

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 748

INTRODUCER: Judiciary Committee and Senator Brandes

SUBJECT: Courts

DATE: March 23, 2021 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u>Forbes</u>	<u>Harkness</u>	<u>ACJ</u>	Pre-meeting
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 748 revises a broad range of statutes that govern the operation of the court system. Some of the diverse changes are made to accommodate developments in technology, some reflect the impact COVID-19 has had on the court system, and one change recognizes the effect of inflation on the monetary jurisdictional thresholds in the county courts.

- The bill updates provisions controlling the maintenance of appellate court records to allow the electronic storage of court records at a remote location. These provisions are updated to keep pace with electronic technology rather than require the court clerk to keep manual control of the records.
- The clerks of court, working with the Florida Courts Technology Commission, must prepare a plan to procure or develop a statewide electronic solution that identifies all civil and criminal mandatory financial assessments required by statute.
- The jurisdictional amount of county courts will be adjusted beginning in 2030, and every 10 years afterwards, to account for inflation based on changes in the Consumer Price Index.
- The bill authorizes a person to postpone for jury service for up to 1 year when a public health emergency or a state of emergency is declared.

- Finally, the bill revises three criminal statutes to authorize the taking and certification of fingerprints when a guilty judgment is entered in a proceeding that is conducted remotely. The fingerprints no longer must be taken in open court and in the judge's presence.

The bill takes effect July 1, 2021.

II. Present Situation:

Responsibilities of the Clerk of the Florida Supreme Court

Chapter 25, F.S., is devoted to the organization and operation of the Florida Supreme Court. Among the provisions in the chapter are two statutes detailing the responsibilities of the Clerk of the Supreme Court. The clerk must keep all books, papers, records, files, and the seal of the Court in the clerk's office in the Supreme Court Building and in his or her custody.¹

Additionally, any decisions and opinions delivered by the Court or any justice must be filed and remain in the clerk's office. These decisions and opinions may not be removed unless ordered by the Court. The clerk is required to furnish certified copies of the decisions and opinions to any person who requests them and pays the necessary fees.² These statutes do not accommodate the developments in technology which allow for digital storage in a remote location.

Mandatory Monetary Assessments

The clerks of the circuit courts were required, by October 1, 2012, to develop a uniform form for the identification and imposition of all assessments mandated by statute. The clerks were required to work with their association and in consultation with the Office of the State Courts Administrator to develop the form. An assessment includes, but is not limited to, a fine or other monetary penalty, fee, service charge, or cost. The clerks are currently required to submit that form by October 1 of each year to the Supreme Court for approval. The form must contain updates to reflect recent changes made in the law. Once a form is approved by the Court, all circuit and county courts must use the form.³

According to information supplied in the *Judicial Branch 2021 Legislative Agenda*, the clerks' association, the Florida Court Clerks and Comptrollers, submitted the initial form matrix as required on October 1, 2012, and updated the form annually. The matrix is a catalogue of mandatory and discretionary fines, fees, charges, and costs in many areas, both civil and criminal. It provides the necessary statutory authority for each item with a brief description, states whether the item is mandatory or discretionary, provides the minimum and maximum amounts authorized, and often contains brief comments on the assessment.⁴ *The Judicial Branch 2021 Legislative Agenda* further states that the Supreme Court has never approved the form matrix because of "concerns that it is not a form within the meaning of the statute." However, the

¹ Section 25.221, F.S.

² Section 25.301, F.S.

³ Section 28.2457(1), (2), and (3), F.S.

⁴ Office of Legislative Affairs, Office of the State Courts Administrator, *Judicial Branch 2021 Legislative Agenda*, (January 21, 2021) (on file with the Senate Committee on Judiciary).

chief justice has provided the document each year to the chief judges of the trial courts for their use as a possible resource.⁵

The Judicial Management Council's Workgroup on Court Costs and Fines⁶ was established on December 31, 2018, within the Judicial Management Council. Its purpose is to review monetary assessments and identify methods that will reduce the disproportionate impact the assessments have on low income individuals.⁷ In June 2020, the Workgroup finalized its report, *Court Costs and Fines in Florida*, and the report was approved by the Judicial Management Council on August 31, 2020. The Workgroup recommended:

- Removing from statute the requirement for a uniform form for identifying and imposing assessments that the clerks produce; and
- Working in cooperation with the clerks of court to develop reforms, using an electronic system, to standardize the ability to identify and impose assessments and payments.

