

**STATE OF FLORIDA
OFFICE OF THE AUDITOR GENERAL**



151637

**PERFORMANCE AUDIT
OF THE
ASSESSMENT OF REQUIRED CRIMINAL FEES
ADMINISTERED BY THE
STATE COURTS SYSTEM OF FLORIDA
NOVEMBER 13, 1991**

151637

**U.S. Department of Justice
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STATE OF FLORIDA

OFFICE OF THE AUDITOR GENERAL



CHARLES L. LESTER, C.P.A.
AUDITOR GENERAL

November 13, 1991

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ACQUISITIONS

The President of the Senate, the Speaker of the
House of Representatives, and the
Legislative Auditing Committee

I have directed that a performance audit be made of the assessment of required criminal fees administered by the State Courts System of Florida. The results of the audit are presented to you in this report. This audit was made as a part of an ongoing program of performance auditing by the Office of the Auditor General as mandated by Section 11.45(3)(a), Florida Statutes.

Respectfully yours,

Charles L. Lester
Auditor General

Audit supervised by:

G. Ellsworth Carroll

Audit made by:

Douglas M. Isabelle

PERFORMANCE AUDIT
 OF THE
 ASSESSMENT OF REQUIRED CRIMINAL FEES
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ASSESSMENT OF REQUIRED CRIMINAL FEES**Purpose and Scope**

This audit reviews the process for assessing fees to individuals convicted by the Florida State Courts System. This audit was conducted as a part of the Auditor General's 10-year schedule of performance audits, pursuant to Ch. 86-217, Laws of Florida. The primary focus of our audit was to examine whether courts within the State Courts System are assessing required fees. Specific audit objectives were to:

- Determine which fees are required to be assessed by judges in criminal cases;
- Determine to what extent judges assess required fees to offenders;
- Determine if the Supreme Court has adopted procedures to guide judges in assessing required fees; and
- Determine the effect of not assessing required fees.

The scope of our audit was limited to a review of fees assessed to offenders convicted of crimes in circuit, county, and traffic courts in nine counties during fiscal year 1988-89. Our scope did not include other costs that may be assessed to criminals such as bonds, forfeitures, restitution, public defender liens, prosecution liens, fines, and service charges such as filing and recording fees. The collection and distribution of assessments will be the subject of future audits.

To conduct our audit, we reviewed relevant sections of the Florida Constitution, Florida Statutes, Rules of Court, and Appellate and Supreme Court decisions. We interviewed the State Courts Administrator and his staff, 19 Chief Circuit Judges, trial Judges in nine counties, Clerks of the Circuit Court and their staff in nine counties, and administrators of various state programs funded by court fees. We made site visits to circuit, county, and traffic courts in nine counties, and reviewed a sample of 2,637 criminal case files. The counties we sampled were: Baker, Charlotte, Citrus, Dade, Duval, Gadsden, Lee, Orange, and Pinellas. We were unable to obtain traffic court information from Baker, Dade, and Orange counties. To determine the effect of not assessing fees, we calculated the amount of fees required to be assessed for each case in our sample, identified the actual amount assessed in these cases, and compared the required assessment to actual assessments.

Background

Florida Statutes authorize the courts to assess various fines and fees to persons convicted of crimes. (See Appendix A, page 38.) Fines are assessed as a penalty for violating the law, and fees recover a portion of the costs of prosecution and support certain local and state programs. The assessment of fines and fees involves the Supreme Court, circuit and county courts, and Clerks of the Circuit Court. While the statutes provide judges with discretion in assessing most of the fines and some fees, the statutes require that judges assess specific fees when sentencing persons convicted of certain types of crimes. Up to ten fees are required to be assessed depending on the crime committed. Judges may be required to assess several fees for a single conviction. For example, if a person is

EXECUTIVE SUMMARY

convicted of driving under the influence, statutes specify that as many as six different fees be assessed. In assessing fines and fees, judges must consider procedures mandated by statute, case law, and promulgated judicial procedures.

The assessment of fines and fees directly impacts the equitable treatment of offenders, the local resources to defray prosecution costs, and the funding of state and local programs established by the Legislature. If offenders convicted of similar crimes are not assessed the same costs, the judicial system may be perceived as not providing uniform treatment to all offenders. Additionally, when fees are not assessed, potential revenues are reduced, and county and state programs that rely on these monies must seek alternative funding sources or limit program services.

According to the Supreme Court Reporting System, in fiscal year 1988-89, the courts rendered guilty verdicts in an estimated 737,795 criminal cases.¹ Summary information on the number of cases assessed fines and fees, and the amounts assessed, is not available on a statewide basis. The Clerks of Circuit Court are not required to collect and report such information. However, for the nine counties in our sample, judges assessed a total of \$55,371,379 in fines and fees during fiscal year 1988-89.²

¹ This figure is composed of cases disposed of prior to trial (plea guilty nolo) and cases disposed of after trial; non-jury (plea and convicted) and jury (plea and convicted) and traffic guilty cases and adjudication withheld by judge cases.

² Office of the Auditor General calculations based on county-provided data. The total for the amount assessed does not include Duval County cases nor traffic court cases for Baker, Dade, and Orange counties.

Results in Brief

Judges typically do not assess all fees required by law. Judges assessed all required fees in approximately 34% (909 of 2,637) of the cases we reviewed. Our analysis also showed that assessment patterns varied by the type of court (circuit, county, and traffic). In cases assessed one or more required fees, 61% (899 of 1,466) were assessed an amount at or above the minimum required by statute. As a result of the low assessment of statutorily required fees, potential revenues to county and state trust funds are being reduced. We determined that of our sample cases, \$297,334 could have been assessed if all required fees were imposed and that \$144,612, or 49% was actually assessed, resulting in a potential revenue loss of \$152,722. Various factors contributed to the overall lack of assessment, including assessment complexity, judicial philosophies, and lack of Supreme Court guidance and oversight.

County-provided data for fiscal year 1988-89, shows that the nine sample counties had approximately 208,000 felonies, misdemeanors, and traffic court cases in which the defendant was found guilty.³ If the required minimum mandatory fees were assessed in these cases, we estimate that approximately \$10 million in additional fees could have been assessed. However, because of the variance we found by county and by court within each county, we were unable to estimate the total statewide impact on court fee assessments. Furthermore, on May 9, 1991, Florida's Supreme Court ruled that trial courts are not required

³ The number of court cases does not include traffic court cases for Baker, Dade, and Orange counties.

to determine defendants' ability to pay statutorily mandated costs prior to assessing costs unless the applicable statute specifically requires such determination.⁴ Therefore, the effect on current year assessments is not known. In addition, it should be pointed out that the increased assessments might not result in additional collections for county and state trust funds. The collection of assessments is the subject of a future audit.

Findings

Judges Assessed All Required Fees in 34% of the Cases

For certain crimes, the statutes require judges to assess several fees. In our sample, judges assessed all required fees in approximately 34% (909 of 2,637) of the cases. The percentage of cases assessed all required fees varied substantially by county, and ranged from 11% (25 of 225) to 63% (139 of 221). Our analysis also showed that assessment patterns varied substantially by type of court (circuit, county, and traffic). In our sample, judges assessed all required fees in 60% (503 of 832) of traffic court cases, in 31% (182 of 578) of circuit court cases, and in 18% (224 of 1,227) of county court cases. Since assessment of several fees may be required in a case, we further analyzed information obtained from court files to determine the percentage of cases assessed at least one of the required fees. In cases in which fees were required, judges had assessed at least one of the required fees in approximately 56% (1,466 of 2,637) of the cases.

⁴ State v. Beasley, 580 so.2d 139 (Fla. 1991); and State v. Vamper, 579 so.2d 730 (Fla. 1991).

**Judges Assessed Fees
at or Above the
Minimum in 61%
of the Cases**

Florida Statutes specify the minimum fees required to be assessed in each type of case. We analyzed the cases in our sample to determine if judges had levied amounts at or above the minimum. We found that judges assessed fees at above the minimum fees in 61% (899 of 1,466) of the cases in our sample. The percentage of cases assessed fees at or above the minimum varied substantially between counties, ranging from 18% (21 of 119) to 88% (103 of 117). The percentage of cases assessed fees at or above the minimum also varied by type of court. Judges assessed fees at or above the minimum in 79% (480 of 609) of traffic court cases, 59% (188 of 319) of circuit court cases, and 43% (231 of 539) of county court cases.

**49% of Required
Fees Assessed**

Due to the low assessment of statutorily required fees, potential revenues to state and county trust funds are being reduced. In the 2,637 court files reviewed, \$297,334 could have been assessed if all required fees were imposed and \$144,612, or 49% of the dollar value, of required fees was actually assessed. The courts assessed 61% of the required fees for state trust funds while these courts assessed 43% of the required fees for county funds. The percentage of actual assessments varied among the courts.

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Court	State Funds	County Funds	Total
Circuit	61%	44%	47%
County	35%	25%	28%
Traffic	82%	79%	81%
All Courts	61%	43%	49%

Source: Office of the Auditor General summary analysis of county-provided data.

In fiscal year 1988-89, the nine sample counties had approximately 208,000 felonies, misdemeanors, and traffic court cases in which the defendant was found guilty. If the required minimum mandatory fees were assessed in these cases, we estimate that approximately \$10 million in additional fees could have been assessed. However, because of the variance we found by county and by court within each county, we were unable to estimate the total statewide impact on court fee assessments. Furthermore, on May 9, 1991, Florida's Supreme Court ruled that trial courts are not required to determine defendants' ability to pay statutorily mandated costs prior to assessing costs unless the applicable statute specifically requires such a determination. Therefore, the effect on current year assessments is not known. In addition, it should be pointed out that the increased assessments might not result in additional collections for county and state trust funds. The collection of assessments is the subject of a future audit.

**Varied Reasons for
Not Assessing
Required Fees**

Court records do not identify reasons for departure from the requirement to assess mandatory fees. However, after discussions with selected trial judges and Chief Judges in 19 of 20 circuits, we identified three factors that appear to affect the fee assessment process: the complexity of the assessment process; varying philosophies of individual judges; and lack of guidance and oversight by the Supreme Court. The complexity of the assessment process appears to have merit, as the requirements for assessing fees is found in as many as ten different sections of the statutes. For example, fee assessment requirements for misdemeanor convictions are found in three sections of the statute: ss. 27.3455, 943.25(3), and 960.20, F.S. Different philosophies among the judges also affected the assessment of fees. These philosophies included decisions based on whether persons can afford to pay fines and fees; decisions based on combining the punishment and fee assessment; and decisions based on interpretation of statutes. Finally, although Article V, section 2 of the Florida Constitution requires the Supreme Court to be responsible for administrative supervision of the State Courts System, it has not provided assessment guidelines for the judges. Although the Supreme Court has established reporting requirements for various aspects of judicial activities, it has not required such reporting for assessment of fines and fees. As a result, the Supreme Court and Chief Circuit Judges are unable to evaluate individual trial judge's effectiveness in following the requirements of the law. Thus, they are unable to provide guidance to trial judges in assessing fines and fees.

The State Courts Administrator pointed out that the issue of the Supreme Court establishing guidelines for assessment should be considered in light of the delegation of power to the three branches of government. He said that if the current statutory guidance is inadequate, or

insufficient, the Legislature has the power and responsibility to provide a remedy.

Recommendations

Recommendations to the Legislature

To simplify the assessment process, we recommend that the Legislature:

- Consolidate into one chapter of the Florida Statutes all requirements for assessing fines and fees; and
- Review the cumulative number and amount of fees a defendant is required to pay and evaluate as to equity and uniformity.

Recommendations to the Supreme Court

To assist in a more uniform application of the statutes, we recommend that the Supreme Court:

- Review statutory requirements and case law and develop procedures that will ensure a more uniform assessment of fees against defendants.
- If the Supreme Court determines that to adhere to the separation of powers doctrine that the Legislature should provide more specific criteria, then the Court should make such recommendations to the Legislature.
- Establish a reporting system to collect information on the assessment of fines and fees. This information will allow the Supreme Court and Chief Circuit Judges to evaluate trial judges' effectiveness in fulfilling the requirement of law.

Agency Response

The Chief Justice of the Supreme Court, in his written response to our preliminary and tentative findings and recommendations agreed with our recommendations related to the consolidation of requirements for assessing criminal fines and fees and Legislative review of the cumulative effect of required fees. He also described actions that will be taken to provide guidance to trial courts related to the assessment of required fees and costs in criminal cases. He indicated that the assessment of fees and costs in specific situations, such as those involving multiple charges or where adjudication of guilt are withheld, were matters for the Legislature to determine. He disagreed with our recommendation that the Supreme Court establish a reporting system to collect information on the assessment of fines and fees. He stated ". . . an executive branch entity must capture both assessment and collection data in order to effectively monitor collections, this same entity should be responsible for reporting assessment information to the supreme court for analysis and distribution through the state courts system."

