

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 Budget Subcommittee on Criminal and Civil Justice Appropriations

BILL: CS/CS/SB 1166

INTRODUCER: Judiciary Committee, Regulated Industries Committee and Senator Simmons

SUBJECT: Clerks of Court

DATE: February 22, 2012 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harrington	Imhof	RI	Fav/CS
2.	Irwin	Cibula	JU	Fav/CS
3.	Harkness	Sadberry	BJA	Pre-meeting
4.			BC	
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|--------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input 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:

The bill amends current law relating to the responsibilities of the clerks of the court to enhance the collection of court fees and fines and to improve the efficiency of their operations. The bill requires a broader use of the Comprehensive Case Information System (CCIS) among state agencies to reduce operational costs and duties of the clerks of the court.

The bill:

- Makes discretionary the clerk’s review of property and motor vehicle records of persons seeking an indigency determination for purposes of obtaining a public defender.
- Provides that filing fees are due when a party files a pleading to initiate a proceeding.
- Provides that fees are due upon filing a pleading to reopen a case that has been closed at least 90 days.
- Requires clerks to collect a \$10 service charge for issuing a certified copy of an electronic certified copy of a summons rather than only for an original summons.
- Updates jury legislation to reflect modern practices and current procedures.
- Allows an action for the collection of court costs and fines to be brought at any time.

- Requires the state attorney to notify the clerk of the court when a defendant is a public officer charged with a specified offense before the clerk must send notice of the proceedings to the Commission on Ethics.
- Ranks claims for the collection of unpaid fees, court costs, and fines at level three for payment of claims against a decedent's estate by a personal representative.
- Removes the requirement for clerks of the court to send certified copies of felony drug convictions to agencies issuing business or professional licenses, and replaces it with a requirement for the licensing agency to obtain such information from the CCIS.
- Provides that with respect to criminal financial obligations, a previously imposed criminal or civil judgment constitutes a civil lien against the judgment debtor's real or personal property when recorded as required by s. 55.10, F.S. The bill exempts such liens from the current 10 year re-recording requirement of the statute.
- Adds the payment of fines, fees, and other court related costs as a condition of parole in addition to the current condition of paying restitution.

This bill substantially amends the following sections of the Florida Statutes: 27.52, 28.24, 28.241, 28.37, 34.041, 40.011, 40.02, 40.022, 40.221, 40.225, 57.081, 95.11, 112.3173, 318.18, 668.50, 733.707, 893.11, 938.27, 938.30, and 947.181.

This bill creates section 28.2405, Florida Statutes.

II. Present Situation:

Determinations of Indigency

Section 27.52(2), F.S., requires the clerk of the court to determine whether an applicant seeking appointment of a public defender is indigent. The clerk must consider the applicant to be indigent if the applicant:

- Is at or below 200 percent of the federal poverty guidelines;
- Is receiving Temporary Assistance for Needy Families-Cash Assistance;
- Is receiving poverty-related veterans' benefits; or
- Is receiving Supplemental Security Income (SSI).¹

There is a presumption that the applicant is not indigent if the applicant owns, or has equity in, any intangible or tangible personal property or real property or the expectancy of an interest in property having a net equity value of \$2,500 or more, excluding the value of the person's homestead and one vehicle having a net value under \$5,000.²

The clerk must conduct a review of property records for the county in which an applicant resides and motor vehicle records of the state to identify any property interests of the applicant.³ The clerk must evaluate and consider the results of its review in making a determination of indigency. The clerk is also required to maintain the results of the review in a file with the application and

¹ Section 27.52(2)(a)1., F.S.

² Section 27.52(2)(a)2.a., F.S.

