



Justice Appropriations Subcommittee

**Tuesday, February 13, 2024
9:00 AM – 11:00 AM
17 HOB (Morris Hall)**

MEETING PACKET

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Justice Appropriations Subcommittee

Start Date and Time: Tuesday, February 13, 2024 09:00 am
End Date and Time: Tuesday, February 13, 2024 11:00 am
Location: Morris Hall (17 HOB)
Duration: 2.00 hrs

Consideration of the following bill(s):

CS/HB 729 Lethality Assessments by Criminal Justice Subcommittee, Baker, Bartleman
HB 1077 Clerks of Court by Botana
HB 1443 Electronic Access to Official Records by Persons-Mulicka
HB 1449 Reclassification of Criminal Penalties by Michael

To submit an electronic appearance form, and for information about attending or testifying at a committee meeting, please see the "Visiting the House" tab at www.myfloridahouse.gov.

NOTICE FINALIZED on 02/09/2024 4:16PM by RSD

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 729 Lethality Assessments
SPONSOR(S): Criminal Justice Subcommittee, Baker
TIED BILLS: **IDEN./SIM. BILLS:** SB 638

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	14 Y, 0 N, As CS	Leshko	Hall
2) Justice Appropriations Subcommittee		Saag	Keith
3) Judiciary Committee			

SUMMARY ANALYSIS

Section 741.29, F.S., requires a law enforcement officer who investigates an alleged incident of domestic violence (DV) to: assist the victim in obtaining medical treatment if such treatment is required as a result of the alleged incident to which the officer responds; advise the victim that there is a DV center where the victim may receive services; give the victim immediate notice of her or his available legal rights and remedies; and obtain a written statement from the victim and any witnesses, if possible.

In 2005, in order to enhance collaboration between law enforcement agencies and DV service providers, the Maryland Network Against Domestic Violence developed and implemented the Lethality Assessment Program, including a lethality screen and protocols. The "lethality screen" is an 11-item questionnaire that assesses a victim's level of risk for being killed by the perpetrator of the alleged DV offense. If, after administering the lethality screen, the officer determines that a victim is at "high risk," meaning the victim is at an increased risk of homicide, the officer conveys to the victim the danger she or he is in and connects the victim with a DV hotline for the purpose of developing a safety plan. As of December 2023, Connecticut, Maryland, North Carolina, Oklahoma, Pennsylvania, and Wisconsin utilize the Lethality Assessment Program. Florida law enforcement agencies do not currently use a statewide lethality screen or assessment.

CS/HB 729 amends s. 741.29, F.S., to require a law enforcement officer who investigates an alleged incident of DV to administer a lethality assessment if the allegation of DV is made against an intimate partner, regardless of whether an arrest is made, and include the results of the assessment in his or her written police report. The bill provides a list of 12 questions an officer must ask a victim when conducting a lethality assessment and requires the officer to advise the victim of the results of the assessment and refer the victim to the nearest locally certified DV center if the victim meets certain criteria. The bill specifies that if a victim refuses, or is unable, to provide sufficient information to complete the lethality assessment, the officer must document the lack of an assessment in the written police report and refer the victim to the nearest locally certified DV center.

The bill further requires the Florida Department of Law Enforcement (FDLE) to consult with the Department of Children and Families and at least one DV advocacy organization to develop the policies, procedures, and training necessary to implement a statewide lethality assessment and to establish a statewide process for referring a victim to a certified DV center. The bill requires FDLE to adopt a statewide lethality assessment form by January 1, 2025. The bill requires all law enforcement officers who respond to or investigate crimes of DV to be trained on the policies and procedures for administering a lethality assessment by October 1, 2026, and prohibits an officer from administering such an assessment before he or she has completed such training. The bill requires the training to be accessible to law enforcement officers in an online format.

The bill may have a negative fiscal impact on state expenditures due to workload associated with implementing the provisions of the bill. See Fiscal Analysis & Economic Impact Statement.

The bill provides an effective date of July 1, 2024.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0729b.JUA

DATE: 2/12/2024

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Domestic Violence

Domestic violence means any criminal offense resulting in the physical injury or death of one family or household member¹ by another family or household member, including:

- Assault;²
- Aggravated assault;³
- Battery;⁴
- Aggravated battery;⁵
- Sexual assault;⁶
- Sexual battery;⁷
- Stalking;⁸
- Aggravated stalking;⁹
- Kidnapping;¹⁰ and
- False imprisonment.^{11,12}

In 2020,¹³ Florida law enforcement agencies received 106,615 domestic violence reports,¹⁴ resulting in 63,345 arrests.¹⁵ Of those 106,615 reports, 20,735 involved a spouse, 29,663 involved a cohabitant, and 20,142 involved a person with an undefined relationship with the victim.¹⁶ Additionally, in 2020, 15

¹ "Family or household member" means spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit. S. 741.28(3), F.S.

² "Assault" means an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent. S. 784.011(1), F.S.

³ "Aggravated assault" means an assault with a deadly weapon without intent to kill or with intent to commit a felony. S. 784.021(1), F.S.

⁴ "Battery" means the actual and intentional touching or striking of another against his or her will or intentionally causing bodily harm to another person. S. 784.03(1)(a), F.S.

⁵ "Aggravated battery" means a battery in which the offender intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement; used a deadly weapon; or victimized a person the offender knew or should have known was pregnant. S. 784.045(1), F.S.

⁶ "Sexual assault" has the same meaning as sexual battery.

⁷ "Sexual battery" means oral, anal, or female genital penetration by, or in union with, the sexual organ of another or the anal or female genital penetration of another by any object, but does not include an act done for a bona fide medical purpose. S. 794.011(1)(j), F.S.

⁸ "Stalking" means willfully, maliciously, and repeatedly following, harassing, or cyberstalking another. S. 784.048(2), F.S.

⁹ "Aggravated stalking" means willfully, maliciously, and repeatedly following, harassing, or cyberstalking another and making a credible threat to that person. S. 784.048(3), F.S.

¹⁰ "Kidnapping" means forcibly, secretly, or by threat confining, abducting, or imprisoning another against his or her will and without lawful authority, with the intent to: hold for ransom or reward or as a shield or hostage; commit or facilitate commission of any felony; inflict bodily harm upon or terrorize the victim or another person; or interfere with the performance of any governmental or political function. S. 787.01(1)(a), F.S.

¹¹ "False imprisonment" means forcibly, by threat, or secretly confining, abducting, imprisoning, or restraining another person without lawful authority and against his or her will. S. 787.02(1)(a), F.S.

¹² S. 741.28(2), F.S.

¹³ The Florida Department of Law Enforcement (FDLE) has not issued an updated report specifically detailing domestic violence offenses since 2020.

¹⁴ The reports include offenses of murder, manslaughter, rape, fondling, aggravated assault, aggravated stalking, simple assault, threats or intimidation, and stalking.

¹⁵ FDLE, *Reported Domestic Violence Offenses: Relationship of Victim to Offender for Florida, 1992-2020*,

https://www.fdle.state.fl.us/CJAB/UCR/Annual-Reports/UCR-Domestic-Violence/03/DV_Victim_Totals_by_Relationship.aspx (last visited Feb. 1, 2024).

¹⁶ *Id.*

percent of all murders in Florida were related to domestic violence.^{17,18} Florida's Computerized Criminal History recorded 68,109 domestic violence offenses in 2022.¹⁹

Furthermore, during fiscal year 2022-2023, Florida's 41 certified domestic violence centers:²⁰

- Provided emergency shelter to 12,836 individuals;
- Provided outreach services to 36,324 individuals;
- Answered 80,493 crisis hotline calls;
- Completed 183,902 safety plans with victims; and
- Provided 418,501 direct service information and referrals to victims, family members, and individuals seeking services.²¹

Investigations

Section 741.29, F.S., requires a law enforcement officer who investigates an alleged incident of domestic violence to:

- Assist the victim in obtaining medical treatment if such treatment is required as a result of the alleged incident to which the officer responds;
- Advise the victim that there is a domestic violence center where the victim may receive services;
- Give the victim immediate notice of her or his available legal rights and remedies;²² and
- Obtain a written statement from the victim and any witnesses, if possible.²³

Additionally, an officer investigating a domestic violence incident is required to make a written police report, regardless of whether an arrest is made.²⁴ The report must include:

- A description of physical injuries observed, if any;
- The grounds for not arresting anyone or for arresting two or more parties, if applicable; and
- A statement which indicates that a copy of the legal rights and remedies notice was given to the victim.²⁵

The officer's agency must provide the written report, along with a narrative description of the domestic violence incident, to the nearest locally certified domestic violence center within 24 hours after the agency's receipt of the report.²⁶

Fatality Review Teams

Section 741.316, F.S., authorizes the establishment of domestic fatality review (DFR) teams at the local, regional, and state level. A DFR team is an organization that is composed of representatives from and including:

¹⁷ FDLE, *Florida Statewide Reported Violent Crime, by Offense and Year, 1971-2020*, https://www.fdle.state.fl.us/CJAB/UCR/Annual-Reports/UCR-Offense-Data/05/Total_Violent_Crime.aspx (last visited Feb. 1, 2024).

¹⁸ FDLE, *Reported Domestic Violence in Florida: Victim Totals by Offense, 1992-2020*, https://www.fdle.state.fl.us/CJAB/UCR/Annual-Reports/UCR-Domestic-Violence/04/DV_Victim_Totals_by_Offense.aspx (last visited Feb. 1, 2024).

¹⁹ Florida Department of Health, *Domestic Violence Offenses, Rate per 100,000 Population, 2022*, <https://www.flhealthcharts.gov/ChartsDashboards/rdPage.aspx?rdReport=NonVitalIndNoGrp.TenYrsRpt&cid=312> (last visited Feb. 1, 2024). (Florida's Computerized Criminal History is fingerprint-based, and unless prints were taken at a later stage in the criminal justice process, does not include reports involving a notice to appear, direct files, or sworn complaints where no physical arrest was made.)

²⁰ Section 39.902(2), F.S., defines "domestic violence center" as an agency that provides services to victims of domestic violence as its primary mission.

²¹ Florida Department of Children and Families (DCF), Office of Domestic Violence, *Annual Report January 2024*, <https://www.myflfamilies.com/sites/default/files/2023-12/Office%20of%20Domestic%20Violence%20Annual%20Report%20to%20the%20Legislature%202022%20to%202023.pdf> (last visited Feb. 1, 2024).

²² S. 741.29(1), F.S.

²³ S. 741.29(2), F.S.

²⁴ The report must be given to the officer's supervisor and filed with the law enforcement agency in a manner that will permit data on domestic violence cases to be compiled. *Id.*

²⁵ S. 741.29(2)(a-c), F.S.

²⁶ S. 741.29, F.S.

- Law enforcement agencies.
- State attorneys' offices.
- Medical examiners' offices.
- Certified domestic violence centers.
- Child protection service providers.
- Court administration offices.
- Clerks of court offices.
- Victim services programs.
- Child death review teams.
- The business community.
- County probation or corrections agencies.
- Any person who has knowledge regarding domestic violence fatalities, nonlethal incidents of domestic violence, or suicide, including research, policy, law, and other matters connected with fatal incidents.
- Other representatives as determined by the review team.²⁷

The DFR teams review fatal and near-fatal incidents of domestic violence, related domestic violence matters, and suicides in order to identify statewide trends, systemic gaps, and potential solutions that allow for increased early intervention, safety, and justice for victims and their children, that hold perpetrators accountable for their violence through coordinated community response efforts, and that prevent the likelihood of domestic violence fatalities in the future.²⁸ The review may include a survey of:

- Events leading up to domestic violence incidents;
- Available community resources;
- Current laws and policies;
- Actions taken by systems and individuals related to the incident and the parties;
- Public records and records for which public record exemptions are granted; and
- Any information or action deemed relevant by the team.²⁹

Additionally, DFR teams utilize knowledge about coercive control tactics used by offenders and indicators that a victim is at an increased risk of domestic violence homicide to guide the formulation of recommendations relating to perpetrator accountability and safety measures for victims and their children.³⁰

In 2022, the Statewide Domestic Violence Fatality Review Team reviewed 27 domestic violence homicides and attempted homicides. Approximately 45 percent of those homicides or attempts were committed by an intimate partner, 37 percent by a spouse, and 15 percent by a former intimate partner.³¹

Lethality Assessment Program

In 2005, in order to enhance collaboration between law enforcement agencies and domestic violence service providers to better attend to the safety needs of victims of intimate partner violence (IPV), the Maryland Network Against Domestic Violence developed and implemented the Lethality Assessment

²⁷ S. 741.316(1)(a)–(m), F.S.

²⁸ DCF, *supra*, at 21.

²⁹ S. 741.316(2), F.S.

³⁰ DCF, *supra*, at 21.

³¹ *Id.*

Program, which includes a lethality screen³² and protocols.^{33,34} The “lethality screen” is an 11-item questionnaire that assesses a victim’s level of risk for being killed by the perpetrator of an alleged IPV offense. The following 11 questions represent the factors found to be the most predictive of homicide in relationships with IPV based on a six-year study of homicides and attempted homicides in 11 cities.³⁵

- Has the alleged perpetrator (he/she) ever used a weapon against you or threatened you with a weapon?
- Has he/she threatened to kill you or your children?
- Do you think he/she might try to kill you?
- Does he/she have a gun or can he/she get one easily?
- Has he/she ever tried to choke you?
- Is he/she violently or constantly jealous or does he/she control most of your daily activities?
- Have you left him/her or separated after living together or being married?
- Is he/she unemployed?
- Has he/she ever tried to kill himself/herself?
- Do you have a child that he/she knows is not his/hers?
- Does he/she follow or spy on you or leave threatening messages?³⁶

The lethality screen is suggested to be used when a past or current intimate partner relationship is involved and there is a “manifestation of danger” evidenced by at least one of the following:

- The officer believes that an assault or other violent act has occurred, whether or not there was probable cause for arrest;
- The officer is concerned for the victim’s safety once the officer leaves the incident scene;
- The officer is responding to a domestic violence call from a victim or at a location where IPV has occurred in the past; or
- The officer has a gut feeling that the victim is in danger.³⁷

If, after administering the lethality screen, the officer determines that a victim is at “high risk,” meaning the victim is at an increased risk of homicide, the protocol referral is triggered. The “protocol referral” consists of the following:

- The officer conveys to the victim the danger that she or he is in and that people in similar situations have been killed.
- The officer calls the local 24-hour domestic violence hotline at the collaborating advocacy organization for information on planning for the victim’s safety and gives the victim the choice of speaking directly with the hotline advocate.
- The officer provides the hotline advocate with basic information to assist in developing safety suggestions for the victim.
- If the victim chooses not to speak directly to the hotline advocate, the hotline advocate provides the officer with some immediate safety planning tips for the next 24 hours to share with the victim.³⁸

³² Maryland Network Against Domestic Violence (MNADV), *Domestic Violence Lethality Screen for First Responders*, <https://nij.ojp.gov/sites/g/files/xyckuh171/files/media/document/domestic-violence-screening.pdf> (last visited Feb. 1, 2024).

³³ National Institute of Justice, *Research Designs in the Real World: Testing the Effectiveness of an Intimate Partner Violence Intervention*, <https://nij.ojp.gov/topics/articles/research-designs-real-world-testing-effectiveness-intimate-partner-violence> (last visited Feb. 1, 2024).

³⁴ MNADV, *Position Paper: Effectiveness of the Lethality Assessment Program*, <https://www.mnadv.org/wp-content/uploads/2021/02/LAP-Effectiveness-Position-Paper.pdf> (last visited Feb. 1, 2024).

³⁵ *Id.*

³⁶ MNADV, *supra*, at 32.

³⁷ National Institute of Justice, *A Closer Look at the Lethality Assessment Program*, <https://nij.ojp.gov/topics/articles/closer-look-lethality-assessment-program> (last visited Feb. 1, 2024).

³⁸ *Id.*

The victim is considered “high risk” if she or he:

- Provides a positive response to any of the first three questions listed above;
- Provides negative responses to the first three questions, but positive responses to at least four of the remaining questions; or
- If the officer believes the victim is in a potentially lethal situation based on her or his answer to the questions – Is there anything else that worries you about your safety? If yes, what worries you?³⁹

A 2014 study conducted in Oklahoma found the lethality screen to be highly sensitive, meaning 92 to 93 percent of women who screened as high-risk actually experienced near-fatal violence in the future.⁴⁰

As of December 2023, Connecticut, Maryland, North Carolina, Oklahoma, Pennsylvania, and Wisconsin utilize the Lethality Assessment Program.⁴¹ Florida law enforcement agencies do not currently use a statewide lethality screen or assessment.

