

CHAPTER 2012-124

Senate Bill No. 1964

An act relating to court-related assessments; creating s. 28.2457, F.S.; providing for a monetary assessment mandated by statute to be imposed regardless of whether the assessment is announced in open court; providing guidelines for establishing the amount of a mandatory assessment under certain conditions; requiring the clerks of court to develop a uniform form to be used in identifying and imposing mandatory assessments; providing for the clerks to consult with the Office of the State Courts Administrator; providing for the Supreme Court to approve the form; defining terms; amending s. 28.246, F.S.; revising requirements for the clerks of court to report on the assessment and collection of certain fines or other monetary penalties, fees, costs, and charges; prescribing requirements for reporting certain assessments that are waived, suspended, or reduced; requiring the clerks to report collection rates; providing guidelines for calculating the collection rate; revising the timeframe for submitting the report; requiring the clerks, rather than the Department of Financial Services, to develop a reporting form and guidelines; providing for the clerks to consult with the Office of the State Courts Administrator; amending s. 28.42, F.S.; removing an obsolete date; providing for the clerks of court, rather than the Office of the State Courts Administrator, to prepare and disseminate a manual of filing fees, service charges, costs, and fines; revising requirements relating to the content and presentation of information in the manual; providing for the clerks to consult with the Office of the State Courts Administrator; providing for applicability of amendments made by the act; providing an effective date.

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

Section 1. Section 28.2457, Florida Statutes, is created to read:

28.2457 Mandatory monetary assessments.—

(1)(a) Except as otherwise provided by law, a monetary assessment mandated by statute shall be imposed and included in the judgment without regard to whether the assessment is announced in open court.

(b) When an assessment mandated by statute prescribes a minimum assessment and a maximum assessment, or prescribes solely a minimum assessment, the minimum assessment is presumed and shall be imposed and included in the judgment, unless the court specifies a greater amount.

(2) The clerks of court, through their association and in consultation with the Office of the State Courts Administrator, shall develop by October 1, 2012, a uniform form for the identification and imposition of all assessments mandated by statute. The clerks shall submit the form by that date, and by October 1 every year thereafter if necessary to reflect changes in the law, to

the Supreme Court for approval. Upon approval of the form by the Supreme Court, all circuit and county courts shall use the form.

(3) As used in this section, the term “monetary assessment” or “assessment” includes, but is not limited to, a fine or other monetary penalty, fee, service charge, or cost.

Section 2. Section 28.246, Florida Statutes, is amended to read:

28.246 Payment of court-related fines or other monetary penalties, fees, charges, and costs; partial payments; distribution of funds.—

(1) The clerk of the circuit court shall report the following information to the Legislature and the Florida Clerks of Court Operations Corporation on a form, and using guidelines developed by the clerks of court, through their association and in consultation with the Office of the State Courts Administrator Department of Financial Services:

(a) The total amount of mandatory fees, service charges, and costs; ~~the total amount actually assessed;~~ the total amount underassessed, if any, which is the amount less than the minimum amount required by law to be discharged, waived, or otherwise not assessed; and the total amount collected.

(b) The total amount of discretionary fees, service charges, and costs assessed; ~~the total amount discharged;~~ and the total amount collected.

(c) The total amount of mandatory fines and other monetary penalties; ~~the total amount assessed;~~ the total amount underassessed, if any, which is the amount less than the minimum amount required by law to be discharged, waived, or otherwise not assessed; and the total amount collected.

(d) The total amount of discretionary fines and other monetary penalties assessed; ~~the amount discharged;~~ and the total amount collected.

~~If provided to the clerk of court by the judge, The clerk, in reporting to the Legislature and corporation amount assessed, shall separately identify the monetary amount assessed and subsequently discharged or converted pursuant to s. 938.30 as community service,; assessed by reducing the amount to a judgment or lien, or to; satisfied by time served; or other. The form developed by the clerks Chief Financial Officer shall include separate entries for recording the amount discharged and the amount converted these amounts. If a court waives, suspends, or reduces an assessment as authorized by law, the portion waived, suspended, or reduced may not be deemed assessed or underassessed for purposes of the reporting requirements of this section. The clerk also shall report a collection rate for mandatory and discretionary assessments. In calculating the rate, the clerk shall deduct amounts discharged or converted from the amount assessed. The clerk shall submit the report on an annual basis 90 60 days after the end of the county fiscal year. The clerks and the courts shall develop by October 1, 2012, the form and guidelines to govern the accurate and consistent~~

reporting statewide of assessments as provided in this section. The clerk shall use the new reporting form and guidelines in submitting the report for the county fiscal year ending September 30, 2013, and for each year thereafter.

