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THE SERVICE OF THE CLERKS OF COURT

Clerks provide critical public safety and commerce services to the citizens of Florida. As an integral part of the justice system, Clerks are responsible for maintaining records and providing those records timely to the Court for the administration of justice. However, revenues for providing these services are not adequate to be able to meet the needs of the citizens they serve. As an example, the current budget model depends on the traffic division to fund the criminal division, which puts public safety at risk as the number of traffic citations decrease across the state.

In recent years, there has been a substantial decrease in the number of traffic citations issued. The population is up, the economy is up, and the number of drivers is up, but traffic citations are down. This trend is driving revenues that fund the Clerks' public safety related services down dramatically. The misalignment of budget to workload is unsustainable and dangerous for the people Clerks serve.

An effective and efficient criminal and civil justice systems are of the utmost concern to Clerks. Clerks have had to contend with increasing requests for information from various stakeholders and the public. As a partner in the criminal justice system, the Clerks serve judges, law enforcement, state attorneys, and public defenders and must provide timely and accurate data. The possibility of a criminal defendant being released inadvertently poses a significant risk to public safety; therefore, inadequate funding hinders the ability of Clerks to continue to ensure the reliability and accuracy of the data.

There are also many factors outside of the control of the Clerks that are increasing costs. These unfunded variables include:

- The fiscal impact to Clerks from state policy decisions and changes
- Judicial and Administrative Orders (at both the State and Local levels)
- Protecting data that could lead to identity theft or potential harm to victims
- Increases in health insurance costs and in statutorily-mandated FRS contributions

Pursuant to s 28.35, F.S., the Florida Clerks of Court Operations Corporation (CCOC) cannot approve budgets that exceed the revenue estimates provided by the Revenue Estimating Conference (REC) regardless of needs or costs. Currently, available revenues are far below what Clerks indicate is needed to sufficiently fund services for the public. **The Clerks' CFY 2018-19 approved the revenue-limited budget is \$424.6 million; however, the approved budget is \$37.3 million less than the Clerks' budget request, which continues to put public safety at risk and threatens to slow down commerce in Florida's economy.**

Commented [JW1]: This section will be rewritten to include new revenue sources provided by the legislature in 2018.

Our Mission: As a governmental organization created by the Legislature, we evaluate Clerks' court-related budgetary needs, and recommend the fair and equitable allocation of resources needed to sustain court operations.

FUNDING CONTINUITY ACTION PLAN

LIST OF OPTIONS

The following menu of options represents this body's efforts to assist the Legislature by identifying ways to provide adequate funding to carry out Clerks' extensive statutory responsibilities.

Funding for Public Safety Services with No Fees

Provide funding for injunctions for protection for the five types of interpersonal violence: domestic, dating, repeat, and sexual violence, and stalking. **(\$16.5 million)**

Injunctions for protection from violence are critically important to ensuring public safety. As such, many Clerks operate 24/7 staffing to ensure these injunctions are timely processed. Without these services, victims of violence may suffer additional victimization.

- Currently, Clerks perform these services at no cost to the petitioners and the Clerks support this good public policy. These services include assisting those individuals requesting injunctions, which is time-consuming and labor-intensive.
- This option assumes the legislature would provide a \$195 filing fee per case from general revenue. This filing fee does not include law enforcement agency costs.
 - It should also be noted that this reimbursement should be additional funding for this activity on a statewide basis. **Revenue for this option should not reduce funds already allocated to other agencies or shelters within the state who perform related/ancillary duties.**

Provide funding for the Baker Act and Marchman Act **(\$11.5 million)**

The Baker Act and Marchman Act are designed to protect the public and individuals that are displaying behavior that will cause serious bodily harm to oneself or others and individuals that have lost self-control with respect to substance abuse. It is important to provide timely service to petitioners so that individuals subject to the Baker Act or Marchman Act do not cause harm to themselves or others.

- Currently, Clerks perform these services at no cost to the petitioners and the Clerks support this good public policy. Clerks must efficiently process involuntary admissions for the Baker Act and Marchman Act to uphold public safety.
- This option assumes the legislature would provide a \$195 filing fee per case from general revenue. This filing fee does not include law enforcement agency costs.
 - It should also be noted that this reimbursement should be additional funding for this activity on a statewide basis. **Revenue for this option should not reduce funds already allocated to other agencies or receiving facilities within the state who perform related duties.**

Commented [JW2]: This option was used in the Clerks Serve Florida Act in 2018 (SB 1076 / HB 1143).

