

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 903 Fines and Fees
SPONSOR(S): Civil Justice Subcommittee, Donalds and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1328

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N, As CS	Jones	Luczynski
2) Appropriations Committee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Each of the 67 Florida counties has a clerk of court, an elected constitutional officer who oversees judiciary functions as the clerk of the county and circuit courts. The clerks are authorized to charge fees for performing various functions. Moreover, clerks collect court costs and fines related to a court disposition.

An indigent person may ask the clerk of court to allow him or her to enter into a payment plan for outstanding financial obligations owed to the clerk. If a fee, service charge, fine, or court cost remains unpaid for 90 days, and the clerk has attempted to collect the unpaid amount through an internal process, the clerk may forward the unpaid accounts to an attorney or collection agent.

Under current law, a person's driver license can be suspended for various reasons, including:

- Failure to pay a court fee or fine.
- Failure to comply with or appear at a traffic summons.
- Having unpaid citations in another state.

CS/HB 903 requires clerks of court to establish uniform payment plans for court-related fees, service charges, costs, and fines for persons who apply for a payment plan. If the person is unable to comply with the payment plan terms, a court may modify the plan or convert the outstanding amount to community service. The court may convert the outstanding amounts owed to community service if the person is unable to comply with the payment plan. The bill provides a 30-day grace period for certain payments prior to the Department of Highway Safety and Motor Vehicles being notified to suspend a person's driver license.

The bill also removes the clerk's authority to suspend a driver license based on a failure to pay fines or fees if the underlying offense is not driving-related. The bill allows a person whose driver license is suspended for nonpayment of such fines and fees to reinstate his or her license upon payment of a reinstatement fee.

The bill also allows clerks to enter into a multi-county intergovernmental agreement with each other to administer payment plans in various counties. When a person seeks to be enrolled in a payment plan, the clerk must require the person to set up automatic withdrawals if the person has such capability.

The bill may have a significant negative fiscal impact on state and local governments.

The bill provides an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Clerks of the Circuit Court

Each of the 67 Florida counties has a clerk of court, an elected constitutional officer who oversees judiciary functions as the clerk of 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 county funds.

The State Constitution requires the clerks of court to 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 appeal 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 the amount of revenues generated. For fiscal year 2013-2014, clerks had an operating budget of \$472.3 million for court-related functions. The 2017-2018 budget was \$409.04 million, and the latest 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 fees; and
- Collected \$863,594,314, for a collection rate of 74.25 percent statewide.⁶

Revenue collected from fines and fees are not solely budgeted to the clerks of court. For example, the Legislature has provided that a 5 percent surcharge for certain non-criminal traffic citations is deposited into the Crimes Compensation Trust Fund.⁷ Additionally, that same trust fund collects \$49 from every \$50 collected as a fine from every adjudication for a felony, misdemeanor, delinquent act, or criminal traffic offense.⁸ During fiscal year 2018-2019, the Crime Compensation Trust Fund received nearly \$13.8 million of revenue generated from fines and fees collected by clerks of court.⁹

¹ Art. V, s. 16, Fla. Const.

² Art. V, s. 14, Fla. Const.

³ *Id.*

⁴ S. 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/> (last visited Feb. 4, 2020).

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 (last visited Feb. 4, 2020).

⁷ S. 938.04, F.S. The Crimes Compensation Trust Fund was created to compensate crime victims. S. 960.21, F.S.

⁸ S. 938.03, F.S.

⁹ Florida Clerks of Court Operations Corporation, *Agency Analysis of 2020 SB 1328* (Jan. 2020).

If a fee, service charge, fine, or court cost remains unpaid for 90 days, and the clerk has attempted to collect the unpaid amount through an internal process, the clerk may forward the unpaid accounts to an attorney or collection agent.¹⁰ Some counties have unpaid fines and fees totaling hundreds of millions of dollars from decades ago.¹¹

Payment Plans

Court costs, fees, and other fines related to a court disposition are enforced by court order and collected by the clerks of court. A person may apply to the clerk of court to enter into a payment plan if that person is "indigent," which means he or she:

- Has an income equal to or below 200 percent of the federal poverty guidelines;¹² or
- Is receiving:
 - Temporary Assistance for Needy Families-Cash Assistance;
 - Poverty-related veterans' benefits; or
 - Supplemental Security Income.¹³

