

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Judiciary Committee

BILL: CS/SB 2542

SPONSOR: Judiciary Committee and Senators Smith and Fasano

SUBJECT: State Judicial System

DATE: April 25, 2005                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Maclure	Maclure	JU	<b>Fav/CS</b>
2.			GE	<b>Withdrawn</b>
3.			JA	
4.				
5.				
6.				

## I. Summary:

This committee substitute addresses the state’s continued implementation of Revision 7 to Article V of the State Constitution. In addition to technical or administrative refinements to the state judicial system, the committee substitute furthers the implementation of Revision 7 and includes the following significant provisions:

- Reorganizes the statutory determination of indigency provision and creates a civil determination of indigency provision;
- Authorizes the waiver of service costs in the civil indigency context if the person’s income is equal to or below 150 percent of the federal poverty level;
- Creates a provision allowing due process costs for persons who are determined to be indigent for costs;
- Delineates the appointment and funding responsibilities for competency experts;
- Specifies that 56.4% of the remainder of any civil penalties received by a county court for violations that occurred within the unincorporated area of a municipality having a consolidated government are to be deposited into the fine and forfeiture fund;
- Extends from 2006 to 2007 the deadline for clerks to assume responsibility for redaction of social security numbers in court records;
- Allows the state to fund mental health professionals required in civil cases as an element of court-appointed counsel;
- Directs trial court administrators to recover expenditures for state-funded services that have been furnished to users who have the ability to pay;
- Provides authority for a county and the chief judge of a circuit to enter into an agreement for the county to fund personnel positions for the circuit;
- Eliminates the Article V Indigent Services Advisory Board, effective July 1, 2006; and

- Provides circumstances in which clerks may exceed statutory budget limits.

This committee substitute substantially amends the following sections of the Florida Statutes: 27.40, 27.42, 27.52, 27.5304, 27.54, 28.24, 28.2402, 28.241, 28.245, 28.246, 28.345, 28.35, 28.36, 28.37, 29.004, 29.007, 29.008, 29.015, 29.018, 34.045, 34.191, 39.0132, 39.821, 39.822, 40.29, 43.16, 43.26, 44.102, 44.108, 57.081, 92.142, 92.231, 110.205, 116.01, 116.21, 119.07, 142.01, 213.13, 219.07, 219.075, 318.121, 318.18, 318.21, 318.31, 318.325, 322.29, 372.72, 903.26, 903.28, 916.115, 916.12, 916.301, 938.29, 939.06, 985.05, and 985.201.

The committee substitute creates the following sections of the Florida Statutes: 29.0081, 29.0185, 40.355, 57.082, and 92.152. The committee substitute repeals the following sections of the Florida Statutes: 29.005(4), 29.014, and 318.37.

## II. Present Situation:

In November 1998, voters approved Revision 7 to Article V of the Florida Constitution. Article V establishes the judicial branch of government. According to the ballot summary, Revision 7 “allocates state court system funding among the state, counties, and users of courts.”

The essence of Revision 7 to Article V provides for a funding reallocation among the 67 counties, the state, and users for the state court system. Specifically, the pertinent part reads as follows:

### SECTION 14. Funding.—

(a) All justices and judges shall be compensated only by state salaries fixed by general law. Funding for the state courts system, state attorneys’ offices, public defenders’ offices, and court-appointed counsel, except as otherwise provided in subsection (c), shall be provided from state revenues appropriated by general law.

(b) All funding for the offices of the clerks of the circuit and county courts performing court-related functions, except as otherwise provided in this subsection and subsection (c), shall be provided by adequate and appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions as required by general law. Selected salaries, costs, and expenses of the state courts system may be funded from appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions, as provided by general law. Where the requirements of either the United States Constitution or the Constitution of the State of Florida preclude the imposition of filing fees for judicial proceedings and service charges and costs for performing court-related functions sufficient to fund the court-related functions of the offices of the clerks of the circuit and county courts, the state shall provide, as determined by the legislature, adequate and appropriate supplemental funding from state revenues appropriated by general law.

(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 performing court-related functions. 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. Counties shall also pay reasonable and necessary salaries, costs, and expenses of the state courts system to meet local requirements as determined by general law.

(d) The judiciary shall have no power to fix appropriations.

Article XII, section 25 of the State Constitution directed the Legislature to commence funding Revision 7 beginning in the 2000-2001 fiscal year and required Revision 7 to be fully effectuated by July 1, 2004.

This committee substitute addresses the state's continued implementation of Revision 7 to Article V of the State Constitution. The "Present Situation" for the issues addressed in the committee substitute is discussed within the "Effect of Proposed Changes," below.

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

This committee substitute addresses the state's continued implementation of Revision 7 to Article V of the State Constitution. In addition to technical or administrative refinements to the state judicial system, the committee substitute furthers the implementation of Revision 7 and includes the following significant provisions:

- Reorganizes the statutory determination of indigency provision and creates a civil determination of indigency provision;
- Authorizes the waiver of service costs in the civil indigency context if the person's income is equal to or below 150 percent of the federal poverty level;
- Creates a provision allowing due process costs for persons who are determined to be indigent for costs;
- Delineates the appointment and funding responsibilities for competency experts;
- Specifies that 56.4% of the remainder of any civil penalties received by a county court for violations that occurred within the unincorporated area of a municipality having a consolidated government are to be deposited into the fine and forfeiture fund;
- Extends from 2006 to 2007 the deadline for clerks to assume responsibility for redaction of social security numbers in court records;
- Allows the state to fund mental health professionals required in civil cases as an element of court-appointed counsel;
- Directs trial court administrators to recover expenditures for state-funded services that have been furnished to users who have the ability to pay;
- Provides authority for a county and the chief judge of a circuit to enter into an agreement for the county to fund personnel positions for the circuit;
- Eliminates the Article V Indigent Services Advisory Board, effective July 1, 2006; and
- Provides circumstances in which clerks may exceed statutory budget limits.

