

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 Committee on Judiciary

BILL: SB 1328

INTRODUCER: Senator Wright

SUBJECT: Fines and Fees

DATE: January 17, 2020

REVISED: 01/27/20

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Ravelo</u>	<u>Cibula</u>	<u>JU</u>	<u>Pre-meeting</u>
2.	<u></u>	<u></u>	<u>ACJ</u>	<u></u>
3.	<u></u>	<u></u>	<u>AP</u>	<u></u>

I. Summary:

SB 1328 requires the clerks of court to establish uniform payment plans for court related fees, service charges, costs, and fines for individuals who are indigent. This plan will allow for the consolidation of amounts owed from all cases involving the individual in the county.

The bill allows a court to excuse the balance of fees and fines owed by an indigent individual if he or she makes consecutive monthly payments under a payment plan for 12, 24, or 36 months depending on the total initial obligation. The bill also allows a court, upon determining that an indigent individual is unable to comply with a payment plan, to modify the plan or convert to community service the amounts owed for fees, service charges, costs, or fines.

The bill repeals the authority of the clerk of court to suspend driver licenses based on the failure of a person to:

- enter into or comply with a payment plan to pay civil or criminal traffic fines and fees;
- attend a driver improvement school; or
- appear at a scheduled hearing.

Individuals whose driver licenses have been suspended before the July 1, 2020, effective date of this bill, solely for the failure to pay fines, service charges, fees, or costs may have their licenses reinstated upon payment of a reinstatement fee. Moreover, the particular wording of the bill, could be read to allow the reinstatement of driver licenses that have been suspended due to the failure to pay child support.

The bill is effective July 1, 2020.

II. Present Situation:

Clerks of the Circuit Court

Each of the 67 Florida counties has a clerk of court. The clerk is an elected constitutional officer who oversees judiciary functions as the clerk of both the county and circuit courts.¹ The clerk may also serve as the ex-officio clerk of the board of county commissioners, as well as the auditor, recorder, and custodian of all county funds.

The State Constitution requires that the clerks of courts be funded from revenue generated from charges for service, court costs, filing fees, and fines from civil and criminal proceedings.² The revenue is used for court related functions as well as select costs, expenses, and salaries as provided by law.³ Court related functions include:

- Case maintenance;
- Records management;
- Court preparation and attendance;
- Collection and distribution of fines, fees, service charges, and court costs;
- Processing for the assignment, reopening, reassignment, and appeals of cases;
- Reasonable administrative support costs;
- Data collection and reporting;
- Determinations of indigent status; and
- Collection and distribution of fines, fees, service charges, and court costs.⁴

The clerk of courts statewide operating budgets vary each year depending on revenues generated. For fiscal year 2013-2014 clerks had an operating budget of \$472.3 million for court-related functions. The 2017-2018 budget was \$409.04 million, while the latest 2018-2019 budget was \$424.8 million.⁵

Between October 1, 2017, and September 30, 2018, the Clerks statewide assessed \$1,163,151,976, in fines, and collected a total of \$863,594,314 for a collection rate of 74.25 percent statewide.⁶ Revenue collected from fines and fees are not solely budgeted toward the clerks of courts. The Legislature has provided, for example, a 5 percent surcharge for certain non-criminal traffic citations, which is deposited in the Crimes Compensation Trust Fund.⁷ Additionally, that same trust fund collects \$49 from every \$50 collected as a fine from every

¹ FLA. CONST. ART. V, § 16

² FLA. CONST. ART. V, § 14. Although the clerks of courts are funded through fines and fees through this provision of the State Constitution, courts have stated that mere operational underfunding which causes the poor performance of a clerk of court do not mean that the funding levels are unconstitutional. *See Fla. Dep't of Rev. v. Forman*, 273 So. 3d 223 (Fla. 1st DCA 2019), jurisdiction denied, No. SC19-1262, 2019 Fla. LEXIS 2153 (Fla Nov. 25, 2019).

³ *Id.*

⁴ Section 28.35(3)(a), F.S.

