

STORAGE NAME: h1331a.cp
DATE: April 16, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME AND PUNISHMENT
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 1331
RELATING TO: Legal Assistance for Accused Persons
SPONSOR(S): Reb. Roberts-Burke
STATUTE(S) AFFECTED: 27.52, 27.56, 39.041, 39.052, 215.22
COMPANION BILL(S): none

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) CRIME AND PUNISHMENT YEAS 8 NAYS 0
- (2) FINANCE & TAXATION
- (3) CRIMINAL JUSTICE (FISCAL)
- (4)
- (5)

I. SUMMARY:

Currently, **Section 27.52, F.S.**, permits the court to make a determination of indigency, but does not specify for what purposes that determination will be made. This bill specifies the determination of indigency will be, only, for the purpose of providing a public defender or other court-appointed counsel.

Currently, **Section 27.52, F.S.**, requires a \$40 fee to be paid at the time of filing an affidavit for indigency. This bill gives the court authority to reduce or waive the \$40 application fee.

Currently, the law provides for this fee to be transferred to the **Indigent Criminal Defense Trust Fund (ICDTF)**, only if such fund is created. Because this fund has since been created, this bill directs transfer of the fee to the fund as administered by the Justice Administrative Commission. These funds supplement the general revenue funds appropriated to the public defender. According to the Justice Administrative Commission, clerks of court did not begin collecting this fee until January 1, 1997. Since the ICDTF was created, effective January 1, 1997, these funds have always been going to the ICDTF; hence, no monies are being diverted away from county governments.

Currently, **Section 27.52, F.S.**, permits the court to assess attorney fees and court costs upon convicted defendants. This bill requires the court to assess such costs, to order them paid, and to set a date certain for collection.

Currently, the **Criminal Indigent Defense Trust Fund (ICDTF)** is not exempt from the 7 percent service charge required to be paid to the General Revenue Fund pursuant to Section 215.20(1). This bill provides an exemption from that charge for the fund.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Determination of Indigency

The Sixth Amendment to the United States Constitution, and Article I, Section 16, of the Florida Constitution guarantee the right to counsel. Section 27.52, F.S., sets forth the procedures for an accused person to be declared indigent and, thereby, receive court-appointed counsel, usually through the Public Defender's Office.

Application for Indigency Fee

In the past, the accused simply filled-out a financial disclosure form ("affidavit for indigency") to comply. Last year, the legislature enacted a \$40 fee to be collected as part of the application process. This fee was intended for deposit with the Indigent Criminal Defense Trust Fund (ICDTF) to supplement general revenue funds appropriated to public defenders. Because the ICDTF had not been established until January 1, 1997, however, the fee could be placed in county depositories. Ultimately, it would be remitted by the clerks of court to the general revenue funds.

Payment of Attorney's Fees

Even though declared indigent by the court, Section 27.56, F.S., requires the reasonable costs of attorney's fees to be assessed against the convicted. The court may include the associated costs of the defense in providing depositions, transcripts, psychiatric evaluations, witness fees, etc. At sentencing, the court may order the convicted to pay attorney's fees and costs:

- 1) in full; or
- 2) within a time certain.

The court's order creates a civil lien against the convicted's property in the name of the county.

General Revenue Fund

Section 215.20(1), F.S., requires a 7 percent service charge to be deducted from the fees deposited with the ICDTF.

B. EFFECT OF PROPOSED CHANGES:

Determination of Indigency

HB 1331 clarifies the legislature's intent that the determination of indigency (Section 27.52, F.S.) is made, only, for purposes of appointing the public defender or other court-appointed counsel.

Application for Indigency Fee

HB 1331 allows the court to reduce, or waive, the \$40 application fee which is currently required when filing an affidavit of indigency. It, also, makes the clerk of the court the appropriate repository for this fee and directs he or she to transfer the money to the Indigent Criminal Defense Trust Fund which is, now, administered by the Justice Administrative Commission. Finally, it permits the clerk of court to retain two percent of this fee.

Payment of Attorney's Fees

HB 1331 requires the court to order payment of attorney's fees and court costs upon anyone convicted of a crime. This amount may no longer be reduced by the amount of the court costs. It, also, requires the court to order convicted defendants to pay these amounts "within a time certain."

General Revenue Fund

HB 1331 exempts the Indigent Criminal Defense Trust Fund from the 7 percent service charge required under Section 215.20(1), F.S. There are, currently, 18 other specific trust funds or trust fund types which benefit from this exemption.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

Not applicable.

- (2) what is the cost of such responsibility at the new level/agency?

Not applicable.

- (3) how is the new agency accountable to the people governed?

Not applicable.

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

Not applicable.

- (2) Who makes the decisions?

Not applicable.

- (3) Are private alternatives permitted?

Not applicable.

- (4) Are families required to participate in a program?

Not applicable.

- (5) Are families penalized for not participating in a program?

Not applicable.

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

Not applicable.

(2) service providers?

Not applicable.

(3) government employees/agencies?

Not applicable.

D. SECTION-BY-SECTION RESEARCH:

Section 1

Revises provision relating to determination of indigency of accused person. Specifies purposes for such determination. Permits court to waive \$40 fee for application of indigency. Requires monthly transfer of fees to Indigent Criminal Defense Trust Fund.

Section 2

Chapters 39.041 & 39.052 reenacted without otherwise being changed since they reference Chapter 27 as amended by this bill.

Section 3

Provides for mandatory assessment of attorney fees and court costs and requires court to order payment by certain date. Prevents the reduction of these amounts by those amounts already paid in court costs.

Section 4

Exempts the Indigent Criminal Defense Trust Fund from the 7 percent service charge required under Section 215.20, F.S.

III. **FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:**

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. **Non-recurring Effects:**

None anticipated.

2. Recurring Effects:

Revenue generating legislation.

3. Long Run Effects Other Than Normal Growth:

None anticipated.

4. Total Revenues and Expenditures:

None anticipated.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None anticipated.

2. Recurring Effects:

Section 27.52, F.S., constitutes revenue generating legislation which supplements the general revenue funds appropriated to public defenders.

3. Long Run Effects Other Than Normal Growth:

None anticipated.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None anticipated.

2. Direct Private Sector Benefits:

None anticipated.

3. Effects on Competition, Private Enterprise and Employment Markets:

None anticipated.

D. FISCAL COMMENTS:

Section 27.52, F.S., constitutes revenue producing legislation which supplements the general revenue funds appropriated to public defenders. According to the Justice Administrative Commission, clerks of court did not begin collecting this fee until January 1, 1997. Since the ICDF was created, effective January 1, 1997, these funds have been going to the ICDF; hence, no monies are being diverted away from the counties. Under this bill, the respective clerks of court will receive 2 % of the \$40 application fee which they are not receiving, now.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill constitutes revenue producing legislation.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

Requiring indigent defendants to pay the costs associated with their defense does not violate any constitutional provision where such costs are ordered, only, as a consequence of being convicted, and are only collected where the defendant can afford to pay. Indeed, **Section 27.52, F.S.**, provides, "In no event should a person who is found to be indigent be refused counsel for failure to pay the fee."

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

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