

STORAGE NAME: h0595.jo.doc
DATE: January 14, 2002

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUDICIAL OVERSIGHT
ANALYSIS**

BILL #: HB 595
RELATING TO: Court Costs
SPONSOR(S): Representative Henriquez
TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) JUDICIAL OVERSIGHT
- (2) FISCAL POLICY AND RESOURCES
- (3) COUNCIL FOR SMARTER GOVERNMENT
- (4)
- (5)

I. SUMMARY:

HB 223 requires the imposition of an additional court cost of \$36 against individuals pleading guilty or nolo contendere to, or those found guilty of, an act of domestic violence. This cost may be waived by the court on the record. The clerks of the court are to retain \$1 of the monies collected as a service charge for processing the assessment and are to transfer \$35 to the Domestic Violence Trust Fund to be used exclusively to provide legal assistance and legal clearinghouse services to victims of domestic violence receiving services from domestic violence centers. Specifications for services to be provided and funding allocations are provided.

This bill has an indeterminate fiscal impact.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |

The bill provides for the assessment of an additional court cost in domestic violence cases in specified circumstances.

B. PRESENT SITUATION:

Domestic Violence Centers

Domestic violence centers were established by the Legislature to provide services to victims of domestic violence and there are currently 38 such centers statewide. Centers are certified under ' 39.905, Florida Statutes, and are required to offer a broad range of services to and on behalf of victims of domestic violence, their minor children, and other dependents. Those services include, but are 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.

The ultimate goal of domestic violence centers is to enable victims of domestic violence and their children to be as safe as possible while working out solutions to a multitude of problems. Securing an injunction for protection against domestic violence is often a critical first step toward this goal and research shows that women who appear in court with legal representation are more likely to be granted a protective order than women who do not have such representation. It is estimated that approximately 11% of litigants in injunction for protection proceedings receive legal assistance. Concern with this lack of legal representation for victims served by domestic violence centers, prompted the Governor's Task Force on Domestic Violence to begin 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 permanent injunction hearings for victims being served by domestic violence centers and provides training and technical assistance to attorneys in the area of domestic violence to enhance their skills in representing victims of domestic violence.

While extensive public education efforts have increased the likelihood that domestic violence victims will seek help, barriers to victims requesting assistance from law enforcement agencies still exist. During fiscal year 2000-2001, 14,158 victims of domestic violence and their children were provided with emergency shelter and 23,834 victims, including both residents and non-residents of the emergency shelters, were provided with case management services by domestic violence centers. However, in 2000, 124,629 police reports were filed for domestic violence offenses and 62,939 arrests were made. While there is no definitive method for documenting the need for domestic violence services and legal assistance services, a comparison between the number of

police reports and arrests for domestic violence offenses and the number of victims of domestic violence receiving services plus the small number who have legal representation at injunctive proceedings indicates that many individuals are still dealing with domestic violence without benefit of domestic violence and legal assistance services.

Domestic Violence Center Funding

Monies collected and appropriated for domestic violence centers are distributed annually by the Department of Children and Family Services to districts for certified domestic violence centers utilizing an allocation formula developed by the department. In developing this formula, the department must consider population, a rural and geographical area factor, and the incidence of domestic violence. Funding to be distributed 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 (' 414.157, Florida Statutes); general revenue funds; and fees collected and deposited into the Domestic Violence Trust Fund. Domestic violence centers are required by statute to receive at least 25% of their funding from other public or private, local, municipal or county sources. In kind contributions may be counted as a part of the required local funding.

Section 741.01(2), Florida Statutes, provides that the "Executive Office of the Governor shall establish a Domestic Violence Trust Fund for the purpose of collecting and disbursing funds generated from the increase in the marriage license fee". Generated funds are to be directed to the Department of Children and Family Services 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 (' 741.01(2), Florida Statutes), an \$18 charge on each petition for a dissolution of marriage (' 28.101(1)(c), Florida Statutes), and fines that may be assessed for violation of a protective injunction pursuant to ' 741.30(8)(a), Florida Statutes.

For fiscal year 2001-2002, a total of \$31.1 million from all sources was appropriated to the Department of Children and Family Services for domestic violence centers. This includes \$7.8 million in federal Violence Against Women Act funds and \$4 million in TANF funds. Of this total amount, \$6.2 million was budgeted from the Domestic Violence Trust Fund.

The Legal Assistance/Legal Clearinghouse Project is funded through the Governor's Task Force on Domestic Violence in the Department of Children and Families, using federal Violence Against Women Act funds. For fiscal year 2000-2001, \$519,000 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.

Costs and Fees Required of Domestic Violence Perpetrators

Individuals 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, pursuant to ' 741.281, Florida Statutes. Batterer's intervention programs are user-funded, requiring participants to pay an initial fee of \$30 to the Department of Corrections (' 945.76, Florida Statutes), and a weekly fee to the program. That fee is based on a sliding scale ranging from zero to \$50 weekly for 29 weeks with the average weekly fee reported to be \$15 to \$20.

The cost of supervision required to be paid by an individual on probation varies depending on whether the offense was a misdemeanor or felony and may vary from county to county. For felony probationers, a monthly fee to the Department of Corrections is imposed (' 948.09, Florida Statutes)

up to the per diem cost of supervision, which is \$103.72. The actual fee imposed averages approximately \$50.00 per month. 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. Section 775.089, Florida Statutes, requires that any court ordered monetary costs for victim restitution be ordered as a condition of probation.

