

**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 Budget Committee

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BILL: SB 1964 (SPB 7068)

INTRODUCER: Budget Committee

SUBJECT: State Courts System; Court-Related Assessments

DATE: February 13, 2012      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harkness	Rhodes		<b>SPB 7068 Favorable</b>
2.				
3.				
4.				
5.				
6.				

**I. Summary:**

This bill conforms Florida Statutes to the Senate proposed Fiscal Year 2012-13 General Appropriations Act.

The state court system and the clerks of the court rely on fines, fees, service charges and other court-related revenues to operate Florida’s trial courts. However, clerk of the court assessment data suggests that Florida’s trial judges are not assessing all mandatory fines, fees, and other monetary penalties at sentencing, as required in law. According to clerk and court system officials, this assessment data is not reliable and the extent to which judges are failing to assess these fines and fees is unclear. This bill would address these two issues by 1) ensuring that all monetary assessments mandated by statute are imposed without regard to whether the assessment is announced in open court and 2) refining the clerks’ reporting requirements for monetary assessments by the courts.

**II. Present Situation:**

Article V, Section 14 of the State Constitution authorizes the use of filing fees and service charges and costs for the funding of the clerks of the court and the court system salaries, costs and expenses. These fines and fees are established in statute, primarily in Chapters 28 and 318, Florida Statutes, and many are mandatory. Judges impose these fines and fees at disposition and clerks enter them into the official court record.

In order to monitor the court’s imposition of these fines and fees, s. 28.246(1), Florida Statutes, requires the clerk of the court to report specific information to the Legislature:

(1) The clerk of the circuit court shall report the following information to the Legislature and the Florida Clerks of Court Operations Corporation on a form developed by the Department of Financial Services:

- (a) The total amount of mandatory fees, service charges, and costs; the total amount actually assessed; the total amount discharged, waived, or otherwise not assessed; and the total amount collected.
- (b) The amount of discretionary fees, service charges, and costs assessed; the total amount discharged; and the total amount collected.
- (c) The total amount of mandatory fines and other monetary penalties; the total amount assessed; the total amount discharged, waived, or otherwise not assessed; and the total amount collected.
- (d) The amount of discretionary fines and other monetary penalties assessed; the amount discharged; and the total amount collected.

If provided to the clerk of court by the judge, the clerk, in reporting the amount assessed, shall separately identify the amount assessed pursuant to s. 938.30 as community service; assessed by reducing the amount to a judgment or lien; satisfied by time served; or other. The form developed by the Chief Financial Officer shall include separate entries for recording these amounts. The clerk shall submit the report on an annual basis 60 days after the end of the county fiscal year.

However, according to clerk data collected pursuant to s. 28.246(1), F.S., judges are failing to assess all of the fines, fees, and other court-related penalties required by law. As shown below, the Florida Court Clerks and Comptrollers reported that during County Fiscal Year 2010-11, judges did not assess \$78.8 million in mandatory assessments.

<b>Payments of Court-Related Fees, Charges, Costs, Fines, and Other Monetary Penalties – ALL COURTS STATEWIDE</b>	
<b>Fines, Court Costs &amp; Other Monetary Penalties</b>	<b>CFY 2010-11</b>
Total of Possible Assessments	\$ 800,364,984
Amount Actually Assessed	\$ 724,458,645
Amount Discharged or Waived	\$ 91,598,119
Amount Collected	\$ 425,106,587
<b>Fees, Service Charges &amp; Costs</b>	
Total of Possible Assessments	\$ 479,905,134
Amount Actually Assessed	\$ 477,055,395
Amount Discharged or Waived	\$ 9,192,514
Amount Collected	\$ 435,142,425
<b>TOTAL COURT-RELATED ASSESSMENTS</b>	
Total of Possible Assessments	\$ 1,280,270,118
Amount Actually Assessed	\$ 1,201,514,040
<b>Difference between possible and actual assessments</b>	<b>\$78,756,078</b>
Amount Discharged or Waived	\$ 100,790,633
Amount Collected	\$ 860,249,012

Source: Payment of Court-Related Fees, Charges, Costs, Fines and Other Monetary Penalties, Annual Report, Fiscal Year: October 1, 2010 to September 30, 2011. The Florida Court Clerks and Comptrollers.

However, both the clerks and the court conceded that there are limitations in this data. For example, clerks have noted confusion and misunderstanding in the definition of (or lack of definition of) the terms “discharged”, “waived” and “other” in the statutory language in s. 28.264, F.S. This has resulted in a lack of uniform application by clerks and courts in reporting assessments in appropriate categories. As a result, the courts, clerks, the legislature and the taxpayers have inadequate information on the extent to which judges are assessing fines and fees required by law.

**III. Effect of Proposed Changes:**

**Section 1** creates s. 28.2457, F. S., which requires that a monetary assessment mandated by statute shall be imposed and included in the judgment without regard to whether the assessment is announced in open court. In other words, the mandatory monetary assessment will be added automatically to the judge’s order, even if the judge fails to order it in the courtroom. Where an assessment prescribes a minimum amount and maximum amount (e.g., the fine shall not be less than \$500, not greater than \$1,000), the minimum amount is presumed and shall be imposed and included in the judgment unless the court orders a greater amount.

This section also requires the clerks of the court to develop a uniform form for the identification and imposition of all mandated assessments, which will ensure that all clerks can consistently track all assessments mandated in law.

**Section 2** amends 28.246, F.S., to modify the clerks’ reporting requirements relating to the assessment and collection of court-related fines and fees. The bill requires the clerks to report the total amount of fees, service charges, and costs assessed, the total amount under-assessed, which is any amount less than the minimum required to be assessed, and the total collected. The bill requires the report to separately identify the amount of assessments that are subsequently discharged or converted to community service. If the court waives, suspends, or reduces an assessment, as authorized by law, the portion waived, suspended or reduced is not deemed assessed or under-assessed.

The chart below shows how assessments would be recorded under the new revisions. Under Scenario A, the judge assesses more than the minimum amount and therefore has not under-assessed the fine. In Scenario B, the clerk would record an under-assessment because the judge failed to assess the minimum fine in the range. Under Scenario C, the judge assesses the maximum fine, but discharges half of it. In this case, the clerk would not report an underassessment.

	<b>SHALL Not Be Less Than \$500, Not Greater Than \$1000 (Discretionary Range)</b>					
	Max Possible Assessment	Actual Assessment	Minimum Possible	Under-Assessed	Discharged	Converted
A	\$1000	\$900	\$500	\$0	\$0	\$0
B	\$1000	\$200	\$500	(\$300)	\$0	\$0
C	\$1000	\$1000	\$500	\$0	\$500	\$0

The clerks must also report a collection rate for mandatory and discretionary assessments. The courts and the clerks will develop, by October 1, 2012, a form and guidelines to ensure accurate and consistent reporting of data.

**Section 3** amends 28.43, F.S., adding language making the clerks of the court and their association responsible, along with the Office of State Courts Administrator, for preparing and disseminating the manual of court-related fines, fees and service charges required by law.

**Section 4** clarifies that the clerks of the court will continue to use current reporting requirements for the remainder of County Fiscal Year 2011-12. The clerk will begin collecting data under the new requirements beginning County Fiscal Year 2012-13.

**Section 5** provides an effective date of July 1, 2012.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill is expected to have positive fiscal impact. Under the new requirements, clerks will record all mandatory assessments into the court order. As a result, the clerks will have more assessments available for collection. The bill's impact, however, is indeterminate.

#### **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.)

None.

**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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