

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 311 Costs of Prosecution, Investigation, and Representation

SPONSOR(S): Ray

TIED BILLS: **IDEN./SIM. BILLS:** SB 288

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 0 N	Jones	Cunningham
2) Justice Appropriations Subcommittee	11 Y, 0 N, As CS	Toms	Jones Darity
3) Judiciary Committee			

SUMMARY ANALYSIS

Currently, convicted persons are liable for the costs of prosecution, as well as the costs of representation. These costs may be imposed at a rate of \$50 in misdemeanor or criminal traffic offense cases, and \$100 in felony criminal cases.

The bill amends s. 903.286, F.S., to add the costs of prosecution and representation to the list of costs a clerk of the court is required to withhold from the return of a cash bond posted on behalf of a criminal defendant.

The bill also requires:

- The clerk to collect and dispense cost payments in any case, regardless of whether the case takes place before a judge in open court or in any other manner; and
- The costs of prosecution to be assessed against juveniles who have been adjudicated delinquent or have adjudication of delinquency withheld.

This bill will create a minimal increase in workload and an insignificant negative fiscal impact for the Clerks of the Court. This bill will likely have an insignificant positive fiscal impact on state attorneys and public defenders. However, the impact is indeterminate because the number of affected offenders and their levels of payment is unknown.

The bill is effective on July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Costs of Prosecution

Section 938.27, F.S., provides that convicted¹ persons are liable for the costs of prosecution at the rate of \$50 in misdemeanor or criminal traffic offense cases and \$100 in felony criminal cases.² The costs of prosecution are deposited into the State Attorneys Revenue Trust Fund.³

If requested, convicted persons are also liable for the investigative costs incurred by a law enforcement agency, fire department,⁴ the Department of Financial Services, and the Office of Financial Regulation of the Financial Services Commission.⁵ Section 938.27, F.S., requires a court to impose the cost of prosecution and investigation notwithstanding the convicted person's present ability to pay.

Costs of Representation

Section 938.29(1)(a), F.S., provides that convicted⁶ persons are liable for payment of a \$50 public defender application fee under s. 27.52(1)(b), F.S.,⁷ 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 if he or she 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.⁸ The costs of representation are deposited into the Public Defender's Indigent Criminal Defense Trust Fund.⁹

Section 938.29(1)(a), F.S., requires a court to impose the cost of representation notwithstanding the convicted person's present ability to pay. A 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.¹⁰

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.¹¹

Cash Bonds

Section 903.286, F.S., requires 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 agent¹² to pay unpaid:

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

If sufficient funds are not available to pay the above costs, the clerk must immediately obtain payment from the defendant or enroll the defendant in a payment plan pursuant to s. 28.246, F.S.¹³

¹ Section 938.27(1), F.S., defines "convicted" as the 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.

² A court may set a higher amount upon the showing of sufficient proof of higher costs incurred. Section 938.27(8), F.S.

³ *Id.*

⁴ For arson investigations. Section 938.27, F.S.

⁵ Section 938.27(1), F.S.

⁶ The definition of "convicted" is the same as that in s. 938.27(1), F.S. See, *supra* note 1 and s. 938.29(1)(a), F.S.

⁷ Section 27.52(1)(a), F.S., provides that a person seeking the appointment of a public defender under s. 27.51, F.S., based upon an inability to pay, must apply to the clerk of the court for a determination of indigent status.

⁸ A court may set a higher amount upon the showing of sufficient proof of higher fees or costs incurred. Section 938.29(1)(a), F.S.

⁹ Section 27.562, F.S.

¹⁰ Section 938.29(1)(c), F.S.

¹¹ Section 938.29(3), F.S.

¹² Licensed under ch. 648, F.S.

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-described costs on behalf of the criminal defendant, regardless of who posted the funds.¹⁴

Effect of the Bill

The bill amends s. 903.286, F.S., to add the costs of prosecution and costs of representation to the list of costs 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 sufficient funds are not available to pay such costs from the cash bond, the clerk must immediately obtain payment from the defendant or enroll the defendant in a payment plan. The bill also requires the cash bond form to include a notice that the costs of prosecution and representation are subject to forfeiture and withholding.