CHAPTER I

Introduction: Purpose and Scope, Methodology

Purpose and Scope

This audit reviews the process of assessing fees to offenders convicted by the Florida State Courts System. The primary focus of our audit was to examine whether courts within the State Courts System are assessing required fees. Specific audit objectives were to:

- Determine which fees are required to be assessed by judges in criminal cases;
- Determine to what extent judges assess required fees to offenders;
- Determine if the Supreme Court has adopted procedures to guide judges in assessing required fees; and
- Determine the effect of not assessing required fees.

The scope of our audit was limited to a review of fees assessed to offenders convicted of crimes by circuit, county, and traffic courts in nine counties during fiscal year 1988-89.¹ Our scope did not include other costs that may be assessed such as bonds, forfeitures, restitution, public defender liens, prosecution liens, fines, and service charges such as filing and recording fees. The collection and distribution of assessments will be the subject of subsequent audits.

This audit was conducted as a part of the Auditor General's 10-year schedule of performance audits, pursuant to Ch. 86-217, Laws of Florida.

¹ Our scope was limited to nine counties because most counties were unable to provide computerized data on fiscal year 1988-89 court assessments. Nineteen counties provided us with this data. From this group, we selected nine counties for in-depth analysis – Baker, Charlotte, Citrus, Dade, Duval, Gadsden, Lee, Orange, and Pinellas. These nine counties represent small, medium, and large counties in the state.

Methodology

This audit was conducted in accordance with generally accepted government auditing standards and accordingly included appropriate performance auditing and evaluation methods. Our fieldwork was conducted from May through December 1990. Follow-up fieldwork was conducted during March and April 1991.

To gain a general understanding of the assessment responsibilities of the various organizations within the State Courts System, and to identify required fees, we reviewed relevant sections of the Florida Constitution and Florida Statutes. We also reviewed Rules of Court, and Appellate and Supreme Court decisions. Additionally, we interviewed staff in the State Courts Administrator's office. (See Appendix A, page 38, for a schedule of fines and fees that may be assessed.)

To determine whether the Supreme Court had adopted procedures to guide judges in assessing required fees to convicted offenders, we reviewed the Rules of Judicial Administration and Rules of Criminal Procedures adopted by the Supreme Court. We also interviewed the State Courts Administrator, staff of the Office of the State Courts Administrator, and 19 Chief Circuit Judges. In addition, we reviewed related studies and audits to identify steps taken by the Supreme Court to standardize the fee assessment process.²

To determine the extent that circuit, county, and traffic courts assessed relevant fees, we obtained computerized data of criminal court records from nine Clerks of Circuit Court for fiscal year 1988-89, and made site visits to courts in these counties to gain in-depth information on their assessment activities. We reviewed court records for fiscal year 1988-89 to allow time for most collection activities to be completed. See Appendix B, page 40, for the

² Studies we reviewed included the Chief Judge Survey: Judicial Behaviors, Experiences and Perspectives Relative to the imposition of Section 27.3455, F.S., Costs, Florida Advisory Council on Intergovernmental Relations, September 1988; Final Report of the Advisory Council on Intergovernmental Relations: Increasing Section 27.3455, Florida Statutes, Revenues to Florida Counties, Florida Advisory Council on Intergovernmental Relations, April 1989; Operational Performance Audit of the Florida Supreme Court for the Period July 1, 1986, Through January 31, 1988 (Report No. 11130), State of Florida Office of the Auditor General, November 15, 1988; Performance Audit of the Crime Victim Compensation Program of the Department of Labor and Employment Security (Report No. 10203), State of Florida Office of the Auditor General, May 11, 1983.

methodology used to select these counties. During these visits, we reviewed a sample of 2,637 criminal case files to determine which fees had been assessed. Our goal was to randomly select 225 cases sentenced during fiscal year 1988-89 from small and/or medium size counties: Baker, Charlotte, Citrus, and Gadsden; and 450 cases sentenced for the same fiscal year from large counties: Dade, Duval, Lee, Orange, and Pinellas. We stratified the cases by circuit, county, and traffic courts to represent criminal cases sentenced by these courts. In Baker, Dade, and Orange counties we were unable to obtain information on traffic court cases sentenced during fiscal year 1988-89, as the computerized information regarding dates when offenders were sentenced was not readily available. In addition, ten cases we reviewed did not contain complete assessment information. Our final sample included 2,637 cases. See Appendix C, page 43, for the methodology used to select these cases. We additionally interviewed trial judges to identify factors considered in determining whether to assess fees, and to identify the fee assessment procedures used by these courts. In addition, we discussed assessment procedures with Clerk of Court staff, and observed court assessment actions.

To determine the fiscal impact of non-uniform fee assessments, we interviewed administrators of various state trust funds and we estimated the amount by which potential revenues to state and county trust funds for fiscal year 1988-89 are reduced due to low assessments. For each court we calculated the amount of fees required to be assessed by statute for each case in our sample, identified the actual amount of fees assessed in these cases, and compared the potential and actual assessments.

CHAPTER II

Background: Program Design and Organization

Program Design

Florida Statutes authorize judges to assess a variety of penalties to offenders convicted of felonies, misdemeanors, or traffic crimes.³ These penalties can include imprisonment, community control, probation, fines, or a combination of the three sanctions. The intent of penalties is to punish offenders for committing crimes against the state, a governmental entity, or citizens of the state. In addition to these penalties, judges are authorized to assess certain fees, including court costs and surcharges. Court costs are intended to defray some of the cost of prosecution, while surcharges are remitted to state trust funds to support certain programs, such as crime victim compensation and police training. While Florida Statutes provide for judicial discretion in assessing most fines, statutes specify that certain fees shall be assessed when offenders are convicted of crimes. The number of fees required to be assessed depends on the type of crime. Judges may be required to assess several fees for a single conviction. For example, a person convicted of driving under the influence of alcohol may be assessed as many as six fees and a fine. See Exhibit 1, page 6, for examples of fines and fees that can be assessed to offenders convicted of crimes.

³ A felony is any criminal offense that is punishable under state laws by death or imprisonment in a state penitentiary, including state correctional facilities. A misdemeanor is any criminal offense that is punishable under state laws by a term of imprisonment in a county correctional facility, except an extended term, not in excess of one year. A traffic violation can be either a felony or a misdemeanor which includes all offenses outlined in Chs. 316 (State Uniformed Traffic Control), 320 (Motor Vehicle Licenses), and 322 (Drivers' Licenses, punishable by a fine and/or period of incarceration), F.S.

Exhibit 1

Examples of Court Fines and Fees

Fine/Fee Authorization	Description	Amount
s. 316.193(4), F.S.	Third conviction of DUI with blood alcohol of .20	\$5,000 Fine
s. 27.3455, F.S.	Conviction of a misdemeanor	\$50 Fee
s. 943.25(3), F.S.	Conviction of any felony, misdemeanor, county or municipal ordinance violation	\$3 Fee
s. 960.20, F.S.	Conviction of any felony, misdemeanor, criminal traffic, county or municipal violation	\$20 Fee
s. 960.25, F.S.	Assessed if fine imposed	5% of Fine
s. 316.193(6)(d), F.S.	Conviction of DUI	\$100 Fee
s. 939.017(1)(a), F.S.	Conviction of any drug or alcohol misdemeanor on or after October 1, 1988.	\$15 Fee

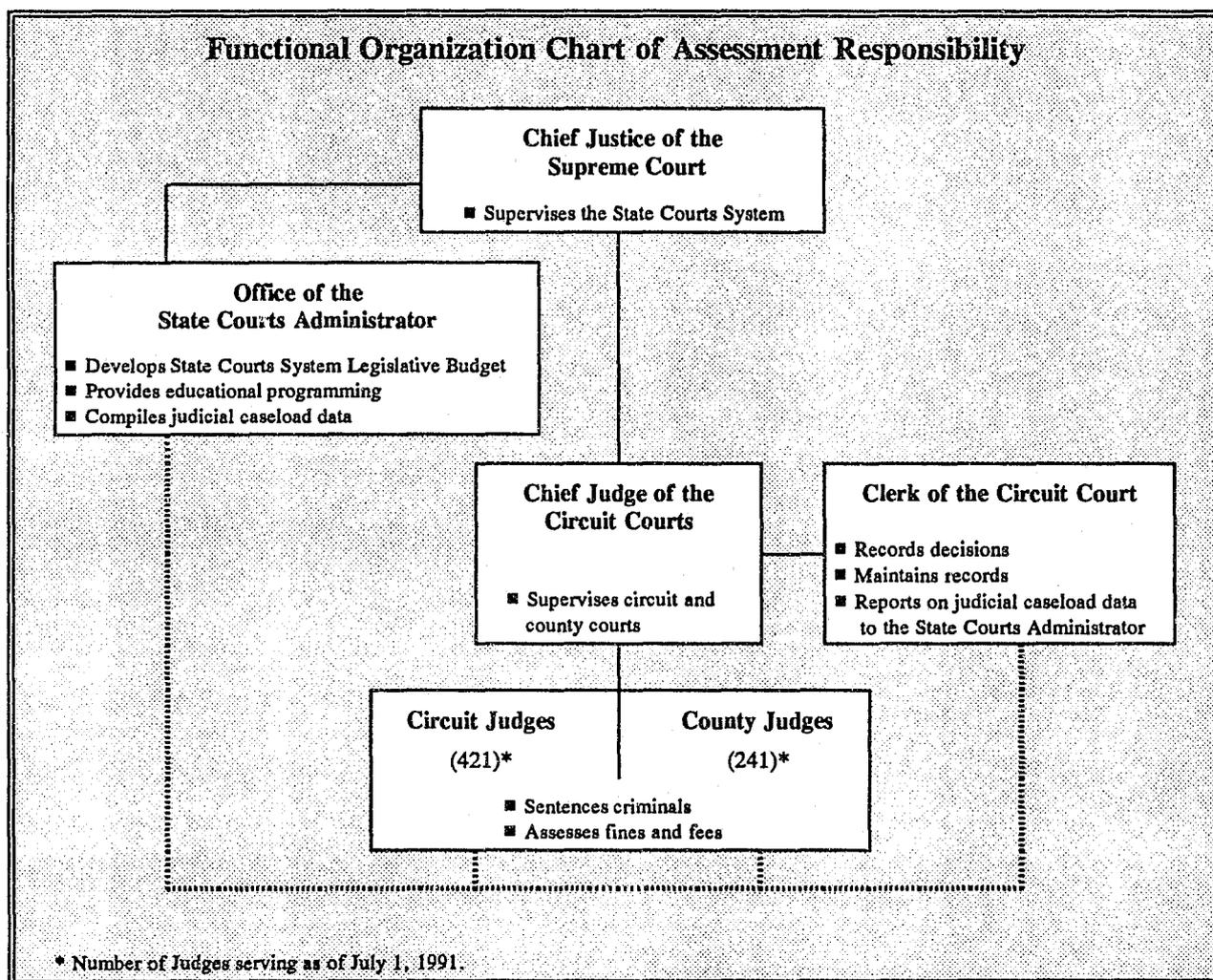
Source: Florida Statutes.

The assessment of fines and fees involve the Supreme Court, circuit and county courts, and Clerks of the Circuit Court.⁴ See Exhibit 2, page 7, for functional assessment responsibilities. Article V, section 2 of the Florida Constitution requires the Supreme Court to adopt rules for the practice and procedure in all courts. The purpose of these rules is to facilitate the uniform conduct of litigation. Judges in circuit and county courts are responsible for assessing the fines and fees. Clerks of the Circuit Court are responsible for documenting and maintaining court records, including judicial assessments. Clerks are also responsible for collecting assessed fines and fees, and remitting these monies to applicable county or state trust

⁴ While not a formal division of the State Courts System, county courts that hear cases involving traffic violations are commonly called traffic courts.

funds. Monies remitted to the counties are used to defray the counties' cost of prosecuting crimes. Monies remitted to the state are used to support programs for victims of crime, crime labs, and police training. For example, s. 142.01, F.S., requires that monies collected from fine assessments be remitted to the fine and forfeiture fund in the county where the crime was committed, unless otherwise specified in statute. In addition, s. 960.20, F.S., requires that fees collected on behalf of victims of crimes be remitted to the Crimes Compensation Trust Fund, administered by the Department of Legal Affairs.

Exhibit 2



Source: Office of the Auditor General based on Article V, ss. 1, 2, 3, 5, 6, and 16, Florida Constitution, and Chs. 25, 26, 28, and 34, F.S.

According to the Supreme Court Reporting System, in fiscal year 1988-89, the courts rendered guilty verdicts in an estimated 737,795 criminal cases.⁵ On a statewide basis, summary information is not available on the number and amounts of fines and fees assessed. The Clerks of Circuit Court are not required to collect and report such information. However, for the nine counties in our sample, judges assessed a total of \$55,371,379 in fines and fees during fiscal year 1988-89.⁶

Program Organization

The Supreme Court consists of seven justices, initially appointed by the Governor, and then approved for continued service by voters during general elections. The Chief Justice is chosen by the majority of justices for a two-year term. The current Chief Justice is Leander J. Shaw, Jr., who assumed this position July 1, 1990.

