

**HOUSE OF REPRESENTATIVES  
FINAL BILL ANALYSIS**

<b>BILL #:</b>	CS/HB 7095 (CS/CS/SB 1166)	<b>FINAL HOUSE FLOOR ACTION:</b>	
<b>SPONSOR(S):</b>	Appropriations Committee; Judiciary Committee; Snyder (Judiciary; Regulated Industries; Simmons)	111 Y's	0 N's
<b>COMPANION BILLS:</b>	CS/CS/SB 1166	<b>GOVERNOR'S ACTION:</b>	Approved

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**SUMMARY ANALYSIS**

CS/HB 7095 passed the House on February 24, 2012, and subsequently passed the Senate on March 8, 2012. This bill changes certain responsibilities of the clerks of court to enhance the collection of court fees and fines and improve the efficiency of their operations. The bill also requires broader use of the Comprehensive Case Information System (CCIS) among state agencies to reduce operational costs and duties of the clerks of the court. The bill:

- Changes the clerks' mandatory review of property and motor vehicle records of persons seeking an indigency determination for purposes of obtaining a public defender to a discretionary review.
- Requires all clerks of the circuit court to participate in the CCIS.
- Clarifies that filing fees are due when a party files a pleading to initiate a proceeding.
- Requires reopen fees to be paid on cases closed for at least 90 days.
- Requires clerks to collect a \$10 service charge for issuing a certified copy or an electronic certified copy of a summons rather than only for an original summons.
- Removes the existing 10 percent fine distribution going toward the clerk's trust fund and operational needs when the fines collected involve those to be distributed to counties and municipalities as a result of red light signal enforcement by local law enforcement.
- Codifies the current administrative practice between the clerks and the courts regarding the generation of jury lists in compliance with statutory requirements of the jury selection plan.
- Allows an action for the collection of court costs and fines to be brought at any time.
- Requires the state attorney to notify the clerk when a public officer is charged with a specified offense at which point the clerk must send notice of the proceedings to the Commission on Ethics.
- Ranks claims for the collection of unpaid fees, court costs and fines at level three within the eight level ranking order for payment of claims against a decedent's estate by a personal representative.
- Removes the requirement for clerks to send certified copies of felony drug dealing convictions to agencies issuing convicted defendants a business or professional license, and replaces it with a requirement for licensing agencies to obtain such information from the CCIS. Such agency shall start an emergency suspension of the license upon finding of certain drug convictions through CCIS.
- Provides that for criminal financial obligations, a previously imposed criminal or civil judgment constitutes a civil lien against the judgment debtor's real or personal property when recorded under s. 55.10, F.S, and exempts such liens from the current 10 year rerecording requirement.
- Adds the payment of fines, fees and other court related costs as a condition of parole in addition to the current condition of paying restitution, but preserves restitution as the first priority for payment.

The bill creates a positive fiscal impact to the Clerks of Court and an indeterminate impact to the Public Defenders. There will be a direct fiscal impact to certain parolees. See fiscal section.

The bill was approved by the Governor on April 6, 2012, ch. 2012-100, Laws of Florida. The effective date of the bill is July 1, 2012.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### **Determinations of Indigency**

Section 27.52, F.S., requires the clerk of the court to determine whether an applicant seeking appointment of a public defender is indigent pursuant to the following criteria: The applicant

- is at or below 200% of the federal poverty guidelines;
- is receiving Temporary Assistance for Needy Families-Cash Assistance;
- is receiving poverty-related veteran's benefits;
- is receiving Supplemental Security Income (SSI).

There is, however, a presumption that the applicant is not indigent if the applicant owns, or has equity in, any intangible or tangible personal property or real property or the expectancy of an interest in property having a net equity value of \$2,500 or more, excluding the value of the person's homestead and one vehicle having a net value under \$5,000.

Current law mandates the clerk to conduct a review of property records for the county in which an applicant resides and motor vehicle title records of the state to identify any property interests of the applicant.<sup>1</sup> The clerk must evaluate and consider the results of its review in making a determination of indigency. The clerk is also required to maintain the results of the review in a file with the application and provide the file to the court if the applicant seeks a court review of a clerk's determination that the applicant is not indigent.

This bill removes the requirement that the clerk review and evaluate property and motor vehicle records by providing that the clerk "may" conduct a review and evaluation of such records. If, however, the clerk conducts a review, a file of the review will be maintained for a court's review of a denial of an application for indigency.

