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## STATUTORILY REQUIRED FUNDING RECOMMENDATIONS

### 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 inadequate to meet the needs of the citizens they serve. For 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 decreases 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 drives revenues that fund the clerks' public safety-related services down dramatically. The budget misalignment to workload is unsustainable and dangerous for the people clerks serve.

Clerks are vital in ensuring effective and efficient criminal and civil justice systems. They manage various case types, some requiring more time and resources than others. For example, criminal and domestic violence injunctions require more attention and staff than in other cases. Additionally, clerks also deal with an increasing demand for information from various stakeholders and the public. They must balance this demand for information with their other responsibilities and obligations. 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.

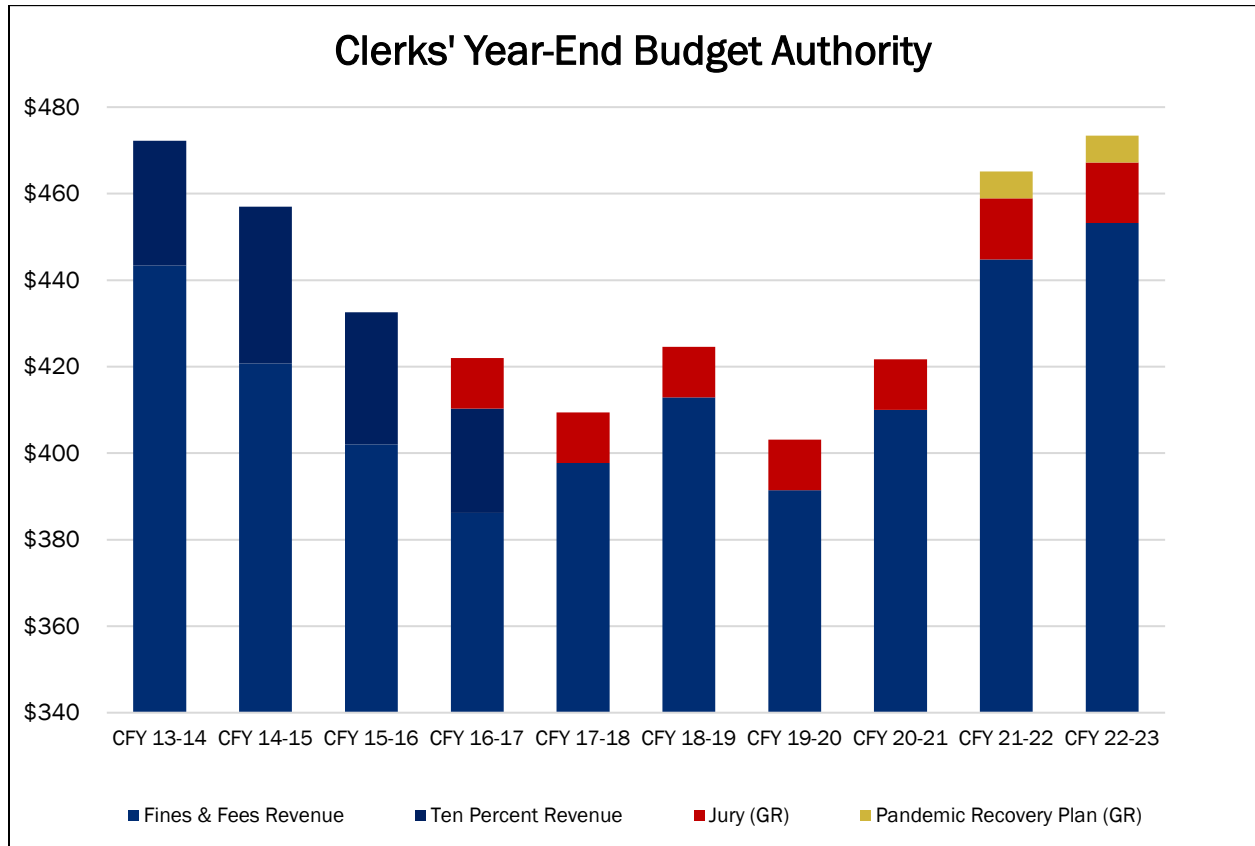
Additionally, clerks serve vulnerable populations through indigency cases and cases without filing fees, such as mental health and substance abuse services. Clerks provide these services at no cost to the public. While this is good public policy, the costs for these services must be absorbed into the clerks' budget. Baker Act and Marchman Act cases are up 17 percent from CFY 2018-19, which puts a strain on clerks to keep up with the demand for these vital services.

Finally, the clerks do not control the flow of cases. In the past several years, there have been tremendous spikes in case types, such as Personal Injury Protection (PIP). The revenue projection and budget process are not agile enough to provide the necessary resources for clerks to keep up with the demand when a case spike happens in the middle of the fiscal year.

