

**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 Committee on Judiciary

---

BILL: SB 1120

INTRODUCER: Senator Perry

SUBJECT: Expert Witnesses

DATE: January 17, 2018

REVISED: 1/24/18

---

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Tulloch</u>	<u>Cibula</u>	<u>JU</u>	<u><b>Pre-meeting</b></u>
2.	<u></u>	<u></u>	<u>CJ</u>	<u></u>
3.	<u></u>	<u></u>	<u>AP</u>	<u></u>

---

**I. Summary:**

SB 1120 amends several statutory provisions that require a trial court to appoint and pay for one of more expert witnesses out of the state court system's funds. The bill amends 13 separate statutory provisions, 11 of which are substantive, in an effort to clarify who pays the costs or to contain the state court system's costs associated with appointing expert witnesses.

Of the substantive changes, the bill:

- Permits the court to initially appoint only one expert in competency proceedings for adult criminal defendants, for adults who may be incompetent due to intellectual disability or autism, and for juvenile defendants who may be incompetent due to intellectual disability or autism. While the court may still be required to appoint and pay up to three experts, the bill provides that the parties may stipulate to the findings of the initial expert, thereby eliminating the need to appoint more experts.
- Shifts, from county funds to defense funds, the cost of hiring a physician to evaluate defendants who seek to avoid sentencing for cause based on insanity or pregnancy.
- Provides that regardless of indigent status, the court must appoint and pay for two experts to evaluate a capital criminal defendant who seeks to avoid the death penalty due to intellectual disability.
- Provides that in guardianship proceedings and in civil proceedings to determine involuntary commitment of a person to a residential program based on developmental disabilities, the court will pay the statutorily required examining committee consisting of three experts.

## II. Present Situation:

### Overview of State Court Funding

The judicial branch is governed under article V of the State Constitution. In 1998, section 14 of article V, entitled “Funding,” was amended to “substantially and significantly revise[] judicial system funding, greatly reducing funding from local governments and placing the responsibility primarily on the state.”<sup>1</sup> As amended, article V, section 14 generally provides that the state court system will be funded as follows:<sup>2</sup>

- Funding for state court systems as well as state attorney’s offices, public defender’s offices, and court-appointed counsel is generally paid from “state revenues appropriated by general law.”<sup>3</sup>
- Funding for circuit and county court clerks’ offices is generated from the filing fees, services charges, and costs collected for performing the clerks’ court-related functions. However, where the clerks’ offices are constitutionally precluded from imposing fees (such as in the case of an indigent criminal defendant), the state must “supplement funding from state revenues appropriated by general law” as determined by the Legislature.<sup>4</sup>
- Generally, funding for the state courts system will *not* be required by a county or municipality.<sup>5</sup> However, the counties are responsible to fund certain types of court infrastructure and maintenance,<sup>6</sup> as well as “reasonable and necessary salaries, costs, and expenses of the state courts system to meet local requirements as determined by general law.”<sup>7</sup>

The 1998 amendment to Article V had to be implemented by July 1, 2004.<sup>8</sup> In order to implement the 1998 amendment, the Legislature responded “in stages, beginning with passage of SB 1212 in 2000 (Chapter 200-237, Laws of Florida), followed by additional changes to that law in 2001, and, finally in 2002, through the funding of a study to assist in the final phase of implementation.”<sup>9</sup> During the 2003 legislative session, the Legislature implemented the final stage, which included a substantial overhaul of chapter 29, F.S., entitled “Court System Funding.”<sup>10</sup>

<sup>1</sup> *City of Fort Lauderdale v. Crowder*, 983 So.2d 37, 39 (Fla. 4th DCA 2008) (“In its Statement of Intent, the Constitution Revision Commission explained: ‘The state’s obligation includes, but is not limited to, funding for all core functions and requirements of the state courts system and all other court-related functions and requirements *which are statewide in nature.*’ [e.s.] 26 Fla. Stat. Ann. (Supp.) 67.”).

<sup>2</sup> FLA. CONST. art. V, s. 14(d), Fla. Const. (“The judiciary shall have no power to fix appropriations”).

<sup>3</sup> FLA. CONST. art. V, s. 14(a).

