

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.)

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL: CS/SB 526

INTRODUCER: Criminal Justice Committee and Senator Lynn

SUBJECT: Court Costs/Crimes Against Minors

DATE: March 17, 2009 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Fav/CS
2.	Toman	Walsh	CF	Favorable
3.	_____	_____	JA	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

Currently, s. 938.10, F.S., provides that if a person pleads guilty or *nolo contendere* to, or is found guilty of, regardless of adjudication, any offense against a minor in violation of certain, criminal statutes, the court must impose a court cost of \$101 against the offender in addition to any other cost or penalty required by law. The section provides that \$100 of the court cost must be deposited into the Department of Children and Family Services' Grants and Donations Trust Fund for disbursement to the Florida Network of Children's Advocacy Centers, Inc., for the purpose of funding children's advocacy centers that are members of the network. The clerk of the court retains \$1 as a service charge.

This bill increases the court cost imposed pursuant to s. 938.10, F.S., to \$151, and expands the list of criminal statutes requiring imposition of the cost. The bill provides that the additional \$50 is to be distributed as follows:

- \$40 deposited in the State Courts Revenue Trust Fund;
- \$5 deposited in the State Attorney Revenue Trust Fund; and
- \$5 deposited in the Public Defenders Revenue Trust Fund.

This bill substantially amends section 938.10 of the Florida Statutes.

II. Present Situation:

Court Costs in Criminal Proceedings

Chapter 938, F.S., prescribes the court costs that must be imposed in criminal cases. Sections 938.01 – 938.06, F.S., relate to mandatory court costs which must be applied in all criminal cases, and ss. 938.07 – 938.13, F.S., relate to mandatory court costs which must be assessed in specific types of cases.

Section 938.10, F.S., provides that if a person pleads guilty or *nolo contendere* to, or is found guilty of, regardless of adjudication, any offense against a minor in violation of a one of a list of criminal statutes, the court must impose a court cost of \$101 against the offender, in addition to any other cost or penalty required by law.

The listed offenses are as follows:

- Section 784.085, F.S., relating to battery of a child by throwing, tossing, projecting, or expelling certain fluids or materials;
- Chapter 787, F.S., relating to kidnapping, false imprisonment, luring or enticing a child;
- Chapter 794, F.S., relating to sexual battery;
- Section 796.03, F.S., relating to procuring person under age of 18 for prostitution;
- Section 800.04, F.S., relating to lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age;
- Chapter 827, F.S., relating to abuse of children;
- Section 847.0135(5), F.S., relating to computer pornography;
- Section 847.0145, F.S., relating to buying or selling of minors; and
- Section 985.701, F.S., relating to sexual misconduct.

The section provides that \$100 of the court cost must be deposited into the Grants and Donations Trust Fund of the Department of Children and Families (DCF or the department) for disbursement to the Florida Network of Children's Advocacy Centers, Inc. (FNCAC) for the purpose of funding children's advocacy centers (CACs) that are members of the network. One dollar from the \$101 is retained by the clerk of the court as a service charge.

Children's Advocacy Centers

The CACs are child-friendly facilities where child victims of abuse may be interviewed, undergo medical examinations, and receive therapy and various other services. CACs reduce additional trauma to child victims by coordinating investigations and services, thereby facilitating effective joint investigations and providing for prompt access to appropriate services in a child-focused and non-threatening environment. CACs are community-based, so each is uniquely designed to best meet the needs of its individual community.¹

¹ See FNCAC website, at <http://www.fncac.org/default.asp> (last visited March 12, 2009).

The mission of the FNCAC is to improve Florida's response to child abuse by supporting the development, growth, and continuation of CAC's.²

Section 39.3035, F.S., provides that in order to be eligible for membership in the FNCAC, a child advocacy center must:

- Be a private, nonprofit incorporated agency or a governmental entity;
- Be a child protection team, or by written agreement incorporate the participation and services of a child protection team;
- Have a neutral, child-focused facility where joint DCF and law enforcement interviews can take place with children in appropriate cases of suspected sexual or physical abuse;
- Have minimum designated staff that is supervised and approved by the local board of directors or governmental entity;
- Have a multidisciplinary case review team that meets on a regularly scheduled basis or as the caseload of the community requires;
- Provide case tracking and collect data on the child abuse cases seen at the center;
- Provide referrals for medical exams and mental health therapy;
- Provide training for various disciplines in the community that deal with child abuse;
- Have an interagency commitment, in writing, covering those aspects of agency participation in a multidisciplinary approach to the handling of child sexual abuse and serious physical abuse cases; and
- Provide assurances that the CAC's employees and volunteers have been trained and screened in accordance with s. 39.001(2), F.S.