*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.*

**CLERKS OF COURT FUNDING**

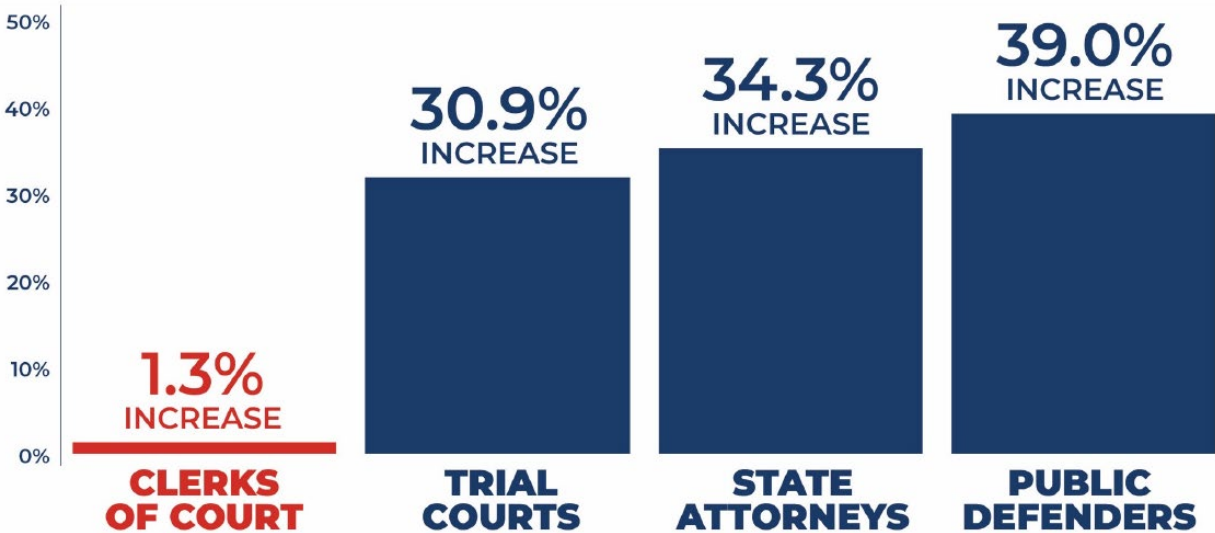
The Clerks of Court funding is unstable and depends on factors outside the clerks' control.



The fines and fees that allow clerks to serve the public and the judicial partners have not kept pace with the rising costs. This chart shows the 10-year funding history of the clerks and highlights where the Legislature has provided additional resources along the way. However, it also shows that the clerks' CFY 2022-23 budget is only \$1.2 million greater than CFY 2013-14. That represents a 0.25 percent increase over the last decade. However, costs such as salaries, health insurance, and Florida Retirement System (FRS) contributions continue to grow, and clerks are forced to absorb these costs or cut constituent services to accommodate these increases. For example, over the last ten years, the Legislature raised employer contributions to the FRS by 43 percent to keep Florida's retirement system financially sound. Additionally, health insurance rates increased by almost 60 percent<sup>i</sup>, and the Labor Consumer Price Index increased by 22 percent<sup>ii</sup> over the last ten years.

# 10 YEAR BUDGET COMPARISON

10-Year Budget Increase from 2012-2013 to 2021-2022



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This chart shows another 10-year comparison between FY 2012-13 and FY 2021-22, comparing the clerks’ budget growth to other judicial partners. The clerks’ judicial partners, including the State Attorneys, Public Defenders (the Appellate Public Defenders and Criminal Conflict and Civil Regional Counsels), and Trial Courts, have annual FRS, Health Insurance, and pay increases appropriated in the General Appropriations Act (GAA) as Administered Funds. Additionally, these partners do not have to ask for these increases as part of the Legislative Budget Request (LBR) process. If the Legislature provides an increase, these agencies automatically receive the revenue to support the increase. The clerks do not receive Administered Funds. As personnel services constitute over 90 percent of clerk budgets, these cost increases leave the clerks with no choice but to reduce positions and services to absorb the increases.

The Florida Constitution and state statute govern the funding for the Clerks of Court. Therefore, maintaining adequately funded clerks to preserve Florida's judicial system is critical. 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.

The Legislature created s. 28.37, F.S., to implement Article V, 14(b), which states:

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

(1) Pursuant to s. 14(b), Art. V of the State Constitution, selected salaries, costs, and expenses of the state courts system and court-related functions shall be funded from a portion of the revenues derived from statutory fines, fees, service charges, and court costs collected by the clerks of the court and from adequate and appropriate supplemental funding from state revenues as appropriated by the Legislature.

To ensure clerks are adequately funded, the Legislature authorizes the clerks to retain revenue from statutorily created fines, fees, service charges, court costs, penalties, and forfeitures. Unfortunately, the revenue from these categories has not kept up with the rising costs associated with providing services to the judiciary and the public. In response, the Legislature now allows the clerks to retain the Unspent Budgeted Funds (UBF) and share half of the Cumulative Excess (CE) with the clerks. Additionally, the Legislature provides General Revenue funds to cover the costs of juror management and recently provided funding to assist with the backlog of cases. These revenues form the basis of the clerk's budget.

