

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.)

BILL: CS/SB 48

SPONSOR: Senator Meek

SUBJECT: Court Costs in Domestic Violence Cases

DATE: February 8, 2000

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dowds</u>	<u>Whiddon</u>	<u>CF</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>CJ</u>	_____
3.	_____	_____	<u>FP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Senate Bill 48 provides for the assessment of an additional mandatory court cost of \$36 against persons pleading guilty or nolo contendere to, or those found guilty or convicted of, an act of domestic violence. This court cost may be waived by the court on the record. The Clerks of the Court are to retain \$1 of the moneys collected to cover the cost of processing the assessment. Funds from this assessment are to be transferred to the Domestic Violence Trust Fund and used to provide legal assistance and legal clearinghouse services to victims of domestic violence served by domestic violence centers. Specifications are established for the legal assistance and legal clearinghouse services and for the allocation of the funds.

This bill amends section 39.903 and 39.904, and creates section 938.14 of the Florida Statute.

II. Present Situation:

Domestic Violence Centers and Legal Assistance/Legal Clearinghouse Project

Domestic Violence Centers have been established by the Legislature to provide services to victims of domestic violence. The provisions for certification under s. 39.905 (1), F.S., require that domestic violence centers offer a wide range of services to and on behalf of victims of domestic violence, minor children and other dependents of victims of domestic violence, including but not limited to information and referral services, counseling and case management services, temporary emergency shelter for more than 24 hours, a 24-hour hotline, training for law enforcement personnel, assessment and appropriate referral of resident children, and educational services for community awareness.

An overarching goal of the domestic violence centers is enabling victims of domestic violence and their children to be as safe as possible. Securing an injunction for protection against domestic violence is usually the most critical first step toward this goal. Women who appear in court with

legal representation are much more likely to be granted an injunction for protection order than women who do not have legal representation. As a result of the concern with the lack of legal representation for victims served by domestic violence centers, the Governor's Task Force on Domestic Violence began contracting with the Florida Coalition Against Domestic Violence in 1997 to implement the Legal Assistance/Legal Clearinghouse Project. Through this project the Coalition subcontracts with legal providers across the state to provide representation at the permanent injunction hearings for victims at domestic violence centers, as well as provides training and technical assistance to attorneys in the area of domestic violence to enhance their skills in representing victims of domestic violence.

Extensive public education efforts have increased the likelihood that domestic violence victims will seek help; however, barriers to victims requesting assistance from law enforcement agencies are still considered to exist by many experts. During fiscal year 1998-1999, 13,578 victims of domestic violence and their children were provided with emergency shelter, and 21,214 victims, including both residents and non-residents of the emergency shelters, were provided with one-to-one case management by domestic violence centers. However, in 1998, 133,345 police reports were filed for domestic violence offenses and 64,446 arrests were made. It is also estimated that only roughly 11 percent of the litigants in injunction for protection proceedings receive legal assistance. While there is not a definitive method for documenting the need for domestic violence services and legal assistance services, the volume of police reports and arrests for domestic violence offenses compared to the number of victims of domestic violence receiving services and the few who have legal representation for their injunction protection proceeding indicates that many individuals are still dealing with domestic violence situations who could benefit from domestic violence and legal assistance services in assuring their safety.

Domestic Violence Funding

Funding collected and appropriated for domestic violence centers is distributed annually by the Department of Children and Families to districts for certified centers, primarily utilizing an allocation formula established by the department. This funding includes federal funds through the Family Violence Prevention and Services Act; Temporary Assistance for Needy Families (TANF) funding for the Diversion Program for Victims of Domestic Violence, s. 414.157, F.S., (created in ch. 99-241, L.O.F.); general revenue funds; and fees collected and deposited into the Domestic Violence Trust Fund. Domestic Violence centers are required to receive at least 25 percent of their funding from other public or private, local, municipal or county sources.