Law Enforcement Training

Sections 943.11 and 943.12, F.S., create the Criminal Justice Standards and Training Commission (CJSTC) and require CJSTC to establish uniform minimum training standards for the training of officers in the various criminal justice disciplines.⁴² Section 943.13, F.S., requires all law enforcement officer applicants to complete a CJSTC-approved basic recruit training program.⁴³ Section 943.171, F.S., requires every basic skills course necessary for a law enforcement officer’s initial certification to include at least six hours of training in handling domestic violence cases. Such training must include training in the recognition and determination of the primary aggressor in domestic violence cases and issues involved in child-to-parent cases.

Effect of Proposed Changes

CS/HB 729 amends s. 741.29, F.S., to require a law enforcement officer who investigates an alleged incident of domestic violence to administer a lethality assessment if the allegation of domestic violence is made against an intimate partner, regardless of whether an arrest is made, and include the results of the assessment in his or her written police report.

The bill requires the Florida Department of Law Enforcement (FDLE) to consult with the Department of Children and Families and at least one domestic violence advocacy organization to develop the policies, procedures, and training necessary to implement a statewide lethality assessment. The bill further requires that such policies, procedures, and training provide how to determine if a victim and an aggressor are intimate partners and establish a statewide process for referring a victim to a certified domestic violence center. The bill requires FDLE to adopt a statewide lethality assessment form that includes all enumerated questions by January 1, 2025.

The bill requires all law enforcement officers who respond to or investigate crimes of domestic violence to be trained on the policies and procedures for administering a lethality assessment by October 1, 2026, and prohibits an officer from administering such an assessment before he or she has completed such training. The bill requires the training to be accessible to law enforcement officers in an online format.

³⁹ MNADV, *supra*, at 32.

⁴⁰ MNADV, *supra*, at 34.

⁴¹ National Criminal Justice Association, *How Lethality Assessments Can Help Prevent Domestic Violence*, Dec. 7, 2023, <https://www.ncja.org/crimeandjusticeneeds/how-lethality-assessments-can-help-prevent-domestic-violence#:~:text=Connecticut%2C%20Maryland%2C%20North%20Carolina%2C%20Oklahoma%2C%20Pennsylvania%2C%20Virginia%20and,assessment%20and%20support%20them%20with%20training%20and%20resources.> (last visited Feb. 1, 2024).

⁴² S. 943.12(5), F.S.

⁴³ S. 943.13(9), F.S.

The bill requires an officer to ask a victim the following 12 questions, in the same or similar wording and in the same order, when conducting a lethality assessment:

- Did the aggressor ever use a weapon against you or threaten you with a weapon?
- Did the aggressor ever threaten to kill you or your children?
- Do you believe the aggressor will try to kill you?
- Has the aggressor ever choked you or attempted to choke you?
- Does the aggressor have a gun or could the aggressor easily obtain a gun?
- Is the aggressor violent or constantly jealous, or does the aggressor control most of your daily activities?
- Did you leave or separate from the aggressor after you were living together or married?
- Is the aggressor unemployed?
- To the best of your knowledge, has the aggressor ever attempted suicide?
- Do you have a child whom the aggressor believes is not the aggressor's biological child?
- Has the aggressor ever followed, spied on, or left threatening messages for you?
- Is there anything else that worries you about your safety and, if so, what worries you?

The bill requires a law enforcement officer to advise a victim of the results of the assessment and refer the victim to the nearest locally certified domestic violence center if:

- The victim answers affirmatively to any of the first four questions;
- The victim answers negatively to the first four questions, but answers affirmatively to at least four of the next seven questions; or
- As a result of the victim's response to the 12th question, the law enforcement officer believes the victim is in a potentially lethal situation.

The bill specifies that if a victim refuses, or is unable, to provide sufficient information to complete the lethality assessment, the officer must document the lack of such an assessment in the written police report and refer the victim to the nearest locally certified domestic violence center. However, the bill prohibits the officer from including any information regarding the domestic violence center to which the victim was referred in a probable cause statement, written police report, or incident report.

The bill provides an effective date of July 1, 2024.

B. SECTION DIRECTORY:

Section 1: Amends s. 741.29, F.S., relating to domestic violence; investigation of incidents; notice to victims of legal rights and remedies; reporting.

Section 2: Reenacts s. 39.906, F.S., relating to referral to centers and notice of rights.

Section 3: Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have a negative fiscal impact on FDLE expenditures due to workload associated with developing and implementing the required policies, procedures, and training. FDLE indicates the need for one new position, training and curriculum development costs, and additional information technology system enhancements to implement provisions of the bill.⁴⁴

⁴⁴ Florida Department of Law Enforcement, Agency Analysis of 2024 HB 729, pp. 3-6 (Dec. 6, 2023).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes FDLE to develop policies and procedures to:

- Implement the lethality assessment.
- Provide how to determine if a victim and an aggressor are intimate partners.
- Establish a statewide process for referring a victim to a certified domestic violence center.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On January 30, 2024, the Criminal Justice Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Required FDLE to adopt a statewide lethality assessment form by January 1, 2025.
- Changed the date by which specified law enforcement officers must be trained by from July 1, 2025, to October 1, 2026.
- Specified that the policies, procedures, and training developed must:
 - Provide how to determine if a victim and an aggressor are intimate partners.
 - Establish a statewide process for referring a victim to a certified domestic violence center.
- Added two questions to the lethality assessment.
- Added criteria used to determine when a law enforcement officer should refer a victim to a locally certified domestic violence center.
- Made technical changes.

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

1 A bill to be entitled
2 An act relating to lethality assessments; amending s.
3 741.29, F.S.; requiring law enforcement officers who
4 investigate an alleged incident of domestic violence
5 to administer a lethality assessment under certain
6 circumstances; requiring the Department of Law
7 Enforcement to consult with specified entities to
8 develop and implement a statewide lethality
9 assessment; requiring certain policies, procedures,
10 and training for specified purposes; requiring the
11 department to adopt a specified form by a date
12 certain; requiring that training on administering
13 lethality assessments and the adopted form be
14 available to law enforcement officers in an online
15 format; requiring certain law enforcement officers to
16 be trained in administering lethality assessments by a
17 specified date; prohibiting law enforcement officers
18 from administering a lethality assessment without the
19 required training; prohibiting law enforcement
20 officers from administering a lethality assessment if
21 they have not completed lethality assessment training;
22 requiring law enforcement officers administering a
23 lethality assessment to ask a victim specified
24 questions; requiring law enforcement officers to
25 advise the victim of the results of the lethality

26 assessment and refer the victim to certain domestic
 27 violence centers under certain circumstances;
 28 requiring law enforcement officers to document in the
 29 written police report a victim's refusal or inability
 30 to provide information necessary for the lethality
 31 assessment; prohibiting law enforcement officers from
 32 disclosing in certain statements and reports the
 33 domestic violence center to which the victim was
 34 referred; requiring that written police reports for
 35 domestic violence incidents include the score of the
 36 lethality assessment, if one was administered; making
 37 technical changes; reenacting s. 39.906, F.S.,
 38 relating to referral to domestic violence centers and
 39 notice of rights, to incorporate the amendment made to
 40 s. 741.29, F.S., in a reference thereto; providing an
 41 effective date.

42

43 Be It Enacted by the Legislature of the State of Florida:

44

45 Section 1. Section 741.29, Florida Statutes, is amended to
 46 read:

47 741.29 Domestic violence; investigation of incidents;
 48 notice to victims of legal rights and remedies; reporting.—

49 (1) Any law enforcement officer who investigates an
 50 alleged incident of domestic violence shall:

51 (a) Assist the victim to obtain medical treatment if such
 52 is required as a result of the alleged incident to which the
 53 officer responds;~~-. Any law enforcement officer who investigates~~
 54 ~~an alleged incident of domestic violence shall~~

55 (b) Advise the victim of such violence that there is a
 56 domestic violence center from which the victim may receive
 57 services;~~-~~

58 (c) Administer a lethality assessment consistent with the
 59 requirements established in subsection (2) if the allegation of
 60 domestic violence is against an intimate partner, regardless of
 61 whether an arrest is made; and

62 (d) ~~The law enforcement officer shall~~ Give the victim
 63 immediate notice of the legal rights and remedies available on a
 64 standard form developed and distributed by the department. As
 65 necessary, the department shall revise the Legal Rights and
 66 Remedies Notice to Victims to include a general summary of s.
 67 741.30 using simple English as well as Spanish, and shall
 68 distribute the notice as a model form to be used by all law
 69 enforcement agencies throughout this ~~the~~ state. The notice must
 70 ~~shall~~ include:

71 1.(a) The resource listing, including telephone number,
 72 for the area domestic violence center designated by the
 73 Department of Children and Families; and

74 2.(b) A copy of the following statement:
 75

76 "IF YOU ARE THE VICTIM OF DOMESTIC VIOLENCE, you may
 77 ask the state attorney to file a criminal complaint.
 78 You also have the right to go to court and file a
 79 petition requesting an injunction for protection from
 80 domestic violence which may include, but need not be
 81 limited to, provisions which restrain the abuser from
 82 further acts of abuse; direct the abuser to leave your
 83 household; prevent the abuser from entering your
 84 residence, school, business, or place of employment;
 85 award you custody of your minor child or children; and
 86 direct the abuser to pay support to you and the minor
 87 children if the abuser has a legal obligation to do
 88 so."

89
 90 (2) The department shall consult with the Department of
 91 Children and Families and at least one domestic violence
 92 advocacy organization to develop the policies, procedures, and
 93 training necessary for implementation of a statewide evidence-
 94 based lethality assessment. Such policies, procedures, and
 95 training must provide how to determine if a victim and an
 96 aggressor are intimate partners and must establish a statewide
 97 process for referring a victim to a certified domestic violence
 98 center. By January 1, 2025, the department must adopt a
 99 statewide lethality assessment form that includes all of the
 100 information in paragraph (b). Training on how to administer a

101 lethality assessment and the adopted lethality assessment form
102 must be accessible to a law enforcement officer in an online
103 format.

104 (a) By October 1, 2026, all law enforcement officers who
105 respond to or investigate crimes of domestic violence must be
106 trained on the policies and procedures for administering a
107 lethality assessment. A law enforcement officer may not
108 administer a lethality assessment to a victim if the officer has
109 not received training on administering a lethality assessment.

110 (b) To administer a lethality assessment, a law
111 enforcement officer shall ask the victim, in the same or similar
112 wording and in the same order, all of the following questions:

113 1. Did the aggressor ever use a weapon against you or
114 threaten you with a weapon?

115 2. Did the aggressor ever threaten to kill you or your
116 children?

117 3. Do you believe the aggressor will try to kill you?

118 4. Has the aggressor ever choked you or attempted to choke
119 you?

120 5. Does the aggressor have a gun or could the aggressor
121 easily obtain a gun?

122 6. Is the aggressor violently or constantly jealous, or
123 does the aggressor control most of your daily activities?

124 7. Did you leave or separate from the aggressor after you
125 were living together or married?

- 126 8. Is the aggressor unemployed?
- 127 9. To the best of your knowledge, has the aggressor ever
128 attempted suicide?
- 129 10. Do you have a child whom the aggressor believes is not
130 the aggressor's biological child?
- 131 11. Has the aggressor ever followed, spied on, or left
132 threatening messages for you?
- 133 12. Is there anything else that worries you about your
134 safety and, if so, what worries you?
- 135 (c) A law enforcement officer shall advise a victim of the
136 results of the lethality assessment and refer the victim to the
137 nearest locally certified domestic violence center if:
- 138 1. The victim answers affirmatively to any of the
139 questions in subparagraphs (a)1.-4.;
- 140 2. The victim answers negatively to the questions in
141 subparagraphs (a)1.-4., but affirmatively to at least four of
142 the questions in subparagraphs (a)5.-11.; or
- 143 3. As a result of the victim's response to subparagraph
144 (a)12., the law enforcement officer believes the victim is in a
145 potentially lethal situation.
- 146 (d) If a victim does not, or is unable to, provide
147 information to a law enforcement officer sufficient to allow the
148 law enforcement officer to administer a lethality assessment,
149 the law enforcement officer must document the lack of a
150 lethality assessment in the written police report required in

151 subsection (3) and refer the victim to the nearest locally
 152 certified domestic violence center.

153 (e) A law enforcement officer may not include in a
 154 probable cause statement, written police report, or incident
 155 report the domestic violence center to which a victim was
 156 referred.

157 (3)-(2) When a law enforcement officer investigates an
 158 allegation that an incident of domestic violence has occurred,
 159 the officer shall handle the incident pursuant to the arrest
 160 policy provided in s. 901.15(7), and as developed in accordance
 161 with subsections (4) -(3), (5) -(4), and (6) -(5). Regardless of
 162 whether or not an arrest is made, the officer shall make a
 163 written police report that is complete and clearly indicates the
 164 alleged offense was an incident of domestic violence. Such
 165 report must ~~shall~~ be given to the officer's supervisor and filed
 166 with the law enforcement agency in a manner that will permit
 167 data on domestic violence cases to be compiled. Such report must
 168 include all of the following:

169 (a) A description of physical injuries observed, if any.

170 (b) If a law enforcement officer decides not to make an
 171 arrest or decides to arrest two or more parties, ~~the officer~~
 172 ~~shall include in the report~~ the grounds for not arresting anyone
 173 or for arresting two or more parties.

174 (c) A statement which indicates that a copy of the legal
 175 rights and remedies notice was given to the victim.

176 (d) A notation of the score of a lethality assessment, if
177 one was administered pursuant to paragraph (1)(c).

178
179 Whenever possible, the law enforcement officer shall obtain a
180 written statement from the victim and witnesses concerning the
181 alleged domestic violence. The officer shall submit the report
182 to the supervisor or other person to whom the employer's rules
183 or policies require reports of similar allegations of criminal
184 activity to be made. The law enforcement agency shall, without
185 charge, send a copy of the initial police report, as well as any
186 subsequent, supplemental, or related report, which excludes
187 victim/witness statements or other materials that are part of an
188 active criminal investigation and are exempt from disclosure
189 under chapter 119, to the nearest locally certified domestic
190 violence center within 24 hours after the agency's receipt of
191 the report. The report furnished to the domestic violence center
192 must include a narrative description of the domestic violence
193 incident.

194 (4)~~(3)~~ Whenever a law enforcement officer determines upon
195 probable cause that an act of domestic violence has been
196 committed within the jurisdiction the officer may arrest the
197 person or persons suspected of its commission and charge such
198 person or persons with the appropriate crime. The decision to
199 arrest and charge shall not require consent of the victim or
200 consideration of the relationship of the parties.

201 (5) (a) ~~(4) (a)~~ When complaints are received from two or more
 202 parties, the officers shall evaluate each complaint separately
 203 to determine whether there is probable cause for arrest.

204 (b) If a law enforcement officer has probable cause to
 205 believe that two or more persons have committed a misdemeanor or
 206 felony, or if two or more persons make complaints to the
 207 officer, the officer must ~~shall~~ try to determine who was the
 208 primary aggressor. Arrest is the preferred response only with
 209 respect to the primary aggressor and not the preferred response
 210 with respect to a person who acts in a reasonable manner to
 211 protect or defend oneself or another family or household member
 212 from domestic violence.

213 (6) ~~(5)~~ A ~~No~~ law enforcement officer may not ~~shall~~ be held
 214 liable, in any civil action, for an arrest based on probable
 215 cause, enforcement in good faith of a court order, or service of
 216 process in good faith under this chapter arising from an alleged
 217 incident of domestic violence brought by any party to the
 218 incident.

219 (7) ~~(6)~~ A person who willfully violates a condition of
 220 pretrial release provided in s. 903.047, when the original
 221 arrest was for an act of domestic violence as defined in s.
 222 741.28, commits a misdemeanor of the first degree, punishable as
 223 provided in s. 775.082 or s. 775.083, and shall be held in
 224 custody until his or her first appearance.

225 Section 2. For the purpose of incorporating the amendment

CS/HB 729

2024

226 | made by this act to section 741.29, Florida Statutes, in a
227 | reference thereto, section 39.906, Florida Statutes, is
228 | reenacted to read:

229 | 39.906 Referral to centers and notice of rights.—Any law
230 | enforcement officer who investigates an alleged incident of
231 | domestic violence shall advise the victim of such violence that
232 | there is a domestic violence center from which the victim may
233 | receive services. The law enforcement officer shall give the
234 | victim immediate notice of the legal rights and remedies
235 | available in accordance with the provisions of s. 741.29.

