

**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.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

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BILL: PCS/CS/SB 1328 (754688)

INTRODUCER: Appropriations Subcommittee on Criminal and Civil Justice; Judiciary Committee; and Senator Wright

SUBJECT: Fines and Fees

DATE: February 20, 2020

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Ravelo</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
2.	<u>Dale</u>	<u>Jameson</u>	<u>ACJ</u>	<u>Recommend: Fav/CS</u>
3.	_____	_____	<u>AP</u>	_____

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

PCS/CS/SB 1328 seeks to minimize driver license suspensions initiated by clerks of court due to the failure of a person to pay fines, service charges, fees, or costs and to provide more notice of the availability of payment plans to defer payments and other measures.

The clerks of court, through their association, in consultation with the Florida Clerks of Court Operations Corporation (CCOC) are required to create a uniform payment plan form for individuals who owe fines or fees based on their ability to pay. This uniform payment plan form is required to be implemented by each clerk beginning January 1, 2021 and payments must be accepted by the clerks electronically, by mail, or in person.

A clerk of court must notify a person owing funds of the potential to enroll in a payment plan to defer the payment of the amounts owed before revoking the person's driver license. Once a payment plan is established, the clerk may provide a person who does not make a required payment with a delinquency notice and must provide a 30-day grace period before revoking the person's license. Additionally, clerks may not refer a case to collection or suspend an individual's driver license for nonpayment if the individual is still incarcerated.

The bill gives courts authority to waive, modify, or convert the outstanding amounts to community service, if the individual is indigent or due to compelling circumstances is unable to comply with a payment plan.

The bill modifies section 322.245, Florida Statutes to remove the clerk's ability to suspend an individual's driver license for non-driving related criminal offenses. A person whose driver license was suspended before July 1, 2020, for non-driving related criminal offenses solely for the nonpayment of fines, fees, or costs in a criminal case not involving operation of a motor vehicle, if otherwise eligible, may apply to have his or her license reinstated upon payment of a reinstatement fee.

The bill has a fiscal impact. See Section V.

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.<sup>1</sup> 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.<sup>2</sup> The revenue is used for court related functions as well as select costs, expenses, and salaries as provided by law.<sup>3</sup> 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.<sup>4</sup>

The clerk of courts statewide operating budgets vary each year depending on revenues generated. For Fiscal Year 2013-2014, the clerks had an operating budget of \$472.3 million for court-

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<sup>1</sup> Fla. Const. Art. V, § 16

<sup>2</sup> 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).

<sup>3</sup> *Id.*

<sup>4</sup> Section 28.35(3)(a), F.S.

related functions. The Fiscal Year 2017-2018 budget was \$409.04 million, while the Fiscal Year 2018-2019 budget was \$424.8 million.<sup>5</sup>

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.<sup>6</sup> 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.<sup>7</sup> Additionally, that same trust fund collects \$49 from every \$50 collected as a fine from every adjudication from any felony, misdemeanor, delinquent act, or criminal traffic offense.<sup>8</sup> 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.<sup>9</sup>

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.<sup>10</sup> It is unclear how successful collection agents are at collecting the remaining fees and fines. However, some counties such as Broward<sup>11</sup> 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.<sup>12</sup> A person is indigent if their income is equal to or below 200 percent of the federal poverty guidelines<sup>13</sup> or if the person is receiving Temporary

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<sup>5</sup> 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/>.

<sup>6</sup> 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](https://cdn.ymaws.com/www.flclerks.com/resource/resmgr/public_documents_/1_final_front_matter_cover_s.pdf).

<sup>7</sup> 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.

<sup>8</sup> Section 938.03, F.S.

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

<sup>10</sup> Section 28.246(6), F.S.

<sup>11</sup> 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>.

<sup>12</sup> Section 28.26(4), F.S.

<sup>13</sup> 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).

Assistance for Needy Families-Cash Assistance, poverty-related veterans' benefits, or Supplemental Security Income.<sup>14</sup>

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 400<sup>15</sup> grams.<sup>16</sup> 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.<sup>17</sup> She pays \$100 per month under her payment plan.