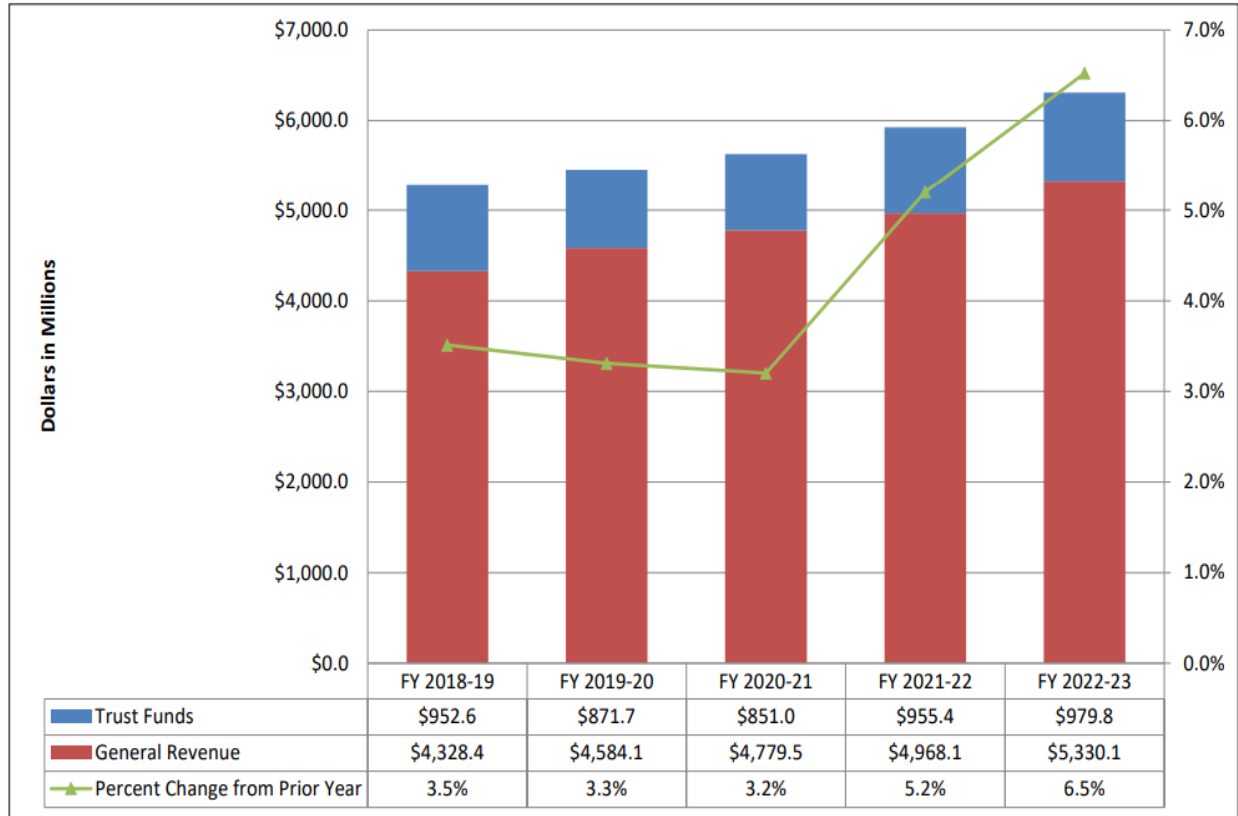
Section 28.35(2)(c)1., Florida Statutes, requires the Clerks of Court Operations Corporation (CCOC) to recommend to the Legislature changes in the amounts and distribution of the various court-related fines, fees, service charges, and court costs established by law to ensure reasonable and adequate funding of the clerks of the court in the performance of their court-related functions.

**This report provides recommendations to meet the statutory requirements of s. 28.35, F.S. It provides the Legislature with options to consider ensuring the clerks have reasonable and adequate funding to serve the judiciary and the public.**

**REASONABLE AND ADEQUATE FUNDING**

Current law does not define reasonable and adequate funding. Therefore, to determine reasonable and adequate, CCOC compared the budget amounts of the entities under the purview of the Justice Appropriations funding silo.