The Office of the State Courts Administrator was created within the Supreme Court in 1972 to assist in the administration of the State Courts System. The duties of this Office include preparing budget requests for Court approval and presentation to the Legislature; representing the State Courts System before the Legislature and other governmental bodies in matters which affect the courts; coordinating, managing, and providing technical assistance to court-administered programs throughout the state; acting as staff to committees, councils and commissions which have been appointed by the Supreme Court; assisting in the preparation of educational and training materials for court-related personnel; and maintaining uniform financial cost data, workloads, and other statistical information which reflects the business of Florida's State Courts System.

⁵ This figure is composed of cases disposed of prior to trial (plea guilty nolo) and cases disposed of after trial; non-jury (plea and convicted) and jury (plea and convicted) and traffic guilty cases and adjudication withheld by judge cases.

⁶ Office of the Auditor General calculation based on county-provided data. The total for the amount assessed does not include Duval County cases nor traffic court cases for Baker, Dade, and Orange counties.

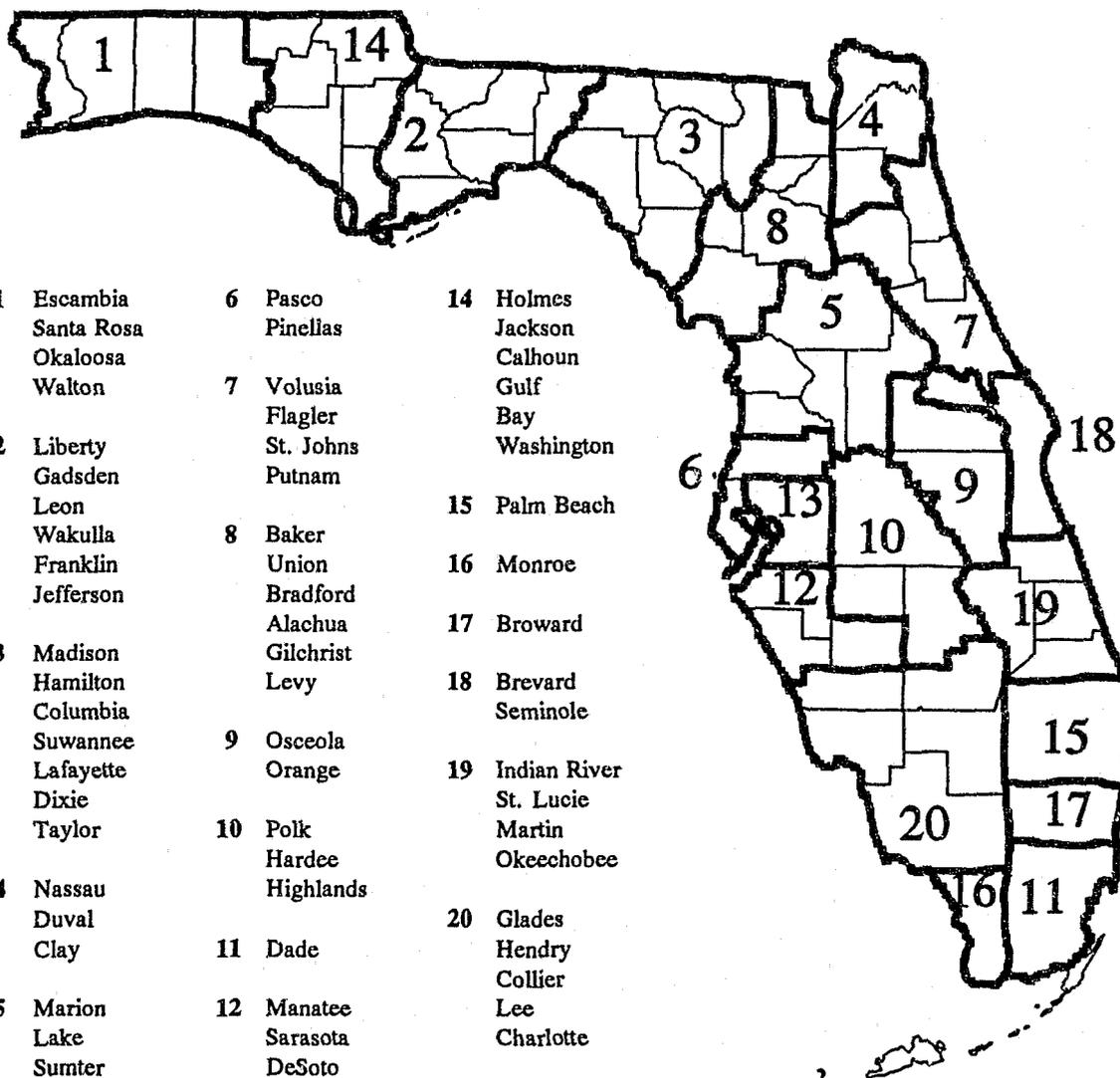
The state's trial courts are divided into 20 judicial circuits consisting of circuit and county courts. See Exhibit 3, page 10. The circuit courts have jurisdiction for felony cases and misdemeanors that arise out of the same circumstances as a felony which is also charged, actions involving the title and boundaries of real property, cases of equity, civil actions involving amounts over \$10,000, and cases involving the legality of any tax assessment or toll, and cases that cannot be heard in county court. The county courts have jurisdiction in misdemeanor cases that cannot be heard by the circuit court, violations of local ordinances, traffic, and civil actions in which the amount in controversy is not more than \$10,000. While not a formal division of the State Courts System, county courts that hear cases involving traffic violations are commonly called traffic courts.

Each judicial circuit consists of counties in which circuit and county judges convene court. These judges are elected by the registered voters within the territorial jurisdiction of their respective courts. As of July 1, 1991, there were 421 circuit judges and 241 county judges. Each judicial circuit is headed by a Chief Judge, who is responsible to the Chief Justice of the Supreme Court for the administrative supervision of the circuit and county courts within their jurisdiction. The Chief Judge is chosen by a majority of the circuit court and county court judges within the circuit for a two-year term.

In each of the 67 counties in the state, a Clerk of Circuit Court is elected to serve a term of four years. Clerks of Circuit Court are responsible for documenting the court's decisions, and maintaining all court records. Clerks are required to maintain records pertaining to criminal cases and report court case activity to the Supreme Court. The Clerks are also required by statute to collect monies assessed by the courts and remit these funds to either the county in which the crime was committed or various state trust funds.

Exhibit 3

**Circuits by Counties
Judicial Circuit System**



Source: Office of the Auditor General, based on s. 26.021, F.S.

Program Resources

Judges' salaries are funded from the state General Revenue Fund. As shown in Exhibit 4, fiscal years 1989-90 and 1990-91 expenditures for salaries and expenses were approximately \$104 million and \$115 million, respectively. Counties are responsible for paying some expenses incurred by Clerks of the Courts. Counties are also required by s. 43.28, F.S., to provide appropriate courtrooms, facilities, and equipment necessary to operate the courts. Statewide summary data of these local expenditures for fiscal years 1989-90 and 1990-91 are not readily available. However, according to a study conducted by Florida's Advisory Council on Intergovernmental Relations, local expenditures for court systems were approximately \$290 million in fiscal year 1986. This study also showed that these expenditures were offset by \$158 million in revenues to the counties.⁷

Exhibit 4

Judicial Salaries and Expenses Fiscal Years 1989-90 and 1990-91				
Court	Number of Judges		Salary and Expenses*	
	1989-90	1990-91	1989-90	1990-91
Supreme Court	7	7	\$ 2,613,833	\$ 2,836,114
District Court of Appeals	57	57	17,542,682	19,436,174
Circuit Courts	399	421	55,211,518	61,021,632
County Courts	235	241	29,170,007	31,794,374
Total	<u>698</u>	<u>726</u>	<u>\$104,538,040</u>	<u>\$115,088,294</u>

* Includes salaries for Judges, Judicial Assistants, Law Clerks, Internal Auditors, Clerks' Offices, Marshals' Offices, and Librarians.

Source: Office of the State Courts Administrator.

⁷ Article V Costs: County Revenues and Expenditures Associated with the Operation of the State Trial Court System, Florida Advisory Council on Intergovernmental Relations; April 1987.

CHAPTER III

Findings and Recommendations

Assessment of Fees in Criminal Cases

Florida Statutes authorize judges to assess various fines and fees to offenders convicted of crimes. Fines are assessed as a penalty for violating the law, while fees recover a portion of the costs of prosecution and support certain local and state programs. While the statutes provide judicial discretion in assessing most of the fines and some fees, statutes require assessment of as many as ten fees to convicted offenders. (See Exhibit 5, page 14.)

In assessing fines and fees, judges must consider procedures mandated by statute, case law, and promulgated judicial procedures. For example, prior to May 9, 1991, case law required judges to determine a person's ability to pay required fees before assessment.⁸ The assessment of fines and fees directly impacts the local resources to defray prosecution costs, and the funding of state and local programs established by the Legislature. Additionally, potential revenues are reduced when fees are not assessed, and counties and state programs that rely on these monies must seek alternative sources of funding.

⁸ On May 9, 1991, in *State v. Beasley*, 580 so.2d 139 (Fla. 1991); and *State v. Vamper*, 579 so.3d 730 (Fla. 1991) the Supreme Court ruled that trial courts are not required to determine defendants' ability to pay statutorily mandated costs prior to assessing costs unless the applicable statute specifically requires such a determination. The courts are required to determine if defendants have the ability to pay costs only when the state seeks to enforce collection of these costs.

Exhibit 5

Required Fees in Criminal Cases

Florida Statute	Description	Fee
s. 27.3455(a)(b)(c)	Any felony	\$200
	Any misdemeanor	\$50
	Any criminal traffic offense	\$50
s. 316.061(1)	Any failure to stop at an accident involving damage to property or vehicle	\$5 ¹
s. 316.192(3)	Any reckless driving	\$5 ¹
s. 316.193(6)(d)	Any driving under the influence (DUI)	\$100 ¹
s. 775.0836(1)	Any felony, misdemeanor, or county or municipal ordinance violation involving handicapped or elderly victim	10% of fine ²
s. 939.015(1)	Any felony, misdemeanor or county or municipal ordinance violation involving handicapped or elderly victim	\$20 ²
s. 939.017(1)(a)	Any drug or alcohol misdemeanor (convicted on or after October 1, 1988)	\$15 ³
s. 943.25(3)	Any felony, misdemeanor, or county or municipal ordinance violation	\$3 ⁴
s. 960.20	Any felony, misdemeanor, criminal traffic, county or municipal ordinance violation	\$20
s. 960.25	Any felony or misdemeanor	5% of fine ^{1/5}

¹ Fee is required if fine assessed.

² Fee applies only in counties containing housing projects.

³ Fee applies only if local ordinances require the collection of such costs.

⁴ The assessment shall not be imposed in addition to civil penalties provided in s. 318.18, F.S.

⁵ This assessment is technically considered a fine. However, we have included assessments under s. 960.25, F.S., in our analysis because these monies are remitted to state trust funds.

Source: Florida Statutes.

To determine whether statutorily required fees are being assessed, we reviewed the judicial activities of circuit, county, and traffic courts in nine counties. We found that:

- Judges are assessing less than half of the statutorily required fees to persons convicted of crimes;
- Judges have been provided little guidance from the Supreme Court in assessing statutorily required fees; and
- As a result, potential revenues to county and state trust funds are reduced.

Finding 1.1

Judges are assessing less than half of the statutorily required fees to persons convicted of crimes. A primary cause of this problem is that judges have been provided little guidance from the Supreme Court in assessing statutorily required fees. As a result, potential revenues to county and state trust funds are reduced.

To determine whether judges were assessing fees as specified by statute, we examined the assessment procedures used in nine Florida counties. We reviewed the court records of 2,637 defendants convicted of crimes in these counties during fiscal year 1988-89, interviewed trial judges, and talked with staff in Clerk of the Court offices in each county in our sample. Court records did not document the reasons for judges' decisions to assess or not assess fees required by law. For example, court records do not indicate whether judges had considered the defendants' ability to pay in their assessment decisions. However, court records showed that judges were not assessing all fees required by law. Judges indicated that the Supreme Court had not provided them with uniform guidelines to assist in making their assessment decisions.

Rate of Fee Assessments

We focused our analysis on two questions:

- Were all required fees assessed in the cases we examined?; and

- When fees were assessed, were the assessments at or above the minimum amounts specified by statute?

Overall, judges assessed all required fees in 34% of the cases we reviewed. The percentage of cases in which judges assessed all required fees varied by county and by type of court (circuit, county, and traffic). Fees were assessed at or above the minimum in 61% of the cases in which judges assessed one or more fees.

Were All Required Fees Assessed? Judges typically had not assessed all of the required fees in the cases in our sample. Overall, Judges had assessed all required fees in approximately 34% (909 of 2,637) of the cases we reviewed. The percentage of cases in which all required fees were assessed varied substantially by county, and ranged from 11% (25 of 225) in Gadsden County to 63% (139 of 221) in Charlotte County. (See Exhibit 6.)

