. The court shall require the defendant to pay the costs
65 within a specified period or pursuant to a payment plan under s.
66 28.246(4).

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

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

71 2. Five years after the end of the term of imprisonment
72 imposed, if the court does not order probation or community
73 control; or

74 3. Five years after the date of sentencing in any other
75 case.

76

77 However, the obligation to pay any unpaid amounts does not
78 expire if not paid in full within the period specified in this
79 paragraph.

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

82 (3) If a defendant is placed on probation or community
83 control, payment of any costs under this section shall be a
84 condition of such probation or community control. The court may
85 revoke probation or community control if the defendant fails to
86 pay these costs.

87 (4) Any dispute as to the proper amount or type of costs

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88 shall be resolved by the court by the preponderance of the
89 evidence. The burden of demonstrating the amount of costs
90 incurred is on the state attorney. The burden of demonstrating
91 the financial resources of the defendant and the financial needs
92 of the defendant is on the defendant. The burden of
93 demonstrating such other matters as the court deems appropriate
94 is upon the party designated by the court as justice requires.

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

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

101 (7) Investigative costs that are recovered must ~~shall~~ be
102 returned to the appropriate investigative agency that incurred
103 the expense. Such costs include actual expenses incurred in
104 conducting the investigation and prosecution of the criminal
105 case; however, costs may also include the salaries of permanent
106 employees. Any investigative costs recovered on behalf of a
107 state agency must be remitted to the Department of Revenue for
108 deposit in the agency operating trust fund, and a report of the
109 payment must be sent to the agency, except that any
110 investigative costs recovered on behalf of the Department of Law
111 Enforcement must ~~shall~~ be deposited in the department's
112 Forfeiture and Investigative Support Trust Fund under s.
113 943.362.

114 (8) Costs for the state attorney must ~~shall~~ be set in all
115 cases at no less than \$50 per case when a misdemeanor or
116 criminal traffic offense is charged and no less than \$100 per

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117 case when a felony offense is charged, including a proceeding in
118 which the underlying offense is a violation of probation or
119 community control. The court may set a higher amount upon a
120 showing of sufficient proof of higher costs incurred. Costs
121 recovered on behalf of the state attorney under this section
122 must ~~shall~~ be deposited into the State Attorneys Revenue Trust
123 Fund to be used during the fiscal year in which the funds are
124 collected, or in any subsequent fiscal year, for actual expenses
125 incurred in investigating and prosecuting criminal cases, which
126 may include the salaries of permanent employees, or for any
127 other purpose authorized by the Legislature.

128 Section 3. Section 985.032, Florida Statutes, is amended to
129 read:

130 985.032 Legal representation for delinquency cases.—

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

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

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

138 985.455 Other dispositional issues.—

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

143 (d) Order the child, upon a determination of the child's
144 inability to pay, to perform community service in lieu of all
145 court costs assessed against the delinquent child, including

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146 costs of prosecution, public defender application fees, and
147 costs of representation.

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