³ Section 27.52(2)(a)2.b., F.S.

provide the file to the court if the applicant seeks a court review of the clerk's determination that the applicant is not indigent.⁴

Filing Fees

A party "instituting any civil action" must pay the statutorily prescribed filing fees to the clerk of the court. Under current law, a party reopening a civil action or proceeding in circuit court must pay a filing fee not exceeding \$50.⁵ In county court, reopening fees are up to \$25 for all claims not more than \$500, and up to \$50 for claims over \$500.⁶ A case is "reopened" when it has previously been reported as disposed of and is resubmitted to the court.⁷ However, section 28.241(1)(b), F.S., and s. 34.041, F.S., list several exceptions to the payment of a reopening fee.⁸

Service Charges

The clerk of the court must collect a \$10 service charge for issuing a summons from a party seeking to have a summons issued.⁹

Juror Legislation

Section 40.01, F.S., provides that jurors in this state must be taken from all persons at least 18 years of age who are citizens of the United States and residents of this state and their respective counties and who possess a drivers' license or state issued identification card. Persons without drivers' licenses or identification cards may also be added to the list if they execute an affidavit at the office of the clerk of the court.¹⁰ Section 40.013, F.S., lists persons who are disqualified or excused from jury service, including but not limited to, persons under prosecution for any crime, the Governor, and the clerk of the court. Section 40.011, F.S., requires the Department of Highway Safety and Motor Vehicles to deliver quarterly to the clerk of the circuit court in each county a list of the names of persons eligible for jury duty.

The chief judge of each circuit, or a circuit judge in each county within the circuit who is designated by the chief judge, must request the selection of a jury list in each county within the circuit during the first week of January of each year, or as soon thereafter as practicable.¹¹

The chief judge or the chief judge's designee shall direct the clerk of the court to select at random a sufficient number of names, with their addresses, from the list of persons who are qualified to serve as jurors . . . and to generate a list of not fewer than 250 persons to serve as jurors, which list shall be signed and verified by the clerk of the court as having been selected [at

⁴ *Id.*

⁵ Section 28.241(1)(b), F.S.

⁶ Section 34.041(2), F.S.

⁷ Section 34.041(2), F.S.

⁸ *See* ss. 28.241(1)(b) and 34.041, F.S. (providing a complete list of 18 circuit court and 10 county court prescribed circumstances when a party is exempt from paying the fee to reopen a case).

⁹ Section 34.041(1)(d), F.S.

¹⁰ Section 40.011(1), F.S.

¹¹ Section 40.02(1), F.S.

random]. A circuit judge in a county to which he or she has been assigned may request additional jury lists as necessary to prevent the jury list from becoming exhausted.¹²

The clerk of the court is responsible for preserving the security of the jury lists.¹³

Statute of Limitations

A statute of limitations is an absolute bar to the filing of a legal case after a date set by law.¹⁴ Section 95.11, F.S., specifies limitations on time periods to initiate actions other than for the recovery of real property. Under this section, an action on a judgment or decree of court must be commenced within 20 years.¹⁵

Notice of Breach of Public Trust

Section 112.3173, F.S., requires the clerk of the court to provide notice to the Commission on Ethics when a proceeding against a public official for a “specified offense” is being conducted in its court. Under s. 112.3173(4)(a), F.S., a copy of an information, indictment, or other document containing the charges is sufficient for notice. Section 112.3173(2)(e), F.S., defines a “specified offense” as:

- The committing, aiding, or abetting of an embezzlement of public funds;
- The committing, aiding, or abetting of any theft by a public officer or employee from his or her employer;
- Bribery in connection with the employment of a public officer or employee;
- Any felony specified in ch. 838, F.S., except ss. 838.15-838.16, F.S.;
- The committing of an impeachable offense;
- The committing of any felony by a public officer or employee who, willfully and with intent to defraud the public or the public agency for which the public officer or employee acts or in which he or she is employed of the right to receive the faithful performance of his or her duty as a public officer or employee, realizes or obtains, or attempts to realize or obtain, a profit, gain, or advantage for himself or herself or for some other person through the use or attempted use of the power, rights, privileges, duties, or positions of his or her public office or employment position; or
- The committing on or after October 1, 2008, of any felony defined in s. 800.04, F.S.,¹⁶ against a victim younger than 16 years of age, or any felony defined in ch. 794, F.S.,¹⁷ against a victim younger than 18 years of age, by a public officer or employee through the use or attempted use of power, rights, privileges, duties, or position of his or her public office or employment position.