Decision point 1: Keep or Remove
Decision point 2: If keep, continue to use the \$195 dollar amount or change

If kept, CCOC can amend the fiscal impact.

Commented [JW3]: This option was used in the Clerks Serve Florida Act in 2018 (SB 1076 / HB 1143).

Decision point 1: Keep or Remove
Decision point 2: If keep, continue to use the \$195 dollar amount or change

If kept, CCOC can amend the fiscal impact.

Criminal Case Cost Reimbursement

(Between \$53 million and \$74 million)

State agencies do not pay a filing fee for cases they file or for any copies or other services Clerks perform for court-related activities. The Clerks services to these agencies is labor intensive and extremely vital to ensuring justice.

- This option provides for reimbursement from the state through an annual general revenue appropriation based on estimated filings for the year. Agencies would also be required to pay for copies and other services at the statutory rates set for all other customers in s. 28.24, F.S., including records on appeal.
- Responsibility for collecting amounts owed on these cases will remain with the Clerks. Performance standards currently in place, as well as certifications of minimal collections efforts by Clerks, are to be maintained and monitored for compliance.
- Under this option, criminal collections would be remitted back to general revenue.

Commented [JW4]: This option was not used in the Clerks Serve Florida Act in 2018 (SB 1076 / HB 1143).

Decision point 1: Keep or Remove

If kept, CCOC can amend the fiscal impact.

Civil Indigency Case Cost Reimbursement

(\$11.2 million)

Applicants who file civil cases, particularly dissolutions of marriage, and are determined to be indigent are not required to pay the statutory filing fees associated with the various case types being filed. The Clerks believe that every person deserves access to the court system and those without means to pay should not be denied access. However, the Clerks must have staff available and, without adequate funding, these cases could suffer consequently.

- This option assumes the legislature would provide reimbursement of the statutory filing fee that is waived in these cases (\$135-\$195 per case) from general revenue for the Clerks to aid those that need access to the judiciary and will allow the Clerks to provide those services timely and equitably.

Commented [JW5]: This option was used in the Clerks Serve Florida Act in 2018 (SB 1076 / HB 1143).

Decision point 1: Keep or Remove

Decision point 2: If keep, continue to use the \$135-\$195 dollar amount or change

If kept, CCOC can amend the fiscal impact.

Administrative Changes

Eliminate the automatic sweep of the Clerks of Court Trust Fund.

(Variable based on Collections – \$20.3 million for County Fiscal Year 2017-18)

The Clerks' CFY 2017-18 collections were greater than the amount projected by the Revenue Estimating Conference (REC). However, the July Article V Revenue Estimating Conference sets the Clerks' budget for the next fiscal year, so there is currently no means for recognition during a fiscal year of any increased collections to assist Clerks with the workload that is associated with the increase in revenue-generating activity. Additional revenue collected by the Clerks accumulates in the Clerks of Court Trust Fund and is automatically swept by the Department of Revenue on January 25 of the following fiscal year.

- Based on the Clerks' budget request of approximately \$460 million for CFY 2017-18, the Clerks could have utilized this funding to fund important public safety issues, such as increased compliance with statutory reporting of mental health records in FDLE's MECOM database.

Commented [JW6]: This option was used in the Clerks Serve Florida Act in 2018 (SB 1076 / HB 1143).

The Legislature modified current statute to allow clerks to keep a portion of any revenues collected above the original projection. However, there is a three-year window on this new policy. At the conclusion of the CFY 2021-22 fiscal year, revenues collected above the original projection will go to general revenue.

Decision point 1: Modify or Delete

FUNDING CONTINUITY ACTION PLAN

Allow unexpended budget authority to be carried forward as a non-recurring revenue source for calculating Clerks' budgets.

(Variable – Between \$4 and \$6 million)

Each year, the Clerks expend between 97 – 98 percent of their budget authority, which is consistent with most public and private organizations.

- In years with declining revenues, the REC allowed the Clerks to carry forward any unexpended dollar amounts to be included in the calculation for the following year's budget.
 - During the 2018 Article V Revenue Estimating Conference, the REC did not allow the carry-forward of this unexpended budget authority.
- Authorizing this unexpended carry-forward amount to be included as a nonrecurring source of funding would allow the Clerks to pay for necessary nonrecurring projects.

Allow Clerks to have additional budget authority during the county fiscal year when the REC projects a higher revenue during the county fiscal year.

(Variable by year)

Revenues collected by the Clerks are difficult to project as there are numerous factors which impact collections, such as the strength or weakness of the economy, hurricanes, and the actions by various stakeholders in the justice system.