<sup>4</sup> FLA. CONST. art. V, s. 14(b).

<sup>5</sup> FLA. CONST. art. V, s. 14(c). (“No county or municipality, except as provided in this subsection, shall be required to provide any funding for the state courts system, state attorneys’ offices, public defenders’ offices, court-appointed counsel or the offices of the clerks of the circuit and county courts for performing court-related functions.”).

<sup>6</sup> *Id.* (“Counties shall be required to fund the cost of communications services, existing radio systems, existing multi-agency criminal justice information systems, and the cost of construction or lease, maintenance, utilities, and security of facilities for the trial courts, public defenders’ offices, state attorneys’ offices, and the offices of the clerks of the circuit and county courts performing court-related functions.”). *See also* s. 29.008, F.S. (“county funding of court-related functions”).

<sup>7</sup> *Id.*

<sup>8</sup> *Office of State Attorney for Eleventh Judicial Circuit v. Polites*, 904 So. 2d 527, 530 (Fla. 3d DCA 2005).

<sup>9</sup> Florida Staff Analysis, H.B. 113A, 5/14/2003

<sup>10</sup> 2003 Fla. Sess. Law Serv. Ch. 2003-402 (H.B. 113–A). *See also City of Ft. Lauderdale v. Crowder*, 983 So. 2d 37, 39 (Fla. 4th DCA 2008).

## State Court Funding of Due Process Costs for Indigent Defendants

Under article V, section 14(c) of the State Constitution and chapter 29, F.S., the circuit and county court clerk's offices are entitled to supplemental funding from state revenues in order to pay the costs of providing constitutionally required representation to indigent<sup>11</sup> defendants in both civil and criminal proceedings, also generally referred to as "due process costs."<sup>12</sup> Under chapter 29, F.S., "due process costs" include the costs of:

- A public defender or a criminal conflict and civil regional counsel attorney;<sup>13</sup>
- A private court-appointed attorney in case of conflict with the public defender or regional counsel attorney;<sup>14</sup>
- Creating a record (transcripts, depositions, court reporting, and, when necessary, interpreters or translators);<sup>15</sup>
- Securing witnesses, including expert witnesses who "the public defender or regional counsel deem necessary for the performance of his or her duties"<sup>16</sup> or who is approved by the court at the request of a private, court-appointed attorney;<sup>17</sup>
- Mental health professionals appointed under ss. 394.473 and 916.115(2), F.S.;<sup>18</sup>
- Transportation;<sup>19</sup>
- Travel expenses;<sup>20</sup>
- Reasonable library and electronic legal research;<sup>21</sup> and
- Reasonable pretrial consultation fees.<sup>22</sup>

State revenues generally pay for the foregoing due process costs.<sup>23</sup> In cases involving the appointment of a private attorney for an indigent defendant, the body generally responsible for developing contract forms and processing payments for due process costs is the Justice Administrative Commission (JAC).<sup>24</sup> The JAC processes payments for due process costs "in

<sup>11</sup> BLACK'S LAW DICTIONARY (10th ed. 2014) ("indigent" means "1. A poor person. 2. Someone who is found to be financially unable to pay filing fees and court costs and so is allowed to proceed *in forma pauperis*.").

<sup>12</sup> See Justice Administrative Commission, *What are Due Process Costs?*, available at <https://www.justiceadmin.org/IFC/dueProcess/What%20are%20Due%20Process%20Costs.pdf> (last visited January 14, 2018).

<sup>13</sup> Section 29.006(1), F.S.

<sup>14</sup> Section 29.007(1)-(2), F.S.

<sup>15</sup> Sections 29.006(2) and 29.007(3), F.S.

<sup>16</sup> Section 29.006(3), F.S.

<sup>17</sup> Section 29.007(4), F.S.

<sup>18</sup> Sections 29.006(4) and 29.007(5), F.S.

<sup>19</sup> Section 29.006(5), F.S.

<sup>20</sup> Sections 29.006(6) and 29.007(7), F.S.

<sup>21</sup> Section 29.006(7), F.S.

<sup>22</sup> Sections 29.006(8) and 29.007(6), F.S.

