

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: February 10, 1998 Revised: 3/25/98 _____

Subject: Court Enforcement Program Act

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Wiehle</u>	<u>Moody</u>	<u>JU</u>	<u>Fav/1 amendment</u>
2.	<u>_____</u>	<u>_____</u>	<u>CJ</u>	<u>_____</u>
3.	<u>_____</u>	<u>_____</u>	<u>WM</u>	<u>_____</u>
4.	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>
5.	<u>_____</u>	<u>_____</u>	<u>_____</u>	<u>_____</u>

I. Summary:

The bill creates the "Comprehensive Court Enforcement Program Act," which requires the Florida Supreme Court and the Chief Justice to establish a statewide Comprehensive Court Enforcement Program (CCEP) within the present structure of the judicial circuits. The CCEP is to provide for the enforcement of court orders and oversee collection of court-ordered costs, fines, and restitution. Additionally, all matters involving a sentence of community service with which the offender has not complied may be transferred to the CCEP for appropriate sanctions.

Hearing costs of \$10 must be taxed against each defendant. Additionally, each person who is sentenced to the CCEP must pay an enrollment fee of \$10. All money collected pursuant to the act must be deposited in a separate account to be used only for the CCEP. The administrative office of the court for each circuit, in order to fund the CCEP, is authorized to deduct an amount up to 100 percent of all fees collected and 25 percent of all moneys collected, except for Crimes Compensation Trust Fund moneys and victim restitution assessments. However, of the funds deposited with the clerk, no more than \$250,000 annually may be deducted and allocated to fund the CCEP.

The bill creates 17 as yet unnumbered sections within the Florida Statutes.

II. Present Situation:

There is currently no program established by statute by which a court, on its own initiative, enforces judgments or court orders setting forth costs, fines and restitution.

III. Effect of Proposed Changes:

The bill creates the “Comprehensive Court Enforcement Program Act” and requires the Florida Supreme Court and the Chief Justice to establish a statewide Comprehensive Court Enforcement Program (CCEP) within the present structure of the judicial circuits.

A. Jurisdiction

The CCEP is to provide for the enforcement of court orders and oversee collection of court-ordered costs, fines, and restitution. Additionally, all matters involving a sentence of community service, entered by any court in the judicial circuit, with which the offender has not complied may be transferred by the sentencing court to the CCEP for appropriate sanctions. These sanctions may include imposition of a financial sanction, enforced community service, incarceration, or a combination of these sanctions or any other alternative as may be appropriate.

B. Administration

In each circuit, the chief judge must designate a judge, senior judge, or magistrate to preside over the CCEP. This judge is to have jurisdiction over cases which originated in the circuit and in which there is a failure to pay court-ordered financial obligations. This jurisdiction may be extended to include cases in which there is a failure to comply with community service orders.

Each CCEP is to include the following staff:

1. A judge or magistrate to take testimony, make findings of fact, and rule on a payment or compliance plan.
2. An employee of the clerk of the circuit court to be present at all hearings to assist in coordinating the proceedings, collecting moneys, issuing receipts in the hearing room, and entering reports on the outcome of hearings.
3. A court reporter or recorder to record the hearing.
4. A bailiff to maintain the same level of security and order as in other proceedings.

A CCEP hearing must be conducted in the same type of physical setting as any other court proceeding, with the same level of security and other amenities.

C. Hearings and Procedure

Any case which is at least 60 days in arrears of the court-ordered payment schedule or in which a period of at least 60 days has elapsed since the final obligation was ordered due is subject to a hearing in the CCEP. Prioritization and selection of cases for scheduling may be based on any reasonable set of criteria set by the chief judge of the circuit, provided that financial obligation is always to be prioritized before community service.

Those persons delinquent in paying court-ordered financial obligations are to receive notice of their delinquency and be given an opportunity to comply before being ordered to appear in the

CCEP. The initial notice consists of a letter informing the individual of the delinquency in payment and demanding compliance within 2 weeks. If the person does not comply and no settlement effort is initiated, a summons must be issued for an order to show cause why court-ordered financial obligations should not be enforced.

If the person fails to appear pursuant to the summons, a bench warrant must be issued. The bench warrant must contain a purge amount equal to the arrearage or the total assessment, the exact amount to be set by the judge or magistrate. If the debtor satisfies his or her obligation before being arrested pursuant to the bench warrant, the bench warrant must be vacated. If the debtor is arrested and subsequently satisfies the obligation, the debtor is to be released from custody.

CCEP hearings are to be conducted as civil proceedings and to be based on the alternative dispute resolution model to effectuate an agreement between the defendant and the court as to payment. Those individuals ordered to show cause must be given an opportunity to comply with the financial obligations. If a defendant enters into a settlement agreement, further execution of a recorded judgment is stayed, provided the defendant begins and continues to meet the terms of the agreement. Only a CCEP judge or chief judge may reduce a court-ordered financial obligation.

If the CCEP judge or magistrate finds that a debt cannot be fully paid, the court administrator's office must use the current enforced community service program as an alternative. Persons enrolled in the enforced community service program must work a minimum of 5 hours at a time. Their debt balance will be reduced by \$5 for each full hour of labor. An enrollment fee of \$10 must be paid by each person who is sentenced to the enforced community service program. Enforced community service fees are to be deposited with the clerk of the court.