Exhibit 6

**Percentage of Cases Assessed All Required Fees By County
Fiscal Year 1988-89**

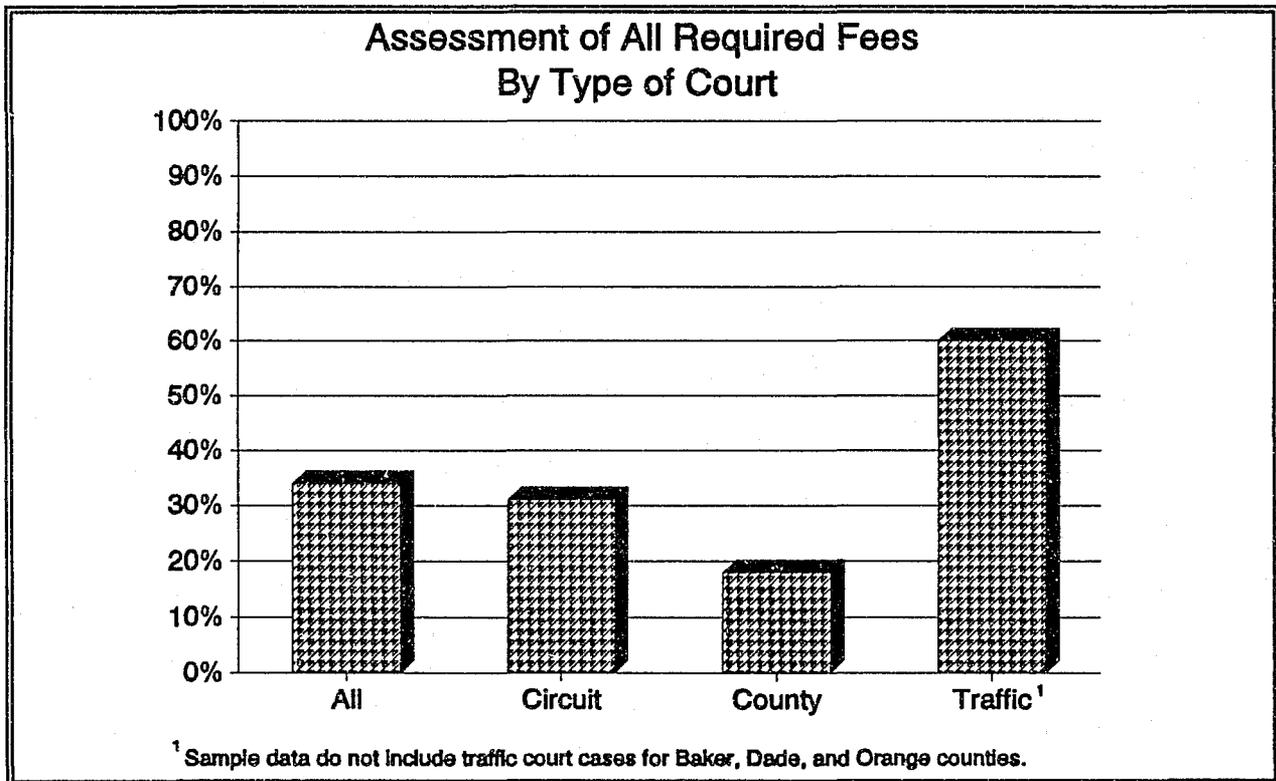
Counties	Number of Cases Reviewed	Number of Cases Assessed All Required Fees	Percentage of Cases Assessed All Required Fees
Baker	112 ¹	35	31%
Charlotte	221	139	63%
Citrus	225	114	51%
Dade	260 ¹	103	40%
Duval	450	64	14%
Gadsden	225	25	11%
Lee	450	196	44%
Orange	244 ¹	76	31%
Pinellas	450	157	35%
Totals	<u>2,637</u>	<u>909</u>	34%

¹ Sample data do not include traffic court cases for Baker, Dade, and Orange counties.

Source: Office of the Auditor General summary analysis of county-provided data.

Our analysis also showed that assessment patterns varied substantially by type of court (circuit, county, and traffic). As shown in Exhibit 7, judges assessed all of the required fees in 60% (503 of 832) of traffic court cases, in 31% (182 of 578) of circuit court cases, and in 18% (224 of 1,227) of county court cases. However, variance occurred within individual counties. For example, in Lee county, all required fees were assessed in 17 of 45 circuit court cases, in 47 of 238 county court cases, and in 132 of 167 traffic court cases. In contrast, in Pinellas county, the required fees were assessed in none of the 84 circuit court cases we examined, but were assessed in 51 of 177 county court cases and 106 of 189 traffic court cases in our sample. (See Appendix D, Tables D-1 through D-4, pages 47 through 50, for the number of cases reviewed in each county by type of court.)

Exhibit 7



Source: Office of the Auditor General summary analysis of county-provided data.

Since several fees may be required to be assessed in a case, we analyzed sample data to determine the percentage of cases assessed at least one of the required fees. This analysis gives an indication of whether judges are aware that required fees should be assessed, and whether the judge considered that the offender had the ability to pay at least the assessed fee. We were unable to determine why fees were not assessed in those cases assessed no fees. As shown in Exhibit 8, in cases that require fees to be assessed, judges had assessed at least one required fee in approximately 56% (1,466 of 2,637) of the cases. The assessment of at least one required fee varied from 18% (82 of 450) in Duval County to 79% (178 of 225) in Citrus County. Circuit, county and traffic courts varied in assessing at least one required fee. (See Appendix D, Tables D-9 through D-11, pages 55 through 57.)

Exhibit 8

**Percentage of Cases Assessed at Least One Required Fee by County
Fiscal Year 1988-89**

Counties	Number of Cases Reviewed	Number of Cases Assessed at Least One Required Fee	Percentage of Cases Assessed at Least One Required Fee
Baker	112 ¹	39	35%
Charlotte	221	173	78%
Citrus	225	178	79%
Dade	260 ¹	117	45%
Duval	450	82	18%
Gadsden	225	119	53%
Lee	450	329	73%
Orange	244 ¹	145	59%
Pinellas	450	284	63%
Totals	<u>2,637</u>	<u>1,466</u>	56%

¹ Sample data do not include traffic court cases for Baker, Dade, and Orange counties.

Source: Office of the Auditor General summary analysis of county-provided data.

As shown in Exhibit 6, page 16, judges assessed all required fees in 34% of the cases we reviewed. Thus, in almost two-thirds (66%) of the cases examined, judges did not assess all fees specified by law. However, assessment rates varied substantially both by county and type of court within counties. In many cases, judges did not assess any of the required fees. Court records did not contain sufficient information to determine if the variation between counties and types of court were attributed to the defendant's financial circumstances or to actions of individual judges.

When Fees Were Assessed, Were the Assessments at or Above the Minimum Amounts Specified by Statute? In addition to specifying that fees be assessed when offenders are convicted of various crimes, statutes specify the minimum amounts of these fees that are to be assessed. We analyzed the cases in our sample to determine if judges had levied fees at or above the minimum specified amounts. We limited our analysis to those 1,466 cases in which judges had assessed one or more of the required fees.

As shown in Exhibit 9, page 20, of the 1,466 cases in our sample assessed a fee, judges assessed at or above the minimum amount in 899 cases (61%). The percentage of cases in which the amount of required fees were assessed at or above the minimum varied substantially between counties, ranging from 21 of 119 in Gadsden County to 103 of 117 in Dade County.

Exhibit 9

**When at Least One Required Fee Was Assessed:
Percentage of Sample Cases in Which Assessment Amounts
Were at or Above the Minimum Amounts Required by Statute
Fiscal Year 1988-89**

County	Number of Cases Assessed at Least One Required Fee	Number of Cases Assessed an Amount at or Above the Minimum Required	Percentage of Cases Assessed an Amount at or Above the Minimum Required
Baker	39 ¹	33	85%
Charlotte	173	148	86%
Citrus	178	121	68%
Dade	117 ¹	103	88%
Duval	82	64	78%
Gadsden	119	21	18%
Lee	329	167	51%
Orange	145 ¹	82	57%
Pinellas	284	160	56%
Total	<u>1,466</u>	<u>899</u>	61%

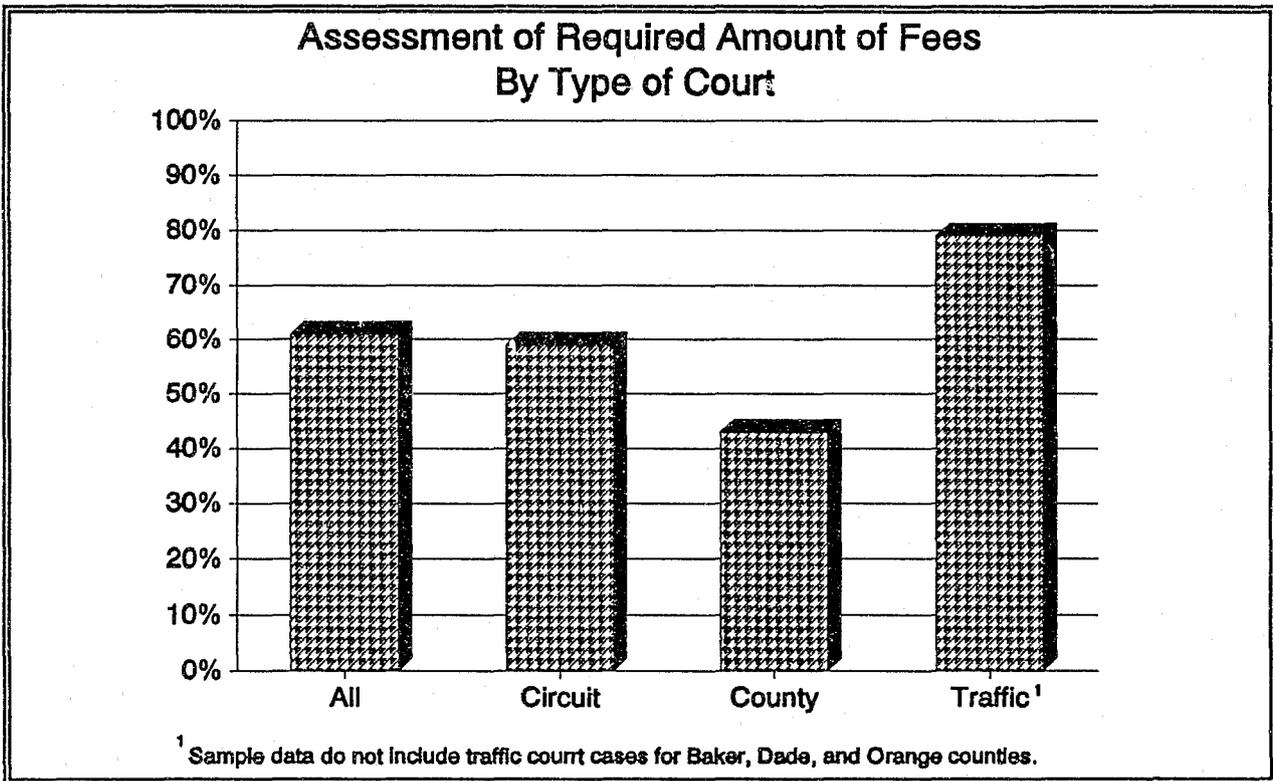
¹ Sample data do not include traffic court cases for Baker, Dade, and Orange counties.

Source: Office of the Auditor General summary analysis of county-provided data.

As shown in Exhibit 10, page 21, the rate at which assessments were made at or above the minimum also varied by type of court. In cases assessed one or more required fees, judges assessed the minimum amount of fees required by statutes in 79% (480 of 609) of the traffic court cases, 59% (188 of 318) of the circuit court cases, and 43% (231 of 539) of the county court cases in our sample. However, the assessment of the minimum amount of required fees by type of court varied greatly by county (see Appendix D, Table D-5, page 51). For example in circuit courts, in Dade County 95 of 100 cases were assessed at or above the minimum required fees. However, for the circuit court cases in Pinellas County that were assessed required fees, only 1 of 28 was assessed at or above the minimum amount required by

statute. Again, the assessment pattern varied within a county by type of court. For example, in Lee County, 17 of 18 of the circuit court cases, 45 of 173 of the county court cases, and 105 of 138 of the traffic court cases assessed required fees were assessed at or above the minimum amount required by statute. In contrast, in Gadsden County, 13 of 85 of the circuit court, 2 of 4 of the county court, and 6 of 30 of the traffic court cases that were assessed required fees were assessed at or above the minimum amount required by statute. (See Appendix D, Tables D-6 through D-8, pages 52 through 54, for the number of cases reviewed in each county by type of court.)

Exhibit 10



Source: Office of the Auditor General summary analysis of county-furnished data.

Thus, in the 1,466 cases in our sample assessed required fees, the minimum fee level specified by law was assessed in 899 (61%) cases and the assessment level varied both by county and by type of court.

Reasons for Non-Uniform Assessment of Fees

Court records reviewed did not document the reasons judges assessed or did not assess required fees, or the rationale for levying various amounts. Judicial procedures do not require judges to document their assessment decisions. To obtain this information, we interviewed trial judges in the nine counties we visited and conducted telephone interviews with 19 of the 20 Chief Circuit Judges.⁹ We identified three factors that appear to affect the fee assessment process:

- The complexity of the assessment process;
- Varying philosophies of individual judges relative to assessing fines and fees; and
- Lack of Supreme Court guidance and oversight.

