

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: April 15, 1998 Revised: _____

Subject: Comprehensive Court Enforcement Program Act

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Wiehle</u>	<u>Moody</u>	<u>JU</u>	<u>Fav/1 amendment</u>
2.	<u>Gomez</u>	<u>Miller</u>	<u>CJ</u>	<u>Favorable/CS</u>
3.	<u> </u>	<u> </u>	<u>WM</u>	<u> </u>
4.	<u> </u>	<u> </u>	<u> </u>	<u> </u>
5.	<u> </u>	<u> </u>	<u> </u>	<u> </u>

I. Summary:

This bill creates the Comprehensive Court Enforcement Program Act and establishes legislative intent for the Act. The enforcement program may be implemented as supplementary proceedings at the option of the chief judge of each circuit. The court may order a person who has been ordered to pay any financial obligation in any criminal case to appear and be examined under oath concerning the person’s financial ability to pay the obligation. Any person failing to attend may be arrested and may be held in civil contempt.

This bill creates the following section of the Florida Statutes: 938.30

II. Present Situation:

A. Court costs and other fines and fees imposed in criminal cases

The 1997 Legislature created ch. 938, F.S., to consolidate and categorize all the court costs imposed on offenders. In the past, these provisions were scattered throughout various chapters. ch. 97-271, L.O.F. Chapter 938, F.S. was designed to assist “the judiciary and other court participants to identify and locate applicable law relating to court costs and thereby facilitating the uniform imposition and collection of court costs.” s.1, ch. 97-271, L.O.F. Chapter 938, F.S., categorizes court costs in five parts as follows: (1) mandatory costs in all cases; (2) mandatory costs in specific types of cases; (3) mandatory court costs authorized by local governmental entities; (4) discretionary costs in specific types of cases; and (5) miscellaneous provisions.

An example of the court costs provided for in ch. 938, F.S., is the Crime Compensation Trust Fund, mandatory in all cases. This is a \$50 cost which is deposited in the Crimes Compensation Trust Fund administered by the Department of Legal Affairs.

Apart from court costs, a defendant incurs other financial obligations. For example, a defendant is assessed a \$40 application fee when he or she requests a public defender and is subject to pay the costs of his or her attorneys fees. See ss. 27.521 and 938.29, F.S. Further, in all criminal cases, the costs of prosecution, including investigative costs incurred by law enforcement agencies may be entered in a judgment rendered against the defendant. s. 938.27, F.S.

B. Court costs, fines, or fees may be reduced to a civil judgment; prison as sanction not authorized

Ordinarily, offenders are placed on a period of probation and required to make monthly payments toward satisfaction of the financial portion of their sentence. If an offender fails to make the necessary payments, he or she is reported to the court by the supervising probation officer and a hearing is conducted to determine whether the offender's failure to pay is an intentional failure to pay. See ch. 948, F.S. If it is determined the offender refuses to pay, he may be committed to, or returned to, prison. If it is determined the offender has no ability to pay, he *may not* be punished with incarceration for that inability. See *Coxon v. State*, 365 So. 2d 1067 (Fla. 2d DCA 1979). The United States has no debtors' prison. Article I, Section 11 of the Florida Constitution provides that: "No person shall be imprisoned for debt, except in cases of fraud."

"Execution on a sentence imposing a fine may be issued in the same manner as execution of a judgment in a civil action whether or not the sentence also imposes imprisonment." s. 922.02, F.S. In *State v. Yost*, 507 So. 2d 1099 (Fla. 1987), the Court held that, where properly assessed, a judgment for court costs may be enforced as a civil judgment. A determination as to a defendant's ability to pay does not have to be made prior to the assessment of statutorily mandated costs. Such determinations are required when the state seeks to enforce collection of the costs. See *State v. Beasley*, 580 So. 2d 139 (Fla. 1991).

C. Supplementary proceedings

Section 56.29, F.S., provides proceedings supplementary to the legal process of enforcing a judgment, directed to discovery of the debtor's property and its application to the debt. The court is authorized to require a defendant to appear before the court or to a special master at a time and place specified in the order. s. 56.29(2), F.S. Section 56.29, F.S. details the procedures applicable to supplementary proceedings.