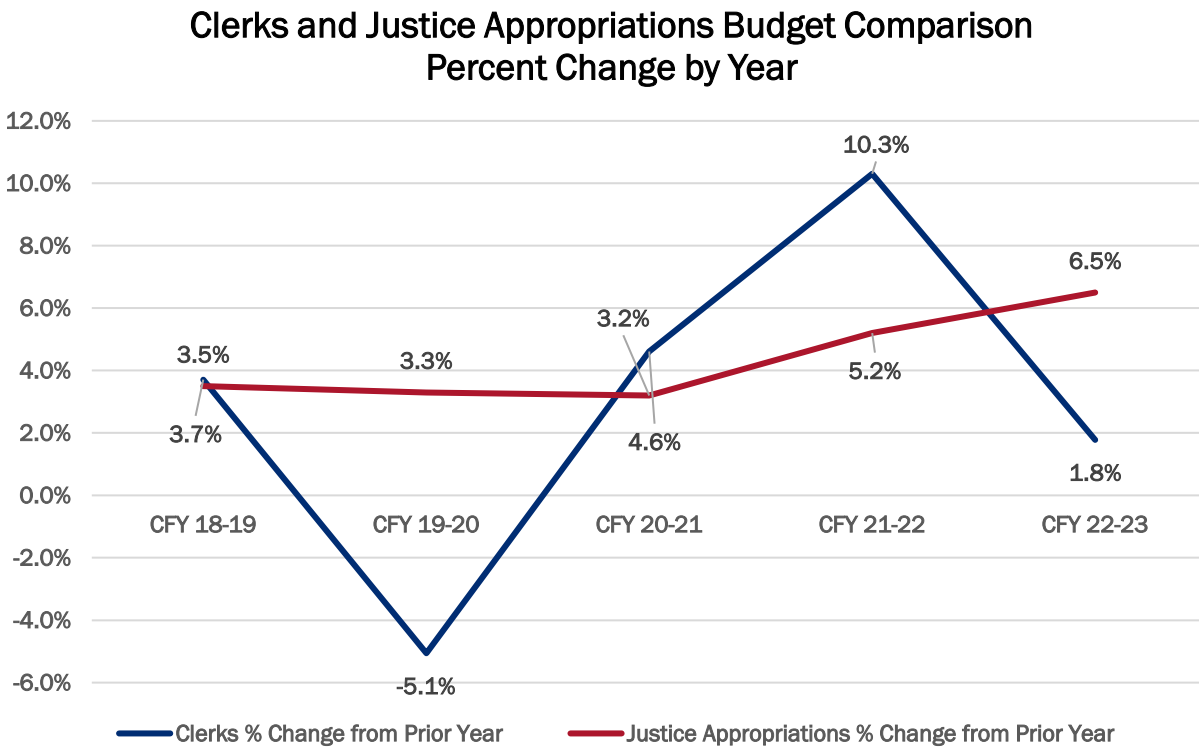
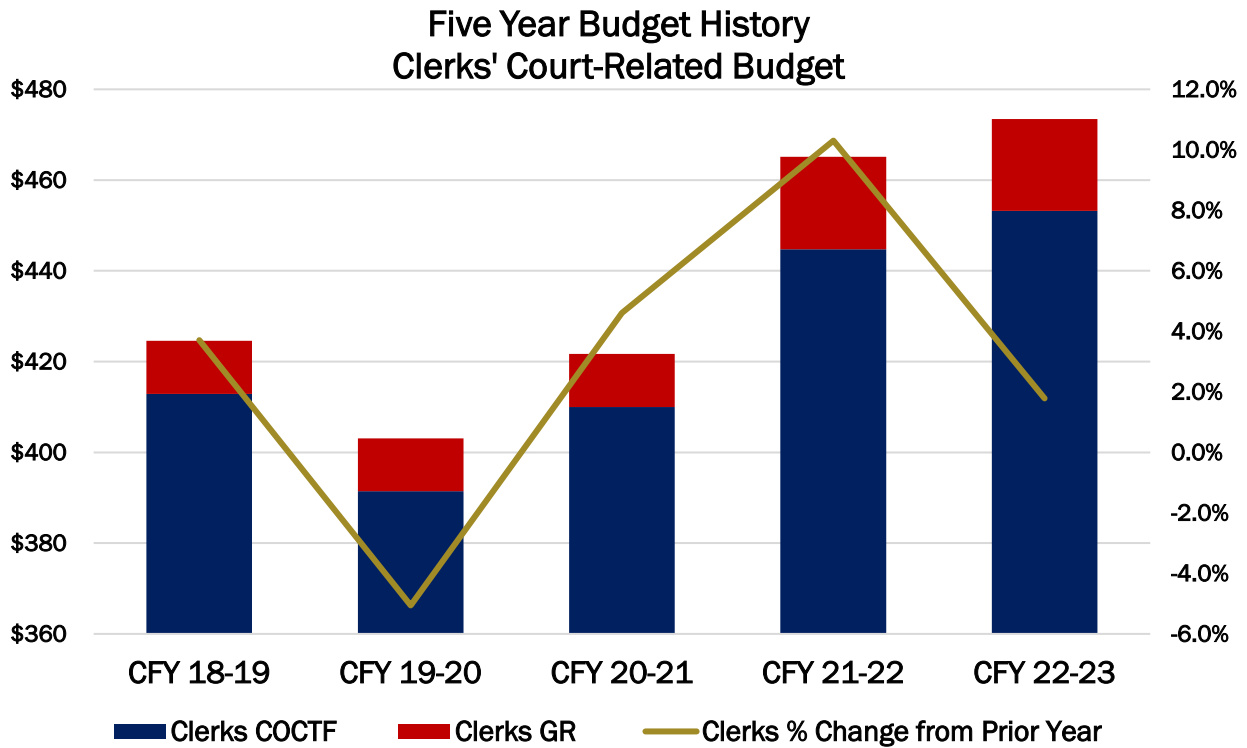
# 5-Year Funding History



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This chart shows the five-year funding history of the agencies covered under the Senate Appropriations Committee on Criminal and Civil Justice and the House Justice Appropriations Subcommittee. These entities are the Department of Corrections, Florida Commission on Offender Review, Department of Juvenile Justice, Department of Law Enforcement, Justice Administrative Commission, State Court System, and Department of Legal Affairs / Office of the Attorney General.

A similar look at the clerk funding history over the last five years:



## STATUTORILY REQUIRED FUNDING RECOMMENDATIONS

The Legislature provided stable increases to the Justice Appropriations entities, ranging between 3.2 percent and 3.5 percent per year, and more significant increases in the last two years with increases of 5.2 and 6.5 percent. This stability and yearly increases starkly contrast the clerks funding history for the last five years, with increases as high as 10.3 percent and a reduction of 5.1 percent during CFY 2019-20. In addition to the recent budget volatility, there was a 13 percent decline (\$62.8 million) in the five years before CFY 2018-19.