<sup>23</sup> Section 29.006, F.S. (providing that enumerated due process costs or "elements" of PD and RCC offices are paid out of state revenues appropriated by general law.

<sup>24</sup> Section 29.007(7), F.S.; s. 43.16(5), F.S.

criminal cases and dependency cases involving [private] court-appointed or indigent for cost<sup>25</sup> counsel or an indigent pro se defendant.”<sup>26</sup>

### **State Court Funding for Court-Appointed Expert Witnesses**

A trial court may be statutorily required to appoint an expert witness.<sup>27</sup> Before the implementation of the 1998 amendment to article V, section 14, “the counties paid for the costs of experts appointed by the trial courts out of their own budgets, whether the expert was appointed by the trial court because of a request by an indigent defendant or by the state attorney or by the trial court sua sponte.”<sup>28</sup> Under current law, however, a *court-appointed* expert witness is paid “out of state revenues appropriated by general law” when “appointed by the court pursuant to an express grant of statutory authority.”<sup>29</sup> As explained in *Office of State Attorney for Eleventh Judicial Circuit v. Polites*,

[T]he party who requests the appointment of the expert must pay for the expert. It is true that court appointed experts historically have been deemed to be nonpartisan. . . . These court-appointed experts are necessary for the implementation of a fair system. . . . Furthermore, experts who are not requested by either party are supposed to be neutral experts. . . . Consequently, where neither party requests the appointment of a mental health expert, the state court system must pay for that expert. The construction of the statutes in any other manner would violate the doctrine of separation of powers.<sup>30</sup>

### **Proposed Cost Containment for Court-Appointed Expert Witnesses**

In 2015, the Trial Court Budget Commission<sup>31</sup> and the Commission on Trial Court Performance and Accountability<sup>32</sup> formed the Due Process Workgroup to study the increasing costs associated with “due process contractual expenditures” in the state court budget.<sup>33</sup> The Workgroup determined that among the primary items increasing due process costs are the fees paid to expert witnesses, such as mental health professionals and physicians.<sup>34</sup>

<sup>25</sup> “Indigent for cost” means “[a] person who is eligible to be represented by a public defender under s. 27.51 but who is represented by private counsel not appointed by the court for a reasonable fee as approved by the court or on a pro bono basis, or who is proceeding pro se, may move the court for a determination that he or she is indigent for costs and eligible for the provision of due process services, as prescribed by ss. 29.006 and 29.007, funded by the state.” s. 27.52(5), F.S.

<sup>26</sup> See Justice Administrative Commission, *Guide to Obtaining Due Process Costs*, p. 4 (“JAC’s Role”) available at <https://www.justiceadmin.org/faq/Training%20Modules/GuidetoDueProcessCosts.pdf> (last visited January 14, 2018).

<sup>27</sup> See, e.g., s. 393.11, F.S., (requiring the court to appoint examining committee of at least three experts upon receiving petition for involuntary admission of a person with an intellectual disability or autism into a residential services program).

<sup>28</sup> *Polites*, 904 So. 2d at 530 (noting the Legislature had set aside funds for “due process costs” including court-appointed expert witnesses not requested by the parties).

<sup>29</sup> Section 29.004(6), F.S. See also *id.* at 532.

<sup>30</sup> 904 So. 2d at 532.

<sup>31</sup> Fla. R. Jud. A. 2.230 (establishing the Trial Court Budget Commission for the purpose of developing and overseeing administration of trial court budgets).

<sup>32</sup> Admin. Order No. AOSC16-39 (establishing the Commission on Trial Court Performance and Accountability “to propose policies and procedures on matters related to the efficient and effective functioning of Florida’s trial courts”).

<sup>33</sup> Florida Supreme Court and State Court Administrators, *White Paper, Judicial Branch 2018 Legislative Agenda*, “Expert Witnesses in Trial Courts,” p. 21, (2018) (on filed with Senate Judiciary Committee).

<sup>34</sup> *Id.* at 21-25.