Following is a section-by-section discussion of the committee substitute.

#### **Court-Appointed Counsel; Registry of Eligible Attorneys – Section 1**

***Present Situation***

The Article V indigent services committee in each judicial circuit is responsible for maintaining a registry of attorneys, from which private counsel may be appointed by the court to provide representation. Currently, an appointed attorney is entitled to payment upon full performance of his or her duties, approval of the payment by the court, and submission of a payment request to the Justice Administrative Commission (JAC).

***Proposed Changes***

The indigent services committee will be required to maintain data on the race, sex, and ethnicity of attorneys in the registry. To be included in the registry, an attorney will be required to execute a contract with the JAC, failure to comply with the terms of which may result in removal from the registry. The committee substitute requires the JAC to develop uniform forms and procedures for use by attorneys in billing the state. Further, the committee substitute provides that payment of an attorney based on a flat-fee per case will not require court approval. When a court-appointed attorney is permitted to withdraw from representation of a client, he or she must notify the JAC. Withdrawal from a case prior to full performance of the duties creates a presumption that the attorney is not entitled to the entire flat fee.

The committee substitute also provides that the appointment of an attorney from the registry who is a member of a law firm counts as a selection of that firm for that particular rotation, and, thus, another attorney from the same firm may not be appointed in the same rotation.

**Circuit Article V Indigent Services Committees – Section 2*****Present Situation***

In each judicial circuit there is an indigent services committee responsible for, among other duties, managing the appointment and compensation of court-appointed counsel. The committee develops a schedule of standard fees and expense allowances for categories of cases. Meanwhile, the Justice Administrative Commission (JAC) tracks expenditures on private court-appointed counsel in criminal conflict, civil conflict, dependency, and guardianship cases.

***Proposed Changes***

The indigent services committee will set the compensation rates of due-process service providers in cases in which a court has appointed counsel or declared a person indigent for costs. The committee shall establish standard allowances for due-process expenses. The legislation authorizes the committee to develop and implement alternative models for the payment of attorneys – other than a per-case fee – if a more cost-effective and efficient system can be provided.

The committee substitute also provides that funds for due-process expenses in cases in which a court has declared a person to be indigent for costs shall be appropriated separately.

The JAC will be required to report quarterly on the race, sex, and ethnicity of court-appointed counsel in each circuit.

### **Determination of Indigent Status – Section 3**

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

Indigency is currently determined pursuant to the provisions of s. 27.52, F.S. A determination of indigency is required prior to the appointment of a public defender, private court-appointed counsel, or the provision of state-funded due process services. Generally, the applicant is required to pay a \$40 application fee to the clerk, who makes an initial determination of indigency based on statutory criteria, which also require the clerk to examine additional factors that create a presumption of indigency. An applicant who is determined not to be indigent can seek court review of the clerk's determination. The current statute does not provide any guidelines for the judicial determination.

#### ***Proposed Changes***

The committee substitute substantially amends s. 27.52, F.S., but retains the same general scheme, with the following modifications:

- The clerk is required to make the initial determination based on information provided by the applicant on a form developed by the Florida Clerk of Courts Operations Conference and approved by the Supreme Court.
- The committee substitute provides criteria for the court to consider when an applicant seeks review of the clerk's determination of non-indigency. The factors (whether the applicant has been released on bail of \$5,000 or more; whether a bond has been posted; and whether private counsel was retained) are currently examined by the clerk, and the existence of any of the factors creates a presumption of non-indigency.
- The committee substitute removes the presumption, but requires the court to review the same factors.
- The committee substitute creates a first-degree misdemeanor penalty for knowingly providing false information in seeking a determination of indigent status.

### **Indigent for Costs – Section 3**

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

Both the U.S. and Florida constitutions require that defendants be afforded with certain due process protections, including the right to have the assistance of counsel.<sup>1</sup> Current law in Florida

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<sup>1</sup> The Sixth Amendment to the U.S. Constitution provides that “[i]n all criminal prosecutions, the accused shall enjoy the right to . . . be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.” Further the 14th Amendment to the U.S. Constitution (both the due process and equal protection provisions) requires that in criminal trials, a state may not discriminate against a defendant on account of poverty. *Griffin v. Illinois*, 351 U.S. 12 (1956). Similarly, Article I, section 16 of the Florida Constitution protects the rights of the accused, and Article I, section 9 of the

is to provide for the right to counsel for indigent defendants through the public defenders or court-appointed counsel in cases where the public defender would have an ethical conflict. There are indigent defendants, however, who are able to secure the service of an attorney (either with their own money, from friends or family, or from a volunteer attorney), while other indigent defendants represent themselves. While these defendants do not need or desire an attorney, they often seek to access public funding for services, such as expert witnesses, that are often associated with a legal defense. There is no statutory authorization or specific funding provided in the state budget to provide such non-attorney services to indigent defendants outside of the public defender system established by law. There is anecdotal evidence that courts are determining such defendants to be “indigent for costs” and ordering the Justice Administrative Commission to pay for these associated costs. Current law requires the clerk to enroll any person seeking to defer payment of fees, service charges, costs, or fines imposed by law in a payment plan corresponding to the individual’s ability to pay.

### ***Proposed Changes***

The committee substitute amends the determination of indigence statute, s. 27.52, F.S., to allow a determination of “indigent for costs” for a person eligible to be represented by the public defender, but who is represented by private counsel not appointed by the court for a fee, who is represented by a pro bono attorney, or who is proceeding pro se. The determination makes the applicant eligible for the provision of state-funded due process services.