Section 741.01(2), F.S., establishes the Domestic Violence Trust Fund and provides that the funds generated are to be used for the specific purpose of funding domestic violence centers. Funds deposited into the Domestic Violence Trust Fund include a \$30 fee charged for each marriage license issued (s. 741.01(2), F.S.) and an \$18 charge on each petition for a dissolution of marriage (s. 28.101(1)(c), F.S.).

For fiscal year 1999-2000, a total of \$16,375,357 from all sources was appropriated to the Department of Children and Families for domestic violence centers. Of this funding, \$6,138,776 was budgeted from the Domestic Violence Trust Fund; however, only \$5,725,776 was made available to the centers because \$413,000 in anticipated fees was not collected. In addition,

\$250,000 of the total appropriated funding is allocated for a designated domestic violence center and not made available through the allocation process.

The Legal Assistance/Legal Clearinghouse Project is funded through the Governor's Task Force on Domestic Violence in the Department of Community Affairs, using federal Violence Against Women Act funds. For the calendar year 2000, \$540,000 was contracted to the Florida Coalition Against Domestic Violence for this project which funded 26 subcontracts to legal providers to serve an estimated 4,000 victims. The funding for this project has been reduced from \$1.1 million for an 18 month period in 1997 to its current allocation.

Costs and Fees Required of Perpetrators

Currently, under s. 741.281, F.S., persons who have been found guilty of, have had adjudication withheld on, or have pled nolo contendere to a crime of domestic violence are ordered by the court to a minimum term of 1 year probation and to attend a batterer's intervention program. The court can determine not to impose the condition of the batterer's intervention program if found inappropriate and documented. Both of these conditions require payment of fees. The batterer's intervention program is a user-fee funded program. The individuals who attend are required to pay an initial fee of \$30 to the Department of Corrections and a weekly fee to the program which is based on a sliding fee ranging from zero to \$50 weekly (the average is usually \$15 to \$20 per week) for 26 weeks.

The cost of supervision required to be paid by the individual on probation varies depending on whether the offense was a misdemeanor or felony and often varies from county to county. For felony probationers, a \$50 monthly fee to the Department of Corrections is imposed. For misdemeanor probations, the monthly cost of supervision is imposed by the county or the probation service provider. This cost varies from county to county and may be waived by the judge. One county contacted charged \$40.

In addition to the various fees, there are court costs and fines imposed in prosecuting criminal offenses. These court costs vary across circuits and counties. In one county contacted, the standard court cost for persons convicted of a first-degree misdemeanor was \$295 and ranged from \$808 for third-degree felony convictions to \$2,333 for first-degree felony convictions. Section 775.083, F.S., authorizes courts to impose fines as possible additional penalties and sets forth maximum amounts of such fines. For example, a first-degree misdemeanant may be fined up to \$1,000. A first-degree felon could be fined up to \$10,000.

III. Effect of Proposed Changes:

Section 1 creates a new section in ch. 938, Part II, F.S., *Mandatory Costs in Specific Types of Cases*, to provide that an additional \$36 mandatory court cost will be assessed against persons pleading guilty or nolo contendere to, and those found guilty or convicted of, an act of domestic violence. This court cost is to be assessed against the person unless specifically waived by the court on record.

The assessments are to be collected by the clerk of the court and transferred to the Domestic Violence Trust Fund on a monthly basis. The Clerks of the Court are authorized to retain \$1 of the \$36 collected to cover the cost of processing this assessment. Under the terms of the recently adopted amendment to Article V of Florida's Constitution, without such a retention of some portion of the fee, the Legislature may be responsible for covering the cost of processing. The bill specifies that funds are to be disbursed in accordance with s. 39.903(7), F.S.