#### **Participation in the Comprehensive Case Information System (CCIS)**

This bill deletes a provision in s. 28.24, FS, which is a provision concerning service charges for clerks of the circuit court, that requires all circuit court clerks to participate in the CCIS by January 1, 2006, and creates s. 28.2405, F.S., which requires their participation in the system and further requires them to submit their electronic cases to the system according to types designated by the Supreme Court.

#### **Filing Fees**

Chapter 28 of Florida Statutes pertains to clerks of the circuit court while chapter 34 relates to county courts. Current law requires a party "instituting any civil action" to pay the statutorily prescribed filing fee to the clerk of the court. This bill amends ss. 28.241, F.S., and 34.041, F.S., to clarify that filing fees are to be paid at the time a party files a case with the clerk.

Under current law a party reopening a civil action or proceeding in circuit court must pay a filing fee not exceeding \$50.<sup>2</sup> In county court, reopening fees are up to \$25 for all claims not more than \$500 and up to \$50 for claims over \$500.<sup>3</sup> A case is "reopened" when it has previously been reported as disposed of

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<sup>1</sup> Section 27.52(2)(a)2.b., F.S.

<sup>2</sup> Section 28.241(1)(b), F.S.

<sup>3</sup> Section 34.041(2), F.S.

and is resubmitted to the court. Under the bill, a case is reopened after all appeals have been exhausted, or the time to file an appeal from a final order or final judgment has expired.

The bill provides that reopen fees are to be assessed by the clerk when pleadings to reopen a case have been filed at least 90 days from the filing of a final order or final judgment with the clerk. For pleadings to reopen cases closed at least 90 days, the reopening fee is due upon filing of the pleading with the clerk. The bill specifies that reservation of jurisdiction by a court does not cause a case to remain open for purposes of assessing a reopening fee.

Section 28.241(1)(b), F.S., and s. 34.041, F.S., lists several exceptions to the payment of a reopening fee. This bill adds "motions to enforce stipulations" and "motions for contempt" to the list of exceptions from this fee.

The bill requires the clerk to pursue collection of fees under s. 28.246, F.S., if a party fails to pay a required fee.

### **Service Charges for Issuance of a Summons**

Current law requires the clerks of the court to collect a \$10 service charge for issuing a summons from a party seeking to have a summons issued. This bill amends s. 28.241(1)(d), F.S., and s. 34.041, F.S., to require the collection of the fee for the issuance of an original, certified copy or an electronic certified copy of a summons.

### **Fines, Fees and Service Charges**

Currently, all court-related fines, fees, service charges, and costs are considered state funds and are remitted by the clerk to the Department of Revenue for deposit into the Clerks of the Court Trust Fund within the Justice Administrative Commission. However, 10 percent of all court-related fines collected by the clerk are deposited into the clerk's Public Records Modernization Trust Fund and are for clerk court-related operational needs and program enhancements.<sup>4</sup>

This bill amends s. 28.37, F.S., to remove the 10 percent portion of fines from going toward the clerk's trust fund and operational needs when the fines involved are those distributed to counties and municipalities as a result of red light signal enforcement by local law enforcement.

### **Jury Lists**

Section 40.01, F.S., provides that jurors in this state must be taken from all persons at least 18 years of age who are citizens of the United States and residents of this state and their respective counties and who possess a drivers' license or state issued identification card. Persons without drivers' licenses or identification cards may also be added to the list if they execute an affidavit at the office of the clerk of the court.<sup>5</sup> Section 40.013, F.S., lists persons who are disqualified or excused from jury service, including but not limited to, persons under prosecution for any crime, the Governor, and the clerk of the court. Section 40.011, F.S., requires the Department of Highway Safety and Motor Vehicles to deliver to the clerk of the circuit court in each county on a quarterly basis a list of the names of persons eligible for jury duty.

The chief judge of each circuit, or a circuit judge in each county within the circuit who is designated by the chief judge, requests the selection of a jury list in each county within the circuit during the first week of January of each year, or as soon thereafter as practicable.<sup>6</sup>

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<sup>4</sup> Section 28.37, F.S.

<sup>5</sup> Section 40.011(1), F.S.

<sup>6</sup> Section 40.02(1), F.S.