Complexity of Assessment Process. One factor that contributes to variation in assessment practices is the complexity of the process. Once a person is convicted of a crime, judges must consider many factors in the sentencing process. These include the number of charges filed against the defendant, the type of conviction, and the circumstances regarding the victim and the crime. In addition, judges must consider statutory requirements, Rules of Court, Appellate and Supreme Court decisions which are continuously be updated. Of 32 judges interviewed, 21 stated that the separation of legal authority to assess fees between several statutory chapters made it difficult to determine precisely the fees applicable to particular cases. This complaint appears to have merit, as the fee assessment requirements for convicted offenders are found in ten different sections of the statutes. For example, fee assessment requirements for misdemeanor convictions are found in three sections of the statutes: s. 27.3455, F.S., requires an assessment of \$50; s. 943.25(3), F.S., requires an assessment of \$3; and s. 960.20, F.S., requires an assessment of \$20.

⁹ One Chief Judge was unavailable to be interviewed.

In addition, some required fees are conditional on the assessment of other fines, or on local ordinances requiring such fees. For example, if a person is convicted of the misdemeanor offense of driving under the influence and the judge imposes a \$250 fine per s. 316.193(2)(a), F.S., three additional fees must be assessed -- s. 316.193(6)(d), F.S., requires an assessment of \$100; s. 960.25, F.S., requires an assessment of 5% of the fine imposed (\$12.50); and s. 939.017(1)(a), F.S., requires an assessment of \$15 in counties with ordinances requiring such fees. Finally, some fees are conditional upon the characteristics of the crime victim. For example, s. 939.015(1), F.S., specifies that a \$20 fee shall be assessed if the victim of the crime is elderly or handicapped. Judges we interviewed said that at the time fees are assessed, they are generally unaware of whether the victim is handicapped and/or elderly. Thus, the assessment process can be complex, with the number and amount of assessed fees depending on the type of conviction, fines imposed, local ordinances, and nature of the crime committed.

Finally, the complexity of the assessment process is increased because three fees are not required but are discretionary by statute.¹⁰ For example, s. 943.25(13), F.S., provides that municipalities and counties may assess an additional \$2 cost for training local enforcement personnel. We analyzed information from court records to determine if any discretionary fees had been assessed in cases that had not been assessed any required fees. Our analysis of 1,171 cases not assessed any required fees showed that in 13% (152 of 1,171) of these cases, the judge assessed discretionary fees. In these cases, the assessment of discretionary fees when no required fees were assessed varied from county to county. For example, judges in four counties (Charlotte, Citrus, Dade, and Lee) did not assess discretionary fees when required fees were not assessed. In the other five counties (Baker, Duval, Gadsden, Orange, and Pinellas), the percentage of cases assessed discretionary fees when no required fees were assessed varied from 1% (1 of 166) in Pinellas to 56% (59 of 106) in Gadsden County. We also found in these 1,171 cases that circuit, county, and traffic courts varied in assessing discretionary fees. (See Appendix E, pages 58 through 60.) See Exhibit 11 for cases assessed discretionary fees when no required fees were assessed.

¹⁰ Sections 893.13(4) and 939.01, F.S., authorize the courts to assess costs, while s. 943.25(13), F.S., provides that municipalities and counties may assess costs.

Exhibit 11

**Cases Assessed Discretionary Fees
When No Required Fees Were Assessed
(All Courts)
Fiscal Year 1988-89**

County	Number of Cases Assessed No Required Fees	Number of Cases Assessed Discretionary Fees			Percentage of All Cases Assessed No Required Fees That Had Discretionary Fees Assessed
		Circuit Court	County Court	Traffic Court	
Baker	73 ¹	0	9	—	12%
Charlotte	48	0	0	0	0%
Citrus	47	0	0	0	0%
Dade	143 ¹	0	0	—	0%
Duval	368	9	23	41	20%
Gadsden	106	0	40	19	56%
Lee	121	0	0	0	0%
Orange	99 ¹	1	9	—	10%
Pinellas	166	0	0	1	1%
Total	<u>1,171</u>	<u>10</u>	<u>81</u>	<u>61</u>	<u>13%</u>

¹ Sample data do not include traffic court cases for Baker, Dade, and Orange counties.

Source: Office of the Auditor General summary analysis of county-provided data.

Thus, the assessment process (requirement to assess fees contained in several sections of statutes, particular circumstances for each case, required and discretionary assessments, and contingency fees based upon the circumstances of cases), has increased in complexity. Absent assessment procedures, it is unlikely convicted offenders will be treated the same from county to county or within the same type of court (circuit, county, or traffic) within a county.

Varying Sentencing Philosophies. Different philosophies among the judges also affected the assessment of required fees. From interviews with trial judges and Chief Circuit Judges and from review of court records, we identified a number of considerations for judicial assessment decisions. These reasons can be grouped into three categories: (1) decisions based on whether persons can afford to pay fines and required fees; (2) decisions based on combining the punishment and assessing required fees; and (3) decisions based on interpretation of statutes.

In determining whether to assess a required fee, the most cited factor that judges consider is a person's ability to pay both fines and fees. Prior to May 1991 Florida case law required that trial courts give indigent criminal defendants notice that they may be assessed, an opportunity to be heard regarding assessments, and an opportunity to present evidence of the ability to pay before enforcing collection. However, all of the trial and Chief Judges we contacted pointed out that there are no standard procedures for determining indigence in the assessment process, and no criteria for when this determination should be made. Judges indicated that they use different approaches in determining indigence in the assessment process. Most of the judges said if a defendant was indigent, they did not assess any fees or all of the required fees because such fees would be uncollectible. However, other judges assessed all fines and fees and waited to see if the assessment could be collected. If the monies were not collected and indigence was determined, fees were either waived or the defendant was ordered to community service. Appeals Courts have issued different opinions on the question of indigence. On May 9, 1991, Florida's Supreme Court ruled that trial courts are not required to determine defendants' ability to pay statutorily mandated costs prior to assessing costs unless the applicable statute specifically requires such a determination.¹¹ The courts are now required to determine if defendants have the ability to pay assessments only when the state seeks to enforce collection. This decision should be of assistance to judges in determining when indigence must be addressed.

¹¹ On May 9, 1991, in *State v. Beasley*, 580 so.2d 139 (Fla. 1991); and *State v. Vamper*, 579 so.3d 730 (Fla. 1991) the Supreme Court ruled that trial courts are not required to determine defendants' ability to pay statutorily mandated costs prior to assessing costs unless the applicable statute specifically requires such a determination. The courts are required to determine if defendants have the ability to pay costs only when the state seeks to enforce collection of these costs.

The State Courts Administrator said that an indicator of indigence is whether a public defender is assigned a case. Of 551 circuit court cases in which this data was recorded, public defenders were appointed in 495, or 90% of the cases.¹² However, fines or fees were assessed in 57% of these cases with public defenders.

In determining whether to assess fees, the second factor cited by some judges was that they considered the punishment levied against a defendant. Most county judges we interviewed said that if a person being sentenced had spent time in jail awaiting arraignment or sentencing, they considered this punishment enough for some types of crime and would not assess fees. Analysis of county and traffic court cases in our sample shows that in 427 cases defendants were given credit for time served at sentencing, and 397 cases (93%) were not assessed all of the required fees. In addition, most circuit court judges interviewed said they probably would not assess required fees to persons sentenced to state prison because they considered the chances of collecting these monies to be remote. Of the 238 circuit court cases in which defendants were sentenced to prison, 175 cases (74%) were not assessed all required fees.¹³

Finally, judges also appear to use different philosophies in interpreting statutory fee assessment requirements. In the counties included in our sample, court records showed that judges assessed a fee for each charge on which a person was convicted, in 21% (42 of 201) of the cases assessed a fee.¹⁴ While in other cases in these counties, judges assessed a single fee regardless of the number of charges. For example, in one county a person was convicted of two misdemeanor crimes. At sentencing, the judge assessed \$73 in mandatory fees for each crime for a total of \$146 in fees. In contrast, in another county, a person was convicted of two misdemeanor crimes and at sentencing the judge assessed a total of \$73 in mandatory fees. We also determined through review of court documents and discussions with clerk staff that circuit

¹² Analysis does not include Baker County data as the information was not readily available.

¹³ Analysis does not include Baker county cases as the information was not readily available.

¹⁴ Analysis does not include Baker county cases as the information was not readily available.

courts in two counties assessed additional fees based on whether an offender was convicted or adjudication was withheld at the time of sentencing. However, circuit courts in the other counties in our sample did not make this distinction in assessing fees.

Lack of Supreme Court Guidance and Oversight. The Supreme Court has adopted a rule to guide in the assessment of some required fees. The Supreme Court has not adopted rules or procedures to guide judges in assessing all required fees, nor has it created a reporting mechanism to oversee the assessment activities of these courts. Two prior audit reports issued by the Auditor General and a study issued by the Florida Advisory Council on Intergovernmental Relations identified inconsistent assessments. All three of these reports recommended the Supreme Court standardize fee assessment procedures. Article V, s. 2 of the Florida Constitution requires the Supreme Court to adopt rules for the practice, procedure, and administrative supervision of all State Courts. Administrative supervision involves not only developing rules and procedures to facilitate the uniform conduct of litigation applicable to all proceedings and all parties but also a reporting system that allows an evaluation of whether laws and rules are being followed. The Supreme Court has adopted rules governing some aspects of administration of local court systems, and collects and reports on various activities of local court systems. For example, the Supreme Court adopted a rule to guide judges in the assessment of some required fees. Rule 6.291, Rules of Court, provides that when a defendant charged with a criminal offense exercises the option of receiving a withheld adjudication as provided in s. 318.14(10), F.S., the judge shall assess fees required in ss. 943.25, 960.20, and 960.25, F.S., in addition to court costs assessed in s. 318.14(10), F.S.¹⁵ However, we did not identify any other rules promulgated by the Supreme Court to guide judges in the assessment process. Such guidelines could provide a framework by which judges could assess required fees, and allow for more consistent assessments from case to case and court to court. We also did not identify any reporting mechanism that would provide the courts with information to evaluate the fee assessment activity of trial judges.

¹⁵ Section 318.14(10), F.S., allows a person to provide proof of a valid, renewed, or reinstated driver's license or vehicle registration in lieu of payment of a fine. However, the defendant is required to pay \$22 court cost.

As the Supreme Court had not provided specific guidance to judges in assessing required fees, we asked the Chief Judges of the Circuits whether each circuit had developed guidelines for its judges to use in assessing required fees. Section 43.26, F.S., specifies that the Chief Judge of each circuit is responsible for administrative supervision of all trial courts within the circuit. Of the 19 Chief Circuit Judges interviewed, none reported that their circuit had provided guidelines to assist judges in assessing fees. However, these Chief Judges provided several reasons why they believe that required assessments were not being made. Among the reasons provided, 13 Chief Judges said judges needed to be better educated to assessment requirements. When we asked the Chief Judges how to improve the assessment process, 9 of 19, either recommended additional education or guidance from the Supreme Court.

When we asked the State Courts Administrator about assessment guidelines, he stated that various sections of the statutes set forth detailed guidelines for assessing costs. The State Courts Administrator referred to guidelines provided in s. 939.01, F.S., for the assessment of prosecution and investigation costs. This section of the statutes relates to the assessment of prosecution and investigation costs for a case and does not specifically reference the assessment of other required and discretionary fees. The State Courts Administrator pointed out that the issue of the Supreme Court establishing guidelines for assessing fines and fees should be considered in light of the delegation of power to the three branches of government. The State Courts Administrator responded:

"In any event, the establishment of a defendant's liability for fines, fees and costs is a legislative function that has been performed, in numerous enactments, by the Legislature. These statutes contain extensive guidance about factors that courts are to consider in determining the amount of such assessments. If this statutory guidance is inadequate, or insufficient, the Legislature has the power and the responsibility to craft a statutory remedy. But the Supreme Court cannot issue guidelines, if they alter substantive rights, without intruding on a legislative function."

Although the Supreme Court is responsible for providing administrative supervision for all state courts, a reporting system has not been developed that provides information on fines and fees assessed. The Court through the State Courts Administrators' office collects, compiles, and reports on various local court activities. Information is gathered

on each case for the purpose of implementing an Offender-Based Transaction System as required by s. 943.052, F.S. In addition, sentencing information is also collected by separate document, as authorized by s. 921.001(3), F.S. However, neither of these reporting systems require the Clerks of the Circuit Court to report on the assessment of fines and fees. The Offender-Based Transaction System is designed to collect such information, but Clerks are not required to report assessment information. The lack of such guidelines means that each circuit or judge is left to determine what fees apply to each conviction, determine what factors must be considered in assessing fees for each conviction, and develop their own procedures for assessing fees in each case. In addition, the lack of reporting hinders the ability of the Chief Justice and Chief Circuit Judges to provide administrative supervision to the courts and to ensure that required fees are being assessed.

