



# Judicial Impact Statement

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House Bill 247

## House Bill 247, 129<sup>th</sup> G.A. Assessments & Waivers of Court Costs

Sponsor:

Rep. Jim Butler

Version: As Introduced

### TITLE INFORMATION

Amend R.C. 2947.23 and R.C. 2949.091 to clarify that court costs are to be charged per case and to authorize courts to waive court costs after sentence has been imposed if the offender is indigent.

### IMPACT SUMMARY

To clarify that court costs are to be charged per case, and not per offense or count, would have the effect of creating greater uniformity between courts when assessing costs. This increased clarity and uniformity should restore public confidence in court costs and should promote public confidence in the courts and the legal system.

To authorize courts to waive court costs after sentence has been imposed if the offender is indigent would have the effect of expanding judicial discretion and bolster the public's confidence in the fairness, rationality, and enforceability of the law by ensuring that court costs do not remain part of the offender's sentence in a situation where there is no realistic possibility the costs would be collected.

What is a Judicial Impact Statement?

A Judicial Impact Statement describes as objectively and accurately as possible the probable, practical effects on Ohio's court system of the adoption of the particular bill. The court system includes people who use the courts (parties to suits, witnesses, attorneys and other deputies, probation officials, judges and others). The Ohio Judicial Conference prepares these statements pursuant to R.C. 105.911.

### BACKGROUND

The Ohio Judicial Conference has a long history of working with Ohio courts and the Ohio General Assembly on court costs and filing fees. It is a major topic of research and discussion of the Court Administration Committee, which authored a policy statement on court costs issued by the Judicial Conference in November 2005. This policy statement is available on our website at [ohiojudges.org](http://ohiojudges.org) and the statement articulates our position that court costs should be reasonable, nominal, and directly related to the operation and maintenance of the court.

In contrast, the Ohio General Assembly has a long history of using court costs and fees to fund projects that may be only tangentially

related or that are often unrelated to court operations. Furthermore, local funding authorities often view court costs as the way the court finances its operations, when this has never been the intended use of court costs. The 126<sup>th</sup> General Assembly enacted substitute House Bill 336, which created the Joint Committee to Study Court Costs and Filing Fees. The Joint Committee began its study in October 2007 with the culmination of the research resulting in a Report that was available in July 2008. The views expressed by the Judicial Conference in their Policy Statement on Court Costs were shared by the Joint Committee and became the focus of Recommendation #1 of their July 2008 Report.

In September 2008 the OJC Executive Committee endorsed the recommendations of the July 2008 Report of the Joint Committee to Study Court Costs and Filing Fees. Recommendation #5 was to amend R.C. 2947.23 consistent with *State v. Clevenger* (2007) to allow the court the discretion to suspend costs after the court has imposed sentence. Recommendation #9 was to amend R.C. 2949.091 consistent with the *City of Middleburg Heights v. Quinones* (2007) ruling that Ohio courts assess court costs on each case and not for each offense or count. Both of these changes were adopted as part of the 2009-2010 Legislative Platform of the Judicial Conference.

## JUDICIAL IMPACT

**Assessment of Court Costs.** The Judicial Conference has reviewed House Bill 247 and has determined that it is consistent with *City of Middleburg Heights v. Quinones* (2007) because it clarifies that court costs are to be charged per case, and not per offense.

The Supreme Court of Ohio decided in the case of *City of Middleburg Heights v. Quinones* (2007) that the trial court had erred by imposing court costs on each of four offenses that were subject of one traffic ticket and one case. In almost a definitional approach, the Court argued that Quinones was cited with only one ticket, and his case had only one case number for all four counts (speeding, OMVI, crossing marked lanes, and failure to use a seat belt). As a result, court costs should not have been imposed on all four counts, but only on the single case that involved the four separate offenses.

The Supreme Court conceded that Ohio has a complex system for assessing and collecting fines and costs in misdemeanor cases, and it differs from jurisdiction to jurisdiction. Nonetheless, the Court concluded that costs are calculated to cover the legitimate expenses incurred by officers, witnesses, jurors and others for their services in an action or prosecution. Citing the 1907 case of *State v. Guilbert*, the court emphasized that Ohio statutes authorize these costs to be taxed and included in the judgment or sentence, and that the statutory authority to collect court costs is the only thing that makes the costs legitimate.

Besides providing doctrinal support for its decision, the Supreme Court of Ohio relied on several other arguments. For statutory support, the Court pointed out that the

circumstances in *Quinones* are analogous to those imagined by the General Assembly when they wrote R.C. 1901.26(A)(1)(a) requiring the municipal courts “to establish a schedule of fees and costs to be taxed in any civil or criminal action or proceeding.”

The Court also cited authority from past decisions of the Ohio Attorney General’s Office, which had issued two opinions in 1991 (91-022 and 91-039) that support the conclusion that court costs are to be charged per case, and not per offense.