236 | Section 3. This act shall take effect July 1, 2024.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	<u> </u>	(Y/N)
ADOPTED AS AMENDED	<u> </u>	(Y/N)
ADOPTED W/O OBJECTION	<u> </u>	(Y/N)
FAILED TO ADOPT	<u> </u>	(Y/N)
WITHDRAWN	<u> </u>	(Y/N)
OTHER	<u> </u>	

1 Committee/Subcommittee hearing bill: Justice Appropriations
2 Subcommittee

3 Representative Baker offered the following:

Amendment (with title amendment)

6 Between lines 235 and 236, insert:

7 Section 3. For the 2024-2025 fiscal year, one full-time
8 equivalent position with associated salary rate of 41,108 is
9 authorized and the sums of \$76,427 in recurring funds and
10 \$66,167 in nonrecurring funds from the Criminal Justice
11 Standards and Training Trust Fund are appropriated to the
12 Department of Law Enforcement for the purpose of implementing
13 this act.

14
15 -----
16 **T I T L E A M E N D M E N T**

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. CS/HB 729 (2024)

Amendment No. 1

17 Remove line 41 and insert:
18 appropriation; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1077 Clerks of Court
SPONSOR(S): Botana and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1470

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	18 Y, 0 N	Leshko	Jones
2) Justice Appropriations Subcommittee		Smith	Keith
3) Judiciary Committee			

SUMMARY ANALYSIS

The Florida Constitution mandates that there be an elected clerk of the circuit court (clerk) in each of Florida's 67 counties. The clerks collect court fines, fees, service charges, and court costs related to court dispositions and are authorized to charge fees to perform various functions. Much of the funding for the clerks' annual operating budgets comes from such fees, services charges, fines, and court costs that are deposited into the Florida Clerk of Court Trust Fund. However, such revenue does not go entirely to the clerks. Florida law directs the Florida Department of Revenue to distribute such revenue among the clerks, municipalities, counties, 51 state trust funds of various statutory function, and the state's General Revenue Fund.

Under ss. 318.15 and 322.245, F.S., a person's driver license and driving privilege may be suspended for various reasons, including failing to comply with civil penalties or other court directives within a specified time period; failing to enter into or comply with the terms of a penalty payment plan; or failing to pay child support. A person's driver license and privilege may not be reinstated until the person complies with all obligations and penalties imposed or with other specified court directives; and presents a certificate of compliance to a driver license office along with a nonrefundable service charge of \$60.

HB 1077 amends a number of statutes which increase revenue for clerks through reimbursement for certain petitions and applications and through redistribution of cumulative excess clerk revenue and other specified fees. Specifically, the bill:

- Amends ss. 27.52, 27.54, 57.082, and 501.2101, F.S., to revise which trust funds certain moneys are deposited into.
- Amends ss. 28.241, 34.041, and 318.18, F.S., to reduce the amount of fees distributed to the General Revenue Fund.
- Amends ss. 28.35, 28.37, 40.29, 741.30, 784.046, and 784.0485, F.S., to expand the duties of the Florida Clerks of Court Operations Corporation.
- Creates s. 322.76, F.S., to authorize the establishment of the Miami-Dade County Clerk of Court Driver License Reinstatement Pilot Program.
- Amends s. 27.703, F.S., to require appointed capital collateral regional counsel or other appointed attorney to be paid from funds appropriated to the Justice Administrative Commission (JAC).
- Amends s. 110.112, F.S., to eliminate state attorney and public defender reporting requirements regarding affirmative action programs.
- Amends s. 186.003, F.S., to update the definition of "state agency" or "agency" in the state and regional planning chapter of the Florida Statutes.

The bill has a significant fiscal impact on state and local governments. See Fiscal Comments.

The bill provides an effective date of upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Clerks of the Circuit Court

The Florida Constitution mandates that there be an elected clerk of the circuit court (clerk) in each of Florida's 67 counties. The clerk may also serve as ex officio clerk of the board of county commissioners, auditor, official records recorder, and custodian of all county funds.¹ As an officer of the court, the clerk serves in a ministerial capacity, and his or her duties and authority are conferred entirely by law.² Such duties include the performance of court-related functions, such as:

- Case maintenance;
- Records management;
- Court preparation and attendance;
- Collection and distribution of fines, fees, service charges, and court costs;
- Processing case assignment, reopening, reassignment, and appeals;
- Processing of bond forfeiture payments;
- Data collection and reporting;
- Determination of indigent status; and
- Paying reasonable administrative costs to enable the clerks to carry out these functions.³

Funding for the Clerks of the Circuit Courts

Annual Operating Budgets

Much of the funding for the clerks' annual operating budgets comes from collected revenues including judicial proceeding fees,⁴ services charges,⁵ fines,⁶ and court costs that are deposited into the Florida Clerk of Court Trust Fund (FCC Trust Fund).⁷ However, such revenue does not go entirely to the clerks. Florida law directs the Florida Department of Revenue (DOR) to distribute such revenue among the clerks, municipalities, counties, 51 state trust funds of various statutory functions, and the state's General Revenue Fund.

Court-Related Functions

The Florida Constitution mandates that funding for much of the clerks' court-related functions come from collected revenue deposited into the FCC Trust Fund.⁸ Additionally, each clerk must create a Fine and Forfeiture Fund for use by the clerk's office in its execution of court-related functions. The Fine and Forfeiture Fund must consist of specified fines, fees, and costs which the clerk is authorized to retain or which are otherwise directed to the Fund.⁹

¹ The clerk of the circuit court is elected by the county's electors to serve a four-year term. Art. V, s. 16 and art. VIII, s. 1, Fla. Const.

² "Ministerial" means acting "in a prescribed manner in obedience to the mandate of legal authority, without the exercise of the person's own judgment or discretion as to the propriety of the action taken." The clerk may appoint deputies, for whose acts the clerk is liable, which deputies have the same power as the clerk, excepting the power to appoint deputies. Ss. 28.06 and 112.312(17), F.S.

³ S. 28.35(3)(a), F.S.

⁴ Filing fees which the clerks must charge are generally set out in s. 28.241, F.S.

⁵ Service charges which the clerks must charge are generally set out in s. 28.24, F.S.

⁶ Ten percent of all court-related fines collected by the clerk, except for penalties or fines distributed to counties or municipalities, must be deposited into the fine and forfeiture fund to be used exclusively for clerk court-related functions. S. 28.37(6), F.S.

⁷ Other funding sources include grants and payments remitted by counties for the performance of county-related functions.

⁸ Selected salaries, costs, and expenses of the state courts system and court-related functions may also be funded from such fines, fees, charges, and costs. Art. V, s. 14, Fla. Const.; s. 28.37(1), F.S.

⁹ S. 142.01, F.S.

Budget Procedures

On or prior to June 1st of each year, each clerk must prepare, summarize, and submit a proposed budget to CCOC in the manner and form prescribed by CCOC.¹⁰ The proposed budget must:

- Provide detailed information on the anticipated revenues available and expenditures necessary for the performance of court-related functions for the fiscal year beginning October 1; and
- Be balanced such that the total of the estimated revenues available¹¹ equals or exceeds the total of the anticipated expenditures.¹²

If a clerk estimates that his or her available funds in addition to projected revenues are insufficient to meet anticipated expenditures, the clerk must report the revenue deficit to CCOC. If the CCOC verifies that a revenue deficit is likely, the CCOC must certify the deficit and notify DOR that the clerk will, as required by statute, retain collected revenues in an amount necessary to fully fund the projected revenue deficit, which revenues the clerk would otherwise have to remit to DOR for deposit into the FCC Trust Fund.¹³

If a revenue deficit is still projected for that clerk after retaining revenues as described above, the CCOC must certify the revenue deficit amount to the Executive Office of the Governor (EOG) and request release authority for additional funds from the FCC Trust Fund. The EOG may approve the release of such funds and provide notice of such approval to DOR and the Chief Financial Officer (CFO). The DOR must then request monthly distributions from the CFO in equal amounts to each clerk certified to have a revenue deficit.¹⁴

Once a clerk receives his or her court-related budget allocation for the fiscal year, the total is divided by 12 to give an estimated monthly budget allocation. In the event that the clerk collects more than the monthly projection, the clerk must submit such additional amount to the FCC Trust Fund by the 10th of the following month.¹⁵ Such revenue is then redistributed to clerks in counties that do not bring in sufficient revenue to fund their budget allocations.

Each year the clerks are required to remit to DOR for deposit into the FCC Trust Fund the cumulative excess¹⁶ of all fines, fees, service charges, and court costs retained by the clerks, plus any funds received from the FCC Trust Fund based on revenue deficiency, which exceed the amount needed to meet the clerks' authorized budget amounts.¹⁷ Thereafter, DOR must transfer 50 percent of the cumulative excess of the original revenue projection from the FCC Trust Fund to the General Revenue Fund. The remaining 50 percent in the FCC Trust Fund may be used in the development of the total combined budgets of the clerks.¹⁸

Florida Clerks of Court Operations Corporation

In 2003, the Florida Legislature created the Florida Clerks of Court Operations Corporation (CCOC) to provide budget support to the clerks. All clerks of the circuit courts are members of the CCOC and hold

¹⁰ S. 28.36, F.S.

¹¹ "Estimated revenues available" may include the fines, fees, charges, and costs to be collected by the clerk in the upcoming fiscal year; the total of unspent budgeted funds for court-related functions carried forward by the clerk from the previous county fiscal year; and the portion of the balance of funds remaining in the FCC Trust Fund after the transfer of funds to the General Revenue Fund which has been allocated to each clerk by the CCOC. S. 28.36(2)(b), F.S.

¹² *Id.*

¹³ S. 28.36(4), F.S.

¹⁴ *Id.*

¹⁵ S. 28.37(3), F.S.

¹⁶ Section 28.37(2)(a), F.S., defines "cumulative excess" to mean revenues derived from fines, fees, service charges, and court costs collected by the clerks of the court which are greater than the original revenue projection.

¹⁷ S. 28.37(4)(a), F.S.

¹⁸ S. 28.37(4)(b), F.S.

their positions and authority in an ex officio capacity.¹⁹ CCOC is funded through appropriations by general law pursuant to a contract with the CFO.²⁰

The CCOC is responsible for approving the combined budgets submitted by the clerks, and ensuring that the total combined budgets of all 67 clerks does not exceed the total estimated revenues from fees, service charges, court costs, and fines for court-related functions available for court-related expenditures; plus the balance of funds remaining in the Clerks of Court Trust Fund after the transfer of funds to the General Revenue Fund; and plus any appropriations for court-related functions.²¹

Additional CCOC duties include, but are not limited to:

- Adopting a plan of operations.
- Recommending to the Legislature changes in the amounts and distribution of various court-related fines, fees, service charges, and costs to ensure reasonable and adequate funding of the clerks in the performance of their court-related functions.
- Entering into a contract with the Department of Financial Services for the department to audit the court-related expenditures of individual clerks.
- Preparing and submitting a report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees by January 1 of each year on the operations and activities of the CCOC and detailing the budget development for the clerks of the court and the end-of-year reconciliation of actual expenditures versus projected expenditures for each clerk of court.
- Preparing an annual budget request which provides the anticipated amount necessary for reimbursement pursuant to s. 40.29(6), F.S., for certain petitions and orders.²² The request for reimbursement shall be submitted to the Governor for transmittal to the Legislature.²³
- Participating in the Florida Retirement System (FRS) for its eligible employees.²⁴

No Fee Court Functions

There are certain filings for which clerks may not charge a filing fee, including:

- A filing by an indigent party;²⁵
- A petition for habeas corpus filed by a person detained as a mental health patient;²⁶
- An ex parte order for an involuntary examination;²⁷
- A petition for an involuntary commitment;²⁸
- Appellate filings for an indigent person determined to be, and involuntarily committed as, a sexually violent predator;²⁹
- A petition for involuntary assessment and stabilization for substance abuse impairment;³⁰
- A petition for a risk protection order;³¹ and
- A petition for a protective injunction against domestic violence;³² repeat, sexual, or dating violence;³³ or stalking.³⁴

¹⁹ S. 28.35(1)(a), F.S.

²⁰ S. 28.35(4), F.S.

²¹ S. 28.35(2)(f), F.S.

²² JAC is not authorized to make changes to the budget request except for technical changes necessary to conform to the legislative budget instructions. S. 28.35(2)(i), F.S.

²³ S. 28.35(2), F.S.

²⁴ S. 28.35(4), F.S.

²⁵ Ss. 57.081 and 57.082, F.S. This does not include prisoners as defined in s. 57.085, F.S.

²⁶ S. 394.459, F.S.

²⁷ S. 394.463, F.S.

²⁸ S. 394.467, F.S.

²⁹ S. 394.917, F.S.

³⁰ S. 397.6814, F.S.

³¹ S. 790.401, F.S.

³² S. 741.30, F.S.

³³ S. 784.046, F.S.

³⁴ S. 784.0485, F.S.

However, subject to legislative appropriation, clerks may, on a quarterly basis, submit to the Office of the State Courts Administrator a certified request for reimbursement for petitions for protection against domestic violence; repeat, sexual, or dating violence; or stalking issued by the court, at the rate of \$40 per petition. From this reimbursement, if any, the clerk must pay any law enforcement agency that served such an injunction a fee requested by the agency, not to exceed \$20.³⁵

Driver License Suspension in Florida

Section 318.15, F.S., requires a clerk to notify the Department of Highway Safety and Motor Vehicles (DHSMV) if a person fails to:

- Comply with civil penalties within a specified time period;
- Enter into or comply with the terms of a penalty payment plan;
- Attend driver improvement school; or
- Appear at a scheduled hearing.³⁶

Section 322.245, F.S., requires a clerk to notify DHSMV if a person fails to:

- Comply with all directives of a court, imposed based on a violation of a criminal offense, within the time allotted by the court; or
- Pay child support.³⁷

Upon receipt of such notice from a clerk, pursuant to either ss. 318.15 or 322.245, F.S., DHSMV must immediately issue an order suspending the driver license and driving privilege of such person. The order must inform the person that he or she may contact the clerk to establish a payment plan to make partial payments for court-related fines, fees, service charges, and court costs.³⁸

A person's driver license and privilege may not be reinstated until the person:

- Complies with the terms of a periodic payment plan or a revised payment plan with the clerk; complies with all obligations and penalties imposed; or complies with all court directives including payment of a delinquency fee; and
- Presents a certificate of compliance issued by the court to a driver license office along with a nonrefundable service charge of \$60.^{39, 40}

Effect of Proposed Changes

Trust Fund Deposits

The bill amends ss. 27.52, 27.54, 57.082, and 501.2101, F.S., to:

- Require 25 percent of any costs recovered by a state attorney from a fraudulent indigency application to be remitted to DOR for deposit into the Grants and Donations Trust Fund of the applicable state attorney instead of into the Grants and Donations Trust Fund of the Justice Administrative Commission (JAC).
- Require any payments received from a county or municipality in support of the operation of the offices of the various public defenders and regional counsel to be deposited into the Grants and Donations Trust Fund of the applicable public defender or criminal conflict and civil regional counsel instead of into the Grants and Donations Trust Fund of JAC.
- Require any moneys received by an enforcing authority for attorney fees and costs of investigation or litigation for specified proceedings to be deposited into the Grants and Donations Trust Fund of a state attorney if the action is brought by the state attorney.

³⁵ Ss. 741.30(2)(a), 784.046(3)(b), and 784.0485(2)(a), F.S.

³⁶ S. 318.15(1)(a), F.S.

³⁷ S. 322.245(1-2), F.S.

³⁸ Ss. 318.15(1) and 322.245(3), F.S.

³⁹ S. 318.15(2), F.S.

⁴⁰ S. 322.29(2), F.S.

Deposit and Distribution of Fees

The bill amends ss. 28.241 and 34.041, F.S., to:

- Reduce the amount of the filing fees, received in a mortgage foreclosure action in which the value of the claim is \$250,000 or more and in which there are not more than five defendants, distributed to DOR for deposit into the General Revenue Fund from \$930 to \$465.
- Require the filing fee received from a party filing a cross-claim, counterclaim, counterpetition, or third-party complaint, or notice of cross-appeal or notice of joinder or motion to intervene as an appellate, cross-appellant, or petitioner in a civil action to be deposited into the clerk's Fine and Forfeiture Fund if the relief sought by the party exceeds \$2,500 but is not more than \$15,000 instead of being remitted to DOR for deposit into the General Revenue Fund.
- Require service charges collected for issuing a summons to be deposited into the clerk's Fine and Forfeiture Fund instead of being remitted to DOR for deposit into the General Revenue Fund.