## **Compensation of Private Court-Appointed Counsel – Section 4**

### ***Present Situation***

Currently, private court-appointed counsel must deliver a copy of an intended bill to the Justice Administrative Commission (JAC) prior to filing a motion with the court for an order approving payment of fees, costs, and related expenses (s. 27.5304, F.S.).

### ***Proposed Changes***

Intended attorney billings based upon a flat-fee per case shall be reviewed by the JAC and may be approved without court order if it is correct. Hourly billings, however, will continue to require court approval. The attorney must serve a copy of the motion seeking court approval of an hourly billing upon the JAC at least five business days prior to the hearing date on the billing. The JAC may participate in the hearing via telephone.

The committee substitute specifies that court-appointed counsel is entitled to compensation upon final disposition of the case. However, two exceptions are provided:

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Florida Constitution requires due process of law in order to deprive a person of life, liberty, or property. The Florida Supreme Court has held that an indigent defendant has the constitutional right to have his court costs, including the cost of his transcript, to be paid for by the government. *State v. Byrd*, 378 So.2d 1231 (Fla. 1979).

- In a dependency case, the attorney may submit payment at three intervals: upon the entry of an order of disposition as to the parent being represented; upon conclusion of a 12-month pendency review; and following a judicial review hearing.
- In an appeal to the district court of appeal or the Supreme Court, private court-appointed counsel may bill upon the filing of the brief and when the opinion of the court is finalized.

The committee substitute limits the amount of time that a private court-appointed attorney may charge for preparing billings to the state in cases based on an hourly rate – to no more than one half-hour for each invoice, unless the court approves otherwise.

The committee substitute provides that a private court-appointed attorney may not allow another attorney to appear at a critical stage in the case unless the other attorney is also in the registry of attorneys eligible for appointment by the court.

### **Public Defender Reimbursement for Defense of Local Ordinance Violations – Section 5**

Section 27.54(1), F.S., authorizes a public defender who represents defendants in certain local ordinance violations to seek recovery of the full cost of the services rendered on an hourly basis. The statute requires a reimbursement rate of \$50 per hour, unless an alternative rate is prescribed in the General Appropriations Act. Payments received are deposited in the Grants and Donations Trust Fund within the Justice Administrative Commission for appropriation by the Legislature.

#### ***Proposed Change***

The committee substitute provides that in cases involving violations of local ordinances, the county or municipality will pay for due-process services approved by the court (e.g., deposition costs) for the alleged violator. However, the person shall be charged a fee, which may be reduced to a lien, when he or she enters a plea or is found to be in violation of the ordinance.

### **Clerk of Court Service Charges – Section 6**

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

Currently, the clerk of court may charge for services rendered by the clerk in performing various duties (e.g., making copies of records). The clerk, however, must provide free copies of public records to the state attorney, the public defender, and guardians ad litem.

Section 28.24, F.S., specifies that court records and *official records* are property of the state and designates the clerk of the court as the custodian of such records. In at least two counties, however, official records are maintained by a separate county office rather than by the clerk.

#### ***Proposed Changes***

The committee substitute includes public guardians, attorneys ad litem, and court-appointed counsel paid by the state among the list of individuals whom the clerk of court may not charge for copies of public records.

The committee substitute also requires all clerks of the court to participate in the Comprehensive Case Information System by January 1, 2006.

In light of the fact that in at least two counties official records are maintained by a separate county office rather than by the clerk, the committee substitute recognizes that the appropriate custodian of such officials records may not be the clerk. However, the committee substitute specifies that the clerk is the custodian of all court records.

### **Use of Circuit/County Court for Local Ordinance Violations – Sections 7 & 22**

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

A county or municipality must pay a filing fee of \$10 when filing a local ordinance violation in circuit court and a \$10 fee when filing a local ordinance violation in county court.

#### ***Proposed Changes***

A county or municipality shall not be required to pay more than one \$10 filing fee for a single filing in circuit court, even if the filing contains multiple alleged violations of local ordinances. Further, no additional fee may be assessed for initiating an enforcement proceeding in circuit court for a local ordinance violation. The committee substitute also provides exceptions under which the \$10 filing fee does not apply.

The committee substitute makes similar changes with respect to filings in county court. (See **Section 22** of the committee substitute.)

### **Filing Fees for Appellate and Trial Proceedings – Section 8**

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

When appealing from a lower court to a circuit court, a person is required to pay a filing fee to the clerk of court of \$250. When appealing from a circuit court to a district court of appeal or the Supreme Court, in addition to any fees charged by those courts, a person must pay a \$50 to the clerk of the circuit court. If a person is deemed indigent, the clerk must defer payment of the fee (s. 28.241(2), F.S.).

#### ***Proposed Changes***

Under the committee substitute, when appealing from a lower court to a circuit court, a person would still be required to pay a filing fee to the clerk of court of \$250, the first \$50 of which the clerk shall remit to the Department of Revenue for deposit into the General Revenue Fund. In addition, one-third of the fee in excess of \$50 shall be remitted to the department for deposit in the Clerks of the Court Trust Fund.

When appealing from a circuit court to a district court of appeal or the Supreme Court, in addition to any fees charged by those courts, a person must pay a \$75 service charge to the clerk of the circuit court. The \$75 service charge is retained by the clerk.

If a person is deemed indigent, the clerk must defer payment of the service charge as well as the fee.

### **Transmittal of Clerk Collections to Department of Revenue – Section 9**

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

Moneys collected by the clerk of the court for subsequent distribution to a state entity must be transmitted electronically to the Department of Revenue (s. 28.245, F.S.)

#### ***Proposed Changes***

The committee substitute clarifies that the moneys to be transmitted to the department include only the funds collected by the clerk as part of its court-related functions. The committee substitute also specifies that the transmittal must occur by the 20th day of the month immediately following the month in which the funds are collected by the clerk.