CCOC defines reasonable and adequate funding as the amount approved by the CCOC Budget Committee during the budget request process and labels it as the “Needs-Based Budget.” During the most recent budget development process, the Budget Committee established the clerks’ CFY 2022-23 Needs-Based Budget of \$501.4 million<sup>v</sup>. However, the recurring revenue available to clerks is only \$464.9 million, a difference of \$36.5 million.

CCOC applied a “What-If” scenario to the clerks’ total budget using the Justice Appropriations’ percent increase to determine the reasonableness of the clerks’ Needs-Based Budget. For example, using the CFY 2018-19 budget authority, if the clerks’ budget increased by the same amount as the other justice entities, the CFY 2022-23 budget would be \$507.1 million.

Fiscal Year	Clerk Total Budget Authority	Clerks % Change from Prior Year	Justice Appropriations % Change from Prior Year	What-If Scenario
<b>CFY 18-19</b>	\$424,592,171			
<b>CFY 19-20</b>	\$403,113,777	-5.1%	3.3%	<b>\$ 438,603,713</b>
<b>CFY 20-21</b>	\$421,700,000	4.6%	3.2%	<b>\$ 452,639,031</b>
<b>CFY 21-22</b>	\$465,151,817	10.3%	5.2%	<b>\$ 476,176,261</b>
<b>CFY 22-23</b>	\$473,434,139	1.8%	6.5%	<b>\$ 507,127,718</b>

Using this What-If scenario, the clerks’ \$501.4 million Needs-Based Budget appears to align with the increases the Legislature provided to other justice-related entities.

The \$36.5 million funding gap may continue to increase as inflation impacts the cost of living and staffing (the most sizable portion of clerk costs). The Pandemic Recovery Plan and the carry-forward juror funding were essential to help close this funding gap and are greatly appreciated. However, these are nonrecurring revenues. In addition, costs such as salaries, health insurance, and Florida Retirement System (FRS) contributions continue to grow, and clerks are forced to absorb these costs.

**Given these factors, CCOC determines that the clerks’ Needs-Based Budget of \$501.4 million is reasonable and adequate.**