The bill amends s. 318.18, F.S., to:

- Require a \$16 civil penalty for failure to comply or failure to pay civil penalties under s. 318.18(8)(a), F.S., to be distributed as follows:
 - \$1.50 to DOR for deposit into the General Revenue Fund.
 - \$9.50 to DOR for deposit in the Highway Safety Operating Trust Fund.
 - \$5 to be retained by the clerk and deposited into the Public Records Modernization Trust Fund and used exclusively for funding court-related technology needs of the clerk.
- Require a \$12.50 administrative fee collected for all noncriminal and nonmoving violations to be distributed as follows:
 - \$6.25 to be retained by the clerk and deposited into the Public Records Modernization Trust Fund and used exclusively for funding court-related technology needs of the clerk.
 - \$6.25 to be deposited into the clerk's Fine and Forfeiture Fund.

Florida Clerks of Court Operations Corporation

The bill amends s. 28.35, F.S., to:

- Require CCOC to request the anticipated amount of reimbursement necessary pursuant to s. 40.29(7), F.S., for approved applications for civil indigency in its annual budget request.
- Require CCOC to include the anticipated amount necessary to fund increases in employer contribution rates for court-related employees participating in the FRS in its annual budget request. This request must be submitted in the form and manner prescribed by JAC and submitted to the Governor for transmittal to the Legislature. JAC may not alter the request except to make technical changes to conform to the legislative budget instructions.
- Authorize clerks to fund improvements to court technology from filing fees, service charges, court costs, and fines.

The bill amends s. 28.37, F.S., to:

- Require CCOC to calculate the cumulative excess of clerk revenues and allow the clerks to retain 100 percent of the cumulative excess, instead of 50 percent as currently authorized, for use in the development of the total combined budgets of the clerks of the court.
- Removes authority from DOR to automatically transfer 50 percent of the cumulative excess of clerk revenues to the General Revenue Fund.

The bill amends ss. 40.29, 741.30, 784.046, and 784.0485, F.S., to:

- Authorize CCOC to submit a certified request to the JAC, on behalf of the clerks, for reimbursement for petitions and orders filed under:
 - Sections 394.459, 394.463, 394.467, 394.917, and 397.6814, F.S., at a rate of \$40 per petition or order; and

- Sections 741.30, 784.046, and 784.0485, F.S., at a rate of \$195 per petition. From such a reimbursement, the bill requires a clerk to pay any law enforcement agency that served an injunction a fee not to exceed \$40, if a fee is requested by the agency.
- Authorize CCOC to submit a certified request for reimbursement to JAC for approved applications for civil indigency, where the civil filing fee was waived, at a rate of \$195 per approved application.
- Require CCOC to submit to JAC a certified amount by county of the employer contribution rate increases for the FRS for court-related employees.

Miami-Dade County Clerk of Court Driver License Reinstatement Pilot Program

The bill creates s. 322.76, F.S., to authorize the establishment of the Miami-Dade County Clerk of Court Driver License Reinstatement Pilot Program. The bill authorizes the clerk of the circuit court for Miami-Dade County to reinstate or provide an affidavit to the department to reinstate a suspended driver license that was originally suspended for the following reasons when the obligations have been met or the suspension period has lapsed:

- Failure to fulfill a court-ordered child support obligation.
- Driving record points.
- Failure to comply with any provision of chs. 318 or 322, F.S.

The bill requires a person to comply with the provisions of s. 322.29, F.S., in order to qualify to have his or her license reinstated under this pilot program.

The bill requires DHSMV to ensure that its technology system allows the Miami-Dade County Clerk to reinstate suspended driver licenses within the system under the pilot program beginning on July 1, 2024.

The bill requires the Miami-Dade County Clerk to submit a report containing the following information to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Executive Director of the CCOC by December 31, 2025:

- The number of driver licenses reinstated.
- The amount of fees and costs collected, including the aggregate funds received by the clerk and local and state governmental entities, including from the General Revenue Fund.
- The personnel, operating, and other expenditures incurred by the clerk.
- Feedback received from the community, if any, in response to the Clerk's participation in the pilot program.
- Information regarding whether the pilot program provided more expeditious reinstatement of driver licenses.
- The Clerk's recommendation as to whether the pilot program should be extended in Miami-Dade County or to other clerks' offices.
- Any other information the Clerk deems necessary.

The bill repeals this pilot program on July 1, 2026.

Other Changes

The bill amends s. 27.703, F.S., to require appointed capital collateral regional counsel or other appointed attorney to be paid from funds appropriated to JAC instead of from funds appropriated to the CFO.

The bill amends s. 110.112, F.S., to eliminate state attorney and public defender reporting requirements regarding affirmative action programs for the previous fiscal year.

The bill amends s. 186.003, F.S., to remove an improper reference to state attorneys, public defenders, capital collateral regional counsel, and JAC from the definition of “state agency” or “agency” in the state and regional planning chapter of the Florida Statutes.

The bill makes other technical and conforming changes.

The bill provides an effective date of upon becoming a law.

B. SECTION DIRECTORY:

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

Section 2: Amends s. 27.54, F.S., relating to limitation on payment of expenditures other than by the state.

Section 3: Amends s. 27.703, F.S., relating to conflict of interest and substitute counsel.

Section 4: Amends s. 28.241, F.S., relating to filing fees for trial and appellate proceedings.

Section 5: Amends s. 28.35, F.S., relating to Florida Clerks of Court Operations Corporation.

Section 6: Amends s. 28.37, F.S., relating to fines, fees, service charges, and costs remitted to the state.

Section 7: Amends s. 34.041, F.S., relating to filing fees.

Section 8: Amends s. 40.29, F.S., relating to payment of due-process costs; reimbursement for petitions and orders.

Section 9: Amends s. 57.082, F.S., relating to determination of civil indigent status.

Section 10: Amends s. 110.112, F.S., relating to affirmative action; equal employment opportunity.

Section 11: Amends s. 186.003, F.S., relating to definitions.

Section 12: Amends s. 318.18, F.S., relating to amount of penalties.

Section 13: Creates s. 322.76, F.S., relating to Miami-Dade County the Clerk of Court Driver License Reinstatement Pilot Program.

Section 14: Amends s. 501.2101, F.S., relating to enforcing authorities; moneys received in certain proceedings.

Section 15: Amends s. 741.30, F.S., relating to domestic violence; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement; public records exemption.

Section 16: Amends s. 784.046, F.S., relating to action by victim of repeat violence, sexual violence, or dating violence for protective injunction; dating violence investigations, notice to victims, and reporting; pretrial release violations; public records exemption.

Section 17: Amends s. 784.0485, F.S., relating to stalking; injunction; powers and duties of court and clerk; petition; notice and hearing; temporary injunction; issuance of injunction; statewide verification system; enforcement.

Section 18: Provides an effective date of upon becoming a law.

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:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill provides for the redistribution of specified revenue collected by the clerks, away from the General Revenue Fund and into other trust funds for use by the clerks. The Revenue Estimating Conference determined that such redistributions would result in a significant negative fiscal impact to General Revenue Fund receipts and a significant positive fiscal impact to trust funds utilized by the clerks. The total impact of funds being redirected in the bill from the General Revenue Fund to the clerks' local trust funds is approximately \$37.6 million in fiscal year 2024-25, and averaging \$38.8 million annually over the next five years.⁴¹ The incremental portions of the \$37.6 million fiscal year 2024-25 impact are further explained below.

Foreclosure Filing Fees

Section 28.241(1)(a)2.d.(III), F.S., authorizes a filing fee of \$1,900 for foreclosure actions in which the value of the claim is \$250,000 or more and in which there are not more than five defendants. From the filing fee, portions are currently remitted to DOR to be deposited into the General Revenue Fund and various other trust funds. The bill revises such distributions so that half of the amount of the General Revenue portion from foreclosure filings are split between, and deposited in, the General Revenue Fund and the clerks' Fine and Forfeiture Funds, while maintaining the currently authorized amounts that are distributed to other trust funds. This results in an estimated \$3.4 million being redirected from the General Revenue Fund in fiscal year 2024-25, and averaging \$4.0 million annually over the next five years.⁴²

Counterclaim Filing Fees

Section 34.041(1)(c), F.S., authorizes counterclaim filing fees which are currently remitted to DOR and deposited into the General Revenue Fund. The bill revises such distributions so that they are not remitted to DOR for deposit into the General Revenue Fund, but are instead deposited into the clerk's Fine and Forfeiture Fund. This results in an estimated \$300,000 being redirected from the General Revenue Fund annually over the next five years.⁴³

Summons Issuance Fees

Section 34.041(1)(d), F.S., authorizes the clerk of the court to collect a \$10 service charge for issuance of a summons, or an electronic certified copy of a summons, which is currently remitted to DOR for deposit into the General Revenue Fund. The bill revises such distributions so that they are not remitted to DOR for deposit into the General Revenue Fund, but are instead deposited into the clerk's Fine and

⁴¹ Office of Economic and Demographic Research, Revenue Estimating Impact Conference, 2024 House Bill 1077, pp. 147-153, Jan. 12, 2024, http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2024/_pdf/impact0112.pdf (last visited Jan. 31, 2024).

⁴² *Id.*

⁴³ *Id.*

Forfeiture Fund. This results in an estimated \$8.4 million being redirected from the General Revenue Fund in fiscal year 2024-25, and averaging \$8.6 million annually over the next five years.⁴⁴

Late Payment of Traffic Violation Civil Penalty

Section 318.18(8)(a), F.S., authorizes a fee of \$16 for late payment of civil penalties. Of this fee, \$6.50 must be remitted to DOR for deposit into the General Revenue Fund, and \$9.50 must be remitted to DOR for deposit into the Highway Safety Operating Trust Fund. The bill revises such distributions so that that \$1.50 be remitted to DOR for deposit into the General Revenue Fund, \$9.50 be remitted to DOR for deposit into the Highway Safety Operating Trust Fund, and \$5.00 be retained by the clerk and deposited into the Public Records Modernization Trust Fund to be used exclusively for funding court-related technology needs of the clerk. This results in an estimated \$4.9 million being redirected from the General Revenue Fund in fiscal year 2024-25, and averaging \$5.0 million annually over the next five years.⁴⁵

Traffic Violation Civil Penalty Administrative Fee

Section 318.18(18), F.S., authorizes an administrative fee of \$12.50 that must be paid in addition to any penalties imposed for all noncriminal moving and nonmoving violations under chs. 316, 320, and 322, F.S., and specifies that the clerk shall remit the administrative fee to DOR for deposit into the General Revenue Fund. The bill revises such distributions so that the administrative fee will be retained by the clerks, with \$6.25 being deposited into the Public Records Modernization Trust Fund to be used exclusively for funding court-related technology needs of the clerk, and \$6.25 being deposited into the clerk's Fine and Forfeiture Fund. This results in an estimated \$20.5 million being redirected from the General Revenue Fund in fiscal year 2024-25, and averaging \$20.8 million annually over the next five years.⁴⁶

Cumulative Excess from the Clerks of the Court Trust Fund

Section 28.37(4)(b), F.S., specifies that no later than February 1, 2022, and each February 1 thereafter, DOR shall transfer 50 percent of the cumulative excess of the original revenue projection from the FCC Trust Fund to the General Revenue Fund, with the remaining 50 percent to be retained and used in the development of the total combined budgets of the clerks of the court as provided in s. 28.35(2)(f)6, F.S. The bill revises this transfer to specify that the CCOC must calculate the cumulative excess, of which 100 percent may be retained by the clerks for use in the development of the total combined budgets of the clerks of the court. The most recent article V Revenue Estimating Conference projects a cumulative excess of \$6.6 million for FY 2024-25.⁴⁷ This would result in an estimated \$3.3 million in additional revenue being redirected from the General Revenue Fund and retained by the clerks.

Reimbursement for Fees in Domestic Violence Injunction

Sections 741.30, 784.046, and 741.0485, F.S., provide that the clerk of the circuit court may submit a quarterly request to the Office of the State Courts Administrator for reimbursement of petitions for protection against domestic violence issued by the court, at the rate of \$40 per petition, subject to legislative appropriation. The bill amends s. 40.29, F.S., authorizing the CCOC, on behalf of the clerks of the circuit court, to submit a certified request on a quarterly basis to the JAC requesting reimbursement for orders filed under ss. 741.30, 784.046, and 741.0485, F.S., subject to legislative appropriation.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Office of Economic and Demographic Research, Revenue Estimating Conference, Article V Fees & Transfers, Dec. 20, 2023, <http://edr.state.fl.us/Content/conferences/articleV/ArticleVResults.pdf> (last visited Feb. 1, 2024)

To the extent that requests for reimbursement are appropriated by the Legislature, this may have an indeterminate negative fiscal impact to state expenditures from the General Revenue Fund. The Florida Court Clerks & Comptrollers indicate the estimated request associated with domestic violence injunctions for protection reimbursements to be approximately \$13.0 million, based on the number of injunction for protection cases reported for county fiscal year 2021-22.⁴⁸

Reimbursement for Fees in Civil Indigency Applications

Section 57.082, F.S., provides requirements for the determination of civil indigent status, including application requirements and the relief from payment of filing fees and prepayment costs under s. 57.081, F.S.⁴⁹ If the clerk of court deems that the applicant is indigent, a portion of the civil filing fee is waived. The bill amends s. 40.29, F.S., authorizing the CCOC to submit a certified request on a quarterly basis to the JAC requesting reimbursement for approved applications in which the civil filing fee was waived for civil indigency status under s. 57.082, F.S., at the rate of \$195 per application, subject to legislative appropriation.

To the extent that requests for reimbursement are appropriated by the Legislature, this may have an indeterminate negative fiscal impact to state expenditures from the General Revenue Fund. The Florida Court Clerks & Comptrollers indicate the estimated request associated with civil indigency application reimbursements to be approximately \$8.4 million, based on the number of approved applications from county fiscal year 2021-22.⁵⁰

Reimbursement for Florida Retirement System (FRS) Employer Contributions

Section 28.35, F.S., creates and authorizes the duties of the CCOC including the executive structure and process by which the CCOC may request funding from the Legislature. Section 28.35(4), F.S., authorizes the participation of all eligible employees of the CCOC in the FRS, as provided in ch. 121, F.S. The bill amends s. 28.35(2), F.S., authorizing the CCOC to annually prepare an annual budget request that provides the anticipated amount necessary to fund increases in employer contribution rates pursuant to ss. 121.71 and 121.72, F.S., for court-related employees participating in the FRS. Section 40.29, F.S., is also amended to authorize the CCOC to submit to the JAC a certified amount by county, of the employer contribution rate increases for the FRS for court-related employees, subject to legislative appropriation.

To the extent that FRS employer contribution rates are increased, and funding is appropriated by the Legislature, this may have a significant negative fiscal impact to state expenditures from the General Revenue Fund. The Florida Court Clerks & Comptrollers indicate the estimated request associated with the fiscal year 2023-24 employer contribution rate increases to be approximately \$5.5 million.⁵¹

Miami-Dade County Clerk of the Court Driver License Reinstatement Pilot Program

The bill may require the Miami-Dade County Clerk's Office to spend funds to develop and implement the pilot program created in the bill.

⁴⁸ Email from Sara Sanders Bremer, Director of Government Relations, Florida Court Clerks & Comptrollers, RE: HB 1077 Information (Jan. 3, 2024).

⁴⁹ S. 57.082, F.S.

⁵⁰ *Id.* at 48.

⁵¹ *Id.*

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill may require the Miami-Dade County clerk's office to spend funds to develop and implement the pilot program created in the bill; however, an exemption may apply as the bill may have only an insignificant fiscal impact on Miami-Dade County.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled

2 An act relating to clerks of court; amending s. 27.52,
3 F.S.; revising the fund into which moneys recovered by
4 certain state attorneys must be remitted; amending s.
5 27.54, F.S.; revising the fund into which certain
6 payments received must be remitted as related to
7 public defenders or regional counsels; amending s.
8 27.703, F.S.; revising the entity that funds the
9 capital collateral regional counsel; amending s.
10 28.241 F.S.; revising allocation of filing fees for
11 certain trial and appellate proceedings; amending s.
12 28.35, F.S.; providing additional duties of the
13 Florida Clerks of Court Operations Corporation related
14 to budget requests; amending s. 28.37, F.S.; requiring
15 Florida Clerks of Court Operations Corporation to
16 calculate certain excesses collected from fines, fees,
17 service charges, and costs, annually by a date
18 certain; amending s. 34.041, F.S.; revising the fund
19 into which certain filing fees are to be deposited;
20 amending s. 40.29, F.S.; authorizing the Florida
21 Clerks of Court Operation Corporation to submit
22 requests for reimbursement at a specified rate for
23 petitions related to certain sexual violence offenses;
24 amending 57.082, F.S.; conforming provisions to
25 changes made by the act; amending s. 110.112, F.S.;

26 removing a provision requiring each state attorney to
 27 publish an annual report addressing results of his or
 28 her affirmative action program; amending s. 186.003,
 29 F.S.; revising the definition of "state agency" for
 30 certain purposes; amending s. 318.18, F.S.; revising
 31 the distribution of certain civil penalty amounts and
 32 administrative fees; creating s. 322.76, F.S.;
 33 creating the Clerk of the Court Driver License
 34 Reinstatement Pilot Program; authorizing the Clerk of
 35 the Circuit Court for Miami-Dade County to reinstate
 36 or provide an affidavit to the department to reinstate
 37 certain suspended driver licenses; establishing
 38 requirements for the clerk under the program to be
 39 performed by a date certain; providing for expiration
 40 of the program; amending s. 501.2101, F.S.; revising
 41 the funds into which certain moneys received by state
 42 attorneys must be deposited; amending s. 741.30, F.S.;
 43 removing a provision authorizing certain clerks of
 44 circuit courts to request reimbursement for certain
 45 petitions related to domestic violence; amending s.
 46 784.046, F.S.; removing a provision authorizing the
 47 clerk of circuit court, under specific circumstances,
 48 to request reimbursement for certain petitions related
 49 to repeat, sexual, or dating violence; amending s.
 50 784.0485, F.S.; removing a provision authorizing the

51 clerk of circuit courts, under specific circumstances,
 52 to request reimbursement for certain petitions related
 53 to stalking; providing an effective date.