### **Driver's License Suspension in Florida**

More than 2 million of the more than 14 million driver licenses issued in Florida are currently suspended.<sup>18</sup> 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.<sup>19</sup>

### **III. Effect of Proposed Changes:**

This bill seeks to minimize driver license suspensions initiated by clerks of court due to the failure of a person to pay fines, service charges, fees, or costs by providing more notice of the availability of payment plans to defer payments and other measures.

The bill amends s. 28.24, F.S. to revise the clerks of court's authority to impose a \$25 fee to enroll individuals in a payment plan and to spread the cost of that current fee over up to 5 months. Section 28.246, F.S. specifies that clerks may waive the one-time administrative processing service charge if an individual enrolls in an automatic electronic debit payment plan.

The bill amends s. 28.246, F.S. to:

- Require the clerks of court to accept payments electronically, by mail, or in person;
- Specify that individuals seeking to defer payment of fees, service charges, costs, or fines must enroll in a payment plan no more than 30 calendar days after the court enters an order or 30 calendar days after release if the individual was incarcerated.

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<sup>14</sup> Section 27.52(1), F.S.

<sup>15</sup> 400 grams is the equivalent to .88 of a pound.

<sup>16</sup> Section 893.135(1)(b)1., F.S.

<sup>17</sup> 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>.

<sup>18</sup> Wayne K. Rouston, *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>.

<sup>19</sup> 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 Feb. 13, 2020).

- Require the clerks to enroll individuals who are seeking deferral and who have the ability, into automatic withdrawals;
- Require that clerks of court coordinate with their courts to develop a process in which persons who have been sentenced for an offense will meet with a clerk to enroll in a payment plan;
- Allow the courts to waive, modify, or convert outstanding fees, service charges, costs, or fines to community service owed by a person who is indigent or who due to compelling circumstances is unable to comply with his or her payment plan;
- Prohibit the clerks from referring a case to collection or sending notice to the Department of Highway Safety and Motor Vehicles to suspend an individual's driver license for nonpayment or failure to comply with the terms of a payment plan if the individual is still incarcerated; and
- Allow a 30 day grace period after the due date prior to seeking a suspension of a driver license.

The bill amends s. 28.42, F.S. to require the clerks of court, in consultation with the Clerks of Court Operations Corporation, develop and use a uniform payment plan form for persons seeking to enroll in a payment plan by October 1, 2020 and begin usage of said payment plan by January 1, 2021.

The bill amends s. 318.20, F.S. to require the Department of Highway Safety and Motor Vehicle's uniform traffic citation form to provide information on paying civil penalties to a clerk of court. Although, the bill does not specify what must be included in the notice, the intent may be to provide information on payment plans.

The bill amends s. 322.245, F.S. to remove the clerk's ability to suspend an individual's driver license for non-driving related criminal offenses. A person whose driver license was suspended before July 1, 2020, for non-driving related criminal offenses solely for the nonpayment of fines, fees, or costs in a criminal case not involving operation of a motor vehicle, if otherwise eligible, may apply to have his or her license reinstated upon payment of a reinstatement fee.

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.

**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:**

On February 7, 2020 the Revenue Estimating Conference (REC) Impact Conference evaluated the potential fiscal impact of CS/HB 903, which is substantially similar to PCS/CS/SB 1328.<sup>20</sup>

There are several sections of the bill which have a fiscal impact:

With regards to the sections of the bill related to payment plans, considering all of the changes, the conference found that the negative impacts will likely dominate the positive ones, resulting in a net indeterminate negative impact.<sup>21</sup>

The bill also removes the clerk's ability to initiate driver license suspensions for criminal cases not involving the operation of a motor vehicle. For the purposes of illustrating the potential impact on the lack of payment of Article V fees, the Conference produced a low, medium, and high scenario before ultimately adopting a negative indeterminate fiscal impact. The original low, medium, high fund impacts are as follows:

Fund Impact from Fee Reductions (5%)

<sup>20</sup> Revenue Estimating Conference (REC) Impact Conference 02/07/20 Revenue Impact Results p. 366-372 [http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2020/\\_pdf/Impact0207.pdf](http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2020/_pdf/Impact0207.pdf) (Last visited February 19, 2020).