⁵ Gary Blankenship, *Court Clerks Get a Bit of the Budget Help they Need*, FLA. BAR NEWS, May 13, 2019, <https://www.floridabar.org/the-florida-bar-news/court-clerks-get-a-bit-of-the-budget-help-they-need/>.

⁶ Florida Court Clerks and Comptrollers, *2018 Annual Assessments and Collections Report*, https://cdn.ymaws.com/www.flclerks.com/resource/resmgr/public_documents/_1_final_front_matter_cover_s.pdf.

⁷ Section 938.04, F.S. The Crimes Compensation Trust Fund was created for the purpose of compensating victims of crime. Section 960.21, F.S.

adjudication from any felony, misdemeanor, delinquent act, or criminal traffic offense.⁸ During fiscal year 2018-2019, the Crime Compensation Trust Fund received \$13,794,800.86 of revenue generated from the above fines and fees collected by the clerks of courts.⁹

Once fees, service charges, fines, or court costs have remained unpaid for 90 days, the clerk may forward the accounts to an attorney or collection agent if the clerk of court attempted to collect the unpaid amount through an internal process such as a collection docket.¹⁰ It is unclear how successful collection agents are at collecting the remaining fees and fines. However, some counties such as Broward¹¹ County have unpaid fines and fees totaling hundreds of millions of dollars which go back decades.

Payment Plans

Court costs, fines, and other fines related to a disposition are enforced by court order and collected by the clerks of the circuit and county courts. An indigent person may apply to the clerk of court to enter a payment plan. The monthly payments under a payment plan are presumed to correspond to the indigent person's ability to pay if it does not exceed 2 percent of the indigent person's annual net income divided by 12.¹² A person is indigent if their income is equal to or below 200 percent of the federal poverty guidelines¹³ or if the person is receiving Temporary Assistance for Needy Families-Cash Assistance, poverty-related veterans' benefits, or Supplemental Security Income.¹⁴

Certain crimes in Florida have significant mandatory minimum fines. An individual convicted of trafficking cocaine, for example, must pay a fine of \$50,000, if the amount trafficked is at least 28 grams, or \$250,000 if the amount trafficked is more than 400¹⁵ grams.¹⁶ Depending on the individual's income and ability to pay, fines and fees may take decades to pay off. An individual on a payment plan in Miami-Dade, for example, is scheduled to complete her \$190,000 payment plan resulting from a grand theft conviction in 190 years.¹⁷ She pays \$100 per month under her payment plan.

⁸ Section 938.03, F.S.

⁹ Memorandum, Florida Clerks of Court Operations Corporation, *CCOC Bill Analysis for SB 1328*, January 2020 (on file with the Senate Committee on Judiciary).

¹⁰ Section 28.246(6), F.S.

¹¹ Broward County has \$735.6 million in outstanding fees and fines from felony, misdemeanor, and traffic dispositions. Similarly, Palm-Beach County has \$277.5 million outstanding while Miami-Dade County has \$278 million from felony adjudications alone. Dan Sweeney, *South Florida felons owe a billion dollars in fines - and that will affect their ability to vote*, SOUTH FLORIDA SUN SENTINEL, May 31, 2019, <https://www.sun-sentinel.com/news/politics/fl-ne-felony-fines-broward-palm-beach-20190531-5hxf7mveyree5cjhk4xr7b73v4-story.html>.

¹² Section 28.26(4), F.S.

¹³ Currently, the federal poverty level is \$12,490 for individuals, with an additional \$4,420 for each additional family member in the individual's household. See: United States Department of Health and Human Services, *U.S. Federal Poverty Guidelines Used to Determine Financial Eligibility for Certain Federal Programs*, <https://aspe.hhs.gov/2019-poverty-guidelines> (last visited Jan 14, 2020).

¹⁴ Section 27.52(1), F.S.

¹⁵ 400 grams is the equivalent to .88 of a pound.

¹⁶ Section 893.135(1)(b)1., F.S.

