

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Policy and Steering Committee on Ways and Means

BILL: CS/SB 12-A

INTRODUCER: Criminal and Civil Justice Appropriations Committee

SUBJECT: State Judicial System

DATE: January 8, 2009 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Maclure/Hendon</u>	<u>Sadberry</u>	<u>JA</u>	FAV/CS
2.	<u>McVaney</u>	<u>Kelly</u>	<u>WPSC</u>	Favorable
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|--------------|-------------------------------------|---------------------------------------|
| A. COMMITTEE | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were |

I. Summary:

This bill amends statutes relating to traffic infractions and criminal fines and thereby generates additional revenue for the state. Revenue from a new traffic assessment is divided among the courts, the state attorneys, and the public defenders. The bill directs the other new revenues generated under the measure to the General Revenue Fund. However, the measure also redirects some existing revenue, collected as civil filing fees, from the General Revenue Fund to a trust fund for use by the state courts system. The bill also revises the statute relating to probation and authorizes a court to impose a fine in a nonfelony case regardless of whether it imposes probation.

Specifically, the bill:

- Increases by \$25 the fine for exceeding the speed limit by 15-19 miles per hour or 20-29 miles per hour;
- Creates a \$10 assessment to be paid, in addition to any other penalties, for noncriminal moving and nonmoving traffic violations;
- Eliminates an 18-percent discount in certain traffic-infraction penalties which drivers may receive for attending a basic driver improvement course;

- Specifies that certain criminal fines apply in cases in which the offender enters a plea of guilt or a plea of nolo contendere, regardless of whether adjudication of guilt is withheld;
- Provides that the criminal fine imposed when adjudication is withheld shall be deposited in the General Revenue Fund;
- Makes it discretionary rather than mandatory for a court to impose probation in a nonfelony matter in which it determines the recurrence of the criminal behavior is unlikely;
- Specifies that a court may impose a criminal fine in a nonfelony matter when it does not impose probation;
- Redistributes a portion of circuit court civil filing fees from the General Revenue Fund to a new Independent State Courts Trust Fund for use by the state courts system; and
- Specifies that the new revenue generated under the bill is not considered as new revenue for purposes of increasing the budgets of the clerks of court.

The fiscal impact of the bill will be an estimated increase to state trust funds by \$15.9 million in the fiscal year 2008-09 and \$63.1 million in fiscal year 2009-10.

This bill amends the following sections of the Florida Statutes: 28.241, 318.14, 318.15, 318.18, 318.21, 775.083, and 948.01.

II. Present Situation:

State Judicial System

In 1998, Florida voters approved Revision 7 to Article V of the State Constitution, which required the state to pay certain costs in the judicial system that had previously been county responsibilities. These changes were effective July 1, 2004. To that end, the Legislature defined the elements of the state courts system and assigned funding responsibilities to the state and local governments. State government began paying additional operational costs such as due process and court appointed counsel. County governments continued pay for facilities, communications, and security for the court system entities. The constitutional amendment also required the 67 county clerks of court to fund their offices using revenues derived from service charges, court costs, filing fees, and fines assessed in civil and criminal proceedings. The Legislature set the amount of some service charges, court costs, and filing fees. In other cases, the Legislature set a cap on the amounts. All 67 clerks have set the maximum amounts allowed by law. To assist in collecting owed service charges, court costs, filing fees, and fines, the clerks of court are authorized to use collection agents if necessary.

Traffic-Infraction Penalties; Driving-School Discount

Penalties for noncriminal – as well as some criminal – traffic infractions are generally prescribed in s. 318.18, F.S. With respect to speeding, the base fines are delineated according to the degree to which the driver was exceeding the limit. The fines range from a warning for exceeding the limit by one to five miles per hour, to \$250 for exceeding the limit by 30 miles per hour or

more.¹ Beyond the base penalties for traffic infractions, the Legislature has authorized additional assessments. For example, during the 2008 Regular Session, the Legislature authorized an “administrative fee of \$12.50” in addition to any other penalties for all noncriminal moving and nonmoving violations.²

Penalties collected for civil traffic infractions are generally divided under s. 318.21, F.S., using a percentage formula among a variety of recipient accounts, including the General Revenue Fund. There are exceptions to the prescribed distribution formula. For example, the Legislature directed the \$12.50 administrative fee assessment that it created in 2008 to the fine and forfeiture fund used to support the court-related functions of the clerk of court.