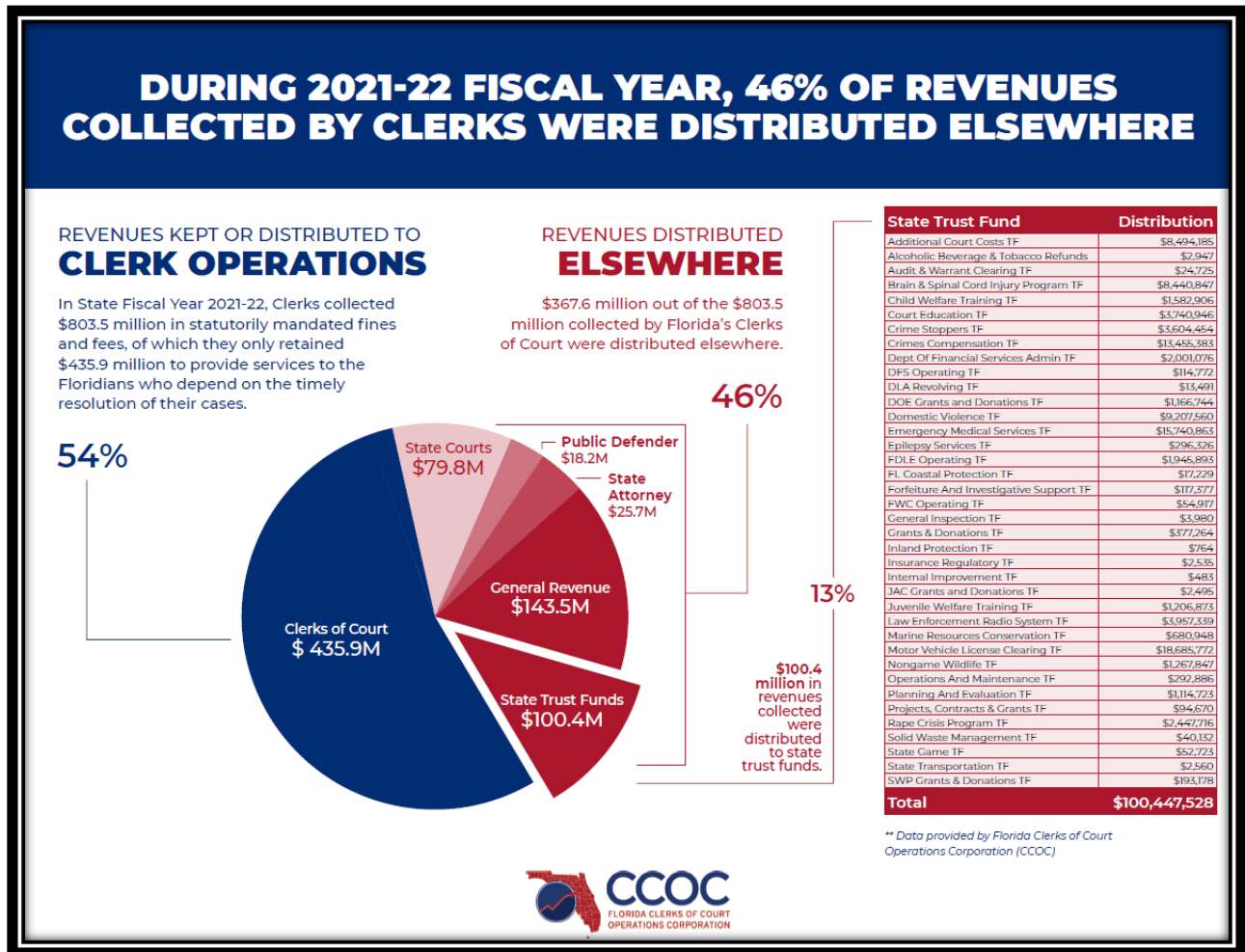
CHANGES TO THE DISTRIBUTION AND CHANGES IN THE AMOUNTS

Changes to the Distribution

Fines, fees, service charges, and court costs fund the services clerks provide to the public. The Legislature sets the fines, fees, service charges, and court costs and gives the clerks a percentage. As a result, some distribution tables are simple, and others are complex. If the Legislature redistributes a portion of the funding from the current recipients to the clerks, it could adequately fund the clerks' Needs-Based Budget.

Priority Recommendation: Allow Clerks to Retain a Portion of General Revenue Distribution

In SFY 2021-22, clerks collected \$803.5 million in statutorily mandated fines and fees and only retained \$435.9 million to provide services to the Floridians who depend on the timely resolution of their cases.



The pie chart and table show the distribution of the various fines and fees clerks collect and distribute to the state. In addition to these revenues, clerks collect revenue for county and municipal entities, which are not included.



## STATUTORILY REQUIRED FUNDING RECOMMENDATIONS

In SFY 2021-22, clerks sent \$143.5 million to the General Revenue Fund. These funds come from various sources, such as the filing fees on foreclosure cases, administrative fees on civil traffic cases, and service charges for issuing summons, and clerks remit them monthly to the Department of Revenue (DOR).

Statute	General Revenue Amount and Description Collected by the Clerks
27.52(7)(b)	75% of any amount recovered by a state attorney for fraudulent indigency claims in criminal proceedings
28.101(1)(c)	\$37.50 charge for petitions for dissolution of marriage
28.24(13)(e)	\$4 additional service charge per page for recording, indexing, or filing, if the state becomes legally responsible for the costs of court-related technology need
28.241(1)(a)2.d.	\$195 in filing fees for circuit civil action relating to real property or mortgage foreclosure
28.241(1)(a)2.d.	\$700 in filing fees for circuit civil action relating to real property or mortgage foreclosure
28.241(1)(a)2.d.	\$930 in filing fees for circuit civil action relating to real property or mortgage foreclosure
34.041(1)(c)	\$295 counterclaim filing fee for county civil action
34.041(8)	\$100 fee for attorneys appearing pro hac vice in county court
57.082(7)b	75% of any amount recovered by the state attorney for fraudulent indigency claims in civil proceedings
316.0083(1)(b)3.b.	\$70 of the \$158 for violation of s. 316.074(1) or s. 316.075(1)(c)1.
318.18(15)(a)1.	Remaining \$30 of \$158 civil penalty for violation of ss. 316.075(1)(c)1 or 316.074(1)
318.21(2)(a)	20.6% of the remainder of civil penalties received pursuant to Ch. 318
501.2075	Up to a \$10,000 civil penalty is assessed against persons found to have committed deceptive and unfair trade practices
815.062(4)	In addition to any sanction imposed when a person is convicted of a violation of this section, the court shall impose a fine of twice the amount of the ransom
895.05(9)(a)	Money recovered for civil penalties under s. 895.03
901.43(3)(a)	\$1,000 per day civil penalty for publication or dissemination of booking photo, which may include attorney's fees and court costs
938.27(7)	Investigative costs recovered - Department of Agriculture & Consumer Services
Ch. 2008-111, Laws of Florida*	Additional revenue pursuant to Ch. 2008-111 L.O.F.
*The Legislature made multiple fee increases in Ch. 2008-111, L.O.F. The Department of Revenue (DOR) tracks those as one line in the revenue remittance system.	

CCOC recommends that the Legislature change the distribution of fines, fees, service charges, and court costs for those revenues split between the clerk and the General Revenue fund.

In addition, while there are distributions to state and local trust funds, CCOC does not make a specific recommendation for redistributing these trust funds to the clerks. These funds usually serve a specific purpose, such as training or providing critical emergency services. In addition, the agencies receiving the revenue rely on these funds to provide the services necessary to implement the public policy established by the Legislature. Setting public policy is the Legislature's purview. CCOC does not have the expertise to evaluate the individual trust funds and make recommendations for redistributing these funds. Therefore, it is not part of this report. However, CCOC recommends that the Legislature review these funds' functions to determine if they align with the state's current public policy direction. In Appendix 1, CCOC provides the amounts sent to each trust fund by state fiscal year for the past three state fiscal years.