54
 55 Be It Enacted by the Legislature of the State of Florida:

56
 57 Section 1. Paragraph (b) of subsection (7) of section
 58 27.52, Florida Statutes is amended to read:

59 27.52 Determination of indigent status.—

60 (7) FINANCIAL DISCREPANCIES; FRAUD; FALSE INFORMATION.—

61 (b) If the court has reason to believe that any applicant,
 62 through fraud or misrepresentation, was improperly determined to
 63 be indigent or indigent for costs, the matter shall be referred
 64 to the state attorney. Twenty-five percent of any amount
 65 recovered by the state attorney as reasonable value of the
 66 services rendered, including fees, charges, and costs paid by
 67 the state on the person's behalf, shall be remitted to the
 68 Department of Revenue for deposit into the Grants and Donations
 69 Trust Fund of the applicable state attorney ~~within the Justice~~
 70 ~~Administrative Commission~~. Seventy-five percent of any amount
 71 recovered shall be remitted to the Department of Revenue for
 72 deposit into the General Revenue Fund.

73 Section 2. Paragraph (c) of subsection (2) of section
 74 27.54, Florida Statutes, is amended to

75 27.54 Limitation on payment of expenditures other than by

76 | the state.—
 77 | (2) A county or municipality may contract with, or
 78 | appropriate or contribute funds to, the operation of the offices
 79 | of the various public defenders and regional counsels ~~counsel~~ as
 80 | provided in this subsection. A public defender or regional
 81 | counsel defending violations of special laws or county or
 82 | municipal ordinances punishable by incarceration and not
 83 | ancillary to a state charge shall contract with counties and
 84 | municipalities to recover the full cost of services rendered on
 85 | an hourly basis or reimburse the state for the full cost of
 86 | assigning one or more full-time equivalent attorney positions to
 87 | work on behalf of the county or municipality. Notwithstanding
 88 | any other provision of law, in the case of a county with a
 89 | population of less than 75,000, the public defender or regional
 90 | counsel shall contract for full reimbursement, or for
 91 | reimbursement as the parties otherwise agree. In local ordinance
 92 | violation cases, the county or municipality shall pay for due
 93 | process services that are approved by the court, including
 94 | deposition costs, deposition transcript costs, investigative
 95 | costs, witness fees, expert witness costs, and interpreter
 96 | costs. The person charged with the violation shall be assessed a
 97 | fee for the services of a public defender or regional counsel
 98 | and other costs and fees paid by the county or municipality,
 99 | which assessed fee may be reduced to a lien, in all instances in
 100 | which the person enters a plea of guilty or no contest or is

101 found to be in violation or guilty of any count or lesser
 102 included offense of the charge or companion case charges,
 103 regardless of adjudication. The court shall determine the amount
 104 of the obligation. The county or municipality may recover
 105 assessed fees through collections court or as otherwise
 106 permitted by law, and any fees recovered pursuant to this
 107 section shall be forwarded to the applicable county or
 108 municipality as reimbursement.

109 (c) Any payments received pursuant to this subsection
 110 shall be deposited into the Grants and Donations Trust Fund of
 111 ~~within~~ the applicable public defender or criminal conflict and
 112 civil regional counsel ~~Justice Administrative Commission~~ for
 113 appropriation by the Legislature.

114 Section 3. Subsection (2) of section 27.703, Florida
 115 Statutes, is amended to read:

116 27.703 Conflict of interest and substitute counsel.-

117 (2) Appointed counsel shall be paid from funds
 118 appropriated to the Justice Administrative Commission ~~Chief~~
 119 ~~Financial Officer~~. The hourly rate may not exceed \$100. However,
 120 all appointments of private counsel under this section shall be
 121 in accordance with ss. 27.710 and 27.711.

122 Section 4. Paragraph (a) of subsection (1) of section
 123 28.241, Florida Statutes, is amended to read:

124 28.241 Filing fees for trial and appellate proceedings.-

125 (1) Filing fees are due at the time a party files a

126 pleading to initiate a proceeding or files a pleading for
127 relief. Reopen fees are due at the time a party files a pleading
128 to reopen a proceeding if at least 90 days have elapsed since
129 the filing of a final order or final judgment with the clerk. If
130 a fee is not paid upon the filing of the pleading as required
131 under this section, the clerk shall pursue collection of the fee
132 pursuant to s. 28.246.

133 (a)1.a. Except as provided in sub-subparagraph b. and
134 subparagraph 2., the party instituting any civil action, suit,
135 or proceeding in the circuit court shall pay to the clerk of
136 that court a filing fee of up to \$395 in all cases in which
137 there are not more than five defendants and an additional filing
138 fee of up to \$2.50, from which the clerk shall remit \$0.50 to
139 the Department of Revenue for deposit into the General Revenue
140 Fund, for each defendant in excess of five. Of the first \$200 in
141 filing fees, \$195 must be remitted to the Department of Revenue
142 for deposit into the State Courts Revenue Trust Fund, \$4 must be
143 remitted to the Department of Revenue for deposit into the
144 Administrative Trust Fund within the Department of Financial
145 Services and used to fund the contract with the Florida Clerks
146 of Court Operations Corporation created in s. 28.35, and \$1 must
147 be remitted to the Department of Revenue for deposit into the
148 Administrative Trust Fund within the Department of Financial
149 Services to fund audits of individual clerks' court-related
150 expenditures conducted by the Department of Financial Services.

151 b. The party instituting any civil action, suit, or
152 proceeding in the circuit court under chapter 39, chapter 61,
153 chapter 741, chapter 742, chapter 747, chapter 752, or chapter
154 753 shall pay to the clerk of that court a filing fee of up to
155 \$295 in all cases in which there are not more than five
156 defendants and an additional filing fee of up to \$2.50 for each
157 defendant in excess of five. Of the first \$100 in filing fees,
158 \$95 must be remitted to the Department of Revenue for deposit
159 into the State Courts Revenue Trust Fund, \$4 must be remitted to
160 the Department of Revenue for deposit into the Administrative
161 Trust Fund within the Department of Financial Services and used
162 to fund the contract with the Florida Clerks of Court Operations
163 Corporation created in s. 28.35, and \$1 must be remitted to the
164 Department of Revenue for deposit into the Administrative Trust
165 Fund within the Department of Financial Services to fund audits
166 of individual clerks' court-related expenditures conducted by
167 the Department of Financial Services.

168 c. An additional filing fee of \$4 shall be paid to the
169 clerk. The clerk shall remit \$3.50 to the Department of Revenue
170 for deposit into the Court Education Trust Fund and shall remit
171 50 cents to the Department of Revenue for deposit into the
172 Administrative Trust Fund within the Department of Financial
173 Services to fund clerk education provided by the Florida Clerks
174 of Court Operations Corporation. An additional filing fee of up
175 to \$18 shall be paid by the party seeking each severance that is

176 granted, from which the clerk shall remit \$3 to the Department
177 of Revenue for deposit into the General Revenue Fund. The clerk
178 may impose an additional filing fee of up to \$85, from which the
179 clerk shall remit \$10 to the Department of Revenue for deposit
180 into the General Revenue Fund, for all proceedings of
181 garnishment, attachment, replevin, and distress. Postal charges
182 incurred by the clerk of the circuit court in making service by
183 certified or registered mail on defendants or other parties
184 shall be paid by the party at whose instance service is made.
185 Additional fees, charges, or costs may not be added to the
186 filing fees imposed under this section, except as authorized in
187 this section or by general law.

188 2.a. Notwithstanding the fees prescribed in subparagraph
189 1., a party instituting a civil action in circuit court relating
190 to real property or mortgage foreclosure shall pay a graduated
191 filing fee based on the value of the claim.

192 b. A party shall estimate in writing the amount in
193 controversy of the claim upon filing the action. For purposes of
194 this subparagraph, the value of a mortgage foreclosure action is
195 based upon the principal due on the note secured by the
196 mortgage, plus interest owed on the note and any moneys advanced
197 by the lender for property taxes, insurance, and other advances
198 secured by the mortgage, at the time of filing the foreclosure.
199 The value shall also include the value of any tax certificates
200 related to the property. In stating the value of a mortgage

201 foreclosure claim, a party shall declare in writing the total
202 value of the claim, as well as the individual elements of the
203 value as prescribed in this sub-subparagraph.

204 c. In its order providing for the final disposition of the
205 matter, the court shall identify the actual value of the claim.
206 The clerk shall adjust the filing fee if there is a difference
207 between the estimated amount in controversy and the actual value
208 of the claim and collect any additional filing fee owed or
209 provide a refund of excess filing fee paid.

210 d. The party shall pay a filing fee of:

211 (I) Three hundred and ninety-five dollars in all cases in
212 which the value of the claim is \$50,000 or less and in which
213 there are not more than five defendants. The party shall pay an
214 additional filing fee of up to \$2.50 for each defendant in
215 excess of five. Of the first \$200 in filing fees, \$195 must be
216 remitted by the clerk to the Department of Revenue for deposit
217 into the General Revenue Fund, \$4 must be remitted to the
218 Department of Revenue for deposit into the Administrative Trust
219 Fund within the Department of Financial Services and used to
220 fund the contract with the Florida Clerks of Court Operations
221 Corporation created in s. 28.35, and \$1 must be remitted to the
222 Department of Revenue for deposit into the Administrative Trust
223 Fund within the Department of Financial Services to fund audits
224 of individual clerks' court-related expenditures conducted by
225 the Department of Financial Services;

226 (II) Nine hundred dollars in all cases in which the value
 227 of the claim is more than \$50,000 but less than \$250,000 and in
 228 which there are not more than five defendants. The party shall
 229 pay an additional filing fee of up to \$2.50 for each defendant
 230 in excess of five. Of the first \$355 in filing fees, \$350 must
 231 be remitted by the clerk to the Department of Revenue for
 232 deposit into the General Revenue Fund, \$4 must be remitted to
 233 the Department of Revenue for deposit into the Administrative
 234 Trust Fund within the Department of Financial Services and used
 235 to fund the contract with the Florida Clerks of Court Operations
 236 Corporation created in s. 28.35, and \$1 must be remitted to the
 237 Department of Revenue for deposit into the Administrative Trust
 238 Fund within the Department of Financial Services to fund audits
 239 of individual clerks' court-related expenditures conducted by
 240 the Department of Financial Services; or

241 (III) One thousand nine hundred dollars in all cases in
 242 which the value of the claim is \$250,000 or more and in which
 243 there are not more than five defendants. The party shall pay an
 244 additional filing fee of up to \$2.50 for each defendant in
 245 excess of five. Of the first \$1,240 ~~\$1,705~~ in filing fees, \$465
 246 ~~\$930~~ must be remitted by the clerk to the Department of Revenue
 247 for deposit into the General Revenue Fund, \$770 must be remitted
 248 to the Department of Revenue for deposit into the State Courts
 249 Revenue Trust Fund, \$4 must be remitted to the Department of
 250 Revenue for deposit into the Administrative Trust Fund within

HB 1077

2024

251 the Department of Financial Services to fund the contract with
252 the Florida Clerks of Court Operations Corporation created in s.
253 28.35, and \$1 must be remitted to the Department of Revenue for
254 deposit into the Administrative Trust Fund within the Department
255 of Financial Services to fund audits of individual clerks'
256 court-related expenditures conducted by the Department of
257 Financial Services.

258 e. An additional filing fee of \$4 shall be paid to the
259 clerk. The clerk shall remit \$3.50 to the Department of Revenue
260 for deposit into the Court Education Trust Fund and shall remit
261 50 cents to the Department of Revenue for deposit into the
262 Administrative Trust Fund within the Department of Financial
263 Services to fund clerk education provided by the Florida Clerks
264 of Court Operations Corporation. An additional filing fee of up
265 to \$18 shall be paid by the party seeking each severance that is
266 granted. The clerk may impose an additional filing fee of up to
267 \$85 for all proceedings of garnishment, attachment, replevin,
268 and distress. Postal charges incurred by the clerk of the
269 circuit court in making service by certified or registered mail
270 on defendants or other parties shall be paid by the party at
271 whose instance service is made. Additional fees, charges, or
272 costs may not be added to the filing fees imposed under this
273 section, except as authorized in this section or by general law.

274 Section 5. Paragraph (i) of subsection (2) and paragraph
275 (a) of subsection (3) of section 28.35, Florida Statutes are

HB 1077

2024

276 amended, and paragraph (j) is added to subsection (2) of that
277 section, to read:

278 28.35 Florida Clerks of Court Operations Corporation.—

279 (2) The duties of the corporation shall include the
280 following:

281 (i) Annually preparing a budget request which,
282 notwithstanding the provisions of chapter 216 and in accordance
283 with s. 216.351, provides the anticipated amount necessary for
284 reimbursement pursuant to s. 40.29(6) and 40.29(7). The request
285 for the anticipated reimbursement amount shall be submitted in
286 the form and manner prescribed by the Justice Administrative
287 Commission. Such request is not subject to change by the Justice
288 Administrative Commission, except for technical changes
289 necessary to conform to the legislative budget instructions, and
290 shall be submitted to the Governor for transmittal to the
291 Legislature.

292 (j) Annually preparing a budget request that,
293 notwithstanding the provisions of chapter 216 and in accordance
294 with s. 216.351, provides the anticipated amount necessary to
295 fund increases in employer contribution rates pursuant to 121.71
296 and 121.72 for court-related employees participating in the
297 Florida Retirement System. The request for the anticipated
298 appropriation must be submitted in the form and manner
299 prescribed by the Justice Administrative Commission. The budget
300 request may not be changed by the Justice Administrative

301 Commission, except for technical changes necessary to conform to
 302 the legislative budget instructions and must be submitted to the
 303 Governor for transmittal to the Legislature.

304 (3)(a) The list of court-related functions that clerks may
 305 fund from filing fees, service charges, court costs, and fines
 306 is limited to those functions expressly authorized by law or
 307 court rule. Those functions include the following: case
 308 maintenance; records management; court preparation and
 309 attendance; processing the assignment, reopening, and
 310 reassignment of cases; processing of appeals; collection and
 311 distribution of fines, fees, service charges, and court costs;
 312 processing of bond forfeiture payments; data collection and
 313 reporting; determinations of indigent status; improving court
 314 technology; and paying reasonable administrative support costs
 315 to enable the clerk of the court to carry out these court-
 316 related functions.

317 Section 6. Paragraph (b) subsection (4) of section 28.37,
 318 Florida Statutes is amended to read:

319 28.37 Fines, fees, service charges, and costs remitted to
 320 the state.—

321 (4)

322 (b) No later than February 1 annually, ~~2022, and each~~
 323 ~~February 1 thereafter,~~ the Florida Clerks of Court Operations
 324 Corporation must calculate ~~Department of Revenue shall transfer~~
 325 ~~50 percent of the cumulative excess, which of the original~~

326 ~~revenue projection from the Clerks of the Court Trust Fund to~~
 327 ~~the General Revenue Fund. The remaining 50 percent in the Clerks~~
 328 ~~of the Court Trust Fund~~ may be used in the development of the
 329 total combined budgets of the clerks of the court as provided in
 330 s. 28.35(2)(f)6. ~~However,~~ A minimum of 10 percent ~~of the clerk-~~
 331 ~~retained portion~~ of the cumulative excess amount must be held in
 332 reserve until such funds reach an amount equal to at least 16
 333 percent of the total budget authority from the current county
 334 fiscal year, as provided in s. 28.36(3)(a).