A monthly payment that does not exceed 2 percent of an indigent person's average monthly pay is presumed to correspond to the indigent person's ability to pay.¹⁴

Fines and Fees for Traffic Infractions and Criminal Offenses

Florida law imposes a schedule of fees for various noncriminal traffic offenses, including the following monetary penalties:

- For infractions of pedestrian regulations, \$15.
- For nonmoving traffic violations, \$30.
- For moving violations involving an unlawful speed not within a school zone, up to \$250, depending on the egregiousness of the violation.¹⁵

Some traffic infractions are classified as criminal traffic infractions, including:

- Fleeing or attempting to elude a police officer.
- Leaving the scene of a crash.
- Driving under the influence.
- Reckless driving.
- Making a false crash report.¹⁶

Certain crimes in Florida have significant mandatory minimum fines. A person 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 400 grams.¹⁷

Depending on the person's income and ability to pay, such a fine or fee may take years or even decades to pay. For example, one Miami-Dade County resident who was convicted of grand theft

¹⁰ S. 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, and 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>) (last visited Feb. 4, 2020).

¹² 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 U.S. 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 Feb. 4, 2020).

¹³ S. 27.52(1), F.S.

¹⁴ S. 28.26(4), F.S.

¹⁵ See s. 318.18, F.S.

¹⁶ See s. 318.17, F.S.

¹⁷ S. 893.135(1)(b)1., F.S.

agreed to a payment plan for \$190,000. She pays \$100 per month and is scheduled to complete her payment plan in 190 years.¹⁸

Driver's License Suspension in Florida

A license can be suspended for various reasons, including:

- Failure to pay a fine.
- Failure to comply with or appear at a traffic summons.
- Unpaid citations reported by another state.¹⁹

Under certain conditions, if a person fails to enter into a payment plan with a clerk of court for unpaid obligations, the clerk of court may notify the Department of Highway Safety and Motor Vehicles, which may in turn suspend the person's driver license.²⁰ Nearly 2 million of the more than 14 million driver licenses issued in Florida are suspended for unpaid fines.²¹

Effect of Proposed Changes

CS/HB 903 requires clerks of courts to establish uniform payment plans for court-related fees, service charges, costs, and fines for persons who apply for a payment plan. These payment plans must be available electronically, by mail, or in person. The clerk must enroll a person seeking deferment of payment into a monthly payment plan within 30 calendar days of the court's entering the order. If the person is incarcerated, he or she must apply to the clerk for enrollment in a payment plan within 30 calendar days of release.

If the person is indigent, a monthly payment amount is presumed to correspond to his or her ability to pay if it is not more than 2 percent of the person's average monthly income or \$10, whichever is greater. If the person is unable to comply with the payment plan terms, the court may modify the payment plan or convert the outstanding amount to community service. The clerk must charge a one-time \$25 administrative processing charge to implement a payment plan. The \$25 fee may be paid in up to five equal monthly payments.

The clerk may notify a person of upcoming or past due payments. If a person on a payment plan fails to make a payment within 30 days of the due date, the clerk must transmit notice to the Department of Highway Safety and Motor Vehicles (DHSMV), unless the person:

- Brings the account current;
- Makes alternate payment arrangements; or
- Enters into a revised payment plan with the clerk.

Similarly, if a person fails to comply with specified civil penalties, fails to enter into or comply with the terms of a penalty payment plan, fails to attend driver improvement school, or fails to attend a scheduled hearing, the clerk generally must notify DHSMV within 30 days, not within 10 days as current law requires.

The bill also requires a court and a clerk to develop a process for referring persons owing fines and fees to the clerk soon after the disposition of a case. If the person has a deposit or credit card account, or other means of setting up automatic withdrawals, the clerk must enroll the person on an automatic withdrawal plan.

¹⁸ 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> (last visited Feb. 4, 2020).

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. 4, 2020).

²⁰ See, e.g., ss. 318.15 and 322.245, F.S.

²¹ Monivette Cordeiro, *Nearly 2 Million Florida Drivers Have License Suspended for Unpaid Fines, Study Finds*, Orlando Sentinel (Dec. 19, 2019), <http://www.orlandosentinel.com/news/crime/os-ne-drivers-license-suspensions-report-20191219-xazyr2cdkff7xfljvqkcz6tum-story.html> (last visited Feb. 4, 2020).