In addition to fees, there are court costs and fines assessed in the process of prosecuting criminal offenses. These costs also vary across circuits and counties. Pursuant to ' 775.083, Florida Statutes, the court may impose a fine in addition to or in lieu of any punishment and the maximum amounts of such fines are specified in statute. Conviction of a first degree misdemeanor could result in a maximum \$1,000 fine, whereas conviction of a first or second degree felony could result in a maximum \$10,000 fine.

The Legislature enacted HB 1673 (Chapter # 2001-50, Laws of Florida), during the 2001 legislative session which requires the court to impose a surcharge of \$201 for a violation of any offense of domestic violence described in ' 741.28, Florida Statutes. \$85 of that surcharge is to be deposited into the Domestic Violence Trust Fund. The Governor is authorized to spend up to \$500,000 of monies collected for administering a statewide public-awareness campaign related to domestic violence.

C. EFFECT OF PROPOSED CHANGES:

The bill would provide additional funding for services to victims of domestic violence by requiring the imposition of a \$36 court cost, in addition to any other required cost or penalty, in cases where a person pleads guilty or nolo contendere to, or is found guilty of, an act of domestic violence unless the court waives the cost on the record. Monies collected are to be used exclusively to provide legal assistance and legal clearinghouse services to victims of domestic violence who receive services from domestic violence centers.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Creates ' 938.14, Florida Statutes, relating to additional court costs in domestic violence cases. The section requires the imposition of a \$36 court cost, in addition to any other required cost or penalty, in cases where a person pleads guilty or nolo contendere to, or is found guilty of, an act of domestic violence. The court may waive the cost on the record. The section also provides for the clerks of court to retain \$1 of collected monies as a service fee and transfer the remaining \$35 to the Domestic Violence Trust Fund.

Section 2. Amends ' 39.903, Florida Statutes, relating to responsibilities of the Department of Children and Family Services with respect to domestic violence, to provide that monies generated as a result of the newly created ' 938.14, Florida Statutes, are to be used exclusively to provide legal assistance and legal clearinghouse services to victims of domestic violence who receive services from domestic violence centers. The bill specifies services to be funded and those include individual legal consultation with domestic violence victims, legal representation in protective injunction proceedings, attorney training, and attorney meetings for the purpose of sharing strategies. The department is required to contract with a statewide nonprofit association to provide these services through subcontracts with local providers.

This section also requires funding allocations, with the exception of the first year, to be based on the achievement of standards for outcome measures that are to be developed by the Department of Children and Family 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 during the first year, the department will determine which services will be provided, which outcome measures are to be used and the standard that must be reached for each outcome. These services, outcome measures and standards are to be adjusted for each subsequent year and the department is required to collect and maintain specified data. The department is required to adopt rules delineating the process for allocating the funds to local providers which will be incorporated into the contract with the statewide association and used in its subcontracting with local providers.

Section 3. Amends ' 39.904, Florida Statutes, to require that the Department of Children and Families' 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.

Section 4. Provides for and effective date of October 1, 2002.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See fiscal comments.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The funds collected as a result of assessing this court cost will generate additional revenue for specific services to aid victims of domestic violence.

D. FISCAL COMMENTS:

The Department of Children and Family Services cannot estimate the significance of the court cost provided for in the bill and pointed out that, historically, the courts do not always impose fees provided for in statute and are not always successful in collecting fees that are imposed.

The Office of the State Courts Administrator (OSCA) reports that no fiscal impact is indicated for the State Courts System. All administrative costs associated with assessing, collecting, and remitting this cost to the trust fund will be borne by the clerks of court. In addition, OSCA reports that it is nearly impossible to estimate the revenue impact of the bill due to the fact that the State Courts System does not collect data on the number of crimes of violence which occur among those

individuals who reside or have resided in the same dwelling unit; prosecutions in domestic violence are typically under reported; and, while there is some evidence that fees assessed related to misdemeanors are collected at a higher rate than costs in felony cases, there is no way to determine what percentage of these fees, if assessed, would actually be collected. OSCA also recommends that this additional court cost be examined in light of the existing costs and the 1998 amendment to Article V of the Florida Constitution which requires the state to take increased funding responsibilities for Article V entities and requires the Clerks of Court to be substantially funded through filing fees, service charges and costs.

The bill provides for \$1 of the \$36 to remain with the clerk of court as a service charge for processing the fee. The Florida Association of Court Clerks have reported that this would be sufficient to cover their costs.

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 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.

The Legislature enacted HB 1673 (Chapter # 2001-50, Laws of Florida), during the 2001 legislative session which required the court to impose a surcharge of \$201 for a violation of any offense of domestic violence described in ' 741.28, Florida Statutes. The bill required that \$85 of that surcharge be deposited into the Domestic Violence Trust Fund. It is not known how much has been deposited into the trust fund since the enactment of HB 1673.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill will not reduce the authority of municipalities and counties to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill will not reduce the state tax shared with counties and municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

This bill requires the Department of Children and Family Services to adopt rules to describe the process for determining the allocation of funds to local providers.

C. OTHER COMMENTS:

While this \$36 assessment is created as a court cost, the monies collected are not retained by the clerk of court for costs associated with prosecuting cases. They are instead transferred for deposit in the Domestic Violence Trust Fund for funding domestic violence centers. Chapter 938, Florida Statutes, relating to court costs does contain other provisions for collecting court costs and transferring them to other depositories and trust funds for other purposes.

As a point of statutory construction, the bill creates a new section in chapter 938, Part II, Florida Statutes, *Mandatory Costs in Specific Types of Cases*. Since the assessment can be waived by the court on the record, the new section might better be placed in Part IV, *Discretionary Costs in Specific Types of Case*.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON JUDICIAL OVERSIGHT:

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