

**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 Committee on Judiciary

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BILL: SB 492

INTRODUCER: Senator Rouson

SUBJECT: Council on the Discretionary Imposition of Criminal Justice and Traffic Fines and Fees

DATE: March 9, 2021

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Ravelo</u>	<u>Cibula</u>	<u>JU</u>	<b>Favorable</b>
2.	_____	_____	<u>ACJ</u>	_____
3.	_____	_____	<u>AP</u>	_____

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## I. Summary:

SB 492 creates the Council on the Discretionary Imposition of Criminal Justice and Traffic Fines and Fees (council). The council will review the impact of fines, fees, restitution, and other court costs on individuals having low incomes and publish a report with findings and recommendations on how to reduce financial hardships created by fines, fees, and other costs.

The council will receive administrative support from the Department of Legal Affairs within the Office of the Attorney General. Membership of the council will consist of members appointed by elected state leaders and other public officials and representatives from various community stakeholders.

The bill takes effect July 1, 2021.

## II. Present Situation:

### Clerks of the Circuit Court

Each of the 67 Florida counties has a clerk of court. The clerk is an elected constitutional officer who oversees judiciary functions as the clerk of both the county and circuit courts.<sup>1</sup> The Florida Constitution requires that the clerks of court be funded from revenue generated from charges for services, court costs, filing fees, and fines from civil and criminal proceedings.<sup>2</sup> The revenue is used for court related functions as well as select costs, expenses, and salaries as provided by law.<sup>3</sup> Court related functions include:

- Case maintenance;
- Records management;

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<sup>1</sup> FLA. CONST. art. V, s. 16

<sup>2</sup> FLA. CONST. art. V, s. 14.

<sup>3</sup> *Id.*

- Court preparation and attendance;
- Collection and distribution of fines, fees, service charges, and court costs;
- Processing for the assignment, reopening, reassignment, and appeals 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.<sup>4</sup>

The clerk of courts statewide operating budgets vary each year depending on revenues generated. According to the Florida Clerks of Courts Operations Corporation, clerk budgets have declined \$50.6 million over the last 8 years.<sup>5</sup> 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,<sup>6</sup> while the latest 2020-2021 budget was \$421.7 million.<sup>7</sup> Most recently, Covid-19 caused a drastic cut in the Clerks budget due to a reduction in court filings.<sup>8</sup>

Between October 1, 2017, and September 30, 2018, the Clerks statewide assessed \$1,163,151,976, in fines, and collected a total of \$863,594,314 for a collection rate of 74.25 percent statewide.<sup>9</sup> Revenue collected from fines and fees are not solely budgeted toward the clerks of courts. The Legislature has provided, for example, a 5 percent surcharge for certain non-criminal traffic citations, which is deposited in the Crimes Compensation Trust Fund.<sup>10</sup> Additionally, that same trust fund collects \$49 from every \$50 collected as a fine from every adjudication a felony, misdemeanor, delinquent act, or criminal traffic offense.<sup>11</sup> During Fiscal Year 2018-2019, the Crime Compensation Trust Fund received \$13,794,800.86 of revenue generated from the above fines and fees collected by the clerks of courts.<sup>12</sup>

## Fees and Fines

Court costs, fines, and other fines related to a disposition are enforced by court order and collected by the clerks of the circuit and county courts. Certain crimes in Florida have significant mandatory minimum fines. An individual 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

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<sup>4</sup> Section 28.35(3)(a), F.S.

<sup>5</sup> Florida Clerks of Court Operations Corporation, *At Your Service 2021 Clerk Legislative Priorities*, <https://www.flclerks.com/page/atyourservice> (last visited Mar. 5 2021).

<sup>6</sup> 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/>.

<sup>7</sup> Florida Clerks of Court Operations Corporation, *CFY 2020-2021 APPROVED BUDGET*, <https://flccoc.org/wp-content/uploads/2020/10/CFY2021-Approved-Budget-092920.pdf> (last visited Mar. 4 2021).