The chief judge or the chief judge's designee must direct the clerk of the court to select at random a sufficient number of names, with their addresses, from the list of persons who are qualified to serve as jurors and to generate a list of at least 250 persons to serve as jurors. The list must be signed and verified by the clerk as having been selected at random. A circuit judge in a county to which he or she has been assigned may request additional jury lists as necessary to prevent the jury list from becoming exhausted.<sup>7</sup>

Section 40.225, Florida Statutes, provides for the selection of jurors to serve within the county by "mechanical, electronic, or electrical device." Under this section, a majority of trial judges within a county of each circuit must approve, and the chief judge of the circuit must submit, a description of the method for selecting jurors to the Supreme Court of Florida. Section 40.225(3), F.S., charges the Supreme Court with the review and approval of the proposed juror selection process, which is referred to as the "juror selection plan."

In the course of developing standards needed to ensure that juror selection plans satisfy statutory, methodological, and due process requirements, the Florida Supreme Court has been gradually expanding the use of technology for such purposes. The Court has tasked the Office of the State Courts Administrator with evaluating proposed plans to determine their compliance with required standards. The current process for Supreme Court approval of proposed juror selection plans is through administrative orders issued to individual circuits.

This bill amends various provisions of chapter 40 relating to preparation of jury lists to conform to the current jury review process conducted by the Office of State Courts Administrator and the Chief Justice of the Florida Supreme Court. The bill amends s. 40.225, F.S., to codify the current administrative process for developing a jury selection program. Under the amendments to this section, the clerk of the circuit court in each county has administrative responsibility for:

- Developing the automated system of jury venire selection;
- Obtaining approval for the juror candidate selection process;
- Operating and updating the system in accordance with the requirements of chapter 40; and
- Operating and updating the system in accordance with technical standards and procedures adopted by the Chief Justice.

### **Statute of Limitations**

A statute of limitations is an absolute bar to the filing of a legal case after a date set by law. Section 95.11, F.S., is the statute of limitations provision governing actions other than for the recovery of real property. Under this section, an action on a judgment or decree of court must be commenced within twenty years. This bill provides that, with respect to court costs and fines owed to the state, a collection action may be commenced at any time.

### **Notice of Breach of Public Trust Offense by Public Official**

Section 112.3173, F.S., requires the clerk of the court to provide notice to the Commission on Ethics when a proceeding against a public official for a "specified offense" is being conducted in its court.<sup>8</sup>

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<sup>7</sup> Id.

<sup>8</sup> Under s. 112.3173(4)(a), F.S., a copy of an information, indictment, or other document containing the charges is sufficient for notice. Section 112.3173(2)(e), F.S., defines a "specified offense" as:

1. The committing, aiding, or abetting of an embezzlement of public funds;
2. The committing, aiding, or abetting of any theft by a public officer or employee from his or her employer;
3. Bribery in connection with the employment of a public officer or employee;
4. Any felony specified in chapter 838, except ss. 838.15 and 838.16;

This bill requires the clerk to submit the required notice after the state attorney advises the clerk that a defendant is a public officer or employee and that the defendant is alleged to have committed a specified offense.

### **Community Service in Lieu of Civil Penalty**

Section 318.18, F.S., sets forth the civil penalties for traffic violations. Currently, if a person has been ordered to pay a civil penalty for a noncriminal traffic infraction and is unable to do so due to a financial hardship, the court must allow the person to satisfy the civil penalty by participating in community service until the civil penalty is paid. Such persons either receive credit for community service hours against the civil penalty at a specified hourly rate based on the wage rate specified under the federal Fair Labor Standards Act of 1938 or, if the person has a trade or profession, at the average prevailing wage rate for that trade or profession.<sup>9</sup> The supervision of the performance of community service hours is conducted by "a community service agency" that agrees to accept community service from persons unable to pay their civil penalties.<sup>10</sup>

Currently, the community service agency must record the number of community service hours completed along with the date of completion to clerk of the court on letterhead of the community service agency and signed by the designated representative of the community service agency. This bill requires the signature of the representative of the community service agency to be notarized on the record submitted to the clerk.

### **Uniform Electronic Transaction Act**

Section 668.50, F.S., is known as the Uniform Electronic Transaction Act. The act applies to electronic records and electronic signatures relating to a transaction.<sup>11</sup> The act does not apply to transactions to the extent they are governed by:

1. A provision of law governing the creation and execution of wills, codicils, or testamentary trusts;
2. The Uniform Commercial Code other than s. 671.107 and chapters 672 and 680;
3. The Uniform Computer Information Transactions Act; or
4. Rules relating to judicial procedure.