¹² Section 40.02(1), F.S.

¹³ Section 40.02(2), F.S.

¹⁴ Section 95.11(6), F.S. *See generally* 35 FLA. JUR 2D s. 1 *Limitations and Laches* (2012).

¹⁵ Section 95.11(1), F.S.

¹⁶ Section 800.04, F.S. (pertaining to lewd and lascivious offenses).

¹⁷ Chapter 794, F.S. (pertaining to sexual battery).

Community Service in Lieu of Civil Penalty

If a person has been ordered to pay a civil penalty for a noncriminal traffic infraction and is unable to do so due to a financial hardship, the court must allow the person to satisfy the civil penalty by participating in community service until the civil penalty is paid.¹⁸ Such persons either receive credit for community service hours against the civil penalty at a specified hourly rate based on the wage rate specified under the federal Fair Labor Standards Act of 1938 or, if the person has a trade or profession, at the average prevailing wage rate for that trade or profession.¹⁹

The supervision of the performance of community service hours is conducted by “a community service agency” that agrees to accept community service from persons unable to pay their civil penalties.²⁰ The community service agency must record the number of community service hours completed along with the date of the completion to the clerk of the court on the letterhead of the community service agency and signed by the designated representative of the community service agency.²¹

Section 668.50, F.S., is known as the “Uniform Electronic Transaction Act.”²² The act applies to electronic records and electronic signatures relating to a transaction.²³ The act does not apply to the transactions to the extent they are governed by:

- A provision of law governing the creation and execution of wills, codicils, or testamentary trusts;
- The Uniform Commercial Code other than s. 671.107, F.S., and chs. 672 and 680, F.S.;
- The Uniform Computer Information Transactions Act; or
- Rules relating to judicial procedure.²⁴

Priority of Payment of Expenses and Obligations

Section 733.707, F.S., sets forth the order in which the personal representative of a decedent’s estate must pay the expenses of the estate’s administration and obligations against creditors. It provides the following order of payment:

¹⁸ Section 318.18(8)(b)1.a., F.S.

¹⁹ Section 318.18(8), F.S.

²⁰ Section 318.18(8)(b), F.S. (defining “community service agency” as a “not-for-profit corporation, community organization, charitable organization, public officer, the state or any political subdivision of the state, or any other body the purpose of which is to improve the quality of life or social welfare of the community and which agrees to accept community service from persons unable to pay civil penalties for noncriminal traffic infractions.”).

²¹ Section 318.18(8)(b)3.a., F.S.

²² Section 668.50(1), F.S.

²³ Section 668.50(2), F.S. (defining an “electronic record” as “a record created, generated, sent, communicated, received, or stored by electronic means.” An “electronic signature” is defined as “an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.” A “transaction” is defined as “an action or set of actions occurring between two or more persons relating to the conduct of business, commercial, insurance, or governmental affairs.”).

²⁴ Section 668.50(3)(b), F.S.

- Class 1.—Costs, expenses of administration, and compensation of personal representatives and their attorneys fees and attorneys fees awarded under s. 733.106(3), F.S.
- Class 2.—Reasonable funeral, interment, and grave marker expenses, whether paid by a guardian, the personal representative, or any other person, not to exceed the aggregate of \$6,000.
- Class 3.—Debts and taxes with preference under federal law, and claims pursuant to ss. 409.9101 and 414.28, F.S.
- Class 4.—Reasonable and necessary medical and hospital expenses of the last 60 days of the last illness of the decedent, including compensation of persons attending the decedent.
- Class 5.—Family allowance.
- Class 6.—Arrearage from court-ordered child support.
- Class 7.—Debts acquired after death by the continuation of the decedent’s business, in accordance with s. 733.612(22), F.S., but only to the extent of the assets of that business.
- Class 8.—All other claims, including those founded on judgments or decrees rendered against the decedent during the decedent’s lifetime, and any excess over the sums allowed as Class 2 or Class 4 expenses.²⁵