The Supreme Court approved these recommendations on November 4, 2020, at the Court Conference for consideration by the Legislature.⁸

Jurisdictional Amount of County Courts

A county court is a trial court that has jurisdiction over the following types of cases within its jurisdictional or monetary limits:

- All criminal misdemeanor cases not cognizable by the circuit courts.
- All violations of municipal and county ordinances.
- Disputes occurring in homeowner associations, but this jurisdiction is concurrent with the jurisdiction of the circuit courts.⁹

The statute governing the jurisdiction of county courts was amended in 2018 to increase the maximum jurisdictional amount of county courts in a three-step process. For all actions, except those within the exclusive jurisdiction of the circuit courts, in which the matter in controversy does not exceed, exclusive of interest, costs, and attorney fees, the jurisdictional amount is:

- \$15,000 if filed on or before December 31, 2019.
- \$30,000 if filed on or after January 1, 2020.
- \$50,000 if filed on or after January 1, 2023.¹⁰

⁵ *Id.*, at 13.

⁶ The Judicial Management Councils are described as “high-level management consultants” to the Florida Supreme Court. The first Judicial Management Council was established in 2012 and the current council is the Court’s fifth council. Each council is composed of 15 voting members including the Chief Justice and one other justice, members of each level of the court system, and members from the public. The council meets at least quarterly and is tasked with identifying potential crisis situations for the judiciary and developing strategies to meet those concerns; evaluating information that will improve the effectiveness and performance of the judicial branch; developing and monitoring the judiciary’s long-range planning work; reviewing the charges of the courts and Florida Bar commissions and committees, making revisions and proposing ways to coordinate the work of these groups; and addressing issues that the Supreme Court brings before the council.
<https://www.flcourts.org/Administration-Funding/Judicial-Management-Council>

⁷ Fla. Admin. Order No. AOSC18-77.

⁸ *Judicial Branch Legislative Agenda*, *supra* note 4, at 15.

⁹ Section 34.01(1), F.S.

¹⁰ *Id.*; Ch. 2019-58, s. 9, Laws of Fla.

When the statute was amended in 2018, an additional provision was included requiring the Office of the State Courts Administrator to submit a report to the Governor, President of the Senate, and Speaker of the House of Representatives by February 1, 2021. The report was to include recommendations regarding the adjustment of county court jurisdiction that considered the claim value of filings in both county and circuit courts, case events, the timeliness in processing cases, as well as any fiscal impact to the state resulting from the adjusted jurisdictional limits. The clerks of the county and circuit courts were tasked with providing data to assist in developing the report. The report was to include a review of fees to ensure that the court system is adequately funded and a review of the appellate jurisdiction of the district and circuit courts, including the use of appellate panels by circuit courts.

The Office of the State Courts Administrator issued its report entitled “Recommendations Regarding the Adjustment of County Court Jurisdiction” on February 1, 2021.¹¹

Maintenance of Appellate Court Records in the District Courts of Appeal

The statutes contain a number of provisions directing how court records are to be stored. Unfortunately, many of these provisions have become outdated and have not kept pace with changes in electronic technology and storage. Section 35.15, F.S., states that all decisions and opinions delivered by the district courts of appeal or one its judges must be filed and remain in the office of the clerk. The decisions and opinions may not be taken from the clerk’s office except by court order. However, the clerk must furnish to anyone who desires certified copies of the opinions and decision upon payment of the appropriate fees.

Section 35.24, F.S., requires each clerk for a district court of appeal to physically keep his or her records at the headquarters of the court. This provision does not envision advancements in technology and electronic storage that would permit a clerk to store records electronically at a remote location.

In a similar manner, s. 35.24, F.S., requires that all books, papers, records, files, and the court seal be kept in the clerk’s office. This also precludes electronic storage of these items at a remote location.

Jury Duty Postponement

The clerks of the court are responsible for summoning prospective jurors at least 14 days before they are to appear in court for jury selection.¹² If a person is summoned to attend as a juror and fails to attend without providing a sufficient excuse, he or she may be required to pay a fine that does not exceed \$100 and may be held in contempt of court.¹³

If someone has been summoned for jury duty, jury service may be postponed for up to 6 months once a written or oral request is made. The request may specify a date or time period to which

¹¹ Office of the State Courts Administrator, *Recommendations Regarding the Adjustment of County Court Jurisdiction*, (February 1, 2021) (on file with the Senate Committee on Judiciary).