### **Partial Payments/Payment Plans – Section 10**

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

Currently, an individual who wants to defer payment of fees, service charges, costs, or fines, and who the court determines is unable to make payment in full, is enrolled by the clerk in a payment program. Periodic payments are based on the person's ability to pay (s. 28.246, F.S.).

#### ***Proposed Changes***

The committee substitute revises the process for making partial payments. Under the committee substitute, a person must apply to the clerk of the court to enroll in a payment plan. If the court has determined that the person is indigent for cost, the clerk is required to enter into a payment plan with the person. The court may review the reasonableness of the plan. A monthly payment plan is deemed to correspond to a person's ability to pay if does not exceed 2 percent of the person's annual net income divided by 12.

### **Exemption from Court-Related Fees and Charges – Section 11**

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

Judges, state attorneys, guardians ad litem, and public defenders, acting in their official capacities, and state agencies are exempt from court-related fees and charges assessed by the clerk (s. 28.345, F.S.).

***Proposed Changes***

Court staff acting on behalf of judges, public guardians, attorneys ad litem, and court-appointed private counsel are added to the list of individuals and organizations exempt from court-related fees and charges assessed by the clerk.

**Florida Clerks of Court Operations Corporation – Section 12*****Present Situation***

The Florida Clerks of Court Operations Corporation is created under s. 28.35, F.S., to, among other functions, recommend to the Legislature changes in the various court-related fines and charges. The corporation also establishes the process for reviewing and certifying court-related budgets submitted by the clerks of the court. The corporation annually certifies to the Legislature, the Chief Financial Officer, and the Department of Revenue information such as the amount of the proposed budget certified for each clerk; the revenue projection supporting the clerk's budget; and the performance of each clerk in meeting performance standards (s. 28.35(3)(a)).

***Proposed Changes***

The corporation's annual certification to the Legislature, Chief Financial Officer, and Department of Revenue must include a report on any additional budget authority the corporation approves for a clerk under s. 28.36(6). Section 28.36(6), F.S., as created in section 13 of the committee substitute, allows the corporation to approve additional funding for a clerk of the court under specific circumstances.

**Budgets of the Clerks of Court – Section 13*****Present Situation***

Section 28.36, F.S., establishes the budget procedure for the court-related functions of the clerks of court.

***Proposed Changes***

The committee substitute authorizes the Clerks of Court Operations Corporation to approve funding for a clerk in excess of the clerk's maximum annual budget if the corporation determines that the funding is necessary in order for the clerk to carry out statutorily required functions and one of three conditions exists:

- The funding is reasonable in order to support new or additional functions of the clerk which are required by law or court-rule changes.
- The funding is reasonable in order to pay costs related to increases in the number of judges; or

- The funding is reasonable in order to pay for court-related expenses of the clerk resulting from increases in previously fixed expenses beyond the clerk's control or to meet increases resulting from contractual obligations entered into prior to July 1, 2004.

The committee substitute requires the corporation to document the facts supporting its approval of the additional funding and to notify the Chief Financial Officer.

#### **Clerk's Remittance of Excess Funds – Section 14**

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

Under s. 28.37(4), F.S., the clerk of the court is required to remit to the Department of Revenue the cumulative excess of all fees, service charges, court costs, and fines retained by the clerk over the amount needed to meet the clerk's approved budget amount.

##### ***Proposed Changes***

The committee substitute includes with in the funds the clerk of the court is required to remit any excess funds received by the clerk from the Department of Revenue's Clerk of the Court Trust Fund.

#### **Court Expert Witnesses – Section 15**

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

One of the elements of the state court system funded with state revenues is expert witnesses not requested by any party who are appointed by the court.

##### ***Proposed Changes***

This element of the state court system funded with state revenues is expanded to include any expert witnesses appointed by the court – regardless of whether or not they are requested by a party.

#### **State-Funded Services for Certain Indigent and Indigent-for-Cost Litigants – Section 16**

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

The statutes (s. 29.007, F.S.) prescribe the services to be funded by the state in a situation in which there is court-appointed counsel. Among these are: reasonable court reporting and transcription services; witnesses, including expert witnesses; mental health professionals; reasonable pre-trial consultation fees; and certain travel expenses. (See s. 29.007(3)-(7), F.S.)

### ***Proposed Changes***

The committee substitute provides that these services – court reporting and transcription services; witnesses, including expert witnesses; mental health professionals; reasonable pre-trial consultation fees; and certain travel expenses – apply in the following situations:

- When court-appointed counsel is appointed;
- When the litigant retains, or represented on a pro bono basis by, a private attorney and the court determines the litigant is indigent for costs; and
- The litigant is proceeding pro se and the court determines the litigant is indigent for costs at the trial or appellate level.

### **County Funding of Court-Related Functions – Sections 17 & 18**

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

Constitutional and statutory provisions govern the costs of the state judicial system that are to be funded by county governments. Under s. 29.008(1), F.S., counties are required to fund the cost of communications services, existing radio systems, and existing multiagency criminal justice information systems, as well as the cost of construction or lease of facilities for circuit and county courts, public defenders' offices, state attorneys' offices, guardian ad litem offices, and the offices of clerks performing court-related functions.

#### ***Proposed Changes***

The committee substitute expands county-funding responsibilities to include:

- facilities costs for the appellate division of the public defender's office in the county that is designated as the headquarters for the appellate district;
- wiring necessary for court-reporting services; and
- courthouse hearing rooms.

The committee substitute also creates new authority (s. 29.0081, F.S.), under which a county and the chief judge of a circuit may enter into an agreement for the county to fund personnel positions for the circuit. The agreement would have to provide for funding on a court fiscal-year basis and provide that the positions would terminate upon cessation of the county funding. The individuals employed under these agreements would be managed by the circuit rather than the county. The committee substitute specifies that an agreement does not obligate the state to fund any positions.