Suspension of License to Practice upon Conviction of Certain Felonies

The clerk of the court must send a certified copy of a judgment of conviction of any person holding a license, permit, or certificate issued by a state agency, to the head of the licensing agency when such conviction is for a felony offense of selling, trafficking, or conspiracy to sell or traffic in a controlled substance.²⁶ The certified copy of the judgment must show the person’s license number, permit number, or certificate number on the face of the document.²⁷ The agency head must suspend or revoke the license, permit, or certificate of the convicted defendant to practice his or her profession or to carry on his or her business.²⁸

Costs of Prosecution and Investigation

Section 938.27(2)(a), F.S., requires a court to impose costs of prosecution and investigation notwithstanding a defendant’s present inability to pay. These costs are to be paid within a specified period or in specified installments.²⁹ Section 28.246, F.S., provides for a monthly payment plan. The court may review the reasonableness of the payment plan.³⁰

Financial Obligations in Criminal Cases

A judgment lien generally refers to a lien against property which is based on an underlying monetary judgment.³¹ A judgment lien on real property is created and perfected upon the recording of a certified copy of a judgment in the official county records.³² Under s. 55.10, F.S.,

²⁵ Section 733.707(1)(a)-(h), F.S.

²⁶ Section 893.11, F.S.

²⁷ *Id.*

²⁸ *Id.*

²⁹ Section 938.27(2)(a), F.S.

³⁰ Section 28.246(4), F.S.

³¹ 34 FLA. JUR 2D s. 1 *Liens* (2012).

³² Section 55.10(1), F.S.

the judgment shall be a lien for an initial period of 10 years from the date of the recording. A lien may be extended for an additional 10 years by re-recording a certified copy of the judgment prior to the expiration of the lien and by simultaneously recording an affidavit with the current address of the person who has a lien as a result of the judgment.³³ Section 55.081, F.S., provides that a judgment lien on real property can be effective for up to 20 years from the date the judgment was entered.

Parole and Fines, Costs, and Restitution

Section 947.181, F.S., provides that the Parole Commission must require restitution to the victim as a condition of parole unless the commission states reasons on the record for not ordering it. The amount of restitution is determined by the commission unless restitution has previously been ordered by the court under s. 775.089, F.S.³⁴ Court ordered restitution must be made a condition of parole.³⁵ If a parolee fails to make restitution as ordered it is considered a violation of parole and may be cause for revocation of parole.³⁶

Section 775.089(3)(a), F.S., provides that the court may require that the defendant make restitution within a specified period or in specified installments. Section 775.089(3)(b), F.S., provides that the end of such period or the last installment for restitution shall be no later than:

- The end of the period of probation if probation is ordered;
 - Five years after the end of the term of imprisonment imposed if the court does not order probation; or
- Five years after the date of sentencing in any other case.

III. Effect of Proposed Changes:

Section 1. Amends s. 27.52, F.S., to provide that the clerk of the court may, instead of must, conduct a review of the property records for the county in which the applicant resides and the motor vehicle title records to identify any property interests of the applicant for a determination of indigent status for an appointment of a public defender. If a review is completed, the clerk must maintain the results of the review in a file with the application and provide the file to the court if the applicant seeks review of the clerk's determination of indigent status.

Section 2. Amends s. 28.24, F.S., to delete a requirement that all clerks must participate in the CCIS on or before January 1, 2006.

Section 3. Creates s. 28.2405, F.S., to provide that all clerks of the circuit court shall participate in the CCIS and shall submit electronic case data to the system based on the case types designated by the Supreme Court.

Section 4. Amends s. 28.241, F.S., to provide that circuit court filing fees are due at the time a party files a pleading to initiate a proceeding or files a pleading for relief, and reopen fees are

³³ Section 55.10(2), F.S.

³⁴ Section 947.181(1)(a), F.S.

³⁵ Section 775.089(4), F.S.

³⁶ Section 947.181(b), F.S.

due at the time a party files a pleading to reopen a proceeding. If a fee is not paid upon the filing of the pleading, the clerk shall pursue collection of the fee pursuant to s. 28.246, F.S.