¹⁷ Lawrence Mower, *Should a felon who owes \$59 million be allowed to vote? How about \$190,000?* MIAMI HERALD, Mar. 29, 2019, <https://www.miamiherald.com/news/politics-government/state-politics/article228399999.html>.

Driver's License Suspension in Florida

More than 2 million of the more than 14 million driver licenses issued in Florida are currently suspended.¹⁸ A license can be suspended for a variety of different reasons, including:

- Failure to pay a fine.
- Failure to comply with or appear at a traffic summons.
- Failure to complete driver improvement school based on court order or citation.
- Unpaid citations reported by another state.
- Clearing a court financial obligation.¹⁹

III. Effect of Proposed Changes:

The bill requires clerks of courts to establish uniform payment plans for court related fees, service charges, costs, and fines for individuals who are indigent. These payment plans must be available electronically, by mail, in person, or through a community based organization authorized by the clerk to collect payments. The monthly payment plans must include all fines and fees assessed for any cases within the county that the individual has been ordered to pay. If the individual is unable to comply with the terms of the payment plan, the court may modify or convert the outstanding amount to community service.

The bill provides a 30-day grace period for the first payment for individuals out of custody, and a 90-day grace period for first payment for those in custody.

The bill allows for a court to determine that the financial obligations under a payment plan have been met when:

- 12 consecutive payments have been made for an obligation that was \$500 or less.
- 24 consecutive payments have been made for an obligation greater than \$500 and less than \$1000.
- 36 consecutive payments have been made for an obligation greater than \$1,000.

This authority to waive the collection of any additional amount only applies to individuals under a payment plan who are indigent,²⁰ receive public assistance,²¹ or whose household income is

¹⁸ Wayne K. Roustan, *Florida suspends nearly 2 million driver's licenses. Help may be on way*, SOUTH FLORIDA SUN SENTINEL, Feb. 16, 2018, <https://www.sun-sentinel.com/news/transportation/fl-reg-drivers-license-suspensions-20180208-story.html>.

¹⁹ Florida Department of Highway Safety and Motor Vehicles, *Traffic Citations or Court Suspensions*, <https://www.flhsmv.gov/driver-licenses-id-cards/driver-license-suspensions-revocations/traffic-citations-court-suspensions/> (last visited Jan. 15, 2020).

²⁰ Section 27.52(2)(a), F.S. Defines indigent status as:

An applicant, including an applicant who is a minor or an adult tax-dependent person, is indigent if the applicant's income is equal to or below 200 percent of the then-current federal poverty guidelines prescribed for the size of the household of the applicant by the United States Department of Health and Human Services or if the person is receiving Temporary Assistance for Needy Families-Cash Assistance, poverty-related veterans' benefits, or Supplemental Security Income (SSI).

²¹ Section 409.2554, F.S. Defines public assistance as money assistance paid on the basis of Title IV-E and Title XIX of the Social Security Act, temporary cash assistance, or food assistance benefits received on behalf of a child under 18 years of age who has an absent parent.

below 200 percent of the federal poverty level.²² If an individual is ordered by a court to pay substantially more than what was paid within the above time periods, the remaining obligations are excused.

The bill will affect the budgets of each clerk of court as well as the separate entities that receive money from revenue generated by fines and fees.

The bill removes the ability of a clerk of court to suspend driver licenses based on failure to pay civil or criminal traffic fines and fees.

The bill allows individuals whose driver licenses were suspended before July 1, 2020, solely for nonpayment of fines and fees, to reinstate their licenses upon payment of a reinstatement fee. Moreover, the particular wording of the bill, could be read to allow the reinstatement of driver licenses that have been suspended due to the failure to pay child support.²³ The amount of the reinstatement fee, however, is not specified in the bill.