- Current statutes indicate the Clerks' approved budget authority is based on the REC's "most recent" revenue projection. The REC re-projects Article V Revenues several times throughout the fiscal year to refine their initial projections based on the trends that are occurring.
 - During the July 2018 REC meeting, CCOC staff indicated that they had the right to increase the current county fiscal year budget authority since the revenue was increasing based on the REC's most recent projection, which occurred in January 2018. However, REC staff indicated the statutes did not support CCOC's interpretation and suggested the Clerks seek a legislative fix to the issue.
- This option would allow the Clerks the ability to adjust their budgets for issues that were funded by the Legislature, such as additional Senior Judges or additional specialty courts such as the Veterans Courts and Mental Health Courts that were not part of the Clerks' original budgets.

Require a reserve in the Clerks of Court Trust Fund.

(No Additional Revenue)

The Clerks have very little protection from the unpredictable assessment and collection of the fines, fees, service charges, and court costs that make-up the basis for the statewide budget.

- This option would require the Clerks to maintain a reserve in the Clerks of Court Trust Fund to insulate the Clerks' budgets from the unpredictable nature of collections.
- The establishment of a reserve would come from revenue collected by the Clerks.

Commented [JW7]: This option was used in the Clerks Serve Florida Act in 2018 (SB 1076 / HB 1143).

The Legislature modified current law to allow individual clerks that do not expend their current budget to carry forward the budget and authority into the next fiscal year.

Staff Recommendation: Remove

Commented [JW8]: This concept was discussed by the FCCC Legislative Committee and Board of Directors. The decision was made to set budgets once and not increase budget authority mid-year if higher-revenue is projected. Additionally, the clerks will receive a portion of the additional revenue under the new statutory scheme established during the 2018 Legislative Session.

Staff Recommendation: Remove

Commented [JW9]: This option was used in the Clerks Serve Florida Act in 2018 (SB 1076 / HB 1143).

Decision point 1: Keep or Remove

FUNDING CONTINUITY ACTION PLAN

Create an 8 percent Administrative Fee for collecting and remitting court fees. (\$10.8 million)

The Clerks collect general revenue for the State on various fines and fees and distribute these revenues to various entities. However, the Clerks do not receive an adequate administrative fee for handling the collection of these fines and fees. The Florida Department of Revenue (DOR) charges an 8 percent administrative fee for receiving and distributing funds on behalf of other state agencies.

- This option would require the State to reimburse Clerks for handling all fines, fees, service charges and court costs collected for the state court system and remitted to the DOR. The recommendation is to only collect this fee from funds remitted to the State general revenue. This option would exclude charging an administrative fee on the trust funds associated with the State Courts, State Attorneys, and Public Defenders.

Amend s. 45.035 (1), F.S. to clarify that Clerks collect \$70 to cover their associated workload each time a foreclosure sale is scheduled rather than only collecting the fee when the initial sale is scheduled.

(Approximately \$675,000)

To prepare a foreclosure sale, Clerks must schedule hearings and process the judicial sale orders. Foreclosure sales are sometimes delayed or reset for different dates. Every time a Clerk resets a sale, the Clerk must redo work that was done for the initial sale date.

- This option would clarify the law and allow Clerks to provide the smooth transition of property in a foreclosure sale.

Redirection of Fines, Fees, Service Charges, and Court Costs Changes

Redirect certain fines and fees to the Clerks. (\$52.8 million)

In 2008, the Legislature increased fines, fees, service charges, and court costs, making changes to 73 sections of the statute. These individual statutes can be compiled into four revenue sources: (1) driving under the influence, s. 316.193 F.S., (2) Filing fees for trial and appellate proceedings, s. 28.241(1) (d) F.S., (3) Amount of Penalties (noncriminal and criminal traffic infractions), s. 318.18, F.S., and (4) all other. These revenues are currently directed to general revenue.

- This option would allow for the redirection of some or all those fines, fees, service charges, and court costs.

Require service charge on cash bonds. (Approximately \$294,000)

Currently, the Clerks collect an \$8.50 service charge on surety bonds but do not collect the service charge on a cash bond.

- This option would allow the Clerks to treat all bonds equally for performing identical services relating to the administration of bonds.

Commented [JW10]: This option was not used in the Clerk's Serve Florida Act in 2018 (SB 1076 / HB 1143).

Decision point 1: Keep or Remove

If kept, CCOC can amend the fiscal impact.

Staff Recommendation: Remove.

While this option is a novel idea, the mention of it during informal legislative meetings was not met with any traction.