Some potential ideas for allowing clerks to keep revenue that currently goes to General Revenue include changing the statutory distribution of:

1. Foreclosure filing fees
2. Issuance of a summons service charge
3. Dissolution of marriage filing fees
4. Probate filing fees
5. Civil Traffic Administration fee
6. County Civil crossclaim, counterclaim, counterpetition, or third-party complaint filing fees

In various combinations, these examples could provide enough revenue to fund the clerks' CFY 2022-23 Needs-Based Budget and close the current \$36.5 million recurring revenue gap.

## CHANGES TO THE DISTRIBUTION AND CHANGES IN THE AMOUNTS

### Changes in the Amounts

Section 28.35(2)(c)1., Florida Statutes, requires CCOC to recommend to the Legislature changes in the amounts and distribution of the various court-related fines, fees, service charges, and court costs established by law to ensure reasonable and adequate funding of the clerks of the court in the performance of their court-related functions. Unfortunately, the fines and fees originally intended to fund the clerks have not kept pace with the costs of providing the services to the public and the judiciary.

The previous section of this report provided recommendations for the distribution, and this section provides suggestions for changes in the amounts of the various court-related fines, fees, service charges, and court costs. However, CCOC recognizes that an increase in the fines, fees, service charges, and court costs may have to overcome the hurdle of requiring a two-thirds majority vote from the Legislature and, therefore, may not be as feasible as a reallocation of General Revenue. Nevertheless, this option exists and is a statutorily required part of the CCOC recommendation to the Legislature. A combination of the following suggestions could adequately fund the clerks' Needs-Based Budget.

The list of fines, fees, service charges, and court costs is lengthy. For example, many case types within a court division have a specific filing fee, such as foreclosures, which have three different filing fees depending on the amount in controversy. In addition, there are twenty-nine service charges explicitly contained in s. 28.24, F.S., and there are multiple statutory sections outlining court costs. Additionally, these revenues are inflexible. Once set in statute, any changes in the amount must receive two-thirds legislative approval for changes.

The Legislature could consider modernizing the statutes to keep up with inflation and rising costs to provide the necessary services to the judicial system and the public. Fines, fees, service charges, and court costs have remained the same since 2008, while population, wages, technology costs, and service demand have certainly increased. For instance, the Florida minimum wage 2012 was \$7.67 an hour compared to \$11 an hour in 2022. Clerks also compete for labor with the state that has effectively raised the minimum wage to \$15. Additionally, when the Legislature creates new duties for the clerks, providing an adaptable funding mechanism could help prevent future revenue gaps. The Legislature should also ensure that as processes become more digital, the current law allows the clerks to charge for those digital services.

These suggestions to increase fines, fees, service charges, and court costs provide the Legislature with another method in addition to the recommendation to redistribute General Revenue to fund the clerks' Needs-Based Budget deficit.

**Other Issues**

While not explicitly outlined in s. 28.35, F.S., there are additional funding methods to ensure clerks have reasonable and adequate funding. These ideas include direct appropriations, like the recurring \$11.7 million for jury management and the nonrecurring \$6.25 million provided for the backlog of cases. Additionally, the Legislature could consider reimbursement for cases without filing fees, such as Risk Protection Orders (RPOs) or indigency cases. There is statutory precedent for providing reimbursement, as Injunctions for Protection, Baker Act, and Marchman Act cases are currently authorized to be reimbursed by the Legislature to the clerks. Another idea for increasing revenue is allowing clerks to create payment plans for civil indigent cases. Finally, as mentioned in the overview, one of the drivers for insufficient revenue is the ever-increasing costs such as FRS and health insurance. The Legislature should consider a methodology to include clerks in the Administered Funds process to provide these increases like how they are provided to the other judicial partners.

