

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 461 Attorney Fees and Costs
SPONSOR(S): Criminal Justice Subcommittee, Alexander
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	15 Y, 0 N, As CS	DuShane	Hall
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

In the United States, over 97 percent of criminal cases resolve through a plea bargain. A plea bargain results from a defendant and state attorney negotiating an agreement beneficial to both sides. A defendant may benefit by having his or her charges modified or reduced, while the state attorney may benefit by more efficiently resolving the case without requiring a criminal trial.

In each judicial circuit in Florida, an elected state attorney and appointed assistant state attorneys investigate and prosecute criminal cases. Florida law authorizes state attorneys to recover costs incurred in investigating and prosecuting cases, and requires a court to assess such costs against the defendant in addition to other court costs. Current law requires a court to assess costs of prosecution in an amount no less than \$50 per case for a misdemeanor or criminal traffic offense or \$100 per case for a felony offense. A court may set a higher amount if the state attorney makes a sufficient showing that higher costs were incurred in investigating or prosecuting the case.

There is no statutory maximum amount a court may assess a defendant for costs of prosecution. As a result, some state attorneys have used costs of prosecution as a plea bargaining tool; offering a defendant a more favorable sentence or making a plea offer contingent upon his or her agreement to pay increased costs. This practice raises concern that a defendant of greater financial means may receive a more favorable outcome based upon his or her ability to pay increased costs.

CS/HB 461 limits the amount of costs of prosecution that may be included as a term of any negotiated plea agreement submitted to the court for consideration to the statutory minimum. Under the bill, a court may order such costs in a maximum amount of \$50 for a misdemeanor or criminal traffic offense or \$100 for a felony offense, including a violation of probation or community control. The bill prevents increased costs of prosecution from being used as a plea bargaining tool; ensuring that a defendant of greater financial means does not receive a more favorable sentence based solely on his or her ability to pay increased costs. The bill does not alter a court's ability to set a higher amount of costs of prosecution upon a sufficient showing the state attorney actually incurred higher costs.

This bill may have a negative indeterminate fiscal impact on some state attorney's offices by reducing the ability to recover increased costs of prosecution, as such costs fund state attorney's office operations.

This bill provides an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Plea Negotiations

In the United States, over 97 percent of criminal cases resolve through a negotiated plea bargain.¹ During plea negotiations, the government and defendant attempt to negotiate a deal favorable to both sides.² A defendant may attempt to reduce or modify his or her charges or sentence while the government attempts to receive the defendant's plea.³ Benefits of plea bargaining include lower costs to the judicial system and expediency in resolving criminal cases.⁴

A defendant may either plead guilty, not guilty, or with consent of the court, *nolo contendere*.⁵ In return for the defendant's plea of guilty or *nolo contendere*, the prosecutor can offer to abandon other charges, agree to not oppose a defendant's sentencing request, or may agree to a specific sentence.⁶ All pleas must be voluntarily entered into by the defendant.⁷ Before accepting a plea, the trial judge must determine that the defendant either acknowledges his or her guilt or acknowledges that the plea is in his or her best interest, while maintaining his or her innocence.⁸ While the prosecutor and defendant may negotiate a plea and present it to the court for acceptance, ultimately, the trial judge determines the defendant's sentence.⁹

Court Costs

A defendant who pleads guilty or *nolo contendere* or who is found guilty, must pay specified mandatory court costs. Section 938.05, F.S., requires a court to assess costs in all cases resolved by plea agreement in the amount of \$225 for a felony and \$60 for a misdemeanor or a criminal traffic offense.¹⁰

A defendant may set up a payment plan to pay court costs in installments.¹¹ However, the time period to pay the costs may not extend beyond the end of any period of probation or community control¹² or five years after a term of imprisonment or the sentencing date.¹³ Probation or community control can be revoked if a defendant does not pay mandatory costs, when a court determines that he or she has the ability to pay.¹⁴ Additionally, upon a defendant's showing of inability to pay, a court may order the defendant to perform community service in lieu of the financial obligations.¹⁵

Costs of Prosecution

¹ Lindsey Devers, *Plea and Charge Bargaining- Research Summary*, Bureau of Justice Statistics, (Jan. 24, 2019), <https://www.bja.gov/Publications/PleaBargainingResearchSummary.pdf> (last visited Jan. 15, 2020).

² *United States v. Robertson*, 582 F. 2d 1356, 1365 (5th Cir. 1978).

³ *Id.* at 1367.

⁴ Devers, *supra* note 4.

⁵ Fla. R. Crim. P. 3.170(a). A *nolo contendere* plea is commonly called a plea of no contest. The defendant enters the plea without admitting guilt or disputing the charge.

⁶ Fla. R. Crim. P. 3.171(b).

⁷ Fla. R. Crim. P. 3.172(a).

⁸ *Id.*

⁹ Fla. R. Crim. P. 3.171(a).