A driver who holds a noncommercial license and is cited for certain traffic infractions may receive an 18-percent discount in the penalty if he or she elects to attend a basic driver improvement course. The benefit applies to fines assessed under s. 318.18(3), F.S., which includes moving violations not requiring a mandatory appearance and a variety of speeding violations. In addition to the 18-percent discount on the penalty, the driver who elects to attend the course also avoids the assessment of points under the points system for evaluating convictions and suspending a driver’s license. Currently a person may not make the driving-school election if he or she made another election in the preceding 12 months. In addition, a person may make no more than five elections in 10 years.³

Criminal Fines, Adjudication Withheld, and Probation

A person convicted of an offense other than a capital felony may be sentenced to pay a fine in addition to other statutorily authorized punishment. The fine amounts are prescribed in s. 775.083, F.S., and range from \$15,000 for a life felony to \$500 for a second-degree misdemeanor or a noncriminal violation. The clerk of court must deposit the fine revenues in the fine and forfeiture fund established by statute for use by the clerk in performing court-related functions. The statute prescribing the fine amounts bases the fine upon being “convicted” or having a “conviction.” These terms are not currently defined in s. 775.083, F.S. There are other instances in the Florida Statutes where the term “convicted” is defined in the relevant statutory section to specify that it includes cases where the determination of guilt is by trial or the entry of a plea of guilty or nolo contendere – regardless of whether adjudication is withheld.⁴ Because the fine statute does not define the term “convicted,” it may result in judicial uncertainty on whether a fine may be imposed when adjudication is withheld.

Withholding adjudication is a practice under which the judge may impose a probation sentence upon a person without entering the underlying judgment of conviction.⁵ The practice has been described as:

¹ Section 318.18(3)(b), F.S.

² Section 318.18(18), F.S.; s. 33, ch. 2008-111, L.O.F.

³ Section 318.14(9), F.S.

⁴ See, for example, s. 943.0435(1)(b), F.S., relating to sexual offenders required to register with the Department of Law Enforcement, and s. 409.901(8), F.S., relating to Medicaid fraud.

⁵ See the definition of “deferred judgment” in BLACK’S LAW DICTIONARY (8th ed. 2004).

a logical compromise for the amicable resolution of criminal cases. In those cases, the defendant consents to the payment of fines and a term of probation in exchange for the state's acquiescence of a withhold of adjudication. Once the term of probation is successfully completed, the court is divested of jurisdiction and there is no adjudication of guilt.⁶

The circumstances under which a court may place a defendant on probation are prescribed in s. 948.01, F.S. If it appears to the court that the person is not likely to engage in the criminal behavior again and that the interests of justice do not require that the person suffer the penalty imposed by law, the judge may either adjudge the person guilty or withhold adjudication. In either case, the court shall then withhold imposition of the sentence and "shall" place the person on probation.⁷ Florida Rule of Criminal Procedure 3.670 echoes the statutory direction, providing that "the judge may withhold an adjudication of guilt if the judge places the defendant on probation."⁸

Case law indicates that in order to withhold adjudication a court must also place the defendant upon probation. In *State v. Tribble*, for example, the Fourth District Court of Appeal ruled that the trial court exceeded its authority when it withheld adjudication in a felony case without ordering probation.⁹

Civil Filing Fees

A party instituting a civil action in circuit court must pay the clerk of court of a fee of \$295 if the case does not have more than five defendants. If the case has more than five defendants, the party must pay an additional \$2.50 for each defendant in excess of five. Of the first \$85 in filing fees collected, the clerk must remit \$80 to the Department of Revenue for deposit into the General Revenue Fund and \$5 to the department for deposit into the Administrative Trust Fund of the Department of Financial Services to support the contract with the Florida Clerk of Court Operations Corporation.¹⁰

III. Effect of Proposed Changes:

This bill revises statutes relating to traffic infractions and criminal fines in order to generate additional revenue for the state. The new revenue is directed to the General Revenue Fund – except for the revenue from a new traffic assessment, which is distributed to trust funds specifically for the benefit of the courts, the state attorneys, and the public defenders. However, the bill also redirects some existing general revenue from civil filing fees toward the state courts system. Additionally, the bill revises the statute relating to probation to make imposition of probation in a nonfelony case discretionary and to authorize a court to impose a fine in a nonfelony case when it does not impose probation. Lastly, the measure specifies that the new

⁶ George E. Tragos and Peter A. Sartes, *Withhold of Adjudication: What Everyone Needs to Know*, 82-FEB FLA. B.J. 48, 48 (2008).