335 Section 7. Paragraphs (c) and (d) of subsection (1) of
 336 section 34.041, Florida Statutes, are amended to read:

337 34.041 Filing fees.—

338 (1)

339 (c) A party in addition to a party described in paragraph
 340 (a) who files a pleading in an original civil action in the
 341 county court for affirmative relief by cross-claim, counterclaim,
 342 counterpetition, or third-party complaint, or who files a notice
 343 of cross-appeal or notice of joinder or motion to intervene as an
 344 appellant, cross-appellant, or petitioner, shall pay the clerk of
 345 court a fee of \$295 if the relief sought by the party under this
 346 paragraph exceeds \$2,500 but is not more than \$15,000 and \$395 if
 347 the relief sought by the party under this paragraph exceeds
 348 \$15,000. The clerk shall deposit ~~remit~~ the fee if the relief
 349 sought by the party under this paragraph exceeds \$2,500 but is
 350 not more than \$15,000 ~~to the Department of Revenue for deposit~~

351 into the fine and forfeiture fund established pursuant to s.
 352 142.01 General Revenue Fund. This fee does not apply if the
 353 cross-claim, counterclaim, counterpetition, or third-party
 354 complaint requires transfer of the case from county to circuit
 355 court. However, the party shall pay to the clerk the standard
 356 filing fee for the court to which the case is to be transferred.

357 (d) The clerk of court shall collect a service charge of
 358 \$10 for issuing a summons or an electronic certified copy of a
 359 summons, which the clerk shall deposit into the fine and
 360 forfeiture fund established pursuant to s. 142.01 ~~remit to the~~
 361 ~~Department of Revenue for deposit into the General Revenue~~
 362 ~~Fund~~. The clerk shall assess the fee against the party seeking
 363 to have the summons issued.

364 Section 8. Subsection (6) of section 40.29, Florida
 365 Statutes, is amended, and subsections (7) and (8) are added to
 366 that section, to read:

367 40.29 Payment of due-process costs; reimbursement for
 368 petitions, ~~and~~ orders, and waived civil filing fees for
 369 indigency; payment of Florida Retirement System costs for
 370 court-related employees.-

371 (6) Subject to legislative appropriation, the Florida
 372 Clerks of Court Operations Corporation ~~clerk of the circuit~~
 373 ~~court~~ may, on behalf of the clerks of the circuit court, on a
 374 quarterly basis, submit to the Justice Administrative
 375 Commission a certified request for reimbursement for petitions

HB 1077

2024

376 and orders filed under ss. 394.459, 394.463, 394.467, 394.917,
377 and 397.6814, at the rate of \$40 per petition or order and for
378 orders filed under ss. 741.30, 784.046, and 784.0485, the
379 Florida Clerks of Court Operation Corporation may, on a
380 quarterly basis, submit a request for reimbursement at the
381 rate of \$195 per petition. From this reimbursement, the clerk
382 of the court receiving reimbursement must pay any law
383 enforcement agency serving injunctions a fee not to exceed
384 \$40, if so requested by the law enforcement agency. Such
385 request for reimbursement shall be submitted in the form and
386 manner prescribed by the Justice Administrative Commission
387 pursuant to s. 28.35(2)(i).

388 (7) Subject to legislative appropriation, the Florida
389 Clerks of Court Operations Corporation may, on a quarterly
390 basis, submit to the Justice Administrative Commission a
391 certified request for reimbursement for approved applications
392 for civil indigency under s. 57.082, in which the civil filing
393 fee has been waived, at the rate of \$195 per approved
394 application. The request for reimbursement shall be submitted
395 in the form and manner prescribed by the Justice
396 Administrative Commission pursuant to s. 28.35(2)(i).

397 (8) Subject to legislative appropriation, the Florida
398 Clerks of Court Operations Corporation must submit to the
399 Justice Administrative Commission a certified amount by county
400 of the employer contribution rate increases for the Florida

401 Retirement System for court-related employees.

402 Section 9. Paragraph (b) of subsection (7) of section
403 57.082, Florida Statutes, is amended to read:

404 57.082 Determination of civil indigent status.—

405 (7) FINANCIAL DISCREPANCIES; FRAUD; FALSE INFORMATION.—

406 (b) If the court has reason to believe that any applicant,
407 through fraud or misrepresentation, was improperly determined to
408 be indigent, the matter shall be referred to the state attorney.

409 Twenty-five percent of any amount recovered by the state
410 attorney as reasonable value of the services rendered, including
411 fees, charges, and costs paid by the state on the person's
412 behalf, shall be remitted to the Department of Revenue for
413 deposit into the Grants and Donations Trust Fund of ~~within~~ the
414 applicable state attorney ~~Justice Administrative Commission~~.

415 Seventy-five percent of any amount recovered shall be remitted
416 to the Department of Revenue for deposit into the General
417 Revenue Fund.

418 Section 10. Paragraph (d) of subsection (4) of section
419 110.112, Florida Statutes, is amended to read:

420 110.112 Affirmative action; equal employment opportunity.—

421 (4) Each state attorney and public defender shall:

422 ~~(d) Report annually to the Justice Administrative~~
423 ~~Commission on the implementation, continuance, updating, and~~
424 ~~results of his or her affirmative action program for the~~
425 ~~previous fiscal year.~~

426 Section 11. Subsection (6) of section 186.003, Florida
 427 Statutes, is amended to read:

428 186.003 Definitions; ss. 186.001-186.031, 186.801-
 429 186.901.—As used in ss. 186.001-186.031 and 186.801-186.901, the
 430 term:

431 (6) "State agency" or "agency" means any official, officer,
 432 commission, board, authority, council, committee, or department
 433 of the executive branch of state government. For purposes of
 434 this chapter, "state agency" or "agency" includes ~~state~~
 435 ~~attorneys, public defenders, the capital collateral regional~~
 436 ~~counsel, the Justice Administrative Commission, and the Public~~
 437 Service Commission.

438 Section 12. Paragraph (a) of subsection (8) and subsection
 439 (18) of section 318.18, Florida Statutes, are amended to read:

440 318.18 Amount of penalties.—The penalties required for a
 441 noncriminal disposition pursuant to s. 318.14 or a criminal
 442 offense listed in s. 318.17 are as follows:

443 (8)(a) Any person who fails to comply with the court's
 444 requirements or who fails to pay the civil penalties specified
 445 in this section within the 30-day period provided for in s.
 446 318.14 must pay an additional civil penalty of \$16, \$1.50 ~~\$6.50~~
 447 of which must be remitted to the Department of Revenue for
 448 deposit in the General Revenue Fund, ~~and~~ \$9.50 of which must be
 449 remitted to the Department of Revenue for deposit in the Highway
 450 Safety Operating Trust Fund, and \$5.00 of which shall be

451 retained by the clerk of the court to be deposited in the Public
452 Records Modernization Trust Fund and used exclusively for
453 funding court-related technology needs of the clerk, as defined
454 in s. 29.008(1)(f)2. and (h). ~~Of this additional civil penalty~~
455 ~~of \$16, \$4 is not revenue for purposes of s. 28.36 and may not~~
456 ~~be used in establishing the budget of the clerk of the court~~
457 ~~under that section or s. 28.35.~~ The department shall contract
458 with the Florida Association of Court Clerks, Inc., to design,
459 establish, operate, upgrade, and maintain an automated statewide
460 Uniform Traffic Citation Accounting System to be operated by the
461 clerks of the court which shall include, but not be limited to,
462 the accounting for traffic infractions by type, a record of the
463 disposition of the citations, and an accounting system for the
464 fines assessed and the subsequent fine amounts paid to the
465 clerks of the court. The clerks of the court must provide the
466 information required by this chapter to be transmitted to the
467 department by electronic transmission pursuant to the contract.

468 (18) In addition to any penalties imposed, an
469 administrative fee of \$12.50 must be paid for all noncriminal
470 moving and nonmoving violations under chapters 316, 320, and
471 322. Of this administrative fee, \$6.25 must be deposited into
472 the Public Records Modernization Trust Fund and used exclusively
473 for funding court-related technology needs of the clerk, as
474 defined in s. 29.008(1)(f)2. and (h), and \$6.25 must be
475 deposited into the fine and forfeiture fund established pursuant

HB 1077

2024

476 ~~to s. 142.01. The clerk shall remit the administrative fee to~~
477 ~~the Department of Revenue for deposit into the General Revenue~~
478 ~~Fund.~~

479 Section 13. Section 322.76, Florida Statutes, is created
480 to read:

481 322.76 Miami-Dade County the Clerk of Court Driver License
482 Reinstatement Pilot Program.-There is created in Miami-Dade
483 County the Clerk of Court Driver License Reinstatement Pilot
484 Program.

485 (1) As used in this section, the term "clerk" means the
486 Clerk of the Circuit Court for Miami-Dade County.

487 (2) Notwithstanding any other provision to the contrary in
488 this chapter, the clerk may reinstate or provide an affidavit to
489 the department to reinstate a suspended driver license:

490 (a) For a person's failure to fulfill a court-ordered
491 child support obligation.

492 (b) As a result of the end of suspension because of
493 points, under s. 322.37, notwithstanding hardship license.

494 (c) For failure to comply with any provision of chapter
495 318 or this chapter.

496 (3) Notwithstanding s. 322.29(1), an examination is not
497 required for the reinstatement of a driver license suspended
498 under s. 318.15 or s. 322.245 unless an examination is otherwise
499 required by this chapter. A person applying for the
500 reinstatement of a driver license suspended under s. 318.15 or

501 s. 322.245 must present to the clerk certification from the
502 court that he or she has either complied with all obligations
503 and penalties imposed pursuant to s. 318.15 or with all
504 directives of the court and the requirements of s. 322.245.

505 (4) A nonrefundable service fee must be paid pursuant to
506 s. 322.29(2).

507 (5) Before July 1, 2024, the department shall work with
508 the clerk, through its association, to ensure the ability within
509 its technology system for the clerk to reinstate suspended
510 driver licenses under the pilot program, to begin on July 1,
511 2024.

512 (6) By December 31, 2025, the clerk must submit the
513 Governor, the President of the Senate, the Speaker of the House
514 of Representatives, and the Executive Director of the Florida
515 Clerks of Court Operations Corporation a report containing the
516 following information:

517 (a) Number of driver license reinstatements.

518 (b) Amount of fees and costs collected, including the
519 aggregate funds received by the clerk, local governmental
520 entities, and state entities, including the General Revenue
521 Fund.

522 (c) The personnel, operating, and other expenditures
523 incurred by the clerk.

524 (d) Feedback received from the community, if any, in
525 response to the clerk's participation in the pilot program.

526 (e) Whether the pilot program led to improved timeliness
 527 for the reinstatement of driver licenses.

528 (f) The clerk's recommendation as to whether the pilot
 529 program should be extended in Miami-Dade County or to other
 530 clerks' offices.

531 (g) Any other information the clerk deems necessary.

532 (7) This section is repealed on July 1, 2026.

533 Section 14. Subsection (1) of section 501.2101, Florida
 534 Statutes, is amended to read:

535 501.2101 Enforcing authorities; moneys received in certain
 536 proceedings.—

537 (1) Any moneys received by an enforcing authority for
 538 attorney ~~attorney's~~ fees and costs of investigation or
 539 litigation in proceedings brought under the provisions of s.
 540 501.207, s. 501.208, or s. 501.211 shall be deposited as
 541 received in the Legal Affairs Revolving Trust Fund if the action
 542 is brought by the Department of Legal Affairs, and in the Grants
 543 and Donations ~~Consumer Frauds~~ Trust Fund of a state attorney ~~the~~
 544 ~~Justice Administrative Commission~~ if the action is brought by
 545 the ~~a~~ state attorney.

546 Section 15. Paragraph (a) of subsection (2) of section
 547 741.30, Florida Statutes, is amended to read:

548 741.30 Domestic violence; injunction; powers and duties of
 549 court and clerk; petition; notice and hearing; temporary
 550 injunction; issuance of injunction; statewide verification

551 system; enforcement; public records exemption.-

552 (2)(a) Notwithstanding any other law, the assessment of a
 553 filing fee for a petition for protection against domestic
 554 violence is prohibited. ~~However, subject to legislative~~
 555 ~~appropriation, the clerk of the circuit court may, on a~~
 556 ~~quarterly basis, submit to the Office of the State Courts~~
 557 ~~Administrator a certified request for reimbursement for~~
 558 ~~petitions for protection against domestic violence issued by the~~
 559 ~~court, at the rate of \$40 per petition. The request for~~
 560 ~~reimbursement must be submitted in the form and manner~~
 561 ~~prescribed by the Office of the State Courts Administrator. From~~
 562 ~~this reimbursement, the clerk shall pay any law enforcement~~
 563 ~~agency serving the injunction the fee requested by the law~~
 564 ~~enforcement agency; however, this fee may not exceed \$20.~~

565 Section 16. Paragraph (b) of subsection (3) of section
 566 784.046, Florida Statutes, is amended to read:

567 784.046 Action by victim of repeat violence, sexual
 568 violence, or dating violence for protective injunction; dating
 569 violence investigations, notice to victims, and reporting;
 570 pretrial release violations; public records exemption.-

571 (3)(b) Notwithstanding any other law, the clerk of the
 572 court may not assess a fee for filing a petition for protection
 573 against repeat violence, sexual violence, or dating violence.
 574 ~~However, subject to legislative appropriation, the clerk of the~~
 575 ~~court may, each quarter, submit to the Office of the State~~

576 ~~Courts Administrator a certified request for reimbursement for~~
 577 ~~petitions for protection issued by the court under this section~~
 578 ~~at the rate of \$40 per petition. The request for reimbursement~~
 579 ~~shall be submitted in the form and manner prescribed by the~~
 580 ~~Office of the State Courts Administrator. From this~~
 581 ~~reimbursement, the clerk shall pay the law enforcement agency~~
 582 ~~serving the injunction the fee requested by the law enforcement~~
 583 ~~agency; however, this fee may not exceed \$20.~~

584 Section 17. Paragraph (a) of subsection (2) of section
 585 784.0485, Florida Statutes, is amended to read:

586 784.0485 Stalking; injunction; powers and duties of court
 587 and clerk; petition; notice and hearing; temporary injunction;
 588 issuance of injunction; statewide verification system;
 589 enforcement.—

590 (2) (a) Notwithstanding any other law, the clerk of court
 591 may not assess a filing fee to file a petition for protection
 592 against stalking. ~~However, subject to legislative appropriation,~~
 593 ~~the clerk of the circuit court may, on a quarterly basis, submit~~
 594 ~~to the Office of the State Courts Administrator a certified~~
 595 ~~request for reimbursement for petitions for protection against~~
 596 ~~stalking issued by the court, at the rate of \$40 per petition.~~
 597 ~~The request for reimbursement shall be submitted in the form and~~
 598 ~~manner prescribed by the Office of the State Courts~~
 599 ~~Administrator. From this reimbursement, the clerk shall pay any~~
 600 ~~law enforcement agency serving the injunction the fee requested~~

HB 1077

2024

601 | ~~by the law enforcement agency; however, this fee may not exceed~~
602 | ~~\$20.~~
603 | Section 18. This act shall take effect upon becoming a
604 | law.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED (Y/N)
ADOPTED AS AMENDED (Y/N)
ADOPTED W/O OBJECTION (Y/N)
FAILED TO ADOPT (Y/N)
WITHDRAWN (Y/N)
OTHER

1 Committee/Subcommittee hearing bill: Justice Appropriations
2 Subcommittee

3 Representative Botana offered the following:

4
5 **Amendment (with title amendment)**

6 Remove lines 122-334

7

8 Remove lines 364-401

9

10 Remove lines 438-478

11
12 Remove line 493 and insert:

13 points, under s. 322.27, notwithstanding hardship license.

14
15 Remove lines 546-602

16

Amendment No. 1

17
18
19
20
21
22
23
24
25
26
27
28
29
30

T I T L E A M E N D M E N T

Remove lines 9-32 and insert:

capital collateral regional counsel; amending s. 34.041, F.S.;
revising the fund into which certain filing fees are to be
deposited; amending 57.082, F.S.; conforming provisions to
changes made by the act; amending s. 110.112, F.S.; removing a
provision requiring each state attorney to publish an annual
report addressing results of his or her affirmative action
program; amending s. 186.003, F.S.; revising the definition of
"state agency" for certain purposes; creating s. 322.76, F.S.;

Remove lines 42-53 and insert:

attorneys must be deposited; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1443 Electronic Access to Official Records

SPONSOR(S): Persons-Mulicka

TIED BILLS: **IDEN./SIM. BILLS:** SB 1616

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	16 Y, 0 N	Mathews	Jones
2) Justice Appropriations Subcommittee		Smith	Keith
3) Judiciary Committee			

SUMMARY ANALYSIS

Protective injunctions are available under Florida law for victims of the following forms of violence:

- Domestic violence;
- Repeat violence;
- Sexual violence;
- Dating violence; and
- Stalking.