Further support came from Rule 12(E) of the Rules of Superintendence for Municipal Courts and County Courts, which instructs that the “courts may only assign one case number in situations in which an individual is charged with more than one offense arising from the same act, transaction, or series of acts or transactions.”

The Supreme Court issued its decision in July 2007 and in September 2007 the Ohio Judicial Conference’s Court Administration Committee reviewed the *Quinones* decision and heard testimony from Judge Larry Allen of Lake County. Judge Allen raised some practical concerns that he believed should be considered by contemporary lawmakers, including the fact that court costs do not fully cover the legitimate expenses incurred as a result of a criminal or civil trial. He also raised concern over the fact that many of these cases begin in a Mayor’s court but that they are almost immediately taken to the municipal court. He asked that the Ohio Revised Code be clarified as to whether the costs can be added by another court, even if the first court to hear the case has also charged costs.

The Court Administration Committee of the Ohio Judicial Conference, in collaboration with the Association of Municipal and County Court Judges, reviewed case law and other relevant materials and concluded that R.C. 2947.23 and 2949.091 should be amended to clarify that court costs are to be charged per case, and not per offense.

The Committee believes that there are courts in the State of Ohio who need statutory guidance regarding the imposition of court costs and that until that guidance is given there will be inconsistent rulings across jurisdictions regarding whether to impose court costs on individual offenses or on an overall case that may involve several offenses.

The Ohio Judicial Conference believes that Ohio courts need to approach this matter in a uniform way and that statutory guidance is needed to ensure clarity of the law. This uniformity and clarity is needed in order for the courts to properly administer justice. Moreover, by achieving uniformity and clarity in this area, the Judicial Conference believes that public confidence in court costs could be restored and this in turn should promote public confidence in the courts and the legal system

House Bill 247 makes changes to the Ohio Revised Code to clarify that court costs may only be taxed on a case and may not be charged on all offenses or counts that are part of a single case. This codifies the *Quinones* decision.

**Waiver of Court Costs.** The Judicial Conference reviewed House Bill 247 and determined that it makes changes that respond to the Ohio Supreme Court's holding in *State v. Clevenger*, 114 Ohio St.3d 258 (2007) that a trial court does not have authority to waive either the imposition or the payment of court costs after the court has imposed sentence, even when the offender is indigent and has no capacity to pay the costs.

The Ohio Supreme Court's holding in *Clevenger* was based upon the absence in current law of any specific authorization for courts to waive costs after sentencing. The Judicial Conference's Criminal Law & Procedure Committee supports the enactment of legislation that would give courts that authority.

The committee believes that prohibiting courts from modifying their judgments to waive court costs serves little practical purpose and could, in fact, undermine the public's confidence in the fairness and enforceability of the law by requiring that costs remain part of a sentence even when there is no realistic possibility that the costs can ever be collected from the offender. When a court imposes sentence, there is not always a colloquy between the court and the offender regarding the offender's capacity to pay costs. Often, the capacity of offenders to pay costs is therefore unknown to courts at the time sentence is imposed. In any event, it is not uncommon for an offender's inability to pay costs to result from a change in the offender's circumstances after sentencing.

The committee is aware of the provision in R.C. 2947.23, identified by the Ohio Supreme Court in *Clevenger*, which authorizes a court to allow an offender to perform community service for credit against costs owed by the offender. Though the committee understands the value community service can provide to both an offender and the offender's local community, community service is not a viable option in many cases. As noted, some offenders are unable to pay costs because of changes in their circumstances after sentencing. Sometimes those changes involve an offender becoming afflicted with a physical or mental disability or involve a worsening of preexisting disabilities or chemical dependencies. Community service is not a realistic option in many of those cases.

A legislative response to *Clevenger* was suggested to the Joint Committee to Study Court Costs and Filing Fees, a joint legislative-judicial committee created by the Ohio General Assembly to study Ohio's existing system of imposing and collecting court costs and to recommend necessary changes. In July 2008, the Joint Committee released its final report and recommendations, which included a recommendation that the General Assembly amend current law to give trial courts the statutory authority to suspend or waive the imposition or payment of costs after a court has imposed sentence.

The Judicial Conference supports this recommendation and believes that modifying current law to give courts statutory authority to waive the imposition or payment of

costs after a court has imposed sentence would expand judicial discretion relative to the imposition and payment of court costs. It would also bolster the public's confidence in the fairness, rationality, and enforceability of the law by ensuring that court costs do not remain part of an offender's sentence in a situation where there is no realistic possibility the costs will be collected.

The Judicial Conference has concluded that House Bill 247 makes changes to R.C. 2947.23 to expand judicial discretion to waive court costs after sentence has been imposed if the offender is indigent. This change is necessary in order to overcome the holding in *State v. Clevenger* (2007).