“[I]n order to improve procedures for the appointment and payment of expert witnesses and the containment of due process costs[,]” the Workgroup identified and recommended changes to 13 separate statutory provisions categorized into seven subject areas that are “related to the appointment and payment of expert witnesses in the trial courts.”<sup>35</sup> For two of the identified statutory provisions, the changes are technical and consist of conforming cross-references.<sup>36</sup> The other 11 statutory provisions fall within the following seven categories:

- (A) Adult Competency (ss. 916.115, 916.12, and 916.17, F.S.).
- (B) Forensic Services for Intellectually Disabled or Autistic Defendants (ss. 916.301-304, F.S.).
- (C) Sentencing Evaluation (ss. 921.09 and 921.12, F.S.).
- (D) Death Penalty – Intellectual Disability (s. 921.137, F.S.).
- (E) Juvenile Competency – Mental Illness and Intellectual Disability or Autism (s. 985.19, F.S.).
- (F) Developmental Disabilities (s. 393.11, F.S.).
- (G) Guardianship Examining Committee (s. 744.331, F.S.).<sup>37</sup>

For ease of comparing present law with the changes proposed by the bill, the categories above will be discussed in more detail in the Effect of Proposed Changes section of this analysis.

### III. Effect of Proposed Changes:

#### Adult Competency (Sections 3-5)

##### *Present Situation:*

Section 916.115, F.S., provides for the appointment and payment of pre-trial competency evaluations for adult criminal defendants. The court is only permitted to pay for up to three court-appointed experts and only to the extent the expert is evaluating competency. If the expert is also evaluating the defendant’s sanity, the defense is responsible for that portion of the expert’s fees. Additionally, the court may only pay an expert whose evaluation and testimony explicitly addresses each of the factors and follows the procedures in chapter 916, F.S., and the Florida Rules of Criminal Procedure.

The requesting party will otherwise pay for the expert’s evaluation and testimony as follows:

- The public defender will pay expert fees under section 29.006, F.S.
- The state attorney will pay expert fees under section 29.005, F.S.
- The Justice Administrative Commission will pay fees of experts retained by private court-appointed counsel, indigent pro se defendants (representing self) and partially represented “indigent for cost” defendants.

Section 916.12, F.S., provides criteria a mental health expert must follow in evaluating an adult criminal defendant’s competency to stand trial. It also reflects the requirement of s. 916.115, F.S., that at least two experts evaluate the defendant’s competency.

<sup>35</sup> *Id.* at 21.

<sup>36</sup> Sections 29.006 and 29.007, F.S.

<sup>37</sup> *See* n. 2, *supra*.

Section 916.17, F.S., generally provides procedures by which a court may approve the conditional release of a criminal defendant to outpatient care in lieu of involuntary commitment. Section 916.17(2), F.S. requires the court to hold a hearing upon the filing of an affidavit or statement that the defendant's conditional release essentially needs be readdressed, during which the court may modify the defendant's release conditions or return the defendant to involuntary custody "after the appointment and report of experts."

***Effect of Proposed Changes:***

**Section 3:** The bill eliminates the requirement in **s. 916.115, F.S.**, that the court immediately appoint two mental health experts, providing instead that the court may initially appoint only one mental health expert to conduct the competency evaluation. The parties may then decide whether to stipulate to the single expert's findings. Based on the single expert's findings, the court may:

- Take less restrictive action than commitment; or
- Commit the defendant if the parties also stipulate to commitment.

Otherwise, if the parties do not stipulate to the single expert's findings and commitment, the court must appoint at least one additional expert but no more than two additional experts to evaluate the defendant before committing him or her based on incompetency. Additionally, if the initial single expert finds the defendant competent to proceed, the party disputing the competency finding may request up to two additional evaluations at the party's expense.

The bill adds that the court is authorized to determine and pay reasonable fees for court-appointed expert *testimony*, but that the requesting party (state or defendant) is responsible to pay for party-requested expert *testimony*.

**Section 4:** To conform to the change above, the bill eliminates the requirement in **s. 916.12(2), F.S.**, that the defendant be evaluated by at least two mental health experts when determining the defendant's competency to stand trial.

**Section 5:** For **s. 916.17(2), F.S.**, the bill adds that the court must determine and pay reasonable fees for the evaluation and testimony of appointed experts for purposes of clarity and consistency with article V, section 14 of the State Constitution.