D. Palm Beach County Collections Court established

A recent study by the National Center for State Courts revealed significantly increased rates of collection for fines and court costs when the judiciary engages in concerted and consistent enforcement efforts. With this in mind, Palm Beach County recently started a collections court designed to enforce payment of these debts through the civil proceedings supplementary statute contained in s. 56.29, F.S. In May, 1996, the Florida Supreme Court approved a local rule creating the circuit-wide Palm Beach County Collections Court. [C.J. Ciklin, *Full Court Press*, "The Search for Accountability in an Overburdened Court System," p. 9 (official newsletter of the

state courts system of Florida, published by the Office of the State Courts Administrator)(on file with comm.)] Delinquent defendants are provided a payment deadline and told not to appear at a future court hearing, provided payment is made. Special masters are employed to “encourage, pressure, push and cajole delinquent defendants to pay.” *Id.* Ultimately, warrants are issued for failure to pay or appear.

E. Uniform Fraudulent Transfer Act

Debtors have been known to engage in the unlawful practice of fraudulently conveying a piece of property to avoid having it seized. Most states have sought to prevent this type of property transfer by adopting the Uniform Fraudulent Conveyances Act.

The Uniform Fraudulent Transfer Act is designed to remove any temptation a debtor may have to hide property before declaring bankruptcy by giving it to a relative, for example. Any transfer of the debtor’s assets made within 90 days of filing for bankruptcy, or within one year if a relative or business associate is involved, is carefully scrutinized by the bankruptcy court. If the court determines that the debtor was attempting to defraud creditors by selling property at a below-market price, the court may order the property or other assets be given over to the trustee. Anything that was sold at a reasonable market value before a bankruptcy filing, however, cannot be recovered by the court under the rules of the Uniform Fraudulent Transfer Act.

In Florida, fraudulent conveyances are dealt with primarily in ch. 726, F.S., the *Uniform Fraudulent Transfers Act*. Section 726.105, F.S., makes it unlawful to convey property with the intent to “hinder, delay or defraud any creditor of the debtor.”

F. Contempt of court

Contempt of court may be either civil or criminal. If the purpose of contempt is to coerce action or non action by a party, an order of contempt is civil. *Pugliese v. Pugliese*, 347 So.2d 422, 424 (Fla.1977). On the other hand, criminal contempt proceedings are initiated to vindicate the court's authority or to punish conduct in violation of a court order. *Landingham v. Landingham*, 685 So.2d 946, 951 (Fla. 1st DCA 1996).

The purpose of a civil contempt proceeding is to obtain compliance on the part of a person subject to an order of the court. Because incarceration is utilized solely to obtain compliance, it must be used only when the contemnor has the ability to comply. This ability to comply is the contemnor's "key to his cell." Incarceration for civil contempt cannot be imposed absent a finding by the trial court that the contemnor has the present ability to purge himself of contempt. Without the present ability to pay from some available asset, the contemnor holds no key to the jailhouse door. *Bowen v. Bowen*, 471 So.2d 1274 (Fla.1985).

Although there is no constitutional impediment to a court's imposing a determinate sentence which also includes a purge provision, such limitations are not routine practice in judgments for civil contempt. Inclusion of a determinate term may blur what should be a bright line between

criminal and civil contempt. *Alves v. Barnett Mortg. Co.*, 688 So.2d 459, 462, N.3. (Fla. 4th DCA 1997)(citations omitted).

III. Effect of Proposed Changes:

The bill creates the Comprehensive Court Enforcement Program Act and establishes legislative intent for the Act. The enforcement program may be implemented as supplementary proceedings in any judicial circuit at the option of the chief judge.

The bill provides that judges, presumably both circuit and county court judges, shall have jurisdiction to carry out the provisions of this act.