(2) The clerk of the circuit court shall establish and maintain a system of accounts receivable for court-related fees, charges, and costs.

(3) Court costs, fines, and other dispositional assessments shall be enforced by order of the courts, collected by the clerks of the circuit and county courts, and disbursed in accordance with authorizations and procedures as established by general law.

(4) The clerk of the circuit court shall accept partial payments for court-related fees, service charges, costs, and fines in accordance with the terms of an established payment plan. An individual seeking to defer payment of fees, service charges, costs, or fines imposed by operation of law or order of the court under any provision of general law shall apply to the clerk for enrollment in a payment plan. The clerk shall enter into a payment plan with an individual who the court determines is indigent for costs. A monthly payment amount, calculated based upon all fees and all anticipated costs, is presumed to correspond to the person's ability to pay if the amount does not exceed 2 percent of the person's annual net income, as defined in s. 27.52(1), divided by 12. The court may review the reasonableness of the payment plan.

(5) When receiving partial payment of fees, service charges, court costs, and fines, clerks shall distribute funds according to the following order of priority:

(a) That portion of fees, service charges, court costs, and fines to be remitted to the state for deposit into the General Revenue Fund.

(b) That portion of fees, service charges, court costs, and fines ~~which are~~ required to be retained by the clerk of the court or deposited into the Clerks of the Court Trust Fund within the Justice Administrative Commission.

(c) That portion of fees, service charges, court costs, and fines payable to state trust funds, allocated on a pro rata basis among the various authorized funds if the total collection amount is insufficient to fully fund all such funds as provided by law.

(d) That portion of fees, service charges, court costs, and fines payable to counties, municipalities, or other local entities, allocated on a pro rata basis among the various authorized recipients if the total collection amount is insufficient to fully fund all such recipients as provided by law.

To offset processing costs, clerks may impose either a per-month service charge pursuant to s. 28.24(26)(b) or a one-time administrative processing service charge at the inception of the payment plan pursuant to s. 28.24(26)(c).

(6) A clerk of court shall pursue the collection of any fees, service charges, fines, court costs, and liens for the payment of attorney attorney's fees and costs pursuant to s. 938.29 which remain unpaid after 90 days by referring the account to a private attorney who is a member in good standing of The Florida Bar or collection agent who is registered and in good standing pursuant to chapter 559. In pursuing the collection of such unpaid financial obligations through a private attorney or collection agent, the clerk of the court must have attempted to collect the unpaid amount through a collection court, collections docket, or other collections process, if any, established by the court, find this to be cost-effective and follow any applicable procurement practices. The collection fee, including any reasonable attorney's fee, paid to any attorney or collection agent retained by the clerk may be added to the balance owed in an amount not to exceed 40 percent of the amount owed at the time the account is referred to the attorney or agent for collection. The clerk shall give the private attorney or collection agent the application for the appointment of court-appointed counsel regardless of whether the court file is otherwise confidential from disclosure.

Section 3. Section 28.42, Florida Statutes, is amended to read:

28.42 Manual of ~~court-related~~ filing fees, charges, costs, and fines.—~~No later than July 1, 2004, The clerks of court, through their association and in consultation with the~~ Office of the State Courts Administrator, shall prepare and disseminate a manual of ~~court-related~~ filing fees, service charges, costs, and fines imposed pursuant to state law, ~~organized by county~~ for each type of action and offense, and classified as either mandatory or discretionary. The manual also shall classify the fee, charge, cost, or fine as court-related revenue or noncourt-related revenue. ~~The clerks, through their association, Office of the State Courts Administrator~~ shall disseminate this manual to the chief judge, state attorney, public defender, and court administrator in each circuit and to the clerk of the court in each county. The clerks, through their association and in consultation with the Office of the State Courts Administrator, shall at a minimum update and disseminate this manual on July 1 of each year thereafter.

Section 4. Notwithstanding the amendments made by this act to s. 28.246, Florida Statutes, the clerks of court shall use the reporting requirements, standards, and form prescribed in that section before July 1, 2012, for the report due for the county fiscal year ending September 30, 2012. The amendments made by this act to s. 28.246, Florida Statutes, apply beginning with the report for the county fiscal year ending September 30, 2013.

Section 5. This act shall take effect July 1, 2012.

Approved by the Governor April 20, 2012.

Filed in Office Secretary of State April 20, 2012.