

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 Appropriations Subcommittee on Criminal and Civil Justice

BILL: CS/SB 1328

INTRODUCER: Judiciary Committee and Senator Wright

SUBJECT: Fines and Fees

DATE: February 17, 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>Pre-meeting</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1328 requires clerks of court to actively attempt to collect fines, service charges, fees, or costs owed before revoking the driver license of the person who owes the funds. Specifically, 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 must provide a person who does not make a required payment with a delinquency notice and a 30-day grace period before revoking the person's license.

The bill further contemplates having clerks of court establish a multicounty intergovernmental authority to establish consolidated payment plans for low income individuals who owe fines, service charges, fees, or costs from multiple cases across the state. Moreover, 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.

All sections of the bill are expected to have an indeterminate insignificant fiscal impact, with the exception of section 28.246(5), Florida Statutes. That provision of the bill requires a notice sent within 5 days after a person fails to make a required payment under a payment plan. The clerks estimate an indeterminate but potentially significant fiscal impact if there are large numbers of notices made by mail. 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.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, the clerks had an operating budget of \$472.3 million for court-related functions. The Fiscal Year 2017-2018 budget was \$409.04 million, while the Fiscal Year 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

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.

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.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

The Florida Interlocal Cooperation Act of 1969

The Florida Interlocal Cooperation Act provides local governmental units the right to enter into mutually advantageous agreements to provide services or facilities to other localities.²⁰ This section of the law allows public agencies of the state to exercise jointly with any other public agency of the state, of any other state, or the United States Government any power, privilege, or authority which such agencies share in common and which each might exercise separately.²¹ To effectuate interlocal cooperation under this section, local governmental units jointly exercising power must form and execute a contract detailing the terms and conditions of the interlocal relationship.²²

An interlocal agreement may provide for a separate legal or administrative entity to administer or execute the agreement, which may be a commission, board, or council constituted pursuant to the agreement.²³

A separate legal or administrative entity created by an interlocal agreement is authorized to:

- Make and enter into contracts;
- Employ agencies or employees;
- Acquire, construct, manage, maintain, or operate buildings, works, or improvements;
- Acquire, hold, or dispose of property; and
- Incur debts, liabilities, or obligations which do not constitute the debts, liabilities, or obligations of any of the parties to the agreement.²⁴

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 Feb. 13, 2020).

²⁰ Section 163.01, F.S.

²¹ *Id.* at (4)

²² *Id.* at (5)

²³ Section 163.01(7)(a), F.S.

²⁴ Section 163.01(7)(b), F.S.

III. Effect of Proposed Changes:

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

The notices required by the bill include:

- A notice on uniform traffic citation forms with 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.
- A notice advising a person who fails to timely pay a civil penalty for a traffic infraction that the person may contact the clerk of court to enroll in a payment plan to make partial payments for court-related fees, service charges, costs, or fines.
- A notice sent within 5 days after a person fails to make a required payment under a payment plan. The bill implies that this notice will advise the person that his or her driver license will be suspended unless the required payment is not received within 30 days after its due date or unless the person makes alternate payment arrangements or enters into revised payment plan.

Other measures provided by the bill that may minimize the need for clerks of court to revoke driver licenses include:

- A requirement that clerks of court accept payments electronically, by mail, or in person.
- A requirement 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.
- An express grant of authority to 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.
- An authorization for clerks of court to establish a multicounty intergovernmental authority to administer payment plans consolidating amounts owed by an individual from cases in multiple counties.
- A requirement that 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.
- Authority to spread the \$25 fee to enroll in a payment plan over 5 months and allowing non-indigent persons to enroll in a payment plan.

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:

The bill requires a notice be sent within 5 days after a person fails to make a required payment in accordance with a payment plan.

The Florida Clerks of Court Operations Corporation (CCOC) indicated the fiscal impact of the notice requirement is indeterminate. However, based upon limited information the CCOC extrapolated from a one-time driver license reinstatement clinic including 61 of the 67 clerks of court in October 2019, called "Operation Green Light", the CCOC reports postage and printing costs could cost up to \$75,000 annually to implement the 5 day notification required in the bill.

While some clerks collect emails and cell phone numbers when setting up a payment plan, they report that staff time involved would not be vastly different whether sending an electronic or an analogue notification.²⁵ The CCOC also reports that the clerks believe up to 20-40 positions statewide could be necessary to implement this task at an estimated

²⁵ Email from Jason Welty with the Florida Clerks of Court Operations Corporation on file with Appropriations Subcommittee on Criminal and Civil Justice dated February 13, 2020.

cost of \$1.2 - \$2.4 million dollars.²⁶ This equates to \$12 to \$24 per notice, whether it is an email, text message, or regular mail.

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, 318.20, 322.245, 27.52, 34.191, 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.)

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.

²⁶*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.