Article I, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records, guaranteeing each person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. Independent of constitutional and statutory provisions that require court files to be generally open to the public, the courts have found that both civil and criminal court proceedings in Florida are public events, and that courts must adhere to the well-established common law right of access to court proceedings and records.

Through administrative rule, the Florida Supreme Court has adopted standards for access to electronic court records; however, clerk of court websites differ as to the level of case detail available electronically. Section 28.2221, F.S., requires the clerk of court or county recorder to make electronically available the identity of an adult against whom a final judgment for protective injunction for a minor has been filed. Current law only requires that such information be made available to the general public on an internet website. As such, it may be difficult for an interested party to find such information, despite it being made available somewhere on the internet.

HB 1443 amends s. 28.2221, F.S., to clarify that each clerk of court must make the identities of adults against whom a protective injunction for the protection of a minor has been entered, as specified under s. 28.2221, F.S., viewable to the general public through a searchable database on the clerk's own website. The database must be easily accessible in a clear and conspicuous location on the homepage of the clerk's website. The required information must be made available for search by the general public. Additionally, the bill requires each clerk to post a notice on its homepage that any affected party may request the addition of such information to the database.

The bill has no impact on state government and an indeterminate fiscal impact on local government. See Fiscal Analysis & Economic Impact Statement.

The bill has an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Protective Injunctions

An injunction is a court order prohibiting a person from doing a specified act or commanding a person to undo some wrong or injury.¹ Protective injunctions are available under Florida law for victims of the following forms of violence:

- Domestic violence;²
- Repeat violence;³
- Sexual violence;⁴
- Dating violence;⁵ and
- Stalking.⁶

A protective injunction may prohibit a person from:

- Remaining in the dwelling that the respondent shares with the petitioner;
- Going to or being within 500 feet of the petitioner's residence, school, place of employment, or other specified place;
- Committing an act of domestic violence or threatening to commit an act of violence against the petitioner;
- Telephoning, contacting, or otherwise communicating with the petitioner;
- Knowingly and intentionally coming within 100 feet of the petitioner's motor vehicle;
- Defacing or destroying the petitioner's personal property; or
- Maintaining possession of firearms or ammunition.⁷

A court may also require a respondent to complete a batterer's intervention program.⁸ Violation of a protective injunction is a first-degree misdemeanor, punishable by up to one year in jail and a \$1,000 fine.⁹

A petitioner seeking a protective injunction must allege in a sworn petition that:

- He or she is a victim of domestic violence; repeat, sexual, or dating violence; or stalking; or
- In the case of a petition for a domestic violence injunction, he or she has reasonable cause to believe he or she is in imminent danger of such violence.¹⁰

As soon as possible following the filing of the petition, a court must set a hearing to determine whether an immediate and present danger of the violence alleged exists.¹¹ However, if the court finds the

¹ Black's Law Dictionary 540 (6th ed. 1995).

² Domestic violence is an assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member. Ss. 741.28(2) and 741.30, F.S.

³ S. 784.046, F.S.

⁴ *Id.*

⁵ *Id.*

⁶ S. 784.0485, F.S., governs the issuance of injunctions against stalking and cyberstalking. This process largely parallels the provisions and procedures relating to domestic violence injunctions.

⁷ S. 741.31, F.S.

⁸ *Id.*; s. 741.30, F.S.

⁹ Ss. 741.31, 775.082, 775.083, 784.047, and 784.0487, F.S.

¹⁰ Ss. 741.30(1)(a), 784.046, and 784.0485, F.S.

petitioner is in immediate and present danger, it may grant a temporary injunction in an ex parte proceeding,¹² pending a full hearing, and grant relief including, but not limited to:

- Restraining the respondent from committing any acts of domestic violence;
- Awarding to the petitioner the temporary exclusive use and possession of a shared residence or excluding the respondent from the petitioner's residence; and
- Providing to the petitioner a temporary parenting plan,¹³ including a timesharing schedule,¹⁴ which may award the petitioner up to 100 percent of the timesharing.¹⁵

A court must then set a hearing with notice to the respondent, and upon such hearing with notice, may grant protective injunctive relief as it deems proper.¹⁶

Public Records

Article I, section 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, section 24(a) of the Florida Constitution provided the exemption passes by two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption, and is no broader than necessary to meet its public purpose.¹⁷

The Florida Statutes also address the public policy regarding access to government records. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt. Furthermore, the Open Government Sunset Review Act (OGSRA)¹⁸ provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose and the "Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."¹⁹ However, the exemption may be no broader than is necessary to meet one of the following purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; or
- Protecting trade or business secrets.²⁰

The OGSRA does not apply to an exemption that applies solely to the Legislature or the State Court System.²¹ Further, the OGSRA does not apply to an amendment to public records law that narrows the scope of an existing exemption.²²

¹¹ Ss. 741.30(5)(a), 784.046, and 784.0485, F.S.

¹² "Ex parte," Latin for "from one party," refers to motions for orders that can be granted without waiting for a response from the other side. These are generally orders that are in place only until further hearings can be held. Legal Information Institute, *Ex Parte*, https://www.law.cornell.edu/wex/ex_parte (last visited Feb. 6, 2024).

¹³ A "parenting plan" governs the relationship between parents relating to decisions that must be made regarding the minor child and must contain a timesharing schedule for the parents and child. S. 61.046(14), F.S.

¹⁴ "Timesharing schedule" means a timetable that must be included in a parenting plan that specifies the time, including overnights and holidays, which a minor child will spend with each parent. S. 61.046(23), F.S.

¹⁵ S. 741.30(5)(a), F.S.

¹⁶ Ss. 741.30(6)(a), 784.046, and 784.0485, F.S.

¹⁷ Art. I, s. 24(c), Fla. Const.

¹⁸ S. 119.15, F.S.

¹⁹ S. 119.15(6)(b), F.S.

²⁰ *Id.*

²¹ S. 119.15(2)(b), F.S.

²² S. 119.15(4)(b), F.S.

Public Records and Court Proceedings

Independent of constitutional and statutory provisions that require court files to be generally open to the public, case law provides that "both civil and criminal court proceedings in Florida are public events" and that courts must "adhere to the well-established common law right of access to court proceedings and records."²³ A court may close a court file or a portion thereof on equitable grounds, but its ability to do so is limited. The Florida Supreme Court has ruled that closure of court proceedings or records should occur only when necessary to:

- Comply with established public policy set forth in the constitution, statutes, rules, or case law.
- Protect trade secrets.
- Protect a compelling governmental interest such as national security or the identity of confidential informants.
- Obtain evidence to properly determine legal issues in a case.
- Avoid substantial injury to innocent third parties, such as to protect a child in a divorce.
- Avoid substantial injury to a party by disclosure of matters protected by a common law or privacy right not generally inherent in the specific type of civil proceeding sought to be closed.²⁴

Currently, s. 119.0714(1), F.S., provides public record exemptions for several types of personal information contained in court files, including, but not limited to:

- Records prepared by an agency attorney;²⁵
- Various law enforcement confidential records;²⁶
- Social security numbers;²⁷
- Bank account numbers; and
- A petition for an injunction for protection against domestic violence, repeat violence, dating violence, sexual violence, stalking and cyberstalking that has been dismissed without a hearing, dismissed due failure to state a claim or lack of jurisdiction, or dismissed for any other reason having to do with the sufficiency of the petition itself without an injunction being issued.²⁸

Public Records Exemptions Relating to Certain Victim Information

Section 119.071(2)(h)1., F.S., provides that the following criminal intelligence information or criminal investigative information is confidential and exempt:

- Any information that reveals the identity of the victim of:
 - Child abuse;²⁹
 - Human trafficking, if the victim is under 18;³⁰ or
 - Any sexual offense.³¹
- A photograph, videotape, or image of any part of the body of the victim of a sexual offense.³²

²³ *Barron v. Florida Freedom Newspapers, Inc.*, 531 So.2d 113, 116 (Fla. 1988).

²⁴ *Id.* at 118.

²⁵ S. 119.0714(1)(a), F.S.

²⁶ S. 119.0714, F.S.

²⁷ S. 119.0714(1)(i), F.S.

²⁸ S. 119.0714(1)(j), F.S.

²⁹ Ch. 827, F.S.

³⁰ S. 787.06(3)(a), F.S.

³¹ Sexual offenses include commercial sex trafficking under ss. 787.06(3)(b), (d), (f), or (g), F.S.; sexual battery under ch. 794, F.S.; prostitution under ch. 796, F.S.; lewd and lascivious acts under ch. 800, F.S.; sexual performance by a child under ch. 827, F.S.; and child pornography under ch. 847, F.S.

³² This information may be disclosed by a law enforcement agency in specified circumstances. See s. 119.071(2)(h)1., F.S.

Access to Electronic Court Records

Through administrative rule, the Florida Supreme Court has adopted standards for access to electronic court records and an access security matrix.³³ There are different levels of permissible access depending on “the user’s role and applicable statutes, court rules, and applicable administrative policy. Access may be restricted to certain user roles based on case type, document type, or information contained within court records.”³⁴

Current law authorizes access for the general public for all records except those that are expunged or sealed, automatically confidential under Rule 2.420(d)(1), Fla. R. Jud. Admin.,³⁵ or made confidential by court order. However, the general public may not remotely access images of records in cases governed by the Florida Family Law Rules of Procedure, Florida Rules of Juvenile Procedure, or Florida Probate Rules, pursuant to s. 28.2221(5)(a), F.S.³⁶

Serena’s Law

Pursuant to s. 28.2221, F.S., each county recorder or clerk of court must post on its website an entry of final judgment for an injunction for protection of a minor under ss. 741.30, 784.046, or 784.0485, F.S., which includes the identity of each adult defendant or respondent against whom the injunction is entered.

Although administrative rules require electronic access to certain court records, clerk of court websites differ on how much case detail is available electronically. As a result, when a criminal case is not prosecuted but a civil protective injunction is obtained against a perpetrator, potential employers and other members of the public may have difficulty discovering or be unable to discover that injunction, including through the use of a third-party background check.

Effect of Proposed Changes

HB 1443 amends s. 28.2221, F.S., to clarify that each clerk of court must make available the identity of a respondent against whom a final judgment for an injunction for protection of a minor for domestic violence, repeat violence, sexual violence, dating violence, or stalking is issued. Such information must be viewable through a searchable database that is available in a clear and conspicuous location on the homepage of the clerk’s official website. The required information must be made available for search by the general public.

The bill requires that notice of the right of any affected party under the bill to request the addition of such information to the searchable database must be displayed clearly and conspicuously on the clerk’s official website. Such notice must state that any person has a right to request that the clerk of the court add information to the searchable database on the clerk of court’s website if that information involves the identity of a respondent against whom a protective injunction of a minor has been issued.

The bill provides an effective date of July 1, 2024.

³³ Fla. Office of the State Courts Administrator, *Standards for Access to Electronic Court Records* (Sept. 2022), <https://www.flcourts.gov/content/download/850949/file/standards-for-access-to-electronic-court-records-september-2022.pdf> (last visited Feb. 6, 2024).

³⁴ *Id.*

³⁵ Pursuant to Rule 2.420(d)(1), Fla. R. of Judicial Admin., certain matters are automatically confidential, including, but not limited to, adoption records, chapter 39 records relating to dependency matters and termination of parental rights, clinical records under the Baker Act, the victim’s address in domestic violence matters, protected information regarding victims of child abuse or sexual offenses, and information that can be used to identify a petitioner or respondent in a petition for injunction against domestic violence, repeat violence, dating violence, sexual violence, stalking, or cyberstalking.

³⁶ *Supra* note 33 at 6.

B. SECTION DIRECTORY:

Section 1: Amends s. 28.2221, F.S., relating to electronic access to official records.

Section 2: Provides an effective date of July 1, 2024.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have an insignificant, yet indeterminate fiscal impact on clerks of the court expenditures related to creating the searchable database as prescribed under the bill. If current databases or indices of Official Records could be utilized, there would be no additional cost to the clerks. In the event that individual clerks' offices are required to create a new database in order to comply with the provisions of the bill, an indeterminate negative fiscal impact could be realized.³⁷ However, statewide revenue projections for funding received by the clerks' Fine and Forfeiture Funds are forecasted to increase by \$5.7 million in Fiscal Year 2023-24 and by \$5.4 million in Fiscal Year 2024-25³⁸, which could help offset any potential impact.

³⁷ Florida Association of Court Clerks and Comptrollers, Agency Analysis of 2024 House Bill 1443, p. 2 (Feb. 1, 2024).

³⁸ Office of Economic and Demographic Research, Revenue Estimating Conference, Article V Fees & Transfers, Executive Summary, p. 2 (Dec. 20, 2023). <http://edr.state.fl.us/Content/conferences/articleV/ArticleVsummary.pdf> (last visited Feb. 6, 2024).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill creates new requirements for a clerk of court; however, an exemption may apply because the fiscal impact may be insignificant.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to electronic access to official
 3 records; amending s. 28.2221, F.S.; requiring the
 4 county clerk of the court to make certain information
 5 available in a searchable database on the clerk's
 6 official website; providing an effective date.

7
 8 Be It Enacted by the Legislature of the State of Florida:

9
 10 Section 1. Subsection (8) of section 28.2221, Florida
 11 Statutes, is amended to read:

12 28.2221 Electronic access to official records.—

13 (8)(a) Each county ~~recorder or~~ clerk of the court must
 14 make the identity of each respondent against whom a final
 15 judgment for an injunction for the protection of a minor under
 16 s. 741.30, s. 784.046, or s. 784.0485 is entered, as well as the
 17 fact that a final judgment for an injunction for the protection
 18 of a minor under s. 741.30, s. 784.046, or s. 784.0485 has been
 19 entered against that respondent, publicly available on the
 20 clerk's official website, ~~an Internet website for general public~~
 21 ~~display, which may include the Internet website required by this~~
 22 ~~section,~~ unless the respondent is a minor. The identity and
 23 information required under this subsection must be viewable
 24 through a searchable database that is available in a clear and
 25 conspicuous location on the homepage of the clerk's official

26 | website and must be available for search by the general public.

27 | (b) Any information specified in this subsection not made
 28 | available by the county ~~recorder or~~ clerk of the court as
 29 | provided in this subsection ~~on a publicly available Internet~~
 30 | ~~website for general public display~~ before July 1, 2024 ~~2021~~,
 31 | must be made publicly available on the clerk of the court's
 32 | official ~~an Internet~~ website if the affected party identifies
 33 | the information and requests that such information be added ~~to a~~
 34 | ~~publicly available Internet website~~ for general public display.
 35 | Such request must be in writing and delivered by mail,
 36 | facsimile, or electronic transmission or in person to the county
 37 | ~~recorder or~~ clerk of the court. The request must specify the
 38 | case number assigned to the final judgment for an injunction for
 39 | the protection of a minor under s. 741.30, s. 784.046, or s.
 40 | 784.0485. A fee may not be charged for the addition of
 41 | information pursuant to such request.

42 | (c) No later than 30 days after July 1, 2024 ~~2021~~, notice
 43 | of the right of any affected party to request the addition of
 44 | information to the searchable database on the clerk of court's
 45 | official ~~a publicly available Internet~~ website pursuant to this
 46 | subsection must ~~shall~~ be conspicuously and clearly displayed by
 47 | the county ~~recorder or~~ clerk of the court on the clerk's
 48 | official ~~publicly available Internet~~ website on which images or
 49 | copies of the county's public records are placed and in the
 50 | office of each county ~~recorder or~~ clerk of the court. Such

HB 1443

2024

51 notice must contain appropriate instructions for making the
52 addition of information request in person, by mail, by
53 facsimile, or by electronic transmission. The notice must state,
54 in substantially similar form, that any person has a right to
55 request that a county ~~recorder or~~ clerk of the court add
56 information to the searchable database on the clerk of court's
57 official ~~a publicly available Internet~~ website if that
58 information involves the identity of a respondent against whom a
59 final judgment for an injunction for the protection of a minor
60 under s. 741.30, s. 784.046, or s. 784.0485 is entered, unless
61 the respondent is a minor. Such request must be made in writing
62 and delivered by mail, facsimile, or electronic transmission or
63 in person to the county ~~recorder or~~ clerk of the court. The
64 request must specify the case number assigned to the final
65 judgment for an injunction for the protection of a minor under
66 s. 741.30, s. 784.046, or s. 784.0485. A fee may not be charged
67 for the addition of a document pursuant to such request.

68 (d) Any affected person may petition the circuit court for
69 an order directing compliance with this subsection.