Costs of Prosecution – Disposition by the Clerk

Section 938.27, F.S., requires the clerk to collect and dispense cost of prosecution payments in every case. In certain instances, the clerk, rather than the judge, is authorized to dispose of a case. For example, s. 318.14, F.S., authorizes the clerk to dispose of certain misdemeanor criminal traffic violations¹⁵ 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.

Effect of the Bill

The bill amends s. 938.27, F.S., to require 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 or in any other manner provided by law.*

Delinquency Cases

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.¹⁶

Effect of the Bill

The bill requires that costs of prosecution be assessed against juveniles who have been adjudicated delinquent or have adjudication of delinquency withheld. The bill also provides that upon determination of a juvenile's inability to pay court costs assessed against the delinquent, including costs of prosecution, public defender application fees and the costs of representation, the juvenile may perform community service in lieu of payment.

B. SECTION DIRECTORY:

Section 1. Amends s. 903.286, F.S., relating to return of cash bond; requirement to withhold unpaid fines, fees, court costs; cash bond forms.

Section 2. Amends s. 938.27, F.S., relating to judgment for costs of prosecution and investigation.

Section 3. Amends s. 985.032, F.S., relating to legal representation for delinquency cases.

Section 4. Provides an effective date of July 1, 2013.

¹³ Section 903.286(1), F.S.

¹⁴ Section 903.286(2), F.S.

¹⁵ 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.

¹⁶ Sections 27.52(6) and 938.29(2)(a)2., F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

There is likely to have an insignificant positive fiscal impact on state attorneys and public defenders for the following reasons:

- The clerk is required to collect and dispense cost payments in any case, regardless of whether the disposition of the case takes place before a judge in open court or in any other manner provided by law. This may result in more costs of prosecution being collected and paid to state attorneys;
- The costs of prosecution will be assessed against juveniles who have been adjudicated delinquent or have adjudication of delinquency withheld. This will likely result in a positive fiscal impact on state attorneys as these costs were not assessed in these specific cases in the past; and
- The costs of prosecution and representation are allowed to 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 will likely have a positive fiscal impact on state attorneys and public defenders as the cost of prosecution and representation will be deducted from any cash bonds posted on behalf of a criminal defendant.

However, the impact is indeterminate because the number of affected offenders and their ultimate level of payment is unknown.

There is also a possible negative fiscal impact on state attorneys and public defenders providing that the court may order a juvenile to perform community service in lieu of all court costs assessed against a delinquent child, including costs of prosecution, public defender application fees and costs of representation. Per the Public Defenders Association, this bill will have an insignificant fiscal impact to their offices.

2. Expenditures:

See "fiscal comments" section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

See "fiscal comments" section.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Juveniles who have been adjudicated delinquent or have adjudication of delinquency withheld may now be assessed the costs of prosecution. However, the bill also allows for the court to order the child to perform community service in lieu of all court costs assessed against the delinquent child, including costs of prosecution, public defender application fees and costs of representation. This may provide for a savings for juveniles.

Criminal defendants must now pay the costs of prosecution and the costs of representation regardless of whether the cases are disposed of before a judge in open court or in any other manner provided by law.

D. FISCAL COMMENTS:

The bill clarifies the types of cases that are subject to the collection and dispensing of cost payments by the Clerks of the Court. The bill will create a minimal increase in workload for the Clerks of the Court. The Florida Association of Court Clerks has stated that this bill will have an indeterminate fiscal impact on the office of the Clerk.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill amends s. 903.286, F.S., to allow the clerk to withhold costs of representation "as provided by s. 27.52, F.S.," from the return of a cash bond. Section 27.52, F.S., only references the \$50 application fee for court-appointed counsel. If the intent was to include all costs of representation, such as attorney's fees, the reference should be changed to s. 938.29, F.S.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 6, 2013, the Justice Appropriations Subcommittee adopted three amendments and reported the bill favorably as a committee substitute.

- The first and second amendments added a cross reference to section 938.29, F.S.
- The third amendment provided that upon determination of a juvenile's inability to pay court costs assessed against the delinquent, including costs of prosecution, public defender application fees and the costs of representation, the juvenile may perform community service in lieu of payment.

This analysis is drafter to the committee substitute as passed by the Justice Appropriations Subcommittee.