**Forensic Services for Intellectually Disabled or Autistic Defendants (Sections 6 & 7)**

***Present Situation:***

**Section 916.301(2), F.S.**, provides that when a criminal defendant's competency to proceed is in question based on intellectual disability or autism, the court must:

- Appoint at least one expert to evaluate the defendant, or at a party's request appoint two experts to evaluate the defendant;<sup>38</sup> and
- Appoint both a qualified psychologist and a social service professional with experience in intellectual disability and autism to evaluate the defendant.<sup>39</sup>

---

<sup>38</sup> Section 916.301(2)(a), F.S.

<sup>39</sup> Section 916.301(2)(b), F.S.

Section 916.301(4), F.S., provides that the court shall pay the foregoing experts a reasonable fee for serving as an evaluator and witness so long as the experts' reports and testimonies "explicitly address each of the factors and follow the procedures set out in [chapter 916, F.S.] and in the Florida Rules of Criminal Procedure."

**Section 916.304, F.S.**, concerns the conditional release of a criminal defendant to a training program when found to be incompetent by virtue of intellectual disability or autism. Section 916.304(2), F.S. requires the court to hold a hearing upon the filing of an affidavit or statement that the defendant's conditional release essentially needs be readdressed, during which the court may order placement of the defendant into a more appropriate release program "after the appointment and report of experts."

*Effect of Proposed Changes:*

**Section 6:** The bill eliminates the requirement in **s. 916.301(4), F.S.**, that the court initially appoint at least one expert to evaluate the defendant, or at a party's request appoint two experts to evaluate the defendant, in addition to a psychologist and social services worker. Rather, the bill permits the court to appoint up to two experts at the party's request if the parties do not stipulate to the psychologist and social worker's findings of incompetence. Regarding payment, the bill authorizes the court to pay the first additional expert and requires the requesting party to pay for any other additional experts.

**Section 7:** For **s. 916.304(2), F.S.**, the bill adds that the court must determine and pay reasonable fees for the evaluation and testimony of appointed experts for purposes of clarity and consistency with article V, section 14 of the State Constitution.

**Sentencing Evaluation (Sections 8 &9)**

*Present Situation:*

**Sections 921.09 and 921.12, F.S.**, pertain to two types of convicted criminal defendants, respectively, claiming cause to not be sentenced: (1) a defendant alleging insanity at the time of sentencing, and (2) a defendant alleging pregnancy at the time of sentencing. For both, the court is required to appoint a physician to examine the defendant.<sup>40</sup> The court is also required to "allow" the examining physician a reasonable fee, which will be paid "by the county in which the indictment was found or the information or affidavit filed."<sup>41</sup>

*Effect of Proposed Changes:*

**Sections 8 and 9:** The bill substantially alters **ss. 921.09 and 921.12, F.S.**, to provide that a convicted defendant claiming insanity or claiming pregnancy as cause not to be sentenced, respectively, may be examined by one or more physicians at the defendant's own expense.

However, for indigent defendants, it appears that the cost of a physician will still be covered by state revenues, paid by either "the public defender or regional counsel" who deems the physician

<sup>40</sup> Sections 921.09 and 921.12, F.S.

<sup>41</sup> *Id.*

“necessary for the performance of his or her duties,”<sup>42</sup> or by the Justice Administrative Commission when the court approves the request for a physician by a private, court-appointed attorney,<sup>43</sup> by an indigent-for-cost defendant, or by an indigent pro se defendant.<sup>44</sup>

### **Death Penalty – Intellectual Disability (Section 10)**

#### *Present Situation:*

**Section 921.137, F.S.**, requires that a defendant in a death penalty case provide notice that he or she intends to claim during the penalty phase that imposition of the death penalty is barred due to his or her intellectual disability.<sup>45</sup> If the defendant provides notice, is convicted of a capital felony, and receives a death sentence recommendation by an advisory jury, the defendant may file a motion to determine if he or she is intellectually disabled prior to the final sentencing hearing.<sup>46</sup> Upon receiving the motion, the court must appoint two experts in the field of intellectual disabilities, who, in turn, must evaluate the defendant and “report their findings prior to the final sentencing hearing.”<sup>47</sup>

#### *Effect of Proposed Changes:*

**Section 10:** The bill amends **s. 921.137, F.S.**, to add that the court must determine and pay reasonable fees to the experts for their evaluations and testimonies concerning the defendant’s intellectual disability regardless of whether the defendant is indigent.