This bill removes the complete exclusion of rules relating to judicial procedure from the provisions of the act and makes subsections (2), (9) and (11) of the act applicable to documents filed with the court.

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5. The committing of an impeachable offense;
  6. The committing of any felony by a public officer or employee who, willfully and with intent to defraud the public or the public agency for which the public officer or employee acts or in which he or she is employed of the right to receive the faithful performance of his or her duty as a public officer or employee, realizes or obtains, or attempts to realize or obtain, a profit, gain, or advantage for himself or herself or for some other person through the use or attempted use of the power, rights, privileges, duties, or position of his or her public office or employment position; or
  7. The committing on or after October 1, 2008, of any felony defined in s. 800.04 against a victim younger than 16 years of age, or any felony defined in chapter 794 against a victim younger than 18 years of age, by a public officer or employee through the use or attempted use of power, rights, privileges, duties, or position of his or her public office or employment position.

<sup>9</sup> Section 318.18(8), F.S.

<sup>10</sup> Section 318.18(8)(b), F.S., defines "Community service agency" as a "not-for-profit corporation, community organization, charitable organization, public officer, the state or any political subdivision of the state, or any other body the purpose of which is to improve the quality of life or social welfare of the community and which agrees to accept community service from persons unable to pay civil penalties for noncriminal traffic infractions."

<sup>11</sup> Section 668.50(2), F.S., defines an "Electronic record" as "a record created, generated, sent, communicated, received, or stored by electronic means." An "Electronic signature" is defined as "an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record." A "Transaction" is defined as "an action or set of actions occurring between two or more persons relating to the conduct of business, commercial, insurance, or governmental affairs."

Subsection (2) is the definitions section of the act. Subsection (9) is the provision of the act relating to attributing an electronic signature to the person making the electronic signature in a manner showing the "efficacy of any security procedure." Subsection (11) relates to electronic notarization of signatures.

### **Priority of Payment of Expenses and Obligations**

Section 733.707, F.S., sets forth the order in which the personal representative of a decedent's estate must pay the expenses of the estate's administration and obligations against creditors. It provides the following order of payment:

- Class 1.—Costs, expenses of administration, and compensation of personal representatives and their attorneys fees and attorneys fees awarded under s. 733.106(3).
- Class 2.—Reasonable funeral, interment, and grave marker expenses, whether paid by a guardian, the personal representative, or any other person, not to exceed the aggregate of \$6,000.
- Class 3.—Debts and taxes with preference under federal law, and claims pursuant to ss. 409.9101 and 414.28.
- Class 4.—Reasonable and necessary medical and hospital expenses of the last 60 days of the last illness of the decedent, including compensation of persons attending the decedent.
- Class 5.—Family allowance.
- Class 6.—Arrearage from court-ordered child support.
- Class 7.—Debts acquired after death by the continuation of the decedent's business, in accordance with s. 733.612(22), but only to the extent of the assets of that business.
- Class 8.—All other claims, including those founded on judgments or decrees rendered against the decedent during the decedent's lifetime, and any excess over the sums allowed in paragraphs (b) and (d).

This bill inserts claims in favor of the state for unpaid court costs, fees or fines at the class three level of this section.

### **Suspension of License to Practice upon Conviction of Certain Felonies**

Currently, under s. 893.11, F.S., the clerk of the court must send a certified copy of a judgment of conviction of any person holding a license, permit, or certificate issued by a state agency, to the head of the agency when such conviction is for a felony offense of selling, trafficking, or conspiracy to sell or traffic in a controlled substance. The certified copy of the judgment must show the person's license number, permit number, or certificate number on the face of the document. The agency head must suspend or revoke the license, permit, or certificate of the convicted defendant to practice his or her profession or to carry on his or her business.

This bill removes the above requirements as they relate to the clerks of the court, and replaces them with a requirement that state agencies use the CCIS to obtain the information relating to such convictions of license, permit or certificate holders. The bill provides that any such conviction reported in the CCIS constitutes a serious danger to the public health, safety, or welfare and is grounds for disciplinary action by the licensing agency. The bill requires the license issuing agency to initiate an immediate emergency suspension of a convicted person's individual professional license under the summary suspension procedures set forth in s. 120.60(6), F.S., upon finding a licensee's conviction reported in the CCIS.