70 Section 2. This act shall take effect July 1, 2024.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1449 Reclassification of Criminal Penalties

SPONSOR(S): Michael

TIED BILLS: **IDEN./SIM. BILLS:** SB 1036

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 3 N	Leshko	Hall
2) Justice Appropriations Subcommittee		Smith	Keith
3) Judiciary Committee			

SUMMARY ANALYSIS

The United States Customs and Border Protection (CBP) is the federal law enforcement agency responsible for securing the nation's borders and facilitating international travel and trade. The CBP's top priority is to keep terrorists and their weapons from entering the United States. In Federal Fiscal Year (FFY) 2023, the total enforcement actions of the Office of Field Operations and the U.S. Border Patrol were 1,137,452, and are 354,753 to date in FFY 2024, including apprehensions, inadmissibles, and expulsions. Criminal noncitizens encountered at the United States borders are a subset of the total inadmissibles encountered and United States Border Patrol arrests of criminal noncitizens are a subset of total apprehensions. Encounters with criminal noncitizens in FFY 2023 was 20,166 and has been 4,805 in FFY 2024 to date.

"Organized crime has been defined as 'illegal activities, conducted by groups or networks acting in concert by engaging in violence, corruption or related activities in order to obtain, directly or indirectly, a financial or material benefit.' Transnational organized crime occurs when these activities, or these groups or networks, operate in two or more countries." Transnational criminal organizations engage in a broad range of criminal activities, including, but not limited to, drug and weapons trafficking, human smuggling, human trafficking, cybercrime, and money laundering, generating an estimated revenue of between \$1.6 trillion and \$2.2 trillion annually.

HB 1449 creates s. 775.0848, F.S., to require reclassification of any new felony committed by a person who unlawfully reenters the United States after having been deported or otherwise removed from the United States under federal immigration proceedings for committing a felony; or departing the United States while such an order of deportation or removal was outstanding.

The bill also creates s. 908.12, F.S., to require reclassification of any felony or misdemeanor, or any delinquent act or violation of law which would be a felony or misdemeanor if committed by an adult, if a person committed the offense for the purpose of benefiting, promoting, or furthering the interests of a transnational crime organization. The bill defines "transnational crime organization" to mean an organization that routinely facilitates the international trafficking of drugs, humans, or weapons or the international smuggling of humans.

Under the bill, qualifying offenses under ss. 775.0848 and 908.12, F.S., are reclassified as follows:

- A misdemeanor of the second-degree is reclassified to a misdemeanor of the first-degree.
- A misdemeanor of the first-degree is reclassified to a felony of the third-degree.
- A felony of the third-degree is reclassified to a felony of the second-degree.
- A felony of the second-degree is reclassified to a felony of the first-degree.
- A felony of the first-degree is reclassified to a life felony.

The bill may have a positive indeterminate impact on jail and prison beds. See Fiscal Comments.

The bill provides an effective date of October 1, 2024.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1449b.JUA

DATE: 2/12/2024

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Immigration

The Federal Government establishes and enforces immigration laws. The federal Immigration and Nationality Act (INA) contains many of the most important provisions of immigration law.¹

The Department of Homeland Security, the United States Immigration and Customs Enforcement, Enforcement and Removal Operations, is responsible for enforcing the immigration laws and identifying, apprehending, and removing aliens who are a risk to national security or public safety, who are in the country illegally, or who undermine the integrity of the country's immigration laws or border control efforts.²

The United States Customs and Border Protection (CBP) is the federal law enforcement agency responsible for securing the nation's borders and facilitating international travel and trade. The CBP's top priority is to keep terrorists and their weapons from entering the United States.

In Federal Fiscal Year (FFY) 2023,³ the total enforcement actions of the Office of Field Operations (OFO) and the U.S. Border Patrol (USBP)⁴ were 1,137,452, and are 354,753 to date in FFY 2024, including apprehensions, inadmissibles, and expulsions,^{5, 6}

Criminal noncitizens⁷ encountered at the United States borders are a subset of the total inadmissibles encountered and United States Border Patrol arrests of criminal noncitizens are a subset of total apprehensions. Encounters with criminal noncitizens for the past five years at all land borders were:⁸

FFY 2020	FFY 2021	FFY 2022	FFY 2023	FFY 2024 (to date)
7,009	6,567	16,993	20,166	4,805

Transnational Crime Organizations

"Organized crime has been defined as 'illegal activities, conducted by groups or networks acting in concert by engaging in violence, corruption or related activities in order to obtain, directly or indirectly, a financial or material benefit.' Transnational organized crime occurs when these activities, or these

¹ 8 U.S.C. §§ 1101-1778.

² U.S. Immigration and Customs Enforcement, *Enforcement and Removal Operations, Mission*, <https://www.ice.gov/ero> (last visited Jan. 27, 2024).

³ The federal fiscal year runs October 1 – September 30.

⁴ Both are federal law enforcement agencies under CBP.

⁵ CBP, *CBP Enforcement Statistics Fiscal Year 2023*, <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics> (last visited Feb. 2, 2024).

⁶ These figures include both Title 8 enforcement actions and Title 42 expulsions. Title 8 enforcement actions include apprehensions or inadmissibles. Inadmissibles refers to individuals encountered at ports of entry who are seeking lawful admission into the U.S. but are determined to be inadmissible, individuals presenting themselves to seek humanitarian protection under our laws, and individuals who withdraw an application for admission and return to their countries of origin within a short timeframe. Apprehensions refers to the physical control or temporary detainment of a person who is not lawfully in the U.S. which may or may not result in an arrest. Title 42 expulsions refers to individuals encountered by USBP or OFO and expelled to the country of last transit or home country in the interest of public health. CBP, *Nationwide Enforcement Encounters: Title 8 Enforcement Actions and Title 42 Expulsions Fiscal Year 2023*, <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics> (last visited Feb. 2, 2024).

⁷ "Criminal noncitizens" refers to noncitizens who have been convicted of a crime, whether in the U.S. or abroad, so long as the conviction is for conduct which is deemed criminal in the United States. CBP, *CBP Enforcement Statistics Fiscal Year 2023*, <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics> (last visited Feb. 2, 2024).

⁸ CBP, *supra* at note 5.

groups or networks, operate in two or more countries.”⁹ Transnational crime organizations (TCOs) engage in a broad range of criminal activities, including, but not limited to, drug and weapons trafficking, human smuggling, human trafficking, cybercrime, and money laundering, generating an estimated revenue of between \$1.6 trillion and \$2.2 trillion annually.¹⁰

Drug Trafficking

Drug trafficking is TCOs’ second-highest most profitable illicit activity.¹¹ TCOs’ expansion of drug trafficking is often accompanied by dramatic increases in local crime and corruption.¹²

Florida law prohibits a person from drug trafficking by knowingly selling, purchasing, manufacturing, delivering, or bringing into the state, or being in actual or constructive possession of, a specified quantity of a controlled substance.¹³ Section 893.135, F.S., outlines threshold amounts of the applicable controlled substance for each trafficking offense.

Human Trafficking

Human trafficking is modern day slavery which involves the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, purchasing, patronizing, procuring, or obtaining of another person for the purpose of exploiting that person.¹⁴ A person may not knowingly, or in reckless disregard of the facts, engage in human trafficking, attempt to engage in human trafficking, or benefit financially by receiving anything of value from participating in a venture that has subjected a person to human trafficking for commercial sexual activity, labor, or services:

- By using coercion;¹⁵
- With or of a child or person believed to be a child younger than 18;¹⁶ or
- If for commercial sexual activity, with a mentally defective¹⁷ or mentally incapacitated¹⁸ person.¹⁹

Human Smuggling

Section 787.07, F.S., prohibits a person from transporting an individual into this state who the person knows, or should know, is illegally entering the United States from another country. A person commits a separate offense for each individual he or she transports into this state.

⁹ Dr. Marina Caparini, *Transnational organized crime A threat to global public goods*, Stockholm International Peace Research Institute (Sept. 2, 2022), <https://www.sipri.org/commentary/topical-backgrounder/2022/transnational-organized-crime-threat-global-public-goods> (last visited Feb. 2, 2024).

¹⁰ Executive Order 14060, Establishing the United States Council on Transnational Organized Crime, 86 Fed. Reg. 71793 (Dec. 15, 2021).; See The White House, *FACT SHEET: The Biden Administration Launches New Efforts to Counter Transnational Criminal Organizations and Illicit Drugs*, <https://www.whitehouse.gov/briefing-room/statements-releases/2021/12/15/fact-sheet-the-biden-administration-launches-new-efforts-to-counter-transnational-criminal-organizations-and-illicit-drugs/> (last visited Feb. 2, 2024) and Channing Mavrellis, *Transnational Crime and the Developing World*, Global Financial Integrity (Mar. 27, 2017), <https://gfintegrity.org/report/transnational-crime-and-the-developing-world/> (last visited Feb. 2, 2024).

¹¹ Channing Mavrellis, *supra* at note 11.

¹² National Security Council, *Transnational Organized Crime: A Growing Threat to National and International Security*, <https://obamawhitehouse.archives.gov/administration/eop/nsc/transnational-crime/threat> (last visited Feb. 2, 2024).

¹³ Florida law criminalizes trafficking in cannabis; cocaine; illegal drugs, which include morphine, opium, hydromorphone, or any salt derivative, isomer, or salt of an isomer thereof, including heroin; hydrocodone, oxycodone, fentanyl; phencyclidine; methaqualone; amphetamine; flunitrazepam; gamma-hydroxybutyric (GHB); gamma-butyrolactone (GBL); 1,4-Butanediol; phenethylamines; lysergic acid diethylamide (LSD); synthetic cannabinoids; and n-benzyl phenethylamines. S. 893.135, F.S.

¹⁴ S. 787.06(2)(d), F.S.

¹⁵ Ss. 787.06(3)(a)2., (b), (c)2., (d), (e)2., and (f)2., F.S.

¹⁶ Ss. 787.06(3)(a)1., (c)1., (e)1., (f)1., and (g), F.S.

¹⁷ Mentally defective means a mental disease or defect which renders a person temporarily or permanently incapable of appraising the nature of his or her conduct. S. 794.011(1)(c), F.S.

¹⁸ Mentally incapacitated means temporarily incapable of appraising or controlling a person's own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered without his or her consent or due to any other act committed upon that person without his or her consent. S. 794.011(1)(d), F.S.

¹⁹ S. 787.06(3)(g), F.S.

Enhanced Penalties for Gang-Related Offenses

Section 874.04, F.S., enhances the penalty for any felony or misdemeanor, or any delinquent act or violation of law which would be a felony or misdemeanor if committed by an adult, if the commission of the offense is found to be for the purpose of benefiting, promoting, or furthering the interests of a criminal gang²⁰ as follows:

- A misdemeanor of the second-degree may be punished as if it were a misdemeanor of the first-degree.
- A misdemeanor of the first-degree may be punished as if it were a felony of the third-degree.²¹
- A felony of the third-degree may be punished as if it were a felony of the second-degree.
- A felony of the second-degree may be punished as if it were a felony of the first-degree.
- A felony of the first-degree may be punished as if it were a life felony.²²

Effect of Proposed Changes

HB 1449 creates s. 775.0848, F.S., to require reclassification of any new felony committed by a person who unlawfully reenters the United States after:

- Having been deported or otherwise removed from the United States under federal immigration proceedings for committing a felony; or
- Departing the United States while such an order of deportation or removal was outstanding.

The bill defines “removal” to mean any agreement in which a person stipulates to removal during a criminal proceeding under federal or state law.

The bill also creates s. 908.12, F.S., to require reclassification of any felony or misdemeanor, or any delinquent act or violation of law which would be a felony or misdemeanor if committed by an adult, if a person committed the offense for the purpose of benefiting, promoting, or furthering the interests of a transnational crime organization.

The bill defines “transnational crime organization” to mean an organization that routinely facilitates the international trafficking of drugs, humans, or weapons or the international smuggling of humans.

Under the bill, qualifying offenses under ss. 775.0848 and 908.12, F.S., are reclassified as follows:

- A misdemeanor of the second-degree is reclassified to a misdemeanor of the first-degree.
- A misdemeanor of the first-degree is reclassified to a felony of the third-degree.
- A felony of the third-degree is reclassified to a felony of the second-degree.
- A felony of the second-degree is reclassified to a felony of the first-degree.
- A felony of the first-degree is reclassified to a life felony.

The bill provides an effective date of October 1, 2024.

B. SECTION DIRECTORY:

Section 1: Creates s. 775.0848, F.S., relating to commission of a felony after unlawful reentry into the United States; reclassification.

Section 2: Creates s. 908.12, F.S., relating to transnational crime organizations; reclassification.

Section 3: Provides an effective date of October 1, 2024.

²⁰ Section 874.03(1), F.S., defines “criminal gang” to mean a formal or informal ongoing organization, association, or group that has as one of its primary activities the commission of criminal or delinquent acts, and that consists of three or more persons who have a common name or common identifying signs, colors, or symbols, including, but not limited to, terrorist organizations and hate groups.

²¹ For purposes of sentencing such an offense is ranked as a level 1 offense on the Criminal Punishment Code offense severity ranking chart. S. 874.04(1)(b), F.S.

²² For purposes of sentencing any such felony offenses enhanced under s. 874.04, F.S., are to be ranked on the OSRC without regard to the penalty enhancement.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have a positive indeterminate impact on jail and prison beds by reclassifying any felony committed by a person who unlawfully reenters the United States under specified circumstances and any misdemeanor or felony committed for the purpose of benefiting, promoting, or furthering the interests of a transnational crime organization, which may result in more jail and prison admissions and longer terms of incarceration.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
2 An act relating to reclassification of criminal
3 penalties; creating s. 775.0848, F.S.; defining the
4 term "removal"; requiring reclassification of the
5 penalty for the commission of a new felony committed
6 by a person who unlawfully reenters the United States
7 and while remaining unlawfully present after having
8 been deported or removed from the United States under
9 federal immigration proceedings for committing a
10 felony, or who has departed the United States while
11 such an order of deportation or removal was
12 outstanding; creating s. 908.12, F.S.; defining the
13 term "transnational crime organization"; authorizing
14 reclassification of the penalty for any felony or
15 misdemeanor offenses or certain other acts or
16 violations upon a specified finding by the factfinder;
17 specifying that the penalty enhancement affects only
18 the applicable statutory maximum sentence; requiring
19 that each of the findings required as a basis for such
20 sentence be found beyond a reasonable doubt; providing
21 an effective date.

22
23 Be It Enacted by the Legislature of the State of Florida:

24
25 Section 1. Section 775.0848, Florida Statutes, is created

26 | to read:

27 | 775.0848 Commission of a felony after unlawful reentry
 28 | into the United States; reclassification.-

29 | (1) As used in this section, the term "removal" means any
 30 | agreement in which a person stipulates to removal during a
 31 | criminal proceeding under federal or state law.

32 | (2) A person who has been deported or removed from the
 33 | United States under federal immigration proceedings for
 34 | committing a felony, or has departed the United States while
 35 | such an order of deportation or removal is outstanding, shall
 36 | have the penalty for committing a new felony after unlawfully
 37 | reentering the United States and while remaining unlawfully
 38 | present reclassified in the following manner:

39 | (a) A felony of the third degree is reclassified to a
 40 | felony of the second degree.

41 | (b) A felony of the second degree is reclassified to a
 42 | felony of the first degree.

43 | (c) A felony of the first degree is reclassified to a life
 44 | felony.

45 | Section 2. Section 908.12, Florida Statutes, is created to
 46 | read:

47 | 908.12 Transnational crime organizations;
 48 | reclassification.-

49 | (1) As used in this section, the term "transnational crime
 50 | organization" means an organization that routinely facilitates

51 the international trafficking of drugs, humans, or weapons or
52 the international smuggling of humans.

53 (2) Upon a finding by the factfinder that a defendant
54 committed the charged offense for the purpose of benefiting,
55 promoting, or furthering the interests of a transnational crime
56 organization, the penalty for any felony or misdemeanor, or for
57 any delinquent act or violation of law which would be a felony
58 or misdemeanor if committed by an adult, may be reclassified
59 under this subsection. A penalty enhancement affects only the
60 applicable statutory maximum sentence, and each of the findings
61 required as a basis for such sentence must be found beyond a
62 reasonable doubt. The reclassification is as follows:

63 (a) A misdemeanor of the second degree is reclassified to
64 a misdemeanor of the first degree.

65 (b) A misdemeanor of the first degree is reclassified to a
66 felony of the third degree.

67 (c) A felony of the third degree is reclassified to a
68 felony of the second degree.

69 (d) A felony of the second degree is reclassified to a
70 felony of the first degree.

71 (e) A felony of the first degree is reclassified to a life
72 felony.

73 Section 3. This act shall take effect October 1, 2024.