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## CLERKS OF COURT FUNDING MODEL

The funding for the Clerks of Court is governed by the Florida Constitution and state statute. It is critical to maintain adequately funded Clerks in order to maintain Florida's judicial system. Specifically, the Constitution states:

### **ARTICLE V, 14(b), Florida Constitution**

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

To ensure Clerks are adequately funded, the Legislature authorizes the Clerks to retain revenue from statutorily created fines, fees, court costs, penalties, service charges, and forfeitures. Additionally, the Legislature provides General Revenue funds to cover the costs of juror management functions for the Clerks. These revenues form the basis of the Clerk's yearly budget and the Legislature tasked the Florida Clerks of Court Operations Corporation (CCOC) with setting Clerks' budgets and tracking revenues. Additionally, the Legislature tasked the CCOC with the responsibility of recommending to the Legislature changes in the amounts of the various court-related fines, fees, service charges, and costs established by law to ensure reasonable and adequate funding of the Clerks of the Court in the performance of their court-related functions.

## **FUNDING CONTINUITY PLAN**

To meet its statutory duty, the CCOC created a Revenue Enhancement Committee in its Plan of Operations to review all of the court-related fines, fees, service charges, and costs established by law. The Revenue Enhancement Committee is responsible for developing the Funding Continuity Plan to make recommendations to the Legislature. This plan provides a menu of options recommended by the Clerks to ensure reasonable and adequate funding of the Clerks of Court.

## **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 managing and preserving judicial 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.

Effective and efficient criminal and civil justice systems are of the utmost concern to Clerks. Clerks are contending 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)
- Increases in health insurance costs and in statutorily-mandated FRS contributions

The current revenue-based funding model does not take into account fixed costs of operating the Clerks' offices, which makes the Funding Continuity Plan a valuable tool for the Clerks when working with our partners in the Legislature.

## LEGISLATIVE ACCOMPLISHMENTS

Prior to 2019, the CCOC could not approve budgets that exceeded the revenue estimates provided by the Revenue Estimating Conference (REC) regardless of needs or costs. The Legislature adopted two changes recommended in the 2019 Funding Continuity Plan during the 2019 Legislative Session. These changes will help diversify the revenue available to the Clerks when building their budgets.

The first recommendation adopted by the Legislature was the elimination of the automatic sweep of the Clerks of Court Trust Fund. The Legislature provided additional authority to use revenues that exceeded the official revenue estimates provided by the REC in the following fiscal year. Revenue received by the Clerks is not static from year to year; an upswing in one year may turn to a downswing in the next depending on the number of traffic citations or civil case filings. These swings make stable and predictable budgeting for the Clerks an impossibility. The elimination of the automatic sweep of the trust fund will allow Clerks to use revenues that are collected in one year to help offset any downturns in the following year.

The second recommendation adopted by the Legislature from the 2019 Funding Continuity Plan was authorization to carry forward unspent budget authority from the previous fiscal year. Each year, the Clerks expend between 97 – 98 percent of their budget authority, which is consistent with most public entities. Authorizing this unexpended carry-forward amount to be included as a source of funding will allow the Clerks to pay for necessary projects and stabilize funding from one year to the next.

## LIST OF OPTIONS

Currently, available revenues are below what Clerks indicate is needed to sufficiently fund services for the public. **The Clerks' CFY 2019-20 approved revenue-limited budget is \$458.5 million; however, the approved budget is \$10 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.**

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**

**1. Risk Protection Orders**

**(\$370,000)**

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.

- 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.
- 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. In counties where law enforcement is substantially using this new petition, Clerks have had to pull staff away from other duties in order to ensure these petitions are being timely filed and staffed before a judge. 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.

**2. Injunctions for protection for the five types of interpersonal violence: domestic, dating, repeat, sexual violence, and stalking.**

**(\$16.1 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.**

**3. Baker Act and Marchman Act**

**(\$11.6 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.**

#### 4. 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 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 or 2019 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.

#### 5. Civil Indigency Case Cost Reimbursement

**(\$10.8 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.

#### 6. 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.

**7. Criminal Case Cost Reimbursement****(Between \$58.4 million and \$79.5 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. If not provided as part of the appropriation above, 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.

**Administrative Changes****1. Establish a Clerk of Court Revenue Stabilization fund within the Clerks of Court Trust Fund.**

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 stabilization amount in the Clerks of Court Trust Fund to insulate the Clerks' budgets from the unpredictable nature of collections.

The establishment of a stabilization amount would come from revenue collected by the Clerks.