The bill requires the clerks to provide certified copies of such convictions when requested by an agency. The bill substitutes the reference to "permit or certificate" holders with persons issued a professional license.

### **Costs of Prosecution and Investigation**

Section 938.27(2)(a), F.S., requires a court to impose costs of prosecution and investigation notwithstanding a defendant's present inability to pay. Currently, these costs are to be paid within a "specified period or in specified installments." This bill requires such payments to be made in accordance with the payment plan provided in s. 28.246, F.S., which requires the clerk to enter into a payment plan for individuals found by a court to be indigent for costs. Section 28.246, F.S., provides for a monthly payment plan. The monthly payment amount, which is calculated based upon all fees and all anticipated costs, is presumed to correspond to the person's ability to pay if the amount does not exceed 2 percent of the person's annual net income divided by 12. The court may review the reasonableness of the payment plan.

### **Financial Obligations in Criminal Cases**

A judgment lien generally refers to a lien against property that is based on an underlying money judgment. A judgment lien on real property is created and perfected upon the recording of a certified copy of a judgment in the official county records. Under s. 55.10, F.S., the judgment shall be a lien for an initial period of 10 years from the date of the recording. A lien may be extended for an additional 10 years by rerecording a certified copy of the judgment prior to the expiration of the lien and by simultaneously recording an affidavit with the current address of the person who has a lien as a result of the judgment. Section 55.081, F.S., provides that a judgment lien on real property can be effective for up to 20 years from the date the judgment was entered.

This bill amends s. 938.30, F.S., relating to financial obligations in criminal cases to provide that in cases where a criminal or civil judgment has been previously entered on a court-imposed financial obligation, the judgment constitutes a lien against the judgment debtor's presently owned or after-acquired real or personal property when recorded pursuant to s. 55.10, F.S. The bill exempts such liens from the 10 year rerecording requirement of s. 55.10, F.S. The judgment must secure all unpaid court-imposed financial obligations that are due and accrue subsequent to the recording of the judgment, including interest and reasonable costs for the issuing a satisfaction and recording the satisfaction in the records. The bill further authorizes the clerks to enforce, satisfy, settle, release or dispose of any debts or liens imposed and collected.

### **Parole and Fines, Costs and Restitution**

Currently, s. 947.181, F.S., provides that the Parole Commission (commission) shall require restitution to the victim as a condition of parole unless the commission states reasons on the record for not ordering it. The amount of restitution is determined by the commission unless restitution has previously been ordered by the court under s. 775.089, F.S. Court ordered restitution must be made a condition of parole. If a parolee fails to make restitution as ordered it is considered a violation of parole and may be cause for revocation of parole.

This bill adds the payment of fines, fees and other related court costs to be included as a required condition of parole. Under the bill, the commission must order these amounts along with restitution unless the commission states reasons on the record for not ordering them. In the payment of these amounts, restitution to the victim is given first priority over the payment of fines, fees and other related court costs. The failure to pay any of these amounts is considered a violation of parole and may cause a revocation of parole.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Parolees will now be required to pay fines, fees and other related court costs as a condition of their parole.

D. FISCAL COMMENTS:

The Florida Clerks of Court Association reports this bill provides clarification regarding the statutes that assists the clerks in collecting outstanding debts owed to the state. The increase in collections by the Clerks of Court created by this bill would result in a positive fiscal impact.<sup>12</sup>

The Public Defender's Association reports this bill will have an indeterminate impact to the Public Defenders.<sup>13</sup> Based on findings of the Office of Economic and Demographic Research (EDR), indigency checks of motor vehicle titles and property titles have not been successful. Few instances of denied indigency status were found by EDR and many of those that were found, were overturned by the court.

The Office of the State Courts Administrator reports the minimal impacts on judicial workload created by this bill can be absorbed within existing resources.<sup>14</sup>

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<sup>12</sup> E-mail from Randy Long, Florida Clerks of Court Association, February 10, 2012, on file with Justice Appropriations Subcommittee staff.

<sup>13</sup> E-mail from Sheldon Gusky, Executive Director, FL Public Defender Association, February 12, 2012, on file with Justice Appropriations Subcommittee staff.

<sup>14</sup> E-mail from Eric Maclure, Director of Community and Intergovernmental Relations, Office of the State Courts Administrator, February 11, 2012, on file with Justice Appropriations Subcommittee staff.