

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Criminal Justice

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BILL: CS/SB 846

INTRODUCER: Criminal Justice Committee and Senator Simmons

SUBJECT: Costs of Prosecution and Investigation

DATE: January 15, 2020

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Jones	CJ	Fav/CS
2.			ACJ	
3.			AP	

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 846 amends s. 938.27, F.S., to prohibit the state attorney and defense counsel from presenting a negotiated plea agreement for the court's consideration which contains amounts greater than the current statutory minimum of \$50 (assessed in misdemeanor or criminal traffic cases) or \$100 (felony cases) costs for the state attorney.

The bill also reenacts s. 985.032(2), F.S., related to costs of prosecution in juvenile delinquency cases to incorporate changes made by this bill.

There is no reported fiscal impact for the bill.

The bill takes effect July 1, 2020.

**II. Present Situation:**

**Plea Agreements**

The Florida Rules of Criminal Procedure recognize that most criminal cases are disposed of by pleas arrived at by negotiations between the prosecutor and defense counsel.<sup>1</sup> In fact, Rule 3.171 states that the prosecuting attorney and the defense attorney, or the defendant when representing himself or herself, are encouraged to discuss and to agree on pleas that may be entered by a

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<sup>1</sup> Rule 3.171, Fla.R.Crim.P., Committee Notes, 1972 Amendment.

defendant.<sup>2</sup> A plea agreement is essentially a contract between the State and the defendant and may include details such as that charges are being dropped by the State in exchange for the plea, that a certain sentence will be recommended to the court, and that fines, fees, and costs will be made part of the recommended sentence.<sup>3</sup> The court has the ultimate responsibility for determining the proper sentence in a case and can accept or reject the plea agreement.<sup>4</sup>

### **Costs of Prosecution/Investigation and Costs for the State Attorney**

A person who is convicted of a criminal offense, including in violation of probation cases and violation of community control cases, is statutorily liable for the payment of costs for the state attorney and costs of prosecution.<sup>5</sup> Costs of prosecution includes investigative costs incurred by law enforcement agencies, by fire departments for arson investigations, and by investigations of the Department of Financial Services or the Office of Financial Regulation of the Financial Services Commission, if requested by such agencies.<sup>6</sup>

However, even if the defendant agrees to pay these statutory costs as part of a plea agreement it does not alleviate the court's obligation to impose the costs as the statutory procedures require.<sup>7</sup> For example, s. 938.27(1), F.S., requires a law enforcement agency or other listed agency to *request* the payment of investigative costs and provide supporting documentation.<sup>8</sup>

Section 938.27(8), F.S., provides that costs for the state attorney must be set in all cases at no less than \$50 per case for a misdemeanor or criminal traffic offense and no less than \$100 per case for a felony offense. The costs are also assessable in a proceeding in which the underlying offense is a violation of probation or community control. The court may set a higher amount upon a showing of sufficient proof of higher costs incurred.<sup>9</sup>

Costs recovered on behalf of the state attorney must be deposited into the State Attorneys Revenue Trust Fund to be used during the fiscal year in which the funds are collected, or in any subsequent fiscal year, for actual expenses incurred in investigating and prosecuting criminal

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<sup>2</sup> Rule 3.171(a), Fla.R.Crim.P.

<sup>3</sup> *Churchill v. State*, 219 So.3d 14, 18 (Fla. 2017) (citing *Garcia v. State*, 722 So.2d 905, 907 (Fla. 3d DCA 1998)).

<sup>4</sup> Rule 3.171(a), Fla.R.Crim.P.

<sup>5</sup> Section 938.27(1), (8), F.S. For purposes of this section, "convicted" means a determination of guilt, or of violation of probation or community control, which is a result of a plea, trial, or violation proceeding, regardless of whether adjudication is withheld. Additionally, s. 985.032, F.S., provides that a juvenile who has been adjudicated delinquent or has had adjudication of delinquency withheld must have costs of prosecution assessed as provided in s. 938.27, F.S.

<sup>6</sup> Section 938.27(1), F.S. Costs of prosecution, as defined in s. 938.27, F.S., does not include "state attorney's fees." *Weeks v. State*, 659 So.2d 695 (Fla. 4th DCA 1995), rev. den., 666 So. 2d 145 (Fla. 1995); *Mickler v. State*, 682 So.2d 607 (Fla. 2d DCA, 1996). Note that when the Office of the State Attorney incurs purely investigative costs in a particular case, those costs may be ordered to be paid by the defendant, as costs of prosecution, if requested.

<sup>7</sup> *Tolbert v. State*, 698 So.2d 1288 (1997).

<sup>8</sup> Any dispute as to the proper amount or type of costs shall be resolved by the court by the preponderance of the evidence. The burden of demonstrating the amount of costs incurred is on the state attorney. The burden of demonstrating the financial resources of the defendant and the financial needs of the defendant is on the defendant. The burden of demonstrating such other matters as the court deems appropriate is upon the party designated by the court as justice requires. Section 938.27(4), F.S.

<sup>9</sup> Section 938.27(8), F.S.

cases, which may include the salaries of permanent employees, or for any other purpose authorized by the Legislature.<sup>10</sup>

### III. Effect of Proposed Changes:

The bill amends s. 938.27, F.S., by creating a new subsection (2) and renumbering other subsections in that section of law. The new subsection (2) retains part of the language from the current subsection (8) which:

- Requires costs for the state attorney be set at no less than \$50 per case for a misdemeanor or criminal traffic offense;
- Requires costs for the state attorney be set at no less than \$100 per case for a felony offense;
- Requires that the court set such minimum costs in proceedings in which the underlying offense is a violation of probation or community control; and
- Provides that the court may set such costs at a higher amount if sufficient proof shows that higher costs were incurred by the state attorney.

The bill amends the new subsection (2) of s. 938.27, F.S., to prohibit the state attorney and the defense counsel from presenting a negotiated plea agreement to the court containing costs for the state attorney in amounts greater than the current minimum. These costs are \$50 in misdemeanor or criminal traffic cases and \$100 in felony cases. This provision would likely discourage, or eliminate altogether, using costs in excess of the minimum for the state attorney as a bargaining chip by either party during plea negotiations.

The bill creates a new subsection (9) of s. 938.27, F.S., which contains the remainder of the existing language in current subsection (8). This language provides that the costs recovered on behalf of the state attorney must be deposited into the State Attorneys Revenue Trust Fund and designates how the funds may be spent.

Current subsections (2) through (8) of s. 938.27, F.S., are redesignated by the bill as subsections (3) through (9).

Section 985.032(2), F.S., which provides for the assessment of costs of prosecution in juvenile delinquency cases is reenacted to incorporate the amendment to s. 938.27, F.S.

The bill takes effect July 1, 2020.

### IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

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<sup>10</sup> *Id.*

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None reported.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 938.27 of the Florida Statutes.

The bill reenacts section 985.032 of the Florida Statutes.

**IX. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Criminal Justice on January 14, 2020:**

The committee substitute removes the phrase “that amount” from the bill and replaces it with a more specific reference to the statutory minimum costs for the state attorney as set forth in s. 938.27(8), F.S.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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