### **Juvenile Competency – Mental Illness and Intellectual Disability or Autism (Section 11)**

#### *Present Situation:*

**Section 985.19, F.S.**, pertains to juvenile delinquency proceedings and provides that if the court has reason to believe the child is incompetent to proceed, the court on its own motion or by motion of one of the parties must stay all proceedings and order an evaluation of the child’s mental condition.<sup>48</sup> In evaluating the child’s mental health, the court is required to base its competency findings on “not less than two nor more than three” mental health experts, each of which are must make a recommendation concerning whether residential or nonresidential treatment should be required.<sup>49</sup> Each expert is also “allowed reasonable fees for services rendered.”<sup>50</sup>

When the potential source of the child’s incompetency is related to an intellectual disability or autism, the court must order the Agency for Persons with Disabilities to examine the child.<sup>51</sup>

---

<sup>42</sup> Section 29.006(3), F.S.

<sup>43</sup> Section 29.007(4), F.S.

<sup>44</sup> Section 27.52(5), F.S. *See also* n. 25, *supra*.

<sup>45</sup> Section 921.137(1)-(3), F.S.

<sup>46</sup> Section 921.137(4), F.S.

<sup>47</sup> *Id.*

<sup>48</sup> Section 985.19(1), F.S.

<sup>49</sup> Section 985.19(1)(b), F.S.

<sup>50</sup> *Id.*

<sup>51</sup> Section 985.19(1)(e), F.S.

**Section 985.19(7), F.S.**, also states that it will be implemented “only subject to specific appropriation.”

*Effect of Proposed Changes:*

**Section 11:** The bill eliminates the requirement in **section 985.19, F.S.**, that the court immediately appoint two mental health experts providing instead that the court may initially appoint only one mental health expert to conduct the evaluation. The parties may then decide whether to stipulate to the single expert’s findings. Based on the single expert’s findings, the court may:

- Take less restrictive action than commitment; or
- Commit the child if the parties also stipulate to commitment.

Otherwise, if the parties’ do not stipulate to commitment, the court must appoint at least two and no more than three experts to evaluate the child before committing the child.

The bill also requires the court to determine and pay a reasonable fee to the experts for their evaluation and testimony rather than “allow” a reasonable fee. It appears the court will have greater control over determining an expert’s fee rather than simply approving a fee request.

The bill also changes the requirement that the court order the Agency for Persons with Disabilities to directly evaluate a child with intellectual disabilities or autism, to requiring the court to order the Agency to select an expert to conduct the same evaluation.

The bill also strikes the specific appropriation provision.

### **Developmental Disabilities (Section 1)**

*Present Situation:*

**Section 393.11, F.S.**, sets out the procedure for petitioning the court for the involuntary admission of a person with an intellectual disability or autism into a residential services program. Upon receiving a petition, a court must immediately appoint an examining committee consisting of “at least three disinterested experts” with expertise in the intellectual disabilities or autism to examine the person: one physician, one psychologist, and one professional with a master’s degree in social work, special education, or vocational rehabilitation counseling.<sup>52</sup> The examining committee must prepare a report to submit to the court.<sup>53</sup>

The examining committee members are entitled to a reasonable fee. The fee is determined by the court but paid from the county’s general revenue fund.<sup>54</sup>

*Effect of Proposed Changes:*

**Section 1:** The bill amends **s. 393.11, F.S.**, to provide that examining committee member fees will be paid by the court instead of the county’s general revenue fund.

---

<sup>52</sup> Section 393.11(5)(a)-(b), F.S.

<sup>53</sup> Section 393.11(5)(e)-(f), F.S.

<sup>54</sup> Section 393.11(5)(g), F.S.