As a result of the low assessment of statutorily required fees, potential revenue to county and state trust funds are being reduced. The estimated impact of low assessments is discussed in the following finding.

Finding 1.2

As a result of the low assessment of statutorily required fees, potential revenues to county and state trust funds are being reduced. Less than half of the required fees were assessed in the cases we examined.

When Clerks of the Circuit Court collect fees assessed by courts, they remit these funds to local county trust funds or to various state trust funds. It is important that these fees be assessed and collected as the remitted monies support various programs and expenses, which are typically crime related. For example, fees assessed pursuant to s. 960.20, F.S., and s. 960.25, F.S., are remitted to the Crimes Compensation Trust Fund, administered by the Department of Legal Affairs, which supports programs to help crime victims. Fees assessed pursuant to s. 27.3455, F.S., are remitted to the county to support State Attorney, Public

Defender and medical examiner services. In addition, three statutes provide the Clerk with fees to support his/her operations. ¹⁶

We analyzed 2,637 court files to determine the fiscal impact of non-uniform assessment of statutorily required fees. Potential revenues to state and local county trust funds (including the Clerk's handling fee) were calculated by determining the minimum fees required to be assessed for each case as provided by statute, identifying the actual amount of fees assessed by the court for each case, and comparing the two totals. We determined that \$297,334 could have been assessed if all required fees were imposed and that \$144,612 (49%) was assessed, resulting in a potential revenue loss of \$152,722. Of the amount that could have been assessed, 47% was assessed in circuit courts, 28% was assessed in county courts, and 81% was assessed in traffic courts. See Exhibit 12 for a comparison of the required assessment to the actual assessment.

Exhibit 12

Comparison of Required Assessment to Actual Assessment of Fees by Court in Sample Counties					
Court	Number of Cases Reviewed	Required Assessments	Actual Assessments	Amount Not Assessed	Percentage of Required Actually Assessed
Circuit	578	\$137,707	\$64,365	\$73,342	47%
County	1,227	91,981	25,778	66,203	28%
Traffic ¹	832	67,646	54,469	13,177	81%
Total	<u>2,637</u>	<u>\$297,334</u>	<u>\$144,612</u>	<u>\$152,722</u>	49%

¹ Data do not include traffic court cases for Baker, Dade, and Orange counties.

Source: Office of the Auditor General summary analysis of sample of criminal records in Baker, Charlotte, Citrus, Dade, Duval, Gadsden, Lee, Orange, and Pinellas counties.

¹⁶ Section 960.20, F.S., requires an assessment of \$20 of which \$1 is retained by the Clerk; s. 939.017(1)(a), F.S., also authorizes the Clerk to keep \$1 of the \$15 assessment; and s. 27.3455, F.S., authorizes the Clerk to keep \$3 of the \$50 assessment for misdemeanor convictions, and \$5 of the \$200 assessment for felony convictions.

We further analyzed the sample cases to determine the impact of the assessment of required fees on state trust funds. Based on statutory requirements, an estimated \$89,114 in fees could have been assessed in these cases for various state trust funds. However, 61% of this amount, or \$54,160 was actually assessed. The actual assessment rate varied among the types of courts. In circuit courts, 61% of the required fees for state trust funds were assessed, while county courts had a 35% assessment rate and 82% of the required fees for state trust funds were assessed in traffic courts. See Exhibit 13 for the comparison of the required assessments to the actual assessments for fees directed to state trust funds by courts.

Exhibit 13

Comparison of Required Assessment to Actual Assessment of Fees Directed to State Trust Funds by Court in Sample Counties

Court	Number of Cases Reviewed	Required Assessments	Actual Assessments	Amount Not Assessed	Percentage of Required Actually Assessed
Circuit	578	\$24,229	\$14,787	\$ 9,442	61%
County	1,227	29,359	10,168	19,191	35%
Traffic ¹	832	35,526	29,205	6,321	82%
Total	<u>2,637</u>	<u>\$89,114</u>	<u>\$54,160</u>	<u>\$34,954</u>	61%

¹ Data do not include traffic court cases for Baker, Dade, and Orange counties.

Source: Office of the Auditor General summary analysis of sample of criminal records of Baker, Charlotte, Citrus, Dade, Duval, Gadsden, Lee, Orange, and Pinellas counties.

To determine how these assessment rates affected individual state trust funds, we analyzed eight state trust funds. (See Exhibit 14, page 32.) We did not examine the fiscal impact of two fees which support the Handicapped and Elderly Security Assistance Trust Fund as court records did not identify whether the cases in our sample involved handicapped or elderly victims. (However, Chief Judges and trial judges interviewed stated that the two fees which support this trust fund were generally not being assessed.) Less than 50% of potential revenues were assessed for four of the eight trust funds -- the Community Drug Abuse Services Grants and Donations Trust Fund, which supports local drug abuse treatment and education programs, Criminal Justice Training Trust Fund, Grant Matching Trust Fund, and Florida Department of

Law Enforcement (FDLE) Administrative Trust Fund, which fund law enforcement training, education, and other criminal justice needs. The Crimes Compensation Trust Fund, which provides assistance to victims of crime, was also adversely impacted as \$29,358 (44%) of the relevant fees were not assessed.

Exhibit 14

Amounts Not Assessed for State Trust Funds By Court in Sample Counties

State Trust Fund	Court			Total Amount Not Assessed	Total Required Assessment
	Circuit	County	Traffic ¹		
Crimes Compensation Trust Fund	\$8,455	\$16,230	\$4,673	\$29,358	\$67,337
Community Drug Abuse Services Grants and Donations Trust Fund ²	—	588	56	644	1,162
FDLE Administrative Trust Fund	247	593	207	1,047	1,972
Grant Matching Trust Fund	82	198	69	349	658
Criminal Justice Training Trust Fund	658	1,582	552	2,792	5,260
Emergency Medical Services Trust Fund	— ⁴	0	0	0	3,350
FDLE Operational Trust Fund ³	— ⁴	0	514	514	6,250
Impaired Drivers and Speeders Trust Fund	— ⁴	0	250	250	3,125
Total	<u>\$9,442</u>	<u>\$19,191</u>	<u>\$6,321</u>	<u>\$34,954</u>	<u>\$89,114</u>

¹ Data do not include traffic court cases for Baker, Dade, and Orange counties.

² Applicable in counties that passed local ordinance for a \$15 assessment of any abuse or alcohol misdemeanor convicted after October 1, 1988.

³ Section 316.193(6)(d), F.S., authorizes distribution to FDLE Administrative Trust Fund. However, because of the specific use of the funds for crime labs, agency officials said they account for received funds in the FDLE Operational Trust Fund.

⁴ No applicable cases.

Source: Office of the Auditor General summary analysis of sample of criminal records of Baker, Charlotte, Citrus, Dade, Duval, Gadsden, Lee, Orange, and Pinellas counties.

In contrast, courts assessed all required fees for the Emergency Medical Services Trust Fund, which supports local emergency medical services such as purchasing emergency rescue vehicles. Courts also assessed required fees that support the statewide crime analysis system of the Florida Department of Law Enforcement as approximately \$514 (8% of the dollar

amount of required fees) were not assessed. Similarly, approximately \$250 (8% of the dollar amount of required fees) were not assessed for the Impaired Drivers and Speeders Trust Fund, which provides support for care of spinal cord and head injury victims. Exhibit 14, page 32, shows the revenues not assessed for the eight state trust funds.

Fees which support local court expenses were similarly affected. Our analysis of cases in our sample showed that an estimated \$208,220 in fees should have been assessed and remitted to the relevant counties' special trust funds as authorized by s. 27.3455, F.S., and to Clerks as handling fees. However, we found that only 43%, or approximately \$90,452, was actually assessed. The circuit courts assessed 44% of the required fees directed to county trust funds. The county courts assessed 25% of the required fees directed to county trust funds and traffic courts assessed 79% of the required fees directed to county trust funds. See Exhibit 15 for the comparison by court type of the required assessment to the actual assessment of fees directed to county trust funds.

Exhibit 15

Comparison of Required Assessment to Actual Assessment of Fees Directed to County Trust Funds in Sample Counties¹

Court	Required Assessment	Actual Assessment	Amount Not Assessed	Percent of Required Actual Assessed
Circuit	\$113,478	\$49,578	\$63,900	44%
County	62,622	15,610	47,012	25%
Traffic ²	32,120	25,264	6,856	79%
Total	<u>\$208,220</u>	<u>\$90,452</u>	<u>\$117,768</u>	43%

¹ Includes Clerk fees for ss. 27.3455, 960.20, and 939.017(1), F.S.

² Data do not include traffic court cases for Baker, Dade, and Orange counties.

Source: Office of the Auditor General summary analysis of sample of criminal records of Baker, Charlotte, Citrus, Dade, Duval, Gadsden, Lee, Orange, and Pinellas counties.

Because of the many factors that impact the assessment of fees, budgeting entities that depend on trust funds for funding established programs should take into consideration that it is not likely that all required fees will be assessed. Likewise, judges should be made aware that the assessment of fees affects many programs established by the Legislature.

Conclusion and Recommendations

The assessment of fees is a complex process that requires judges to consider not only requirements of the statutes but Rules of Court, judicial procedures promulgated by the Supreme Court and Chief Circuit Judges, and case law. The assessment of fines and fees directly impacts the equitable treatment of criminals, local resources to defray prosecution costs, and funding of state and local programs established by the Legislature. If offenders convicted of similar crimes are not assessed fees required by law, the judicial system may be perceived as not providing uniform treatment to all offenders. Additionally, when fees are not assessed, potential revenues are reduced, and counties and state programs that rely on these monies must seek alternative sources of funding.

Florida Statutes specify that courts shall assess various fees when offenders are convicted of crimes. The number and amount of fees required to be assessed depend on the crime(s) for which offenders are convicted. The statutes may require several fees for a single conviction. For example, as many as six different fees may be required for a conviction of driving under the influence.

Overall, judges assessed all required fees in 34% (909 of 2,637) of the cases we reviewed. The percentage of cases in which judges assessed all required fees varied by county and by type of court (circuit, county, and traffic). Of the 1,466 cases in which judges assessed one or more fees, in 899 cases (61%) assessments were at or above the minimum amount required. The assessment rate may be attributed to several factors: the requirement to assess fees is found in many different sections of the statutes; the application of case law and judicial

procedures differ by various judges; different philosophies of sentencing judges; and limited guidance provided to judges by the Supreme Court and Chief Judges.

County-provided data for fiscal year 1988-89, shows that the nine sample counties had approximately 208,000 felonies, misdemeanors, and traffic court cases in which the defendant was found guilty.¹⁷ If the required minimum mandatory fees were assessed in these cases, we estimate that approximately \$10 million in additional fees could have been assessed. However, because of the variance we found by county and by court within each county, we were unable to estimate the total statewide impact on court fee assessments. Furthermore, on May 9, 1991, Florida's Supreme Court (Case Nos. 76,102 and 75,165) ruled that trial courts are not required to determine defendant's ability to pay statutorily mandated costs prior to assessing costs unless the applicable statute specifically requires such a determination. Therefore, the effect on current year assessments is not known. In addition, it should be pointed out that the increased assessments might not result in additional collections for county and state trust funds. The collection of assessments is the subject of a future audit.

To simplify the assessment process, we recommend that the Legislature consolidate into one chapter of the statutes all requirements for assessing criminal fines and fees. Consolidation of criminal fine and fee assessment requirements into one place would allow for easy identification of laws pertaining to assessing fines and fees. The Legislature may want to develop a chapter of the statutes similar to Ch. 939, F.S, to clarify judges' responsibilities for assessing fines and fees.

Because of the number of fees required to be assessed and the aggregate dollar amount of fees to be assessed, we recommend that the Legislature review the cumulative affect of required fees and determine if individual defendants should be required to pay this total amount of surcharges in addition to other authorized penalties. It may not be reasonable to expect that all offenders could pay from \$73 to \$223 in required fees plus other penalties that the judge is authorized to assess.

¹⁷ The number of court cases does not include traffic court cases for Baker, Dade, and Orange counties.

To assist in a more uniform application of the statutes and case law relative to fee assessment, we recommend that the Supreme Court develop uniform assessment procedures, at the level they deem necessary, to assist in the assessment process. At a minimum, these assessment procedures should include a standard assessment form for each type of court (circuit, county, and traffic) to be used by all judges in their assessment decisions. The assessment procedures should also provide judges with guidelines for assessing fees based on individual charges or persons; and adjudication versus adjudication withheld. The developed assessment procedures should ensure that judges are provided sufficient information about crime victims and mitigating circumstances to enable judges to make assessment decisions. If the Supreme Court determines that to adhere to the separation of powers doctrine that the Legislature should provide more specific criteria, then the Court should make such recommendations to the Legislature.

We also recommend that the Supreme Court establish a reporting system to collect information on the assessment of fines and fees. This information should be compiled and distributed to Chief Circuit Judges to assist in their administrative supervision of the judicial system within their circuits. The Supreme Court should provide Chief Circuit Judges with criteria to evaluate the information. This information will allow the Supreme Court and Chief Circuit Judges to evaluate trial judges' effectiveness in fulfilling the requirements of law.