If the CCEP judge determines that the payor is financially unable to comply with the financial obligation initially imposed by the sentencing court, the judge or magistrate may:

1. Create a scheduled payment plan designed to achieve compliance by setting a rate that is reasonable.
2. Impose enforced community service hours at \$5 per hour in lieu of paying the court-ordered financial obligation, until the balance is satisfied.
3. In an extreme circumstance, with the approval of the chief judge, relieve the person of the obligation to pay, except for victim restitution and crime victim compensation costs.

D. Penalties

If a person fails to respond to a CCEP summons, a warrant is to be issued and the person may be incarcerated. If a person fails to pay financial obligations in the time schedule established by the CCEP, a contempt charge will be entered against the defendant and may result in incarceration or other sanctions. If a person fails to comply with court-ordered community service assigned by a CCEP judge or magistrate, a contempt charge will be entered and may result in incarceration or other sanctions. Any debts not resolved to the judge's or magistrate's satisfaction shall be entered as a lien in the amount of the balance, plus a reasonable fee assessment.

E. Funding

Hearing costs of \$10 must be taxed against each defendant and collected by clerk of court staff prior to the defendant's hearing. Additionally, an enrollment fee of \$10 must be paid by each person who is sentenced to the enforced community service program. Enforced community service fees are to be deposited with the clerk of the court. The clerk is to deposit moneys collected pursuant to this act in a separate account to be used only for the CCEP.

Subject to the approval of the clerk of court and the chief judge, the administrative office of the court for the circuit is authorized to deduct from the funds deposited with the clerk an amount up to 100 percent of all fees collected and 25 percent of all moneys collected, except for Crimes Compensation Trust Fund moneys and victim restitution assessments. However, of the funds deposited with the clerk, no more than \$250,000 annually may be deducted and allocated to fund the CCEP. The clerk of the circuit court is to disburse funds as provided by Florida law and, if not provided by Florida law, is to distribute partial payments on a pro rata basis. The hearing fee of \$10 must be distributed to the office of the clerk of the circuit court to offset administrative costs.

F. Effective Date - Application

The bill takes effect upon becoming law and requires that all judicial circuits have a Comprehensive Court Enforcement Program operational by October 1, 1998.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

If the costs of a circuit's Comprehensive Court Enforcement Program exceed the revenues generated by the CCEP, it may constitute an unfunded mandate as to the counties within that circuit.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The Florida Constitution prohibits any member of one branch of government from exercising any power appertaining to either of the other branches of government. s. 3, Art. II, Fla. Const. The Supreme Court is to adopt rules for the practice and procedure in all courts. s. 2, Art. IV, Fla. Const. As the Florida Supreme Court is to provide for the administration of the

judicial branch, the bill is subject to challenge under the separation of powers provision of the State Constitution.

The bill may be interpreted as establishing a new division within each circuit court. Section 7, Art. V, Fla. Const., provides that “[a]ll courts except the Supreme Court may sit in divisions as may be established by general law.” Section 43.30, F.S., states that “[a]ll courts except the Supreme Court may sit in divisions as may be established by local rule approved by the Supreme Court.” Thus, the bill may be subject to challenge. However, establishment of the CCEP may be interpreted as similar to the Supreme Court’s finding that “the Legislature effectively preempted s. 43.30, F.S., and the local rule requirement as to family law divisions by establishing a policy in ch. 90-273, Laws of Fla., creating the Commission on Family Courts, that family law divisions were to be created in Florida and by directing this Court in that chapter to ensure that ‘family law divisions shall operate with as much consistency as possible throughout the state.’ ” *In re Report of the Commission on Family Courts*, 646 So.2d 178, 181 (Fla. 1994).

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

The Office of the State Courts Administrator (OSCA) has stated that the increase in revenue due to both increased collection of fees and the \$10 per hearing court cost is difficult to estimate. The OSCA states that the expense of establishing a CCEP in each of the 20 judicial circuits as required under the bill could be substantial.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Judiciary:

The amendment creates the Comprehensive Court Enforcement Program Act and establishes legislative intent for the Act. The enforcement program may be implemented as supplementary proceedings at the option of the chief judge of each circuit. The court may order a person who has been ordered to pay any financial obligation in any criminal case to appear and be examined under oath concerning the person's financial ability to pay the obligation. The order requiring the person's attendance must be served a reasonable time before the date of the examination. Any person failing to attend may be arrested and may be held in civil contempt.

Testimony may be taken on any subject relevant to the person's financial interest, and other witnesses may be examined and documents produced as evidence. The court may reduce the amount of the obligation based on evidence of financial ability at the hearing. The court may order that any nonexempt property in the possession of a third party be applied toward the obligation, with the Uniform Fraudulent Transfer Act applying to all collection matters under the Act. If a judgment has not been previously entered on any court-imposed financial obligation, the court may enter judgment and issue any writ necessary to enforce the judgment in the manner allowed in civil cases. Any judgement issued constitutes a civil lien. The court may order the person examined to comply with a payment schedule. Any person willfully failing to comply with an order, including an order to comply with a payment schedule, may be held in civil contempt. Administrative costs may be assessed against the person. Past due obligations which have been reduced to judgment may be referred by the county commission to a private attorney or collection agency for collection. These provisions are in addition to other remedies.

The clerk of court must make a quarterly report of court-imposed financial obligations collected to the chief judge. (WITH TITLE AMENDMENT)