⁷ Section 948.01(2), F.S.

⁸ Fla. R. Crim. Pro. 3.670.

⁹ *State v. Tribble*, 984 So. 2d 639, 640-41 (Fla. 4th DCA 2008).

¹⁰ Section 28.241(1)(a), F.S. The corporation reviews and approves the budgets of the clerks of court.

revenue generated as a result of the various statutory changes is not to be considered in establishing the budgets of the clerks of court.

Traffic-Infraction Penalties; Driving-School Discount (Sections 3, 4, 5, and 6)

The bill eliminates the 18-percent discount on certain traffic-infraction penalties which a driver may receive if he or she elects to attend a basic driver improvement course, as provided in s. 318.14, F.S. The discount currently applies to fines imposed under s. 318.18(3), F.S., relating to moving violations for which an appearance is not mandated and for various speeding violations. Although the bill eliminates the 18-percent discount on the penalty, it retains the provision withholding the assessment of driver's license points for those drivers who attend the basic course. The measure provides that revenue generated from eliminating the discount shall be deposited in the General Revenue Fund. It specifies, however, that the new revenue shall not be considered in establishing the budgets of the clerks of court.¹¹ The bill makes a conforming change in s. 318.15, F.S., to eliminate reference to the 18-percent discount based on attending driving school.

The measure also increases by \$25 two speeding fines. The fine for exceeding the speed limit by 15-19 miles per hours is increased to \$150 from \$125. The fine for exceeding the speed limit by 20-29 miles per hours is increased to \$175 from \$150. The bill amends s. 318.21, F.S., which governs the distribution of civil traffic penalties, to specify that the new revenue from the two \$25 increases shall be deposited in the General Revenue Fund. The measure also specifies that the new revenue shall not be considered in establishing the budgets of the clerks of court.

The bill creates a new assessment applicable to noncriminal moving and nonmoving traffic violations under ch. 316, F.S. The assessment – described as an Article V¹² assessment – is \$10 and is in addition to any penalties imposed. The measure calls for distribution of the \$10 as follows:

- \$5 to the State Courts Independent Trust Fund for use by the state courts system;
- \$3.33 to the State Attorneys Independent Trust Fund for use by the state attorneys; and
- \$1.67 to the Public Defenders Independent Trust Fund for Public Defenders.¹³

The measure specifies that the new revenue from the \$10 assessment shall not be considered in establishing the budgets of the clerks of court. The bill makes a conforming change to s. 318.21, F.S., which governs the distribution of civil traffic penalties, to account for the proposed distribution of the funds to the courts, the state attorneys, and the public defenders, as an exception to how such funds are typically distributed. The measure makes a similar conforming change to s. 318.21, F.S., to reflect the Legislature's creation during the 2008 Regular Session of an administrative fee that is directed to the clerks' court-related functions.

¹¹ Under s. 28.36, F.S., the budgets of the clerks of court generally may increase based on the collection of additional revenue.

¹² Article V appears to refer to Article V of the State Constitution, which governs the judicial branch of state government.

¹³ These trust funds are proposed for creation in other measures under consideration by The Florida Senate during Special Session 2009-A.

Criminal Fines, Adjudication Withheld, and Probation (Sections 7 and 8)

The bill revises the statute governing criminal fines, s. 775.083, F.S., to specify that the fines apply to cases in which the determination of guilt results from a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld. Currently the fines apply to cases in which a person is “convicted,” but the fine statute does not define the terms “convicted” or “conviction.” In some other instances, particular sections of the Florida Statutes will specify that convictions include pleas and withholds of adjudication. This portion of the bill appears to be designed to remove any question about whether a criminal fine may be imposed when adjudication is withheld. Typically, the clerk deposits criminal fines in a fine and forfeiture fund to support the clerk’s court-related functions. The bill specifies that – in a case where adjudication is withheld – the fine shall be directed to the General Revenue Fund, and the revenue shall not be considered in establishing the clerk’s budget.

The statute governing probation, s. 948.01(2), F.S., is also revised by the bill to provide that the imposition of probation in a nonfelony offense is discretionary. Under the current statute, if the court determines that a recurrence of the criminal behavior is unlikely, it may adjudge the defendant guilty or withhold adjudication but in either case “shall” place the defendant on probation. Under the measure, the court would still be required to place the person on probation in a felony case, but it would have discretion on whether to impose probation in a nonfelony case. The measure also specifies that the court may impose a criminal fine authorized by law even if it does not place a nonfelony offender on probation. Thus, under the bill, for example, a court could withhold adjudication in a nonfelony case, impose a fine as authorized under s. 775.083, F.S., and not place the person on probation.