The bill does not appear to effect the payment of restitution to victims of crimes.²⁴

The bill is effective July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

²² Currently, the federal poverty level is \$12,490 for individuals, with an additional \$4,420 for each additional family member in the individual's household. *See*: United States Department of Health and Human Services, *U.S. Federal Poverty Guidelines Used to Determine Financial Eligibility for Certain Federal Programs*, <https://aspe.hhs.gov/2019-poverty-guidelines> (last visited Jan 14, 2020).

²³ To the extent that this reading of the bill is the result of a drafting error, the issue could be corrected by changing the reference to "this section" on line 358 to "subsection (1)."

²⁴ Section 775.089, F.S. Although a court may order restitution to be paid in installments similar to a payment plan, restitution is not considered a fine or fee for the purpose of payment plans under section 28.246(4) F.S.

E. Other Constitutional Issues:

Article V, s. 14(b) of the State Constitution provides that the clerks of court are to be funded from filing fees, service charges, and costs for performing court related functions. To the extent that the bill will waive or forgive collectable amounts owed by some participants in the judicial system, the Constitution may require the imposition of increased fees, charges, and costs upon others.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Limiting the authority of the clerks of court to suspend driver licenses may help those who would otherwise be affected drive to work to earn money to pay debts. On the other hand, the potential for having one's driver license suspended may be an incentive for some to enroll in payment plans and make timely payments to the clerks.

C. Government Sector Impact:

The bill could have a negative impact on the overall budget of each clerk of court. The Florida Clerks of Courts Operations Corporations estimates that this bill would result in a revenue loss for Clerks of Court of between \$20.8 million and \$49.5 million statewide.²⁵ Additionally, a decline in revenue generated from fines and fees would impact government entities such as the State Attorney's and Public Defenders, as well as various trusts such as the Child Welfare Training Trust Fund²⁶ and the Brain and Spinal Injury Trust Fund,²⁷ which both receive funding from revenue generated by fines and fees collected by the clerks of courts.

The Crimes Compensation Trust Fund is one of many trust funds that will be negatively affected as a result of the bill. This fund has experienced notable declines in revenue and increases in expenditures in recent years. There is currently an amended issue in a Legislative Budget Request submitted by the Department of Legal Affairs for \$11.5 million nonrecurring General Revenue to support the Victim Compensation Program. Passage of this bill would further exacerbate the revenue issues this trust fund has experienced in recent years. Other trust funds that will be negatively impacted by the bill include the Brain and Spinal Cord Trust Fund and the Court Facilities Fund.

According to the Office of the State Courts Administrator, provisions of the bill that allow courts to modify payment plans or to waive financial obligations after a sufficient number of timely payments have been made will increase judicial workloads and staff

²⁵ Memorandum, Florida Clerks of Court Operations Corporation, *CCOC Bill Analysis*, January 2020 (on file with the Senate Committee on Judiciary).

²⁶ Section 318.21(1), F.S.

²⁷ Section 318.21(2)(d), F.S.

workloads.²⁸ However, the bill may reduce court workloads by reducing the number of driving with suspended license cases.

With respect to revenue impacts on the court system, OSCA states that:

There is potential indirect negative fiscal impact from the elimination of driver license suspension for failure to pay legal financial obligations. If the elimination of this provision removes a punitive threat of driver license suspension for non-payment and creates a reduction in the collection of legal financial obligations, this could result in a loss of revenues that are directed to the State Courts Revenue Trust Fund and other local funding sources that provide resources to the judiciary. The amount of the impact is currently unknown.²⁹

With respect to expenditure impacts on the court system, OSCA states:

“The fiscal impact of this legislation cannot be accurately determined due to the unavailability of data needed to quantifiably establish the effects on judicial time and workload resulting from the provisions of license suspension and payment plans related to payment of fines and fees”³⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 28.24, 28.246, 28.42, 318.15, 322.245, 34.191, 320.03, 27.52, and 57.082.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

²⁸ Office of the State Courts Administrator, *2020 Judicial Impact Statement for SB 1328* (Jan. 26, 2020) (on file with the Senate Committee on Judiciary).

²⁹ *Id.*

³⁰ *Id.*

B. Amendments:

None.

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