¹⁰ S. 938.05(1), F.S.

¹¹ S. 28.246(4), F.S.

¹² S. 938.27(2)(b)1., F.S.

¹³ Ss. 938.27(2)(b)2. or 3., F.S.

¹⁴ S. 938.27(3), F.S.

¹⁵ S. 938.30(2), F.S. The defendant is required to testify under oath regarding his or her current financial situation.

A state attorney is entitled to recover the costs associated with prosecuting a criminal case.¹⁶ Any costs recovered are deposited into the State Attorneys Revenue Trust Fund, used to fund state attorney's office operations.¹⁷ Costs of prosecution may include investigative costs, extradition costs, expert witness fees, deposition costs, fees, and evidence costs.¹⁸

The defendant is responsible for the costs of prosecution in a criminal case.¹⁹ Section 938.27, F.S., requires a court to set costs of prosecution at a minimum of \$50 per case for a misdemeanor or criminal traffic offense or \$100 per case for a felony offense, including a violation of probation or community control.²⁰ The court may set a higher amount if the state attorney makes a sufficient showing that higher costs were incurred in investigating or prosecuting the case.²¹ There is no statutory maximum that the court may assess a defendant for the costs of prosecution.²²

While not occurring statewide, some state attorneys in Florida have offered plea deals reducing a defendant's sentence or making the plea offer contingent upon his or her agreement to pay additional costs of prosecution to the state attorney's office.²³ This practice leads to concern that such plea deals result in inequitable justice; favoring defendants who have the ability to pay higher costs of prosecution over those without.

Some state attorneys claim the practice is forced by funding cuts and allows the office to raise fees in order to make up for funding shortfalls.²⁴ Others have defended the practice by arguing that a defendant maintains a choice to decide whether to accept a plea offer including increased costs.²⁵ Additionally, some state attorneys have justified the practice by arguing that defendants, who are the users of the criminal justice system, should be responsible for funding for the system.²⁶

Effect of Proposed Changes

CS/HB 461 limits the amount of costs of prosecution that may be included in a negotiated plea agreement submitted to the court for consideration. Under the bill, the costs of prosecution in a negotiated plea agreement cannot exceed more than \$50 for a misdemeanor or criminal traffic offense or \$100 for a felony offense, including a violation of probation or community control. By setting a statutory maximum on costs of prosecution included in a negotiated plea agreement, state attorneys will be prevented from offering a defendant a more favorable plea deal or making a plea deal contingent upon his or her agreement to pay increased costs of prosecution.

A court continues to maintain the ability to set higher costs of prosecution upon a sufficient showing that the state attorney actually incurred higher costs.

The bill provides an effective date of July 1, 2020.

B. SECTION DIRECTORY:

Section 1: Amends s. 938.27, F.S., relating to Judgment for costs of prosecution and investigation.

¹⁶ S. 938.27(1), F.S.

¹⁷ S. 27.367, F.S.

¹⁸ *Mickler v. State*, 682 So. 2d 607, 609 (Fla. 2d DCA 1996). State attorney fees include time spent preparing for and participating in trial.

¹⁹ S. 938.27(1), F.S.

²⁰ S. 938.27(8), F.S.

²¹ *Id.*

²² *Id.*

²³ Daphne Duret, 'Checkbook justice'? Why Palm Beach County Prosecutors Are Doubling Fees In Some Plea Deals, The Palm Beach Post, (Feb. 2, 2019), <https://www.palmbeachpost.com/news/20190202/checkbook-justice-why-palm-beach-county-prosecutors-are-doubling-fees-in-some-plea-deals> (last visited Jan. 15, 2020).

²⁴ The Palm Beach State Attorney's office forecasted a budget shortfall of \$600,000 to \$900,000 for FY 18-19. *Id.*

²⁵ *Public Defenders: Fees For Pleas Lead to Unequal Justice*, Tampa Bay Times (Nov. 11, 2015), <https://www.tampabay.com/news/courts/public-defender-fees-for-pleas-lead-to-unequal-justice/2253619/> (last visited Jan. 15, 2020).

²⁶ *Id.*

Section 2: Reenacts s. 985.032, F.S., relating to Legal representation for delinquency cases.

Section 3: Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill may have a negative indeterminate fiscal impact on some state attorney's offices by decreasing the ability to collect increased costs of prosecution. Such costs are deposited into the State Attorney's Trust Fund, which provides funding for state attorney's office operations. The bill does not limit recovery of higher costs of prosecution when such costs are actually incurred.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 15, 2020, the Criminal Justice Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Clarified a court may set higher costs of prosecution when such costs are incurred by the state attorney, however, such costs are prohibited from being included solely on the basis of being a bargained for term of a negotiated plea agreement.
- Removed the restriction on the maximum amount of attorney's fees and costs that a court may assess a defendant for assistance of court-appointed counsel.

This analysis is drafted to the committee substitute as passed by the Criminal Justice Subcommittee.