

**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.)

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Prepared By: The Professional Staff of the Committee on Criminal Justice

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BILL: SB 1264

INTRODUCER: Senator Steube

SUBJECT: Mandatory Court Costs

DATE: January 26, 2018

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Jones	CJ	<b>Pre-meeting</b>
2.	_____	_____	ACJ	_____
3.	_____	_____	AP	_____

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**I. Summary:**

SB 1264 increases the minimum amounts a court may assess a defendant at sentencing for the costs of prosecution in adult and juvenile misdemeanor, criminal traffic, and felony cases.

Currently, the court is required to assess a minimum of \$50 in misdemeanor and criminal traffic cases for the costs of prosecution. The bill increases the minimum assessment to \$100.

The current minimum costs of prosecution assessment in felony cases is \$100. The bill increases this to \$200.

The bill is effective July 1, 2018.

**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.<sup>1</sup> The costs of prosecution are deposited into the State Attorneys Revenue Trust Fund.<sup>2</sup>

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.”<sup>3</sup>

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<sup>1</sup> Section 938.27(8), F.S.

<sup>2</sup> *Id.*

<sup>3</sup> Section 938.27(1), F.S.

Section 938.27, F.S., requires a court to impose the costs of prosecution notwithstanding the convicted person's present ability to pay.<sup>4</sup>

### **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. The clerk may enter into a payment plan when an individual is determined to be indigent for costs by the court.<sup>5</sup>

### **Delinquency Case Disposition**

Costs of prosecution are assessed for juveniles who have been adjudicated delinquent or have adjudication of delinquency withheld.<sup>6</sup> If the juvenile is found by the court to be unable to pay, the court may order the juvenile to complete community service in lieu of paying the assessed costs.<sup>7</sup>

### **Cash Bond Used to Pay Fines, Costs, and Fees**

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 agent to pay court fees, criminal penalties, and court costs including costs of prosecution and costs of representation.

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.<sup>8</sup>

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.<sup>9</sup>

## **III. Effect of Proposed Changes:**

The bill increases the minimum required assessment in misdemeanor, criminal traffic, and felony cases for the costs of prosecution. The assessment applies in both adult and juvenile cases.

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<sup>4</sup> The court must require the defendant to pay the costs within a specified period or pursuant to a payment plan under s. 28.246(4), F.S. Section 938.27(2)(a), F.S. *See also* Section 938.27(1), F.S., referencing the assessment of investigative costs.

<sup>5</sup> Section 28.246(4), F.S. "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 two percent of the person's annual net income, as defined in s. 27.52(1), divided by 12." Section 28.246(4), F.S.

<sup>6</sup> Section 985.032(2), F.S.

<sup>7</sup> Section 985.455(1)(d), F.S.

<sup>8</sup> Section 903.286(1), F.S.

<sup>9</sup> Section 903.286(2), F.S.

The bill increases the amounts from \$50 to \$100 in misdemeanor and criminal traffic cases. In felony cases, the assessment is increased from \$100 to \$200.

The bill is effective July 1, 2018.

#### **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:

Criminal defendants who are convicted and therefore required to pay costs of prosecution, including juvenile offenders, will be required to pay the increased amount for the costs of prosecution. The costs will increase from \$50 for misdemeanor and criminal traffic offenses to \$100. Felony costs of prosecution will increase from \$100 to \$200.

C. Government Sector Impact:

From Fiscal Year 2014-15 to Fiscal Year 2016-17, the revenues accruing to the State Attorney Revenue Trust Fund declined from \$32.5 million to \$29.3 million, approximately a 10 percent decline. Similarly, revenues collected for costs of prosecution declined from \$24.2 million to \$22.7 million, almost 6 percent during that time period.<sup>10</sup>

Increasing criminal defendant's and juvenile offender's costs of prosecution responsibility may slow the decline in the State Attorney Revenue Trust Fund, however it cannot be predicted to what degree since collections of costs of prosecution cannot be predicted with any certainty.

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<sup>10</sup> Information provided by the Senate Appropriations Subcommittee on Civil and Criminal Justice, e-mail dated January 21, 2018 (on file with the Senate Committee on Criminal Justice).

The Florida Public Defender Association reports that the bill “could have an indirect fiscal impact on Public Defender budgets.” Although a policy argument against the bill is made, there is no real fiscal analysis presented in the document received from the association.<sup>11</sup>

The Justice Administrative Commission (Commission) reports no fiscal impact from the bill with the caveat that the Commission directs its comments only on behalf of the Commission, not the judicial-related offices administratively served by the Commission.<sup>12</sup>

## **VI. Technical Deficiencies:**

None.

## **VII. Related Issues:**

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.<sup>13</sup>

Costs of representation are not addressed by the bill.

## **VIII. Statutes Affected:**

This bill substantially amends section 938.27 of the Florida Statutes.

This bill reenacts section 985.032 of the Florida Statutes.

## **IX. Additional Information:**

### **A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

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<sup>11</sup> Florida Public Defender Association, *Fiscal Analysis of SB 1264*, December 27, 2017 (on file with the Senate Committee on Criminal Justice).

<sup>12</sup> Justice Administrative Commission, *Memorandum No. 076-17, Exec, Bill Analysis Response for Senate Bill 1264*, December 21, 2017 (on file with the Senate Committee on Criminal Justice).

<sup>13</sup> Section 27.562, F.S.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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