The bill creates s. 938.30, F.S., as follows:

- ▶ Provides that any person “ordered to pay any financial obligation in any criminal case” is subject to the newly created section. The bill does not define financial obligation. However, the legislative intent makes clear that the bill is directed at a collection of “court costs, fines, and fees against litigants pursuant to statutory law.” Further, legislative intent providing an intent to “collect offenders’ financial obligations to the state” and the newly created section’s placement in ch. 938, F.S., relating to court costs, suggests that the bill does not contemplate that restitution orders are to be part of the authorized supplementary proceedings. See s. 775.089, F.S.
- ▶ Authorizes the court to require a person ordered to pay an obligation to appear and be examined under oath concerning the person’s financial ability to pay the obligation.
- ▶ Authorizes the court to reduce the obligation based on its determination of the person’s ability to pay.
- ▶ Provides that any person who fails to attend a hearing may be arrested on warrant or *capias*.
- ▶ Provides that an order requiring a person’s appearance at a hearing may be served by summons or by actual notice.
- ▶ Provides that testimony may be taken regarding any subject relevant to the person’s financial interests. Other witnesses may be examined; documents or other exhibits may be produced as evidence.
- ▶ Authorizes the court to order any nonexempt property of the person, “which is in the hands of another” to be applied toward satisfying the obligation.
- ▶ Authorizes the court to enter a judgment, if one has not been previously entered, and issue any writ necessary to enforce the judgment as allowed in civil cases.

- ▶ Provides that any judgment issued under this newly created section constitutes a civil lien against the judgment debtor's presently owned or after-acquired property when recorded pursuant to s. 55.10, F.S. (Section 55.10, F.S., provides that a judgment becomes a lien on real estate in any county when a certified copy of it is recorded in the official records or judgment lien record of the county, and it shall remain a lien for 7 years. Section 55.10, F.S., allows for extension of the liens after expiration of the 7 years.)
- ▶ Provides that supplementary proceedings undertaken by any governmental entity to satisfy a judgment imposed pursuant to the new created section may proceed without a bond.
- ▶ Provides that the Uniform Fraudulent Transfer Act applies to collection matters under the newly created section and may be used to collect any court-imposed financial obligation under the section.
- ▶ Provides an alternative to examination of the person by authorizing that the person comply with a payment schedule. The court may also require compliance with a payment schedule in addition to examination.
- ▶ Authorizes holding a person in civil contempt for failure to appear or willful failure to comply with an order, including an order to comply with a payment schedule.
- ▶ Authorizes assessment of "administrative costs" against the person, including such things as docketing fees, service fees, and court reporter fees. Authorizes assessment of "reasonable attorney's fees." However, it is unclear how attorneys play a role in the enforcement program since the bill makes no mention of state attorney, public defender, county attorney, or private attorney involvement.
- ▶ Authorizes court referral of a proceeding to a special master who in turn may report findings and make recommendations to the court.
- ▶ Requires the clerk of court make a quarterly report of court-imposed financial obligations which it collects pursuant to the section.
- ▶ Authorizes the county commission to refer past due financial obligations to a collection agent or to a private attorney. Such referrals are to be made in accordance with established bid practices.
- ▶ Provides that the newly created section "may be used in addition to, or in lieu of, other provisions of law" which relate to enforcing payment.
- ▶ Provides that the act shall take effect upon becoming a law. Does not specify whether its provisions will apply to those financial obligation which arose prior to its effective date.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Those offenders who will be affected by the provisions of this bill can expect to pay fines and court costs they may previously have ignored.

C. Government Sector Impact:

According to the Office of the State Courts Administrator, uncollected court-imposed financial obligations in criminal cases rang in the millions of dollars in some of the larger judicial circuits. To the extent that this bill facilitates the collection of outstanding fees, fines and court costs, the state and counties will experience a positive fiscal impact. The potential amount is indeterminate and will depend on the number of judicial circuits which opt to participate. According to the Office of the State Courts Administrator, the Palm Beach County Collections Court raised almost \$60,000 for Palm Beach County in its first five months. The Collections Court's procedures are similar to the provisions of this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