Commented [JW11]: This option was initially included in the Clerks Serve Florida Act, but was pulled because it was considered a tax increase. Tax increases must pass by a 2/3rds majority and this option was seen as a potential obstacle to passage of the clerk bill.

Decision point 1: Keep or Remove

If kept, CCOC can amend the fiscal impact.

Commented [JW12]: This language was modified from the 2018 report to the legislature, which specifically reference the Ch. 2008-111 L.O.F. fee increases.

Staff Recommendation: Remove. The legislature passed retroactive language to ensure the increases passed in 2008 would continue to go to GR. This recommendation is specifically for this year and does not prevent the committee from targeting some of these fees in future years if funding/cases decline.

Commented [JW13]: This option was initially included in the Clerks Serve Florida Act, but was pulled because it was considered a tax increase. Tax increases must pass by a 2/3rds majority and this option was seen as a potential obstacle to passage of the clerk bill.

Decision point 1: Keep or Remove

If kept, CCOC can amend the fiscal impact.

Funding for New Policies

Risk Protection Orders

(Indeterminate Positive)

During the 2018 session, the legislature created the Risk Protection Order Act to prevent individuals who are at a substantial risk of harming themselves or others from accessing firearms or ammunition by allowing law enforcement officers to obtain a court order temporarily restricting a person's access to firearms or ammunition.

- Like injunctions for protection against violence, the Clerks support this public policy, but without a stable funding source, the Clerks will not be able to timely perform the tasks set forth in the new legislation. There is a very real possibility of a negative impact on public safety if the Clerks are unable to process these petitions by the law enforcement community in a timely and efficient manner.

Commented [JW14]: This option was used in the Clerks Serve Florida Act in 2018 (SB 1076 / HB 1143).

Decision point 1: Keep or Remove

If kept, CCOC can provide a fiscal impact as we have 15 months of data available for RPOs.

Staff Recommendation: If this option is kept, recommend moving it to the **"Funding for Public Safety Services with No Fees"** section of the report.

Injunction for protection for vulnerable adults

(Indeterminate Positive)

During the 2018 session, the legislature created a cause of action for an injunction prohibiting exploitation of a vulnerable adult. The new law requires Clerks to assist petitioners in filling out the forms and sets a sliding-scale fee for filing a petition. The law also allows Clerks to request a reimbursement for the processing of petitions, but only if funding is made available in the General Appropriations Act (GAA).

- Funding has not been made available for similar injunctions and was not appropriated in the 2018 GAA.
- Many of the petitioners are indigent and, while the law set a sliding-scale fee, that fee is waived for indigent petitioners.
- Similar to injunctions for protection against violence, the Clerks support this public policy, but without a stable funding source, the Clerks will not be able to timely perform the tasks set forth in the new legislation.

Commented [JW15]: This option was used in the Clerks Serve Florida Act in 2018 (SB 1076 / HB 1143).

Decision point 1: Keep or Remove

If kept, CCOC can provide a fiscal impact as we have 15 months of data available for VAs.

Staff Recommendation: If this option is kept, recommend moving it to the **"Funding for Public Safety Services with No Fees"** section of the report.

Criminal Justice Data Transparency Initiative

(Indeterminate Positive)

During the 2018 session, the legislature created a uniform criminal justice data collection process to promote criminal justice data transparency.

- The Clerks maintain many of the data elements required by the new law; however, there are costs associated with gathering and sending this information to the central data collection agency that was not funded in the legislation.
- The Clerks support this public policy, but without a stable funding source, the Clerks will not be able to timely perform the tasks set forth in the new legislation or ensure the accuracy of data that is collected.

Commented [JW16]: This option was not used in the Clerks Serve Florida Act in 2018 (SB 1076 / HB 1143).

Decision point 1: Keep or Remove

Staff Recommendation: If this option is kept, recommend moving it to the **"Funding for Public Safety Services with No Fees"** section of the report.

FUNDING CONTINUITY ACTION PLAN

NEW ISSUES?

Commented [JW17]: Are there any new ideas or trends that could be considered?

- Fee for GR swaps (i.e. foreclosure filing fee to GR, state provides GR to support base-level foreclosures)
- New laws to increase public safety with corresponding fines (i.e. texting while driving)
- New duties with corresponding new service charge (i.e. taking over restitution and criminal payments from DOC)
- Increased fines, fees, court costs, or service charges
- Redirecting revenue currently dedicated to non-clerk related sources (i.e. Marine Resources Conservation TF)
- Law authorizing clerks to refuse to support increased costs through local administrative orders
- Increased standards for collections and compliance