Civil Filing Fees (Sections 1 and 2)

The bill amends the statute governing civil filing fees in circuit court to provide for the redistribution of a portion of the fees from the General Revenue Fund to a new trust fund for use by the state courts system. Currently, \$80 of the first \$85 of the civil circuit-court filing fee is deposited in the General Revenue Fund. The bill amends the statute twice to provide that of the \$80:

- Effective February 1, 2009, through June 30, 2009: \$32 shall be deposited in a new State Courts Independent Trust Fund for use by the state courts system, and \$48 shall be deposited in the General Revenue Fund.
- Effective July 1, 2009: \$60 shall be deposited in the new State Courts Independent Trust Fund for use by the state courts system, and \$20 shall be deposited in the General Revenue Fund.

The bill does not change the current practice of the remaining \$5 of the first \$85 of the filing fee going into the Administrative Trust Fund of the Department of Financial Services.

Effective Date

The bill provides that the act takes effect on February 1, 2009, except for one of the sections amending s. 28.241, F.S., relating to the redistribution of civil filing fees, which takes effect July 1, 2009.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill raises fees and fines in the traffic and criminal area by an estimated \$15.9 million in the fiscal year 2008-09 and \$63.1 million in fiscal year 2009-10.

B. Private Sector Impact:

Persons violating certain traffic laws will experience an increase in fees and fines. Persons charged with felony and misdemeanor where the court has withheld adjudication will now be assessed criminal fines.

C. Government Sector Impact:

Specific Fee or Fine	FY 2008-09 (cash) \$ Millions		FY 2009-10 (12 month figure) \$ Millions	
	General Revenue	Trust Fund	General Revenue	Trust Fund
Circuit Civil Filing Fee	(8.1)	8.1	(32.3)	32.3
Eliminate Traffic School Discount on Tickets	2.7		10.8	
\$25 Increase on Speeding Fines (15 – 29 m.p.h.)	3.2		12.8	
\$5 Assessment on Traffic Tickets for Courts		3.9		15.4

\$5 Assessment on Traffic Tickets for State Attorneys and Public Defenders		3.9		15.4
Criminal Fine on Adjudication Withholds	2.2		8.7	
Total	0	15.9	0	63.1

A total of \$15.9 million is expected to be raised during FY 2008-09 by the bill. Of that total, \$3.9 million will be deposited into the State Courts Independent Trust Fund, \$2.6 million will be deposited into the State Attorneys Independent Trust Fund and \$1.3 million will be deposited into the Public Defender Independent Trust Fund. The remaining revenues raised by the bill (\$8.1 million) will be deposited in general revenue. The bill re-directs a like amount (\$8.1 million) from general revenue to the State Courts Independent Trust Fund from the circuit filing fee provided in s. 28.241(1), F.S.

In FY 2009-10, the bill raises a total of \$63.1 million in trust funds.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. **Committee Substitute – Statement of Substantial Changes:**
 (Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal and Civil Justice on January 7, 2009:

- Increases by \$25 the fine for exceeding the speed limit by 15-19 miles per hour or 20-29 miles per hour;
- Creates a \$10 assessment to be paid, in addition to any other penalties, for noncriminal moving and nonmoving traffic violations;
- Eliminates an 18-percent discount in certain traffic-infraction penalties which drivers may receive for attending a basic driver improvement course;
- Specifies that certain criminal fines apply in cases in which the offender enters a plea of guilt or a plea of nolo contendere, regardless of whether adjudication of guilt is withheld;
- Provides that the criminal fine imposed when adjudication is withheld shall be deposited in the General Revenue Fund;
- Makes it discretionary rather than mandatory for a court to impose probation in a nonfelony matter in which it determines the recurrence of the criminal behavior is unlikely;

- Specifies that a court may impose a criminal fine in a nonfelony matter when it does not impose probation;
- Redistributes a portion of circuit court civil filing fees from the General Revenue Fund to a new Independent State Courts Trust Fund for use by the state courts system; and
- Specifies that the new revenue generated under the bill is not considered as new revenue for purposes of increasing the budgets of the clerks of court.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