<sup>8</sup> Specifically, the Florida Clerks of Court Operations imposed a \$60 million budget cut. This was in response to a recent report showing that collections were \$48.3 million below estimate. Jim Ash, *Falling Revenue Backs Court Clerks Into a Budget Corner*, FLA. BAR NEWS, July 27, 2020, <https://www.floridabar.org/the-florida-bar-news/falling-revenue-back-court-clerks-into-a-budget-corner/> (last visited Mar. 5 2021).

<sup>9</sup> Florida Court Clerks and Comptrollers, *2018 Annual Assessments and Collections Report*, <https://flccoc.org/wp-content/uploads/2018/12/2018-Annual-Assessments-and-Collections-Report.pdf>

<sup>10</sup> Section 938.04, F.S. The Crimes Compensation Trust Fund was created for the purpose of compensating victims of crime. Section 960.21, F.S.

<sup>11</sup> Section 938.03, F.S.

<sup>12</sup> Memorandum, Florida Clerks of Court Operations Corporation, *Senate Bill 1328 Analysis* (January 2021) (on file with the Senate Committee on Judiciary).

trafficked is more than 400<sup>13</sup> grams.<sup>14</sup> In fiscal year 2018-2019 more than \$654 million in mandatory criminal and traffic costs were assessed, with an additional \$86 million in discretionary costs and fines assessed.<sup>15</sup> Only a fraction of these costs, however, are collected each year.<sup>16</sup> Additionally, certain costs and fines can be converted to community service in limited circumstances.<sup>17</sup>

Once fees, service charges, fines, or court costs have remained unpaid for 90 days, the clerk may forward the accounts to an attorney or collection agent if the clerk of court attempted to collect the unpaid amount through an internal process such as a collection docket.<sup>18</sup> It is unclear how successful collection agents are at collecting the remaining fees and fines. However, some counties such as Broward County have unpaid fines and fees totaling hundreds of millions of dollars which go back decades.<sup>19</sup>

### ***Payment Plans***

An indigent person may apply to the clerk of court to enter a payment plan. The monthly payments under a payment plan are presumed to correspond to the indigent person's ability to pay if it does not exceed 2 percent of the indigent person's annual net income divided by 12.<sup>20</sup> A person is indigent if their his or her income is equal to or below 200 percent of the federal poverty guidelines<sup>21</sup> or if the person is receiving Temporary Assistance for Needy Families-Cash Assistance, poverty-related veterans' benefits, or Supplemental Security Income.<sup>22</sup> Depending on the individual's income and ability to pay, fines and fees may take decades to payoff. An individual on a payment plan in Miami-Dade, for example, is scheduled to complete her \$190,000 payment plan resulting from a grand theft conviction in 190 years.<sup>23</sup> She pays \$100 per month under her payment plan.

<sup>13</sup> 400 grams is the equivalent to 0.88 pounds.

<sup>14</sup> Section 893.135(1)(b)1., F.S.

<sup>15</sup> Judicial Management Council, Workgroup on Court Costs and Fines, *Court Costs and Fines in Florida*, 6 (June 2020) (on file with the Senate Committee on Judiciary).

<sup>16</sup> Based on that same year, for example, 9.38% was collected in the circuit criminal division, 40.25% was collected in the county criminal division, and 84.55% was collected in civil traffic division. *Id.*

<sup>17</sup> Section 938.30, F.S. allows a judge to convert monetary obligations to community service work based on an offender's inability to pay. For traffic cases, section 318.18, F.S. allows a judge to convert civil penalties into community service work if the offender has a financial hardship.

<sup>18</sup> Section 28.246(6), F.S.

<sup>19</sup> 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 while 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>.

<sup>20</sup> Section 28.26(4), F.S.

<sup>21</sup> Based on the 2021 guidelines, an applicant under this scenario would qualify if his or her income were equal to or below \$25,760 (200% of \$12,880) for a single person household, adding \$9,080 for each additional person in the household. U.S. Dept. of Health and Human Service, HHS Poverty Guidelines for 2021, <https://aspe.hhs.gov/poverty-guidelines> (last visited Mar. 4, 2021).