### **Due Process Funding/Deficits in State Attorney or Public Defender Budgets – Section 19**

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

Section 29.015, F.S., prescribes steps to be taken if a state attorney or public defender experiences a deficit in a contracted due process services appropriation category. If the office cannot locate surplus funds within the office, it must notify the Justice Administrative

Commission of the deficit. If other offices have a surplus, the JAC shall request a budget amendment to transfer funds among offices.

### ***Proposed Changes***

The committee substitute provides that if the surplus from other offices available to alleviate the deficit in an office must be in the same appropriations category. If that is the case, the JAC shall transfer the amount needed to resolve the deficit and notify the Governor and Legislature 14 days before the transfer, as provided under s. 216.177. When the surplus is from a different appropriations category, the JAC must pursue a budget amendment.

### **Cost-Sharing of Due Process Costs – Section 20**

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

In order to effectuate the Legislature's intent that state-funded due process services be provided in a cost-effective manner, s. 29.018, F.S., authorizes the state courts system, state attorneys, public defenders, and court-appointed counsel to contract to share costs such as court-reporting services, court interpreter and translation services, and court experts.

#### ***Proposed Changes***

The Justice Administrative Commission would participate in such cost-sharing agreements on behalf of court-appointed counsel, rather than having court-appointed counsel participate directly.

### **Provision of State-Funded Due Process Services – Section 21**

#### ***Proposed Changes***

The committee substitute creates a new section of law (s. 29.0185, F.S.) providing that due process services may not provided with state revenue unless:

- The individual on whose behalf the services are provided is eligible for court-appointed counsel because he or she is determined to be indigent, even if counsel is not ultimately appointed; or
- The services are provided under a court order.

### **Fines and Forfeitures for Offenses Tried in County Court – Section 23**

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

Fines and forfeitures arising from offense tried in county court shall be collected and accounted for by the clerk of the court (s. 34.191, F.S.). Fines from violations of municipal ordinances committed within a municipality shall be paid monthly to the municipality. All other fines shall be considered income of the clerk.

***Proposed Changes***

The committee substitute clarifies that fines from offenses occurring in the unincorporated area of a municipality having a consolidated government shall be paid monthly to the clerk of the county court.

**Access to Records in Proceedings Relating to Children – Section 24**

The committee substitute amends s. 39.0132, F.S., to provide that the Justice Administrative Commission may have access to court dockets in proceedings relating to children under chapter 39, F.S., as necessary to audit compensation of court-appointed attorneys. If the docket is insufficient for purposes of the audit, the JAC may petition the court for additional documentation.

**Guardian Ad Litem Appointment – Sections 25 & 26*****Present Situation***

Guardian ad litem are appointed under s. 39.822, F.S., to represent a child in child abuse, abandonment, or neglect judicial proceedings. Prior to the creation of a statewide Guardian Ad Litem Program in 2003, guardian ad litem were considered employees of the court. According to staff of the Statewide Guardian Ad Litem Office, the change in status of guardian ad litem has raised some questions about the statutory authority for the guardians to obtain certain agency and business records related to the best interests of the children.

***Proposed Changes***

The committee substitute specifies that, once a guardian ad litem (GAL) is appointed by the court, the guardian may have access to records, including confidential and exempt records, of agencies which are related to the best interests of the child. The committee substitute also directs organizations other than governmental agencies to allow the guardian ad litem to inspect and copy records.

The committee substitute also makes a technical correction to s. 39.821, F.S., to provide that the guardian ad litem program (rather than the chief judge of the circuit court) may request a federal criminal records check on a GAL applicant.

**Payment of Due Process Costs – Section 27*****Present Situation***

The clerk of the court is required to forward to the Justice Administrative Commission (JAC) – on behalf of the courts, state attorney, and public defender – an estimate of the funds needed to pay for witnesses (s. 40.29, F.S.).

### ***Proposed Changes***

The committee substitute revises the clerk's duty to specify that the estimate relates to ordinary witnesses – including, but not limited to, witnesses in civil traffic cases. Additionally, the JAC shall, based on the clerk's estimate, advance funds to pay for these witnesses using state funds specifically appropriated for this purpose.

### **Accounting of Funds for Payment of Due Process Costs – Section 28**

The committee substitute directs the clerk of the court to render to the public defender and the state attorney an accounting of moneys received and disbursed in ch. 40, F.S. Under this chapter moneys are drawn from the state treasury by the clerk of the court and disbursed for the payment of witnesses. The clerk of the court pays invoices approved and submitted by the state attorney and public defender.

### **Justice Administrative Commission and the Administrative Procedure Act – Section 29**

The committee substitute amends the statutory authority for the Justice Administrative Commission, s. 43.16, F.S., to specify that the Administrative Procedure Act (ch. 120, F.S.) does not apply to the JAC. The legislation also relieves the JAC of certain budget duties related to the Judicial Qualifications Commission and replaces these with duties related to the guardian ad litem program.

### **Roles of the Chief Judge and the Clerk of Court – Section 30**

The committee substitute delineates the respective roles of the chief judge and the clerk of court. The chief judge has authority to promote the prompt and efficient administration of justice. Meanwhile, the clerk provides court-related functions essential to the orderly administration of the judicial branch. The chief judge, after consulting with the clerk, shall determine the priority of services provided by the clerk. The clerk shall manage the performance of these services.

### **Court-Ordered Mediation – Section 31**

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

Chapter 44, F.S., governs mediation alternatives to judicial action. Under s. 44.108, F.S., a \$1 filing fee is levied to fund mediation and arbitration services. The chief judge shall maintain a list of mediators certified by the Supreme Court and registered for appointment. Nonvolunteer mediators are compensation according to Supreme Court rules. Under s. 44.102(4)(b), F.S., if a mediation program is funded under s. 44.108, F.S., the mediator may be compensated by the county or the parties.