<sup>21</sup> *Id.*

Total	GR	Clerks
\$ (2.5)	\$ (0.2)	\$ (2.3)

Fund Impact from Fee Reductions (10%)

Total	GR	Clerks
\$ (4.9)	\$ (0.3)	\$ (4.6)

Fund Impact from Fee Reductions (20%)

Total	GR	Clerks
\$ (9.8)	\$ (0.7)	\$ (9.2) <sup>22</sup>

Additionally, the revenue associated with the suspension reinstatements due to changes to s. 322.245, F.S. was estimated to be negative \$1.2 million (GR -\$0.6m, DHSMV - \$0.3m, and clerks/tax collectors - \$0.3m).

Although truly unknown, this brings the total estimated potential impact relating to the clerk’s inability to initiate driver license suspensions for criminal cases not involving the operation of a motor vehicle to \$3.7 - \$11 million. The low-end \$3.7 million estimation would impact the General Revenue Fund by \$0.8 million, the clerks and tax collectors by \$2.6 million and the DHSMV by \$0.3 million. The high-end \$11 million estimation would impact the General Revenue Fund by \$1.3 million, the clerks and tax collectors by \$9.5 million, and the DHSMV by \$0.3 million.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 27.52, 28.24, 28.246, 28.42, 57.082, 318.15, 318.20, and 322.245,

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

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

**Recommended CS/CS by Appropriations Subcommittee on Criminal and Civil Justice on February 18, 2020:**

The committee substitute makes several changes to the underlying bill by:

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<sup>22</sup> *Id.*

- Adding language disallowing the clerks to refer a case to collection or send a notice to suspend an individual's driver license for nonpayment or failure to comply with a payment plan if the individual is still incarcerated;
- Requiring that the clerks enroll individuals with a deposit or credit card, or with other means of automatic withdrawal, in an automatic payment plan arrangement to ensure timely payment under the plan;
- Adding permissive language that the clerks may transmit notice to the DHSMV if any payment due under a payment plan is not received within 30 days, excluding certain circumstances;
  - Currently, the bill requires that clerks send either mail or electronic notice within 5 days to an individual who fails to make a timely payment due under a payment plan. This requirement is removed via the strike-all.
- Changing the one-time administrative processing charge for setting up the payment plan from a requirement to a permissive allowance and also allowing the clerks to waive the fee for those who enroll in an automatic payment plan;
- Removing the language in the underlying bill allowing the clerks to establish a multicounty intergovernmental authority pursuant to chapter 163 for the administration of payment plans in the various participating counties.
- Requiring that payment plans set up for indigent individuals in civil proceedings contemplate fines as well as fees and all anticipated costs owed within that county.

**CS by Judiciary on January 28, 2020:**

The committee substitute differs from the underlying bill by:

- Allowing the clerk of courts to apply the \$25 payment plan administrative fee to individuals, including indigent clients.
- Removing the original language of the bill which allowed authorized community based organizations to collect payment plan payments on behalf of a clerk of court
- Requiring individuals requesting a payment plan to request one within 30 days after any court order assessing related fines and costs. If the individual is incarcerated, they may request a payment plan within 30 days after release.
- Allowing a court to modify, waive, or convert any outstanding fees, service charges, costs or fines to community service if the court determines that the individual is indigent or unable to comply with the payment plan due to compelling circumstances.
- Removing the original bill's requirement to waive any remaining costs and fines for individuals who make 12, 24, or 36 consecutive payments under a payment plan.
- Retaining the ability to suspend a driver license based on failure to pay a clerk of court fine or fee.
- Requiring each clerk of court to coordinate with courts to develop a process to guide individuals to the clerk upon sentencing.
- Allowing clerks of courts to establish a multicounty intergovernmental authority for the purpose of collecting payment plans from multiple counties.
- Requiring the Department of Highway Safety and Motor Vehicles to include information about the clerk of court payment plan when issuing orders to suspend an individual's driver license.
- Requiring uniform traffic citations to include information on paying the civil penalty to the clerk of court.



**B. Amendments:**

None.

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

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