The FNCAC has the responsibility for tracking and documenting compliance with the foregoing standards, and a CAC may not receive funds generated pursuant to s. 938.10, F.S., unless it meets the standards.

The Child Advocacy Trust Fund was created in 2004 to receive funds collected pursuant to s. 938.10, F.S.³ In 2008, in the context of a mandatory review of trust funds,⁴ the Legislature terminated the Child Advocacy Trust Fund and re-directed the cash balances in the fund, as well as the future collections of court costs under s. 938.10, F.S., to DCF for disbursement to FNCAC for the purpose of providing community-based services that augment services provided by state agencies.⁵

III. Effect of Proposed Changes:

This bill amends s. 938.10, F.S., increasing the court cost which must be imposed in specified cases involving minors, from \$101 to \$151.

² *Id.*

³ Chapter 2004-302, L.O.F.

⁴ To implement Fla. Const. art. III, s. 19(f), s. 215.3208(1), F.S., specifies that a schedule for review of trust funds must be included in the legislative budget instructions developed pursuant to s. 216.023, F.S. DCF's trust funds were scheduled for review in 2008.

⁵ Chapter 2008-16, L.O.F. *See also*, Health and Human Services Appropriations Committee and Senator Peadar, *Bill Analysis and Fiscal Impact Statement, CS/SB 2116* (March 13, 2008).

In addition, the bill expands the list of offenses against minors to which the court cost applies to include the following:

- Section 796.035, F.S., relating to selling or buying of minors into sex trafficking or prostitution;
- Section 847.012, F.S., relating to sale of harmful materials to minors or use of minors in production in harmful materials;
- Section 847.0133, F.S., relating to the prohibition of certain acts in connection with obscenity;
- Section 847.0138, F.S., relating to transmission of material harmful to minors to a minor by electronic device or equipment; and
- Section 893.147(3), F.S., relating to use, possession, manufacture, delivery, transportation, or advertisement of drug paraphernalia.

The court cost must also be imposed for any violation of the following sections:

- Section 775.21, F.S., relating to the Florida Sexual Predators Act;
- Section 823.07, F.S., relating to abandonment of iceboxes, refrigerators, deep-freeze lockers, clothes washers, clothes dryers, or airtight units;
- Section 847.0125, F.S., relating to the retail display of materials harmful to minors;
- Section 847.0134, F.S., relating to the prohibition of an adult entertainment establishment that displays, sells, or distributes materials harmful to minors within 2,500 feet of a school; and
- Section 943.0435, F.S., relating to registration of sexual offenders.

The bill provides that the court cost will be distributed as follows:

- \$100 will be deposited in DCF's Grants and Donations Trust Fund for disbursement to the FNCAC for the purpose of funding children's advocacy centers that are members of the network as required by current law;
- \$40 will be deposited in the State Courts Revenue Trust Fund;
- \$5 will be deposited into the State Attorney Revenue Trust Fund;
- \$5 will be deposited in the Public Defenders Revenue Trust Fund; and
- \$1 will be retained by the clerk of court as a service charge.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Through August 2008, a net total of \$196,698 had been deposited in the Child Advocacy Trust Fund, for the benefit of the CACs, pursuant to s. 938.10, F.S.⁶

C. Government Sector Impact:

According to information from the Office of State Courts Administrator (OSCA), the bill would likely generate approximately \$17,818 in court costs.⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. 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 March 11, 2009:

- The bill expands the list of violations for which the additional court costs may be imposed to include violations of s. 943.0435, F.S., relating to the registration of sexual offenders.
- The bill increases the additional court costs imposed in the enumerated offenses and violations by \$50, forty of which will be deposited in the State Courts Revenue Trust Fund with the remaining \$10 divided equally between the State Attorneys Revenue Trust Fund and the Public Defenders Revenue Trust Fund.

⁶ E-mail and attachment from John M. Knight, Chief Executive Officer, Florida Network of Children's Advocacy Centers (Fri 3/13/2009 3:03 PM) (on file with the Senate Committee on Children, Families and Elder Affairs).

⁷ Based on data from the Offender-Based Transaction System, OSCA estimated that the number of offenders who would be affected by the original bill (which did not include s. 943.0435, F.S., in the list of offenses to which the cost would apply) was 118. This number multiplied by the proposed \$151 cost is \$17,818. See OSCA, *Judicial Impact Statement, Bill Number SB526* (January 29, 2009).

B. Amendments:

None.

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