#### ***Proposed Changes***

The committee substitute clarifies that the county or the parties may compensation nonvolunteer mediations when a mediation program is *not* funded under s. 44.108, F.S.

## **Funding of Mediation and Arbitration – Section 32**

### ***Present Situation***

When court-ordered mediation services are provided by a circuit's mediation program, the following fees apply:

- \$80 per person per session in family mediation when the parties' combined income is greater than \$50,000 but less than \$100,000;
- \$40 per person per session in family mediation when the parties' combined income is less than \$50,000; and
- \$40 per person per session in county court cases.

### ***Proposed Changes***

The committee substitute specifies that the rates listed above apply per *scheduled* session. The committee substitute also requires the clerk to submit to the chief judge a report on the amount of funds collected during each quarter. Further, the legislation specifies that no mediation fees shall be assessed in *residential* eviction cases, thus authorizing fees in other kinds of eviction cases.

## **Determination of Civil Indigence Status – Sections 33 & 34**

### ***Present Situation***

Indigency is currently determined pursuant to the provisions of section 27.52, F.S. This section, however, primarily relates to cases in which the indigent person is a defendant in a criminal action.

### ***Proposed Changes***

The committee substitute creates a separate section, s. 57.082, F.S., governing determinations of *civil* indigent status. The process is comparable to the process prescribed in revised s. 27.52, F.S., under section 3 of the committee substitute. Elements of the civil indigence determination included in the committee substitute are:

- Application to the clerk of the court. Unlike s. 27.52, F.S., there is no application fee.
- Determination of indigent status by the clerk using a standard that a person is indigent if his or her income is equal to or below 200 percent of the federal poverty level.
- An opportunity to have a court review the clerk's determination.
- Enrollment in a payment plan for fees and costs.
- Waiver of all service costs if the person's income is equal to or below 150 percent of the federal poverty level.

The committee substitute (section 33) amends s. 57.081, F.S., to make a conforming cross-reference to the new civil indigence statute.

**Witnesses; pay – Section 35**

The committee substitute amends s. 92.142, F.S., to remove the discretion of the court regarding whether to award per diem and travel to witnesses in a criminal matter who are required to appear in a county more than 50 miles from their homes. Under the committee substitute, these witnesses would be entitled to per diem and travel expenses at the same rate for state employees under s. 112.061, F.S., in lieu of any other witness fees.

**Exemption from Career Service for JAC Employees – Section 37**

The committee substitute amends the career services statute, s. 110.205, F.S., to provide that officers and employees of the following are not career service positions:

- Justice Administrative Commission;
- Office of the State Attorney;
- Office of the Public Defender;
- Regional offices of capital collateral counsel; and
- Statewide Guardian Ad Litem Office, including the circuit guardian ad litem programs.

**Payment of Public Funds into the Treasury – Section 38**

Section 116.01, F.S., provides that public officers shall pay moneys officially received into the state or county treasury, as appropriate, no later than 7 working days from the close of the week in which the officer received the funds. This committee substitute specifies, however, that, in the case of their court-related functions, clerks must remit those funds as provided under s. 28.245.

**Unclaimed Moneys – Section 39**

The committee substitute amends s. 116.21, F.S., to provide that unclaimed court-related funds collected or deposited by the clerk of the court which remain unclaimed must be deposited into the fine and forfeiture fund under s. 142.01, F.S.

**Court Records/Social Security Numbers and Other Data – Section 40*****Present Situation***

Section 119.07(6)(gg), F.S., allows specified social security numbers included in court files to be available for public inspection and copying unless redaction is requested by the holder of the numbers. Effective January 1, 2006, the clerks will be required to keep complete bank account, debit, charge, credit card numbers, and social security numbers confidential and exempt without any person having to request redaction. During the 2002 legislative session, the Legislature created the Study Committee on Public Records and charged it with studying issues of privacy in the electronic release of court records and other public records. As a result, the Florida Supreme Court has issued an administrative order halting the online publication of specified court records pending recommendations by a workgroup, whose recommendations are due July 1, 2005.

### ***Proposed Changes***

The committee substitute extends the deadline for the clerks to keep social security, bank account, debit, charge, and credit card numbers included in court files confidential and exempt from January 1, 2006, to January 1, 2007.

#### **Fine and Forfeiture Fund – Section 41**

The committee substitute amends the statute governing the fine and forfeiture fund used by the clerks in performing court-related functions (s. 142.01, F.S.). The committee substitute expands the fund sources to include proceeds from unclaimed bonds and unclaimed moneys.

#### **Electronic Remittance of Funds Collected by Clerk – Section 42**

The committee substitute provides that court-related collections of the clerk that the clerks are required to remit to the state must be electronically transmitted by the 20th day of the month immediately following the month in which the funds are collected.

#### **Disbursements – Section 43**

The committee substitute clarifies that court-related collections of the clerks of court are to be disbursed differently than the clerk's non-court-related collections.

#### **Investment of Surplus Funds – Section 44**

The committee substitute provides that s. 219.075, F.S., relating to investment of surplus funds of certain public officers, does not apply to the clerk of the court's court-related collections.

#### **Court Costs Added to Certain Traffic Penalties – Section 45**

The committee substitute clarifies an existing exception allowing certain court costs to be added to civil traffic penalties under s. 318.121, F.S.

#### **Civil Traffic Penalties – Section 46**

The committee substitute requires the clerk of the court to report to the Office of the State Courts Administrator, the chief judge, the Governor, and the Legislature on moneys collected under s. 318.18(13), F.S.