The section provides a revised definition for when a case is “reopened.” The bill provides that a case is reopened after all appeals have been exhausted or time to file an appeal from a final order or final judgment has expired. A reopen fee may not be assessed by the clerk for any motion filed by any party until 90 days after a final order or final judgment has been filed with the clerk. When the case has been reopened, an additional reopen fee may not be assessed until the reopened matter is resolved. A reservation of jurisdiction by a court does not cause a case to remain open for purposes of this section or exempt a party from paying a reopen fee. The bill provides two additional circumstances for when a party is not required to pay the fee to reopen a case to include motions to enforce stipulations or motions for contempt.

The bill provides that the clerk of court shall collect a service charge of \$10 for issuing an original, a certified copy, or an electronic certified copy of a summons.

Section 5. Amends s. 28.37, F.S., to provide that except for penalties or fines distributed to counties or municipalities under ss. 316.0083(1)(b)3. or 318.18(15)(a), F.S., 10 percent of all court-related fines collected by the clerk must be deposited into the clerk’s Public Records Modernization Trust Fund.

Section 6. Amends s. 34.041, F.S., to provide that all county court filing and reopen fees shall be paid by the party filing the case at the time the case is filed. If the fee is not paid at that time, the clerk shall pursue collection of these filing fees pursuant to s. 28.246, F.S.

The bill provides that the clerk of the county court shall collect a service charge of \$10 for issuing a summons or an electronic certified copy of a summons. The section provides a revised definition for when a case is “reopened.” The definition is the same as in section 5 of this CS but applies to county courts. The bill provides that a case is reopened after all appeals have been exhausted or time to file an appeal from a final order or final judgment has expired. A reopen fee may not be assessed by the clerk for any motion filed by any party under 90 days after a final order or final judgment has been filed with the clerk. When the case has been reopened, an additional reopen fee may not be assessed until the reopened matter is resolved. A reservation of jurisdiction by a court does not cause a case to remain open for purposes of this section. The bill provides two additional circumstances for when a party is not required to pay the fee to reopen a case to include motions to enforce stipulations or motions for contempt.

Section 7. Amends s. 40.011, F.S., to provide that a clerk of the court shall generate a set of juror candidate lists derived from the source lists described in s. 40.01, F.S. The source lists and the juror candidate list must be maintained as specified in ch. 40, F.S., and in accordance with the juror selection plan approved in s. 40.225, F.S.

The bill provides that in addition to the list of licensed drivers and identification card holders, the clerk of the circuit court must add to the list of jurors the name of any person who is at least 18 years of age or older and who is a citizen of the United States and resident of this state if the person desires to be a juror.

The bill provides that a clerk of the court may generate juror candidate lists as necessary to ensure a valid and consistent juror selection process. The initial juror candidate list is derived from the name sources described in s. 40.01, F.S., which must be the master list from which prospective jurors are drawn for summons. The final juror candidate list must contain a list of those persons, drawn from the initial candidate list as prescribed in ch. 40, F.S., who are to be summoned as a pool for possible juror service.

Section 8. Amends s. 40.02, F.S., to delete the requirement that the chief judge of each circuit must request the selection of a jury list in each county within the first week of January of each year, or as soon as practicable thereafter. Alternatively, the bill provides that the chief judge or designee must direct the clerk of the court to select, by lot and at random, a sufficient number of names from the initial juror candidate list of not fewer than 250 persons to serve as jurors as provided for in s. 40.221, F.S.

The bill provides that the final juror candidate list may be created, updated, or supplemented as often as necessary to prevent the selection list from being exhausted, but in no case less than annually during the first week of January of each year, or as soon as practicable thereafter. The bill provides that the circuit judge may also request that the final juror candidate list be updated or supplemented, or that a new list be created as necessary.

Section 9. Amends s. 40.022, F.S., to provide that each clerk of the circuit court must, upon receipt of the list of persons in the department database from the Department of Highway Safety and Motor Vehicles, purge the final juror candidate lists of, at a minimum, the names of those persons adjudicated mentally incompetent, convicted of a felony, or deceased. The bill provides that this purge is necessary to ensure that the juror candidate summons satisfy the requirements of ss. 40.01 and 40.013, F.S.