<sup>22</sup> Section 27.52(1), F.S.

<sup>23</sup> 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>.

### *Suspension of Driver License*

Between 2015 and 2017, more than 3.5 million suspension notices were issued in relation to unpaid court obligations.<sup>24</sup> An estimated 2 million of the more than 14 million driver licenses issued in Florida are currently suspended.<sup>25</sup> A license can be suspended for a variety of different reasons, including:

- Failure to pay a traffic fine.
- Failure to comply with or appear at a traffic summons.
- Failure to complete driver improvement school based on court order or citation.
- Unpaid citations reported by another state.
- Failure to pay a court financial obligation.<sup>26</sup>

### **III. Effect of Proposed Changes:**

The bill creates the Council on Discretionary Imposition of Criminal Justice and Traffic Fines and Fees. The membership of the Council must reflect the racial, ethnic, and cultural diversity of the state and will have a membership composed of:

- A chair, appointed by the Attorney general;
- Two Senators, appointed by the Senate President and Minority Leader respectively;
- Two members of the House of Representatives, appointed by the Speaker and Minority Leader respectively;
- Two Public Defenders, appointed by the President of the board of directors of the Florida Public Defender Association
- Two State Attorneys, appointed by the President of the executive board of the Florida Prosecuting Attorneys Association;
- A justice of the Supreme Court or a judge from a District Court of Appeal, appointed by the Chief Justice of the Florida Supreme Court;
- Two county court judges, appointed by the President of the board of directors of the Conference of County Court Judges of Florida;
- Two circuit judges, appointed by the chair of the executive committee of the Florida Conference of Circuit Judges;
- A representative of the Florida Association of Court Clerks and Comptrollers, appointed by the Association's President;
- A representative of the Fines and Fees Justice Center, nominated by the organization and appointed by the Attorney General; and
- A representative nominated by each of the following organizations and appointed by the Attorney General:

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<sup>24</sup> Fines and Fees Justice Center, *Driving on Empty: Florida's Counterproductive and Costly Driver's License Suspension Practices* (Dec. 2019), 3, <https://finesandfeesjusticecenter.org/content/uploads/2019/11/florida-fines-fees-drivers-license-suspension-driving-on-empty.pdf> (last visited March 4 2021)

<sup>25</sup> Wayne K. Roustan, *Florida suspends nearly 2 million driver's licenses. Help may be on way*, SOUTH FLORIDA SUN SENTINEL, Feb. 16, 2018, <https://www.sun-sentinel.com/news/transportation/fl-reg-drivers-license-suspensions-20180208-story.html>.

<sup>26</sup> 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 Jan. 15, 2020). Fines and Fees Justice Center, *Driving on Empty: Florida's Counterproductive and Costly Driver's License Suspension Practices* (Dec. 2019),

- Operation New Hope;
- Florida Rights Restoration Coalition;
- Southern Legal Counsel;
- Florida Rural Legal Services;
- Chainless Change; and
- Abe Brown Ministries.

### ***Duties of the Council***

The Council will review the impact of fines, fees, restitution, and other court costs on individuals and families having low incomes. This review will include the proportional impact on people of color as well as how these obligations impact poor individuals and their families. Additionally, the review will include a review of mechanisms used in other states that allow judicial discretion for the imposition of fines and fees.

Additionally, the Council will organize four community meetings with individuals directly impacted by the obligations from criminal fines and fees.

The Council will issue a report with findings and recommendations regarding increased judicial discretion in the imposition of fines, fees, and costs along with recommended policy changes to reduce the financial hardship associated with these obligations.

The bill has a repeal date of December 31, 2024.

The bill takes effect July 1, 2021.

## **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:**

SB 492 requires the Department of Legal Affairs within the Office of the Attorney General to provide administrative support to the Council. Likewise, the membership of the Council will include various public officials such as State Attorneys, Public Defenders, and state Judges. This may require these offices to spend additional funds when serving on or providing support to the Council.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 16.6171, 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.