**STATUTORILY REQUIRED FUNDING RECOMMENDATIONS**

Appendix 1

State Trust Funds & General Revenue	SFY 2019-20	SFY 2020-21	SFY 2021-22
ADDITIONAL COURT COSTS - TF	\$8,002,792.66	\$7,598,778.84	\$8,486,932.53
AGRICULTURAL LAW ENFORCEMENT TF	\$3,930.60	\$5,897.01	
ALCOHOLIC BEVERAGE AND TOBACCO REFUNDS	\$3,153.16	\$635.00	\$2,947.42
AUDIT & WARRANT CLEARING TF	\$16,845.80	\$28,357.63	\$24,725.09
BRAIN & SPINAL CORD INJURY PROGRAM TF	\$7,529,753.83	\$7,306,892.52	\$8,440,846.88
CHILD WELFARE TRAINING TF	\$1,437,143.27	\$1,421,192.41	\$1,582,905.65
COURT EDUCATION TF	\$3,254,490.57	\$3,917,173.80	\$3,740,945.78
CRIME STOPPERS TF	\$3,360,424.61	\$3,868,122.44	\$3,604,454.37
CRIMES COMPENSATION TF	\$12,531,750.16	\$15,435,652.95	\$13,455,382.51
DEPT OF FINANCIAL SERVICES ADMIN TF	\$1,927,554.43	\$2,110,898.61	\$2,001,076.38
DFS OPERATING TF	\$94,966.71	\$63,120.36	\$114,771.94
DLA REVOLVING TF	\$14,310.72	\$11,196.63	\$13,490.86
DOE GRANTS AND DONATIONS TF	\$1,053,109.53	\$1,023,241.21	\$1,166,743.62
DOMESTIC VIOLENCE TF	\$7,549,234.70	\$8,653,328.53	\$9,207,559.50
ECOSYSTEM MGMT & RESTORATION TF	\$446.34		
EMERGENCY MEDICAL SERVICES TF	\$13,918,950.07	\$13,258,750.87	\$15,740,862.99
EPILEPSY SERVICES TF	\$354,924.34	\$260,835.68	\$296,325.63
FDLE OPERATING TF	\$1,837,272.15	\$2,199,573.54	\$1,945,893.02
FL COASTAL PROTECTION TF		\$3,359.51	\$17,229.44
FORFEITURE AND INVESTIGATIVE SUPPORT TF	\$57,788.84	\$83,282.28	\$117,376.86
FWC OPERATING TF	\$58,847.82	\$42,393.51	\$54,916.94
GENERAL INSPECTION TF			\$3,979.53
GRANTS & DONATIONS TF	\$270,459.67	\$322,547.97	\$377,264.38
INDIGENT CIVIL DEFENSE TF	\$49,355.75	\$31,692.34	\$17,094.56
INDIGENT CRIMINAL DEFENSE TF	\$17,321,549.46	\$22,719,518.98	\$18,211,429.89
INLAND PROTECTION TF	\$250.40	\$314.21	\$763.58
INSURANCE REGULATORY TF		\$1,730.00	\$2,535.01
INTERNAL IMPROVEMENT TF	\$229.00	\$60.00	\$482.95
JAC GRANTS AND DONATIONS TF	\$943.64	\$230.94	\$2,495.40
JUVENILE WELFARE TRAINING TF	\$1,132,788.37	\$1,079,566.22	\$1,206,873.26

STATUTORILY REQUIRED FUNDING RECOMMENDATIONS

State Trust Funds & General Revenue	SFY 2019-20	SFY 2020-21	SFY 2021-22
LAW ENFORCEMENT RADIO SYSTEM TF	\$3,866,458.22	\$3,460,221.98	\$3,957,339.39
MARINE RESOURCES CONSERVATION TF	\$566,000.20	\$578,933.60	\$680,947.69
MOTOR VEHICLE LICENSE CLEARING TF	\$18,371,758.95	\$14,187,118.13	\$18,685,772.34
NONGAME WILDLIFE TF	\$1,198,808.16	\$1,124,798.58	\$1,267,847.03
OPERATIONS AND MAINTENANCE TF	\$285,415.29	\$265,654.96	\$292,886.02
PLANNING AND EVALUATION TF	\$932,938.21	\$1,017,731.69	\$1,114,722.84
PROJECTS, CONTRACTS & GRANTS TF	\$53,360.07	\$49,245.01	\$94,669.70
RAPE CRISIS PROGRAM TF	\$1,835,671.78	\$2,292,840.81	\$2,447,716.24
SOLID WASTE MANAGEMENT TF	\$53,693.92	\$41,335.27	\$40,131.53
STATE ATTORNEYS' REVENUE TRUST FUND	\$23,421,892.39	\$26,159,508.24	\$25,658,063.16
STATE COURTS REVENUE TF	\$76,343,540.39	\$80,361,949.26	\$79,768,830.53
STATE GAME TF	\$38,034.67	\$56,096.69	\$52,723.35
STATE TRANSPORTATION TF	\$3,422.15	\$3,100.49	\$2,560.28
SWP GRANTS & DONATIONS TF	\$109,123.96	\$134,550.27	\$193,177.87
<b>TRUST FUND TOTAL</b>	<b>\$208,863,384.96</b>	<b>\$221,181,428.97</b>	<b>\$224,095,693.94</b>
<b>GENERAL REVENUE</b>	<b>\$142,718,256.77</b>	<b>\$122,536,084.94</b>	<b>\$143,509,482.58</b>

## End Notes

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<sup>i</sup> Health insurance price inflation since 2013. <https://www.in2013dollars.com/Health-insurance/price-inflation/2013-to-2022?amount=20>. Last accessed 1/14/2023.

<sup>ii</sup> CPI Inflation Calculator. <https://data.bls.gov/cgi-bin/cpicalc.pl?cost1=50%2C000.00&year1=201301&year2=202201>. Last Accessed 1/14/2023.

<sup>iii</sup> Ten-Year History of Appropriation Reports – JUDICIAL BRANCH - JUSTICE ADMINISTRATION. Transparency Florida. <http://www.transparencyflorida.gov/Reports/TYHAppropAgy.aspx?ID=21000000&FY=&SC=F>. Last accessed 2/2/2023.

<sup>iv</sup> House Justice Appropriations Subcommittee – Meeting Packet – Wednesday, January 4, 2023. <https://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3198&Session=2023&DocumentType=Meeting+Packets&FileName=jua+1-4-23.pdf>. Last accessed 1/13/23.

<sup>v</sup> CFY 2022-23 Budget Development Spreadsheet – Needs-Based Budget tab. <https://flccoc.org/clerks-budget/>. Last accessed 1/13/2023.