Appendices

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Appendix A
Assessments in Criminal Court

Fines Assessed in Criminal Court

	Florida Statute	Description	F i n e	Application
Chapter 316	s. 316.061(1)	Leaving the scene of an accident involving damage to vehicle or property	Not more than \$500	Discretionary
	s. 316.192(2)(a)	Reckless driving	Between \$25 to \$500	Discretionary
	s. 316.192(2)(b)	Second conviction of reckless driving	Between \$50 to \$1,000	Discretionary
	s. 316.193(2)(a)	Driving under the influence (DUI) - .1 alcohol level	Between \$250 and \$500	Required ¹
	s. 316.193(4)(a)	DUI - .2 alcohol level	Between \$500 and \$1,000	Required ¹
	s. 316.193(6)(a)	Additional fine in lieu of community service if payment of fine is in best interest of state	\$10 for each hour of community service	Discretionary
	s. 316.1935(1)	Fleeing or attempting to elude police	Not more than \$1,000	Discretionary
	s. 316.2398(5)	Misdemeanor - unofficial use of emergency vehicle red light	Between \$5 and \$25	Required
Chapter 775	s. 775.083(1)(a)	Life felony	Not more than \$15,000	Discretionary
	s. 775.083(1)(b)	1st or 2nd degree felony	Not more than \$10,000	Discretionary
	s. 775.083(1)(c)	3rd degree felony	Not more than \$5,000	Discretionary
	s. 775.083(1)(d)	1st degree misdemeanor	Not more than \$1,000	Discretionary
	s. 775.083(1)(e)	2nd degree misdemeanor	Not more than \$500	Discretionary
	s. 775.083(1)(f)	Any felony or misdemeanor or noncriminal violation	Equal to double the pecuniary gain of the offender or double the pecuniary loss of the victim	Discretionary
	s. 775.0835(1)	Any felony or misdemeanor resulting in injury or death of another person	Up to \$10,000	Discretionary
Chapter 893	s. 893.20(2)(a)	Felony - continuing drug trafficking activity	\$500,000	Required
Chapter 895	s. 895.04(2)	Felony - violation of Racketeer Influenced and Corrupt Organization Act	Not more than 3 times gross value gained by offender or 3 times the gross loss caused	Discretionary
Chapter 896	s. 896.102(1)	Misdemeanor - failure of a person engaged in trade or business to report receiving currency of \$10,000 or more in one transaction or through 2 or more related transactions	Not more than \$250,000 or twice the value of the amount of currency transaction	Discretionary

Fees Assessed in Criminal Court

Florida Statute	Description	Fee	Application	
Chapter 27	s. 27.3455(1)(a)(b)(c)	Any felony	\$200	Required
		Any misdemeanor	\$50	
		Any criminal traffic offense	\$50	
Chapter 316	s. 316.061(1)	Any failure to stop at an accident involving damage to property or vehicle	\$5	Required ²
	s. 316.192(3)	Any reckless driving	\$5	Required ²
	s. 316.193(6)(d)	Any driving under the influence (DUI)	\$100	Required ²
Chapter 775	s. 775.0836(1)	Any felony, misdemeanor, or county or municipal ordinance violation involving handicapped or elderly victim	10% of fine	Required ²
Chapter 893	s. 893.13(4)	Any drug offense	Up to amount of fine	Discretionary
Chapter 939	s. 939.01(1)	All criminal cases - costs of prosecution, including investigative costs	Varies	Discretionary
	s. 939.015(1)	Any felony, misdemeanor, or county or municipal ordinance violation involving handicapped or elderly victim	\$20	Required ³
	s. 939.017(1)(a)	Any drug or alcohol misdemeanor (convicted on or after October 1, 1988)	\$15	Required ⁴
Chapter 943	s. 943.25(3)	Any felony, misdemeanor, or county or municipal ordinance violation	\$3	Required
	s. 943.25(13)	Any felony, misdemeanor, or county or municipal ordinance violation	\$2	Discretionary
Chapter 960	s. 960.20	Any felony, misdemeanor, criminal traffic, county or municipal ordinance violation	\$20	Required
	s. 960.25	Any felony or misdemeanor - additional to any fine	5% of fine imposed	Required ²

¹ The court may, upon finding that the defendant is financially unable to pay either all or part of the fine order the defendant to participate for a specified period of time in public service or community work project in lieu of payment.

² Required if fine assessed.

³ Required in counties with housing projects.

⁴ Required if local ordinance adopted which requires the collection of such costs.

Source: Florida Statutes.

Appendix B

Methodology Used to Select Sample of Local Court Systems for Site Visits

Purpose

We conducted site visits to nine counties to gather information about the assessment of criminal court fines and fees. The purpose of these site visits was to obtain judicial perspective on guidelines for assessing fines and fees, and to validate data provided by Clerks of the Circuit Court on fines and fees assessed during fiscal year 1988-89.

Scope and Methodology

Our primary objective in our site visits was to collect information on the judicial assessment of criminal fines and fees from a sample of local court systems. We based our selection of local courts on two factors: geographic distribution of counties representing the northern, central and southern sections of the state; and whether the local courts could provide us with computer data on the number of offenders assessed fines and fees, and the amount assessed in fiscal year 1988-89 which would help facilitate fieldwork. In making our site selection we gave consideration to discussions with staff of Legislative committees and the State Courts Administrator, and the number of criminal disposed cases reported by the local courts to the Supreme Court's Summary Reporting System and the Department of Highway Safety and Motor Vehicles' Annual Uniform Traffic Citation Statistics Report. At each site, we interviewed Clerks staff, circuit and county trial judges (as practicable), and reviewed local court policies and procedures. While our audit findings may represent generally the assessment process throughout the state, the results do not express statewide conclusions.

We assigned each county to one of three categories, according to the number of disposed guilty criminal cases during fiscal year 1988-89. Counties that disposed of between 1 to 1,000 criminal cases were grouped in one category (small), counties that disposed of 1,001

to 10,000 criminal cases were grouped together (medium), and counties that disposed of over 10,000 criminal cases were grouped together (large). (See Table B-1.)

Table B-1

Guilty Cases Disposed Fiscal Year 1988-89	
Number of Guilty Cases Disposed	Number of Counties
1 - 1,000	16
1,001 - 10,000	36
Over 10,000	15

Source: Office of the Auditor General Summary Analysis of Supreme Court Summary Reporting System information, and Department of Highway Safety and Motor Vehicles Annual Uniform Traffic Citation Statistics Report.

The Supreme Court's data showed that the 15 large counties disposed of approximately 78% of the criminal cases, while the medium size counties disposed of approximately 21%, and the small size counties disposed of 1% of the cases.

Based on these factors, we selected the following nine counties for site visits: Baker, Gadsden, Citrus, Charlotte, Dade, Duval, Lee, Orange, and Pinellas counties. The nine counties are located in 8 of the State's 20 judicial circuits. (See Table B-2, page 42.)

Table B-2

Guilty Cases By Court in Sample Counties

Category	County	Circuit	County	Traffic	Total
1 - 1,000 Cases	Baker	82	361	357	800
	Gadsden	1,251	969	523	2,743
1,001 - 10,000 Cases	Citrus	354	1,342	1,574	3,270
	Charlotte	305	910	2,428	3,643
Over 10,000 Cases	Duval	9,744	16,123	19,705	45,572
	Orange	6,867	10,023	22,008	38,898
	Pinellas	6,699	20,043	25,663	52,405
	Dade	24,804	32,440	47,052	104,296
	Lee	1,974	12,850	6,689	21,513

Source: Supreme Court Summary Reporting System and Department of Highway Safety and Motor Vehicles Annual Uniform Traffic Citation Statistics Report.

Appendix C

Methodology for Case Selection

To obtain information about the assessment of criminal fines and fees, we reviewed the case file histories of a random sample of 2,647 guilty cases sentenced between July 1, 1988, and June 30, 1989. Given this sample size, our results are subject to a 5% sampling error at the .95 confidence level, meaning that there is a 95% probability that the characteristics of the total population of criminal cases in our selected counties sentenced during this time period would vary no more than $\pm 5\%$ from the characteristics of our sample. The methodology used to select our sample, and the characteristics of these criminals are discussed below.

Sample Selection and Data Collection

Sample Frame. To select our sample of criminal cases, we obtained from the Clerks of the Circuit Court a listing of all cases sentenced during the period July 1, 1988, through June 30, 1989. We selected this time period in order to cover a complete fiscal year and to allow sufficient time for assessments to be collected by the courts during the subsequent fiscal year. (A separate audit report on the collection of fines and fees based on this population will be issued at a later date.)

The listings of cases were generally derived from computerized record systems maintained by the Clerks of the Circuit Court. The records provided unique case numbers assigned to each case sentenced by the courts during the fiscal year. Two counties, Baker and Citrus, did not have all cases included in their computerized record system. Accordingly, we used manual records to obtain listings of cases sentenced in these counties.

Sample Selection. Clerks could not provide us with a complete listing of cases found guilty during fiscal year 1988-89 as reported to the Florida Supreme Court and the Department of Highway Safety and Motor Vehicles. Clerks provided us with listings of case

files available for the audited period. We then selected a random sample of 2,647 cases from the combined listings of cases sentenced upon conviction of a crime. To draw our sample, we used the random number generator in a commercial software package. We numbered the cases on the combined listings, and using the random numbers, identified cases until we had selected the requisite number. If a Clerk was unable to provide the case file for a specified case, we selected a replacement case using the above method. We selected a representative number of cases for each type court within a county (circuit, county, and traffic), based on the number of guilty cases disposed during fiscal year 1988-89. See Table C-1 for the number of cases selected from each county.

Table C-1

**Sample Size and Precision Rate for Guilty Cases Sentenced
July 1, 1988, Through June 30, 1989**

County	Number of Guilty Cases ¹	Sample
Baker	391	112
Charlotte	3,860	221 ²
Citrus	3,114	225
Dade	53,651	260 ²
Duval	49,618	450
Gadsden	2,623	225
Lee	18,805	450
Orange	14,306	244
Pinellas	61,813	450
Total	<u>208,181</u>	<u>2,637</u>

Precision rate of .05 at confidence level of .95

¹ Does not include traffic data for Baker, Dade, and Orange counties.

² We were unable to determine complete assessment data for four cases in Charlotte and six cases in Dade counties. Therefore our reporting sample is 2,637.

Source: Office of the Auditor General summary analysis of county-provided guilty cases.

Sample Validation. To validate our sample of guilty cases, we compared information from computerized case file histories to original source documentation. We made this comparison for the dollar amount of fines and fees assessed by the courts at the time of sentencing. In general, this validation found that the assessments reflected in the computerized case file histories were reasonably accurate within the precision and confidence level specified. Accordingly, it can be concluded that the combined assessment data in our sample is generally representative of the data in the combined listings.

We also did not receive criminal traffic case data from Baker, Dade, and Orange counties. We analyzed the impact of not including these cases by weighing the estimated total disposed guilty cases for traffic courts compared to circuit and county court guilty cases. We concluded that not including these cases in our sample did not materially affect our conclusions.

File Review. To evaluate the information about the assessment of criminal fines and fees, we reviewed the case file histories of the 2,637 cases in our sample. We obtained these case file histories by requesting the Clerks of the Circuit Court to provide computerized printouts for our sample. The computerized systems of three counties (Baker, Orange, and Pinellas) did not always retrieve sentencing dates or indicate that a sentencing action had occurred. Also, in Citrus County, a small portion of the cases did not have this information. Accordingly, we obtained information for these cases from the court file records. During our review of computerized case histories we reviewed predominantly docket line entries. For case files of felony and misdemeanor cases we reviewed sentence and judgement forms and probation orders. For traffic cases we also reviewed traffic citations. To gain additional information and clarify case information, we interviewed knowledgeable staff of the Clerks of the Circuit Court.

From this review we identified such information as whether a case was assessed, the crime for which offender was convicted, verdict, and sentence, such as jail, and/or probation.

Appendix D
Assessment of Required Fees

We reviewed court records to determine if judges were assessing fees to convicted criminal defendants as specified by statute. We examined three issues:

- Whether judges were assessing all required fees;
- Whether judges were assessing the full amount of the required fees; and
- Whether judges were assessing discretionary fees when no required fees were assessed.

Assessment of Required Fees

As shown in Table D-1, judges assessed all required fees to offenders convicted of criminal offenses in 34% of the cases we examined. The overall assessment rate varied by type of court, with traffic courts assessing all required fees in 60% of the examined cases, to a 31% assessment rate for circuit courts, and an 18% assessment rate for county courts. Tables D-1 through D-4 present the number of cases we examined by county and type of court, and the percentage of cases in which all required fees were assessed.