The bill requires the clerks of courts, by October 1, 2020, to develop a uniform payment plan form, which must inform the user of:

- The minimum payment due each month;
- The term of the payment plan;
- Acceptable payment methods; and
- The circumstances under which a case may be referred to collections for nonpayment.

The bill requires a uniform traffic citation to include a notice informing the person to whom it is given that the person may contact the clerk to establish a payment plan. The bill also removes the authority for the Department of Highway Safety and Motor Vehicles to suspend a person's driver license for failure to pay certain fines and fees based on a non-driving-related offense. The bill allows a person whose driver license was suspended pursuant to s. 322.245, F.S., before July 1, 2020, solely for nonpayment of such fines and fees, to reinstate his or her license upon payment of a reinstatement fee.²² The bill does not require that the person must agree to a payment plan to be eligible for reinstatement.

The bill also allows a clerk to enter into a multi-county intergovernmental agreement with other clerks to administer payment plans in various counties.

The bill provides an effective date of July 1, 2020.

B. SECTION DIRECTORY:

Section 1: Amends s. 27.52, F.S., relating to determination of indigent status.

Section 2: Amends s. 28.24, F.S., relating to service charges.

Section 3: Amends s. 28.246, F.S., relating to payment of court-related fines or other monetary penalties, fees, charges, and costs; distribution of funds.

Section 4: Amends s. 28.42, F.S., relating to manual of filing fees, charges, costs, and fines.

Section 5: Amends s. 57.082, F.S., relating to determination of civil indigent status.

Section 6: Amends s. 318.15, F.S., relating to failure to comply with civil penalty or to appear; penalty.

Section 7: Amends s. 318.20, F.S., relating to notification; duties of department.

Section 8: Amends s. 322.245, F.S., relating to suspension of license upon failure of person charged with specified offense under chapter 316, chapter 320, or this chapter to comply with directives ordered by traffic court or upon failure to pay child support in non-IV-D cases as provided in chapter 61 or failure to pay any financial obligation in any other criminal case.

Section 9: Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill eliminates the authority of a clerk of court to use the possibility of a driver license suspension to compel the payment of fines or fees owed in certain cases, which may indirectly have a negative fiscal impact on the collection of revenues that go to the State Courts Revenue Trust Fund. The bill may also have an indeterminate negative fiscal impact on other government entities that receive revenues from funds generated by the clerks of court. However, the bill could incentivize more persons to enter into payment plan agreements, which could increase revenues and have a positive fiscal impact on the State.

2. Expenditures:

The bill requires greater levels of court involvement with respect to a payment plan, which may have an indeterminate negative fiscal impact on the court system. However, the bill could reduce

²² The bill does not specify the amount of the reinstatement fee. However, it appears such fee would be \$60 under current law. See s. 322.29(2), F.S.

court workloads by reducing the number of driving with suspended license cases, which would have an indeterminate positive fiscal impact on the court system.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill may reduce the revenues received by the clerks of court, which could have a significant negative fiscal impact on the clerk's budgets. However, the bill could incentivize more persons to enter into payment plans, which could increase revenues and have a positive fiscal impact on the clerks.

2. Expenditures:

The bill requires the clerks of court to develop a uniform payment plan form, which may have an insignificant negative fiscal impact on the clerks of court.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill limits the authority of the clerks of court to suspend driver licenses solely for failure to pay fines or fees in certain cases, which may benefit persons who would otherwise be unable to drive to work and earn money to pay debts.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill requires the clerks of court to create a new payment plan form, and because the bill may reduce the amount of revenues a clerk of court can generate by eliminating a monthly partial payment fee; however, an exemption may apply because the bill may have only an insignificant fiscal impact.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 4, 2020, the Civil Justice Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment:

- Required a person seeking to enter into a payment plan agreement to apply for such plan within 30 days after the court orders payment, or within 30 days of being released from incarceration.
- Required the clerk and court to develop a process ensuring a person who owes fines or fees is referred to the clerk to establish a payment plan.
- Required clerks to use automatic withdrawals for payment plans.

- Allowed a 30-day grace period between the time certain obligations are due and the time DHSMV is notified to suspend a driver license.
- Allowed a clerk to enter into a multi-county agreement with other clerks to administer payment plans.
- Allowed suspension of a driver license for nonpayment in a criminal case only if the underlying crime involved a motor vehicle.
- Allowed reinstatement of a license suspended for nonpayment in a criminal case not involving a motor vehicle.

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.