## **Guardianship Examining Committee (Section 2)**

### ***Present Situation:***

**Section 744.331, F.S.**, sets out the procedures to petition to determine incapacity and appoint a guardian. Within five days after a petition is filed, the court must appoint a three-member examining committee consisting of one psychiatrist, one physician, and a third person (another psychiatrist, nurse, social worker, etc.) with appropriate training and expertise;<sup>55</sup> and at least one member must “have knowledge of the type of incapacity alleged in the petition.”<sup>56</sup> Each committee member must conduct a comprehensive examination of the allegedly incapacitated person and file a report for the court’s consideration.<sup>57</sup> If the court finds the allegedly incapacitated person is incapacitated, the court will appoint a guardian.<sup>58</sup>

The members of the examining committee are entitled to reasonable fees.<sup>59</sup> The fees are either paid by the guardian out of the ward’s property, or by the state for an indigent ward. If paid by the state, the state retains a creditor’s claim against the guardianship property.<sup>60</sup>

### ***Effect of Proposed Changes:***

**Section 2:** The bill amends **s. 744.331, F.S.**, to provide that the court rather than the state will pay the fees to the members of the examining committee. However, the bill retains the language that the state will retain a creditor’s claim for “any amounts paid under this section.”<sup>61</sup>

## **Sections 29.006 and 29.007, F.S.**

### ***Present Situation:***

As stated in the overview, ss. 29.006 and 29.007, F.S., provide the “due process costs” that must be paid on behalf of indigent defendants.<sup>62</sup>

### ***Effect of Proposed Changes:***

**Sections 12 and 13** makes technical, conforming changes to ss. 29.006 and 29.007, F.S.

## **Effective Date**

**Section 14** provides the bill will take effect July 1, 2018.

---

<sup>55</sup> Section 744.331(3)(a), F.S. (“The remaining members must be either a psychologist, gerontologist, another psychiatrist, or other physician, a registered nurse, nurse practitioner, licensed social worker, a person with an advanced degree in gerontology from an accredited institution of higher education, or other person who by knowledge, skill, experience, training, or education may, in the court’s discretion, advise the court in the form of an expert opinion.”).

<sup>56</sup> *Id.*

<sup>57</sup> Section 744.331(3)(e)-(g), F.S.

<sup>58</sup> Section 744.331(6), F.S.

<sup>59</sup> Section 744.331(7)(a), F.S.

<sup>60</sup> Section 744.331(7)(b), F.S.

<sup>61</sup> *Id.*

<sup>62</sup> See n. 11-24, *supra*.

**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:

The bill will likely impact convicted, non-indigent criminal defendants seeking to avoid sentencing due to insanity or pregnancy by requiring the defendant to pay for a physician.

All the other provisions of the bill appear to have little fiscal impact. While the bill requires that the court initially appoint only one rather than two mental health experts to evaluate a defendant or child's competency to proceed, generally, the bill maintains the court's authority to appoint and pay for up to three mental health experts if the parties do not stipulate to the initial expert's findings.

## C. Government Sector Impact:

The bill implements several cost containment measures that the Trial Court Budget Commission believes will have some impact in reducing the state court system's due process costs for expert witnesses.<sup>63</sup> As already noted under the private sector impact, *supra*, the bill shifts the costs of a medical expert's opinion to a convicted, *non-indigent* criminal defendant seeking to avoid sentencing due to insanity or pregnancy. The bill also requires that trial courts initially appoint one rather than two mental health expert to criminal defendants or children when competency is an issue. If the parties stipulate to the findings of the one mental health expert, the courts will not have to appoint and pay another expert, thereby saving costs.

The Justice Administrative Commission notes that the bill will have limited policy impact and indeterminate fiscal impact.<sup>64</sup>

---

<sup>63</sup> See n. 31, *supra*.

<sup>64</sup> Justice Administrative Commission, *Agency Analysis for HB 1063* (similar bill), January 12, 2018.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends sections 29.006, 29.007, 393.11, 744.331, 916.115, 916.12, 916.17, 916.301, 916.304, 921.09, 921.12, 921.137, and 985.19 of the Florida Statutes.

**IX. Additional Information:**

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

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

None.

**B. Amendments:**

None.