Section 2 provides that the funds generated pursuant to s. 938.14, F.S., are to be used exclusively for legal assistance and legal clearinghouse services to victims of domestic violence served by domestic violence centers. Subsection (7) is added to s. 39.903, F.S., to establish the specifications for the legal assistance and legal clearinghouse services, and the allocation of the funds. The bill stipulates that the services to be provided with this funding include individual legal consultation to victims of domestic violence, legal representation in injunctions for protection cases of victims of domestic violence, training for attorneys representing victims of domestic violence, and meeting of the attorneys to share strategies in representing victims of domestic violence. The funds will be contracted to a statewide non-profit association whose primary purpose is to represent and provide technical assistance to domestic violence centers, to manage the services through subcontracts with local providers.

The provisions included in s. 39.903(7), F.S., link the provision of these legal assistance and legal clearinghouse services with accomplishment of performance based measures. The Department of Children and Family Services is directed to develop outcome measures that will evaluate the effectiveness of the services. These measures are to reflect the permanent injunctions for protection against domestic violence obtained, temporary child support orders obtained, improved competency of attorneys in the area of domestic violence, and the satisfaction of the victims served. Based on the level of funding generated by this assessment the first year, the Department of Children and Family Services will determine whether there is adequate funding to offer all of the identified services, or which services will be provided, in the event the level of funding generated is not sufficient to offer the full range of services. Expected standards for the identified outcome measures will be developed, also based on the level of funding generated. A predominate consideration in the allocation of funds to the local providers will be the achievement of the targeted standards. The Department of Children and Family Services is directed to adopt rules which provide the process for allocating the funds to local providers. This process will be incorporated into the contract with the statewide association and used in its subcontracting with local providers.

Section 3 amends s. 39.904, F.S., to require that the Department of Children and Family Services' annual report on the status of domestic violence in the state include information on the utilization of the funds collected from this court cost for legal assistance services.

While the additional funding to the Domestic Violence Trust Fund would enable more victims of domestic violence to obtain legal representation and secure permanent injunctions, the ability of the perpetrator to pay this court cost, given the level of existing fees required, may impact the level of funds actually generated by this assessment.

Section 4 provides an effective date of October 1, 2000.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

A \$36 court cost will be assessed against persons who are found guilty or convicted of an act of domestic violence, regardless of whether persons are found guilty or plead guilty or nolo contendere. This assessment will be applied in addition to the cost of supervision for probation, a batterer's intervention program (if program participation is ordered), and other standard court costs and fines applied by the courts in prosecuting the case. However, this assessment may be waived by the court.

B. Private Sector Impact:

The funds collected as a result of assessing this court cost will generate additional revenue for legal assistance and legal clearinghouse services for victims of domestic violence. The Florida Department of Law Enforcement reported that while offenses and arrests can be identified as a domestic violence act, data on convictions is not categorized in a manner that allows for the number of persons pleading guilty or nolo contendere to, or found guilty or convicted of, an act of domestic violence to be identified at this time. Therefore, the level of revenue that can potentially be generated through this court cost currently cannot be projected.

C. Government Sector Impact:

The Department of Children and Families cannot estimate the significance of this proposed court fee. They point out that, historically, the courts have not always been successful in

collecting the fees that are imposed but that any increase in Domestic Violence Trust Fund dollars could be well utilized by the centers.

The Office of the State Court Administrator reports that no fiscal impact is indicated for the State Courts System. The administrative costs of assessing, collecting, and remitting this new mandatory court cost to the Domestic Violence Trust Fund will be borne by the clerks of the court.

The Clerks of the Court have reported that the \$1 provided in the bill to be retained by the clerk would cover the costs of process the assessment.

VI. Technical Deficiencies:

None

VII. Related Issues:

While this new assessment is created as a “court cost,” the monies are not retained by the Clerk of the Court for costs associated with prosecuting the cases, but instead are transferred to the Domestic Violence Trust Fund. There are, however, precedents in s. 938, F.S. for assessing mandatory court costs which are then transferred to other depositories for other purposes.

VIII. Amendments:

None.