Section 10. Amends s. 40.221, F.S., to provide that a clerk of the court, under supervision of a judge of any court, must, in a manner deemed to produce a result by lot and at random, select from the final juror candidate list such number of persons as he or she deems necessary for a jury venire.

Section 11. Amends s. 40.225, F.S., to remove the alternative method for drawing jury venire. The bill provides that the chief judge of each circuit must review and consent to the process for selecting juror candidate within his or her circuit. The clerk of the court must implement an automated electronic system as the exclusive method for maintaining the names of prospective jurors and other data for the purpose of drawing juror candidates. The clerk of the circuit in each county must have the administrative responsibility for developing the automated system of jury venire selection, obtaining approval for the juror candidate selection process, and operating and updated the system in accordance with ch. 40, F.S., and the technical standards and procedures adopted by the Chief Justice.

The bill provides that the clerk of the court, or the chief judge of the circuit if performing the duties of juror candidate selection, must submit for approval a plan for the selection of juror candidates to the Chief Justice.

Section 12. Amends s. 57.081, F.S., to reword the provision that a party who has obtained a certification of indigence pursuant to s. 27.52, F.S.,³⁷ or s. 57.082, F.S.,³⁸ is not required to prepay costs, filing fees, or charges for issuance of a summons.

Section 13. Amends s. 95.11, F.S., to extend the statute of limitations for the collection of court costs or fines owed to the state. The bill provides that such an action may be commenced at any time.

Section 14. Amends s. 112.3173, F.S., to provide that the clerk of the court in a proceeding involving a specified offense being conducted against a public officer or employee must provide notice of the proceeding to the Commission on Ethics *after* the state attorney advises the clerk that the defendant is a public officer or employee and that the defendant is alleged to have committed a qualifying offense.

Section 15. Amends s. 318.18, F.S., to require the signature of the person designated to represent a community service agency be notarized on letterhead that indicates the number of hours of community service completed and the date the community service hours were completed by a person who is ordered to perform community service as a penalty for specified offenses.

Section 16. Amends s. 668.50, F.S., related to the Uniform Electronic Transaction Act. The bill provides that the Uniform Electronic Transaction Act does apply to rules relating to judicial procedure, except with respect to subsections (2), (9), and (11), of s. 668.50, F.S., to the extent the transaction is governed by rules relating to judicial procedure.³⁹

Section 17. Amends s. 773.707, F.S., to add claims in favor of the state for unpaid court costs, fees, or fines, to a Class 3 debt for purposes of classification for the order of payments due from a decedent's estate.

Section 18. Amends s. 893.11, F.S., to restate that a state agency must immediately suspend the business or professional license of a person licensed by the agency if that person is convicted of a felony for the sale of, or trafficking in, a controlled substance or for the conspiracy to sell, or traffic in, a controlled substance. The bill provides that a state agency that renews a business or professional license must use the CCIS to obtain information relating to the conviction. The clerk of the court must provide a certified copy of the judgment upon request to the agency, rather than automatically upon conviction of the person. The bill provides that the term "business or professional license" includes any license, permit, or certificate that authorizes a person to practice his or her profession or to carry on his or her business.

Section 19. Amends s. 938.27, F.S., to provide that a court must require the defendant to pay the costs of prosecution and investigation pursuant to a payment plan under s. 28.246(4), F.S., rather than installments specified by the court.

³⁷ Section 27.52, F.S. (providing criteria for determining criminal indigency status).

³⁸ Section 57.082, F.S. (providing criteria for the clerk to determine if a civil litigant is indigent).

³⁹ Subsection (2) provides definitions; subsection (9) provides the effect of an electronic signature; and subsection (11) specifies how an electronic signature is notarized or acknowledged.

Section 20. Amends s. 938.30, F.S., to provide that if a criminal or civil judgment has previously been entered on a court-imposed financial obligation, the judgment constitutes a civil lien against the judgment debtor's presently owned or after-acquired real or personal property when recorded pursuant to s. 55.10, F.S., except that a judgment on a court-imposed financial obligation is not subject to the 10-year re-recording requirement of s. 55.10, F.S. The judgment must secure all unpaid court-imposed financial obligations that are due and may accrue subsequent to the recording of the judgment, as well as interest and reasonable costs for issuing a satisfaction and recording of the satisfaction in the official records.