¹² Section 40.23(1), F.S.

¹³ Section 40.23(3), F.S.

the service is to be postponed, and if that is stated, he or she will be given consideration for service once the assignment of the postponed date of jury service is made.¹⁴

According to the *Judicial Branch 2021 Legislative Agenda*, jury service in Florida has been postponed since March 2020 because of the COVID-19 pandemic. Once jury service resumes, some people who are summoned may not be able to attend on a particular date due to complications created by the pandemic. The examples are given that the person summoned might recently have returned to work after being unemployed during the pandemic or might be responsible for the care of someone who is at greater risk of health complications if he or she is exposed to COVID-19.¹⁵

Fingerprinting a Defendant upon Conviction

The criminal law statutes detail procedures that must be followed when a judgment is entered in certain misdemeanor and all felony offenses. A judgment of guilty or not guilty for a misdemeanor petit theft offense¹⁶ or a felony offense¹⁷ must contain:

- A written record, signed by the judge, and recorded by the clerk of the circuit court; or
- An electronic record that contains the judge's electronic signature and is recorded by the clerk of the circuit court.

To enter a written or electronic judgment of guilt involving petit theft and all felonies, the judge must, in open court, and in the judge's presence, have the defendant's fingerprints taken either manually or electronically, sign a certificate certifying that the fingerprints on the judgment are the defendant's fingerprints and that they were placed on the certificate in the judge's presence, and for a felony judgment, cause the defendant's social security number to be recorded. It is the opinion of some practitioners that these statutes do not appear to allow for a proceeding to be conducted remotely.

III. Effect of Proposed Changes:

Responsibilities of the Clerk of the Florida Supreme Court (Sections 1 and 2)

The requirement that the clerk keep all books, papers, records, files, and the seal in his or her office and custody is amended. The revised language reflects developments in technology and electronic storage and requires that those items be "maintained" by the clerk and in the clerk's "control" as prescribed by the Supreme Court. The clerk is no longer required to physically keep them in the clerk's office and custody but is permitted to electronically store records at a remote location.

¹⁴ Section 40.23(2), F.S.

¹⁵ Office of Legislative Affairs, Office of the State Courts Administrator, *Judicial Branch 2021 Legislative Agenda*, 9 (January 21, 2021) (on file with the Senate Committee on Judiciary.)

¹⁶ Section 812.014(3)(d), F.S.

¹⁷ Section 921.241, F.S.

Mandatory Monetary Assessments (Section 3)

Section 28.2457(2), F.S., is amended to delete the requirements that the uniform form developed by the circuit court clerks be updated and submitted annually to the Supreme Court for approval and later distribution. Under the bill, the clerks of the circuit courts must collaborate with the state courts through the Florida Courts Technology Commission¹⁸ to prepare a plan to procure or develop a statewide electronic solution that will accurately identify all civil and criminal assessments required by statute. At a minimum, the plan must address operational, technological, and fiscal considerations involved in implementing the electronic solution. The clerks must submit the plan to the President of the Senate and the Speaker of the House of Representatives by January 1, 2022.

Jurisdiction Amount of County Courts (Section 4)

The statute defining the jurisdiction of the county courts is amended to delete the now obsolete provision requiring the Office of the State Courts Administrator to publish a report by February 1, 2021.

A new provision is added requiring the \$50,000 jurisdictional amount for cases that will be filed on or after January 1, 2023, to be adjusted in accordance with changes in the Consumer Price Index. Effective January 1, 2030, and every 10 years after, the \$50,000 limit will be adjusted by the percentage change in the average of the Consumer Price Index for the most recent 12-month period that ends on September 30, compared to the base year average, which is the average for the 12-month period ending September 30, 2022. The adjusted jurisdictional limit is required to be rounded to the nearest \$1,000.

Maintenance of Appellate Court Records in the District Courts of Appeal (Sections 5, 6, and 7)

Section 35.15, F.S., as amended, no longer requires that decisions and opinions be kept in the physical office of the clerks, but requires them to be kept under the clerk's "maintenance or control." The decisions and opinions, however, may be taken from the clerk's maintenance or control when ordered by the court. These revisions permit the electronic storage of records at a remote location and reflects an adaptation to advancements in technology.