#### **Civil Penalties Received by County Courts – Section 47**

### ***Present Situation***

Current law requires that civil penalties received by a county court for the disposition of traffic infractions be distributed monthly to specified entities. One dollar from every civil penalty is remitted to the Department of Revenue for deposit into the Child Welfare Training Trust Fund, and another dollar is deposited into the Juvenile Justice Training Trust Fund. Of the remainder,

56.4% shall be deposited into the fine and forfeiture trust fund if the violation occurred within the unincorporated area of a county that is not within a special improvement district of the Seminole Indian Tribe or Miccosukee Indian Tribe. However, if the violation occurred within a municipality, only 5.6% is paid into the fine and forfeiture fund and the municipality keeps 50.8%.

### ***Proposed Changes***

The committee substitute specifies that 56.4% of the remainder of any civil penalties received by county court for violations occurring within the unincorporated area of a county having a consolidated government under s. 6(e), Article VIII of the State Constitution, are to be deposited into the fine and forfeiture fund.

### **Civil Traffic Infraction Hearing Officer Program – Sections 48, 49, & 65**

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

The Civil Traffic Infraction Hearing Officer Program is authorized under ss. 318.30-318.38, F.S. The intent of the program is to use the officers at the county level but under the supervision of the Supreme Court. The officers may accept pleas from and decide the guilt or innocence of persons charged with civil traffic infractions (s. 318.32, F.S.). Establishment of the program is at the discretion of the local government. Under s. 318.37, F.S., in any county that elects to establish a program, the court is required to develop an implementation plan for submission to the Office of State Courts Administrator. Funds are to be used for hearing officer salaries and other necessary expenses. A county electing to establish a program shall provide the necessary funding.

#### ***Proposed Changes***

The committee substitute deletes the counties' responsibility to pay for Civil Traffic Infraction Hearing Officer programs, as hearing officers are a state responsibility. The committee substitute repeals s. 318.37, F.S., relating to funding for the Civil Traffic Infraction Hearing Officer Program. It also eliminates language in s. 318.31, F.S., providing that appointment of a hearing officer shall be at the option of the county electing to establish a program.

### **Surrender and Return of License/Fees – Section 50**

The committee substitute amends s. 322.29, F.S., to conform the criminal fee for return of a license after a criminal offense to match the current \$47.50 fee for the civil offense.

### **Disposition of Fines, Penalties, and Forfeitures – Section 51**

The committee substitute includes moneys collected from the proceeds from unclaimed bonds within the moneys to be deposited into the fine and forfeiture fund.

**Bond Forfeiture; Remission of Forfeiture – Sections 52 & 53**

The committee substitute updates ss. 903.26 and 903.28, F.S., to reflect that the sheriff and the clerk of court, rather than the state attorney or the county attorney, carry out certain duties relating to discharging the forfeiture of bonds and remission of forfeiture.

**Appointment of Competency Experts – Sections 54, 55, 56, 63, & Others***Present Situation*

Current law authorizes the court to appoint no more than three nor fewer than two experts to determine issues of the mental condition of a defendant in a criminal case, including the issues of competency to proceed, insanity, and involuntary hospitalization or placement. While expert witnesses are clearly covered as part of the state's responsibility to fund due process costs, current law requires the county in which the indictment was found or information filed to fund expert witnesses. Further, current law only allows the court to pay for witnesses not requested by either party that are appointed by the court pursuant to an express grant of statutory authority.

*Proposed Changes*

The committee substitute's amendments are premised on the understanding that the determination of competency to proceed is akin to a jurisdictional issue for the courts, and, as such, the court system should be responsible for the payment of experts it appoints to determine competency. If insanity is asserted as an affirmative defense, however, the defense is responsible for payment of such expert. The committee substitute makes the following statutory changes regarding provisions relating to the appointment and payment of mental health experts:

- Amends s. 916.12, F.S., to allow the parties to stipulate to the findings of one competency expert, without further evaluation. The amendment to this section further allows the court to appoint no more than two additional experts to evaluate the defendant.
- Amends s. 916.115, F.S., to allow the court to pay for any expert that it appoints, using funds specifically appropriated on behalf of the state courts for due process costs. If a competency expert also addresses issues related to sanity as an affirmative defense, the court shall only pay for that portion of the expert's fees as relates to competency to proceed, with the remainder paid by the defense. The committee substitute requires the public defender to pay for any expert it retains, the Justice Administrative Commission to pay for any experts retained by court-appointed counsel, and the state attorney to pay for any expert it retains, including experts appointed by the court to ensure that the expert has access to the defendant.
- Amends s. 29.004, F.S., to allow the courts to pay for expert witnesses appointed by the court pursuant to an express grant of statutory authority.
- Amends both ss. 916.115 and 916.301, F.S., to clarify that payment of competency experts shall be the responsibility of the courts, rather than the county.
- Repeals s. 29.005(4), F.S., allowing the state attorney to fund mental health professionals required for Baker Act or competency proceedings involving indigents, but retains s. 29.005(3), F.S., regarding payment of experts.

- Amends s. 29.007, F.S., to allow the state to fund the appointment of mental health professionals expressly required by statute for the full adjudication of any civil case involving an indigent.

### **Lien for Payment of Attorney's Fees – Section 57**

Currently, the state has a lien in all property of a person who has received assistance from a public defender or the parent of an accused minor. Section 938.29(2)(b), F.S., provides that a judgment showing the name and residence of defendant-recipient or parent shall be filed for record in the clerk's office. The committee substitute revises this requirement to provide that the judgment shall be recorded in the public record without cost.

### **Acquitted Defendant/Liability for Costs – Section 58**

Under s. 939.06, provides that an acquitted defendant shall not be liable for cost or fees of the court and may receive a refund of costs that he or she paid. The committee substitute adds a requirement that, in order to receive the refund, the defendant must request it from the Justice Administrative Commission and must attached to the request an order from the court demonstrating the right to the refund.

### **Court Records – Section 59**

The committee substitute authorizes the Justice Administrative Commission to inspect and copy official court records relating to a child in a case involving delinquency and the Interstate Compact on Juveniles.