The bill provides that the clerk must enforce, satisfy, compromise, settle, subordinate, release, or otherwise dispose of any debts or liens imposed and collected under s. 938.30, F.S., in the same manner as prescribed in s. 938.29(3), F.S., relating to indigent criminal defense fees and costs.

Section 21. Amends s. 947.181, F.S., to rename the section "Fines, fees, restitution, or other costs ordered to be paid by a court as conditions of parole."⁴⁰ The bill provides that the Parole Commission must require the payment of fines, fees, restitution, or other court-ordered costs as condition of parole unless the commission finds reasons to the contrary. If the commission does not require payment of fines, fees, restitution, or other court-ordered costs, or requires partial payment, the commission must state on the record the reasons for its decision. Failure of a parolee to make the above payments must be considered by the commission as a violation of parole. The bill provides that restitution to the aggrieved party for injury, damage, or loss caused by the offense for which the parolee was imprisoned must have first priority in the payment of amounts owed under s. 947.181, F.S.

The bill deletes the provision that required the commission to revoke parole if the parolee failed to make restitution payments, but maintains current law that the commission must consider the defendant's employment status, earning ability, financial resources, willfulness of the defendant's failure to pay, and other special circumstances that may have bearing on the defendant's ability to pay prior to revoking parole.⁴¹

Section 22. Provides that this act shall take effect on July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁴⁰ Section 947.181, F.S. (currently relating only to "victim restitution as condition of parole").

⁴¹ Section 947.181(2), F.S.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

This bill adds additional fees for services provided by the Clerks of the Court.

B. Private Sector Impact:

This bill adds additional fees for services provided by the Clerks of the Court.

C. Government Sector Impact:

According to the Florida Association of Court Clerks, the bill provides for increased efficiencies in day-to-day office operations for the clerks and should result in an indeterminate, positive fiscal impact.⁴²

According to the Office of the State Courts Administrator, the bill will likely have a minimal fiscal impact on expenditures of the State Court Systems.⁴³ However, the Office of State Courts Administrator indicated that the more narrowly drawn definition for when a case is “reopened” may result in a reduction of the amount of revenues that are generated from reopening cases.⁴⁴ The Florida Association of Court Clerks and Comptrollers reported that the reduction of revenue associated with the change in the definition of “reopened” cases would not be significant.

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/CS by Judiciary on February 16, 2012:**

The Committee Substitute (CS) removes a provision requiring the Department of the Lottery to use the CCIS, rather than rely on notification from the judiciary and other state agencies to enforce the current prohibition on paying a prize of \$600 or more before collecting outstanding fines and support obligations.

The CS also removes a provision imposing a \$70 fee for rescheduling a judicial sale.

⁴² Florida Association of Court Clerks, *Senate Bill # 1166 Clerks of Court* (January 4, 2012) (on file with the Senate Committee on Judiciary).

⁴³ Office of the State Courts Administrator, *2012 Judicial Impact Statement SB 1166* (January 12, 2012) (on file with the Senate Committee on Judiciary).

⁴⁴ *Id.*

CS by Regulated Industries on February 7, 2012:

The Committee Substitute provides that except for penalties or fines distributed to counties, 10 percent of all court-related fines collected by the clerk must be deposited into the clerk's Public Records Modernization Trust Fund. The bill adds sections 8-12 of the bill to amend ch. 40, F.S., to be consistent with modern practices and current procedures concerning jury legislation. The bill provides that licensing agencies must use the CCIS when renewing a license to obtain conviction information. The bill clarifies that payment of restitution takes priority over payment of court costs. The bill deletes the requirement in the original bill for circuit and county courts to require a prisoner to make monthly payments of at least 20 percent of the balance of the prisoner's trust account as payment of the court costs while imprisoned. The bill amends the effective date of the act.

B. Amendments:

None.