

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 732

SPONSOR: Senator Meek

SUBJECT: Domestic Violence Court Costs

DATE: February 5, 2002 REVISED: 02/26/02 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dugger</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
2.	<u>Dowds</u>	<u>Whiddon</u>	<u>CF</u>	<u>Fav/ 1 Amendment</u>
3.	<u>Keating</u>	<u>Johansen</u>	<u>FT</u>	<u>Favorable</u>
4.	_____	_____	<u>APJ</u>	_____
5.	_____	_____	<u>AP</u>	_____
6.	_____	_____	_____	_____

I. Summary:

SB 732 provides for the assessment of an additional mandatory court cost of \$36 against persons pleading guilty or nolo contendere to, or those found guilty of, an act of domestic violence. The court may waive this court cost. The Clerks of the Court are to retain \$1 of the monies 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 substantially amends sections 39.903 and 39.904, of the Florida Statutes and creates section 938.14, of the Florida Statutes.

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. The 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.

A goal of the domestic violence centers is to enable victims of domestic violence and their children to be as safe as possible. Securing an injunction for protection against domestic violence is often 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 provide 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, according to many experts. 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.

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, s. 414.157, F. S.; 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 percent 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), F. S., 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, s. 741.01(2), F. S., an \$18 charge on each petition for a dissolution of marriage, s. 28.101(1)(c), F. S., and fines that may be assessed for violation of a protective injunction pursuant to s. 741.30(8)(a), F. S.

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 Family Services, 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 that funded 26 subcontracts to legal providers to serve an estimated 4,000 victims.

Costs and Fees Required of Domestic Violence Perpetrators

Effective July 1, 2001, the Legislature passed HB 1673 (ch. 2001-50, L.O.F.), creating s. 938.08, F.S., which requires the court to impose a surcharge of \$201 for a violation of any offense of domestic violence described in s. 741.28, F.S. Payment of the surcharge is to be a condition of probation, community control or any other court-ordered supervision. Eighty-five dollars of that surcharge is to be deposited into the Domestic Violence Trust Fund with the remainder of the funds to be used to recoup costs of incarcerating domestic violence offenders and training for law enforcement relating to domestic violence. A preliminary fiscal analysis done in 2001 by the Governor's Office on HB 1673, estimated that once fully implemented, the \$201 surcharge for a violation of any domestic violence offense, could possibly generate \$9.8 million, with \$4.2 million for deposit into the Domestic Violence Trust Fund. The estimate is based on the assumption that the courts assess the surcharge on 59% of convicted cases. Year to date, collections have been insignificant, which may be the result of the courts waiving the surcharge.

Individuals who have been found guilty of, have had adjudication withheld or have pled nolo contendere to a crime of domestic violence are ordered by the court to serve a minimum term of 1 year's probation and to attend a batterer's intervention program, pursuant to s. 741.281, F.S. Batterer's intervention programs are user-funded, requiring participants to pay an initial fee of \$30 to the Department of Corrections 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 under s. 948.09, F.S., up to the per diem cost of supervision. The actual fee imposed averages approximately \$50 per month. For misdemeanor probations, the county or the probation service provider imposes the monthly cost of supervision. This cost varies from county to county and may be waived by the judge. Section 775.089, F.S., 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 s. 775.083, F.S., 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 fine of \$1,000, and a conviction of a first or second degree felony could result in a maximum fine of \$10,000.

III. Effect of Proposed Changes:

SB 732 creates s. 938.14, F.S., providing 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 (current surcharge is \$201). The bill's newly created section, s. 938.14, F.S., provides for the clerks of court to retain \$1 of the collected monies as a service fee and to transfer the remaining \$35 to the Domestic Violence Trust Fund. 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.

The bill also amends s. 39.903, F.S., 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 section 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.

The bill 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.

Finally, the bill 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.

The effective date of this bill is October 1, 2002.

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:

Persons who plead guilty or nolo contendere or are found guilty of an act of domestic violence will be required to pay an additional cost of \$36. This assessment will be applied in addition to the current surcharge of \$201, 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. Like the \$201 surcharge, this assessment may be waived by the court. The level of revenue that can potentially be generated through this additional \$36 court cost currently cannot be projected. In addition, 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

B. Private Sector Impact:

The funds collected as a result of assessing this court cost will generate additional revenue to enable more victims of domestic violence to obtain legal representation and secure permanent injunctions.

C. Government Sector Impact:

According to the Department of Children and Family Services, it would contract with the non-profit organization, the Florida Coalition Against Domestic Violence, to provide the services under the bill. The department would accomplish administrating and monitoring this contract through existing resources.

The Office of the State Courts Administrator (OSCA) reports that there would be no fiscal impact on the courts as a result of this bill. The exception to this may be that by providing additional attorneys in injunction proceedings, OSCA anticipates potential increases in the length of the hearings and thus, the need for additional judge time. In addition, OSCA reports that it is very difficult to estimate the revenue impact of the bill because the court 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.

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 has reported that this would be sufficient to cover their costs.

VI. Technical Deficiencies:

The directive provided in the bill for the department to contract with a statewide nonprofit association for provision of the legal assistance services does not clearly distinguish between the description of the association and the purpose of the contract with the association.

VII. Related Issues:

None.

VIII. Amendments:

1 by Children and Families:

This amendment clarifies the purpose of the contract with the statewide association.

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