Section 35.23, F.S., is amended to provide that a clerk must no longer "keep his or her records" at the headquarters of the district court of appeal, but rather to "have an office" at the headquarters of the court. This revision permits the use of electronic technology to store records at a remote location in accordance with the revision to s. 35.24, F.S., which no longer requires the clerk to keep the books, papers, records, files, and the seal of the court in his or her office. As amended, these items must be maintained by, and in the control of, the clerk.

¹⁸ The Florida Courts Technology Commission was created by the Florida Supreme Court in 2010. The Commission is composed of 25 members who are tasked with the responsibility of "overseeing, managing, and directing the development and use of technology within the judicial branch under the direction of the Court." The Commission must submit an annual report by April 1 each year.

<https://www.flcourts.org/content/download/579375/file/FCTC%20Operational%20Procedures%20-%20Feb%202020.pdf>.

Jury Duty Postponement (Section 8)

The bill creates an additional postponement period of up to 12 months for someone who has been summoned for jury service. If the State Health Officer declares a public health emergency pursuant to s. 381.00315, F.S., or the Governor declares a state of emergency pursuant to s. 252.36(2), F.S., a person who has been summoned may have his or her service postponed from for up to 12 months upon a written or oral request. As with the existing 6 month postponement in statute, the request may specify a date or time period to which the service is to be postponed and may be given consideration when an assignment of jury service is made.

Fingerprinting a Defendant upon Conviction (Sections 9, 10, and 11)

The pandemic has significantly limited the number of in-person criminal court proceedings which is creating a backlog of pending cases. The Florida Supreme Court's COVID-19 workgroup has studied options for resolving criminal cases remotely without the requirement of proceedings conducted in court. The Workgroup determined that the Florida Rules of Criminal Procedure could be adopted to authorize a criminal defendant to expressly request and be given approval by the court to either enter a plea of guilty or nolo contendere in a remote proceeding using audio-visual technology. To make this possible, the Workgroup has recommended that several statutes be amended.¹⁹

Because current law requires that a defendant be fingerprinted in open court in the judge's presence, it appears that current laws must be amended to establish a court's authority to take fingerprints at the time a judgment is entered in a remotely conducted proceeding.²⁰

Section 812.014, F.S., relating to petit theft, s. 921.241, F.S., relating to felony judgments, and s. 921.242, F.S., relating to prostitution offenses, are amended to:

- Authorize the fingerprinting of a defendant, either manually or electronically, when a guilty judgment is entered in a proceeding that is conducted outside of court or outside of the judge's presence.
- Delete the requirement that a judge must certify that a defendant's fingerprints were taken in open court and in the judge's presence.
- Require that the certification be entered by a court officer, employee of the court, or the employee of a criminal justice agency who captured the fingerprints. If taken manually, the person who took the fingerprints must place his or her written signature on the certification. If taken electronically, he or she must place a written or electronic signature on the certification. The fingerprints and certification must be filed in the case.
- Delete the requirement that a defendant's social security number be taken when his or her fingerprints are taken.

The bill takes effect July 1, 2021.

¹⁹ Office of Legislative Affairs, Office of the State Courts Administrator, *Judicial Branch 2021 Legislative Agenda*, 10-12 (January 21, 2021) (on file with the Senate Committee on Judiciary).

²⁰ *Id.* at 11.

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:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 25.221, 25.301, 28.2457, 34.01, 35.15, 35.23, 35.24, 40.23, 812.014, 921.241, and 921.242.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary Committee on March 2, 2021:

The committee substitute makes changes to the underlying bill in two areas: mandatory monetary assessments and fingerprinting defendants. The clerks of court must work with the Florida Courts Technology Commission to develop a plan for a technology solution that tracks all civil and criminal monetary assessments. The plan must be submitted to legislative leaders by January 1, 2022. The fingerprinting section now permits fingerprints to be taken manually or electronically, regardless of whether the judgment is a written judgment or electronic judgment. The defendant's fingerprints and the certification of the person who took the fingerprints must be filed in the case in which the judgment is entered.

- B. **Amendments:**

None.