### **Jurisdiction in Juvenile Delinquency Matters – Section 60**

#### *Present Situation/Proposed Changes*

Section 985.201, F.S., governs jurisdiction in cases in which a child is alleged to have committed a delinquent act or violation of law. The court is authorized to retain jurisdiction over a child and the child's parent when the court has ordered the payment of restitution to the victim, until the restitution order is satisfied or until the court orders otherwise. The committee substitute further specifies that, in order to retain jurisdiction, the court must enter a restitution order on or prior to the date the court's jurisdiction would cease. This change may help the court to collect restitution from a juvenile who has not paid an obligation by the age of majority.

### **Compensation of Traffic Court Witnesses – Section 61**

The committee substitute creates an unnumbered section of the Florida Statutes specifying that a person who secures the presence of a witness in traffic court bears the costs of calling the witness, including witness fees. If the witness is required to testify on the prosecution's behalf, the state attorney's office shall bear the costs.

**Recovery of Expenditures for State-Funded Services – Section 62**

The committee substitute directs the trial court administrator to recover expenditures for state-funded services when those services have been furnished to a user of state court system. The chief judge shall establish the rate of compensation for these services.

**Article V Indigent Services Advisory Board – Section 64**

The committee substitute provides for the repeal of the board (s. 29.014, F.S.) effective July 1, 2006. Conforming changes are made by the committee substitute in s. 92.231, F.S., which requires the board to make certain recommendations to the Legislature relating to expert witness fees. (See **Section 36.**)

**Effective Date – Section 66**

Except as otherwise specifically provided in the legislation, the committee substitute has an effective date of July 1, 2005.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

Revisions to s. 28.241(2), F.S. would increase the service charge collected by the clerk of court for appellate filings (see table below). Revenues to the clerk in excess of their respective maximum annual budgets are deposited in the Clerk of Court Trust Fund in the Department of Revenue. If such revenues are not used for the annual budgets approved by the Clerk of Court Operations Corporation, they are deposited in the General Revenue Fund in January of each year following the end of the county fiscal year. Revisions to s. 34.191, F.S., clarify that for the purposes of the distribution of fines from traffic tickets, Miami-Dade is a county not a municipality. This would result in revenues deposited in the Clerk of Court Trust Fund in the Department of Revenue (see table below). If such revenues are not used for the clerks' annual budgets, they are deposited in the General Revenue Fund in January of each year following the end of the county fiscal year.

Fee	Entity Receiving Fee	FY 2005-06
Appellate service charge	Clerk of Court/State GR	800,000
Traffic ticket revenue	Clerk of Court/State GR	7,500,000
Total		8,300,000

In addition to the revenues described above, the committee substitute would increase revenues to the state in an insignificant or indeterminate amount in the following areas. Revisions to s. 322.29, F.S., increase the service fee for the reinstatement of driver licenses. The additional revenue is deposited in the Highway Safety Operating Trust Fund in the Department of Highway Safety and Motor Vehicles. The committee substitute also allows the court to recover the cost of services provided to private counsel.

Further, the legislation specifies, in amendments to s. 44.108, F.S., that no mediation fees shall be assessed in *residential* eviction cases, thus authorizing fees in other kinds of eviction cases.

**B. Private Sector Impact:**

Private attorneys who receive certain services from the court will now have to pay for such services. State-paid dependency counsel would benefit from the revisions to s. 27.5304, F.S., that allow more frequent billings.

The committee substitute provides that in cases involving violations of local ordinances, the county or municipality will pay for due-process services approved by the court (e.g., deposition costs) for the alleged violator. However, the person shall be charged a fee, which may be reduced to a lien, when he or she enters a plea or is found to be in violation of the ordinance.

**C. Government Sector Impact:**

**State Government**

Entity	FY 2005-06 Recurring GR	FY 2005-06 Non-Recur. GR
Justice Administrative Comm. For Increased Dependency Case Billings	355,626	25,014
State Attorney for Traffic Witness Fees	800,000	0
Total	1,155,626	25,014

In addition to the fiscal impact on the state described above, there are several sections of the committee substitute that would result in a fiscal impact that is insignificant or indeterminate. Revisions to s. 27.40, F.S., would have an insignificant impact on the Justice Administrative Commission and the Indigent Services Committees by requiring the collection of additional data on the characteristics of court appointed counsel.

Revisions to s. 28.36, F.S., allow the Clerk of the Court Operations Corporation to approve increases to the clerks' annual budgets for performing new duties prescribed by law or court rule, for costs associated with increases in the number of judges or magistrates, and for any other costs outside the control of the clerk. The use of this authority could result in a significant loss of revenue to the General Revenue Fund. The loss of revenue to the state cannot be determined. Revisions to s. 939.06, F.S., require the state to reimburse acquitted indigent defendants the cost of the \$40 application fee for services of a public defender.

### **Local Government**

In addition to the revenue generated for the clerk of the court described in A. Tax/Fee Issues above, several sections of the committee substitute create a fiscal impact or loss of revenue to local governments, including the clerk of court, that are insignificant or indeterminate. Revisions to s. 28.24, F.S., prohibit the clerk of court from assessing a service charge to the guardian ad-litem and other state entities before the court. Revisions to s. 28.345, F.S., clarify that state entities are exempt from paying certain court fees to the clerk of the court. Revisions to s. 372.72, F.S., require the clerk to pay for certain advertisements regarding unclaimed bonds. Revisions to s. 903.28, F.S., allow the clerk to contract with and reimburse the state attorney for assistance in bond forfeiture proceedings.

Other changes could result in a positive fiscal impact on the counties. Revisions to s. 44.102, F.S., provide that mediation fees for indigent clients are not the responsibility of the county.

### **VI. Technical Deficiencies:**

None.

### **VII. Related Issues:**

None.

## **VIII. Summary of Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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