Table D-1

**Percentage of Cases Assessed All Required Fees
in Sample Counties by Type of Court
Fiscal Year 1988-89**

Counties	All Courts ¹		Circuit Courts	County Courts	Traffic Courts ¹
Baker	31%	(35 of 112)	74%	23%	-- %
Charlotte	63%	(139 of 221)	12%	29%	83%
Citrus	51%	(114 of 225)	15%	35%	68%
Dade	40%	(103 of 260)	72%	6%	-- %
Duval	14%	(64 of 450)	0% ²	4%	35%
Gadsden	11%	(25 of 225)	15%	3%	16%
Lee	44%	(196 of 450)	38%	20%	79%
Orange	31%	(76 of 244)	43%	25%	-- %
Pinellas	35%	(157 of 450)	0% ²	29%	56%
Average	34%	(909 of 2,637)	31%	18%	60%

¹ Sample data do not include traffic court cases for Baker, Dade, and Orange counties.

² These courts were not assessing fees authorized by s. 943.25(3), F.S.

Source: Office of the Auditor General summary analysis of county-provided data.

Table D-2

**Percentage of Cases Assessed All Required Fees
in Circuit Courts by County
Fiscal Year 1988-89**

Counties	Number of Cases Reviewed	Number of Cases Assessed All Required Fees	Percentage of Cases Assessed All Required Fees
Baker	19	14	74%
Charlotte	17	2	12%
Citrus	20	3	15%
Dade	132	95	72%
Duval	78	0 ¹	0%
Gadsden	99	15	15%
Lee	45	17	38%
Orange	84	36	43%
Pinellas	84	0 ¹	0%
Total	<u>578</u>	<u>182</u>	31%

¹ Circuit Court not assessing fees authorized by s. 943.25(3), F.S.

Source: Office of the Auditor General summary analysis of county-provided data.

Table D-3 shows the percentage and number of cases assessed all required fees in county courts.

Table D-3

**Percentage of Cases Assessed All Required Fees
in County Courts by County
Fiscal Year 1988-89**

Counties	Number of Cases Reviewed	Number of Cases Assessed All Required Fees	Percentage of Cases Assessed All Required Fees
Baker	93	21	23%
Charlotte	59	17	29%
Citrus	85	30	35%
Dade	128	8	6%
Duval	210	8	4%
Gadsden	77	2	3%
Lee	238	47	20%
Orange	160	40	25%
Pinellas	177	51	29%
Total	<u>1,227</u>	<u>224</u>	18%

Source: Office of the Auditor General summary analysis of county-provided data.

Table D-4 shows the percentage and number of cases assessed all required fees in traffic courts.

Table D-4

Percentage of Cases Assessed All Required Fees in Traffic Courts by County Fiscal Year 1988-89			
Counties	Number of Cases Reviewed	Number of Cases Assessed All Required Fees	Percentage of Cases Assessed All Required Fees
Baker	---1	---	---
Charlotte	145	120	83%
Citrus	120	81	68%
Dade	---1	---	---
Duval	162	56	35%
Gadsden	49	8	16%
Lee	167	132	79%
Orange	---1	---	---
Pinellas	189	106	56%
Total	<u>832</u>	<u>503</u>	60%

¹ Sample data do not include traffic court cases for Baker, Dade, and Orange counties.

Source: Office of the Auditor General summary analysis of county-provided data.

Assessment of Full Amount of Required Fees

As shown in Table D-5, assessments were at or above the minimum amount required by statute in 61% of the cases in which judges levied at least one required fee. Fees assessed at or above the minimum varied by type of court, traffic court assessments were at 79%, 59% assessment rate for circuit courts, and 43% assessment rate for county courts. Tables D-6 through D-8 present the number of cases in which judges levied at least one required

fee by county and type of court, and the number of cases in which the assessments were at or above the minimum amount required by statute.

Table D-5

When Required Fees Are Assessed: Percentage of Sample Cases Assessed at or Above the Minimum Amounts Required by Statute By Type of Court Fiscal Year 1988-89

Counties	All Courts ¹		Circuit Courts	County Courts	Traffic Courts ¹
Baker	85%	(33 of 39)	93%	79%	-- %
Charlotte	86%	(148 of 173)	100%	51%	98%
Citrus	68%	(121 of 178)	22%	56%	84%
Dade	88%	(103 of 117)	95%	47%	-- %
Duval	78%	(64 of 82)	50%	42%	90%
Gadsden	18%	(21 of 119)	15%	50%	20%
Lee	51%	(167 of 329)	94%	26%	76%
Orange	57%	(82 of 145)	82%	43%	-- %
Pinellas	56%	(160 of 284)	4%	50%	70%
Average	61%	(899 of 1,466)	59%	43%	79%

¹ Sample data do not include traffic court cases for Baker, Dade, and Orange counties.

Source: Office of the Auditor General summary analysis of county-provided data.

Table D-6 shows the percentage and number of cases assessed full fees in circuit courts.

Table D-6

When Required Fees Are Assessed: Percentage of Circuit Court Cases Assessed at or Above the Minimum Amounts Fiscal Year 1988-89			
Counties	Number of Cases With Required Fees Assessed	Number of Cases Assessed at or Above the Minimum Amount	Percentage of Cases Assessed at or Above the Minimum Amount
Baker	15	14	93 %
Charlotte	2	2	100 %
Citrus	18	4	22 %
Dade	100	95	95 %
Duval	2	1	50 %
Gadsden	85	13	15 %
Lee	18	17	94 %
Orange	50	41	82 %
Pinellas	28	1	4 %
Total	<u>318</u>	<u>188</u>	59 %

Source: Office of the Auditor General summary analysis of county-provided data.

Table D-7 shows the percentage and number of cases assessed full fees in county courts.

Table D-7

**When Required Fees Are Assessed: Percentage of County Court Cases Assessed at or Above the Minimum Amounts
Fiscal Year 1988-89**

Counties	Number of Cases With Required Fees Assessed	Number of Cases Assessed at or Above the Minimum Amount	Percentage of Cases Assessed at or Above the Minimum Amount
Baker	24	19	79%
Charlotte	45	23	51%
Citrus	61	34	56%
Dade	17	8	47%
Duval	19	8	42%
Gadsden	4	2	50%
Lee	173	45	26%
Orange	95	41	43%
Pinellas	101	51	50%
Total	<u>539</u>	<u>231</u>	43%

Source: Office of the Auditor General summary analysis of county-provided data.

Table D-8 shows the percentage and number of cases assessed full fees in traffic courts.

Table D-8

When Required Fees Are Assessed: Percentage of Traffic Court Cases Assessed at or Above the Minimum Amounts Fiscal Year 1988-89			
Counties	Number of Cases With Required Fees Assessed	Number of Cases Assessed at or above the Minimum Amount	Percentage of Cases Assessed at or above the Minimum Amount
Baker	---1	---	---%
Charlotte	126	123	98%
Citrus	99	83	84%
Dade	---1	---	---%
Duval	61	55	90%
Gadsden	30	6	20%
Lee	138	105	76%
Orange	---1	---	---%
Pinellas	155	108	70%
Total	<u>609</u>	<u>480</u>	79%

¹ Sample data do not include traffic court cases for Baker, Dade, and Orange counties.

Source: Office of the Auditor General summary analysis of county-provided data.

Assessment of At Least One Required Fee

We also reviewed court records to determine if judges assessed at least one required fee in a case. Tables D-9 through D-11 show that judges assessed at least one required fee in 73% of the traffic court cases and about 50% of the circuit and county court cases. Variation also occurred among judges within the same type of court. The assessment of at least

one required fee in circuit courts varied from 90% in Citrus County to 3% for circuit courts in Duval County. See Table D-9 for the percentage and number of cases assessed at least one required fee in circuit courts.

Table D-9

**Percentage of Cases Assessed at Least One Required Fee
in Circuit Courts by County
Fiscal Year 1988-89**

Counties	Number of Cases With Required Fees Assessed	Number of Cases Assessed at or Above the Minimum Amount	Percentage of Cases Assessed at or Above the Minimum Amount
Baker	19	15	79%
Charlotte	17	2	12%
Citrus	20	18	90%
Dade	132	100	76%
Duval	78	2	3%
Gadsden	99	85	86%
Lee	45	18	40%
Orange	84	50	60%
Pinellas	84	28	33%
Total	<u>578</u>	<u>318</u>	55%

Source: Office of the Auditor General summary analysis of county-provided data.

Table D-10 shows the percentage and number of cases assessed at least one required fee in county courts.

Table D-10

**Percentage of Cases Assessed at Least One Required Fee
in County Courts by County
Fiscal Year 1988-89**

Counties	Number of Cases With Required Fees Assessed	Number of Cases Assessed at or Above the Minimum Amount	Percentage of Cases Assessed at or Above the Minimum Amount
Baker	93	24	26%
Charlotte	59	45	76%
Citrus	85	61	72%
Dade	128	17	13%
Duval	210	19	9%
Gadsden	77	4	5%
Lee	238	173	73%
Orange	160	95	59%
Pinellas	177	101	57%
Total	<u>1,227</u>	<u>539</u>	44%

Source: Office of the Auditor General summary analysis of county-provided data.

Table D-11 shows the percentage and number of cases assessed at least one required fee in traffic courts.

Table D-11

**Percentage of Cases Assessed at Least One Required Fee
in Traffic Courts by County
Fiscal Year 1988-89**

Counties	Number of Cases With Required Fees Assessed	Number of Cases Assessed at or Above the Minimum Amount	Percentage of Cases Assessed at or Above the Minimum Amount
Baker	---	---	---%
Charlotte	145	126	87%
Citrus	120	99	82%
Dade	---	---	---%
Duval	162	61	38%
Gadsden	49	30	61%
Lee	167	138	83%
Orange	---	---	---%
Pinellas	189	155	82%
Total	<u>832</u>	<u>609</u>	73%

¹ Sample data do not include traffic court cases for Baker, Dade, and Orange counties.

Source: Office of the Auditor General summary analysis of county-provided data.

Appendix E

Assessment of Discretionary Fees

We reviewed court records to determine if judges were assessing discretionary fees when no required fees were assessed. Tables E-1 through E-3 show that some judges are not assessing fees required by law, but are assessing other fees that are optional. Court records did not indicate why judges assessed discretionary fees. We found that judges were assessing discretionary fees when no required fees were assessed in 10 of the 260 cases in circuit courts. Judges assessed discretionary fees when no required fees were assessed in circuit courts in two counties (9 of 76 cases in Duval County and 1 of 34 cases in Orange County). See Table E-1 for the number of cases assessed discretionary fees when no required fees were assessed in circuit court by county.

Table E-1

Percentage of Cases Assessed No Required Fee That Had Discretionary Fees Assessed in Circuit Courts Fiscal Year 1988-89			
Counties	Number of Cases Assessed No Required Fee	Number of Cases Assessed No Required Fee That Had Discretionary Fees Assessed	Percentage of Cases Assessed No Required Fees That Had Discretionary Fees Assessed
Baker	4	0	0%
Charlotte	15	0	0%
Citrus	2	0	0%
Dade	32	0	0%
Duval	76	9	12%
Gadsden	14	0	0%
Lee	27	0	0%
Orange	34	1	3%
Pinellas	56	0	0%
Total	<u>260</u>	<u>10</u>	4%

Source: Office of the Auditor General summary analysis of county-provided data.

Our analysis also showed that judges assessed discretionary fees when no required fees were assessed in 81 of 688 cases in county courts. Judges assessed discretionary fees when no required fees were assessed in four counties; ranging from 23 of 191 in Duval County to 40 of 73 in Gadsden County. See Table E-2 for the number of cases assessed discretionary fees when required fees were not assessed in county court by county.

Table E-2

Percentage of Cases Assessed No Required Fees That Had Discretionary Fees Assessed in County Courts Fiscal Year 1988-89			
Counties	Number of Cases Assessed No Required Fees	Number of Cases Assessed No Required Fee That Had Discretionary Fees Assessed	Percentage of Cases Assessed No Required Fees That Had Discretionary Fees Assessed
Baker	69	9	13%
Charlotte	14	0	0%
Citrus	24	0	0%
Dade	111	0	0%
Duval	191	23	12%
Gadsden	73	40	55%
Lee	65	0	0%
Orange	65	9	14%
Pinellas	76	0	0%
Total	<u>688</u>	<u>81</u>	12%

Source: Office of the Auditor General summary analysis of county-provided data.

Our analysis further showed that judges assessed discretionary fees and did not assess required fees in 61 of 223 cases in traffic court. Judges assessed discretionary fees but not required fees in three counties ranging from 1 of 34 in Pinellas County to 19 of 19 in Gadsden County. See Table E-3 for the number of cases assessed discretionary fees and required fees were not assessed in criminal traffic cases by county.

Table E-3

**Percentage of Cases Assessed No Required Fees
That Had Discretionary Fees Assessed in Traffic Courts
Fiscal Year 1988-89**

Counties	Number of Cases Assessed No Required Fees	Number of Cases Assessed No Required Fee That Had Discretionary Fees Assessed	Percentage of Cases Assessed No Required Fees That Had Discretionary Fees Assessed
Baker	--- ¹	---	---%
Charlotte	19	0	0%
Citrus	21	0	0%
Dade	--- ¹	---	---%
Duval	101	41	41%
Gadsden	19	19	100%
Lee	29	0	0%
Orange	--- ¹	---	---%
Pinellas	34	1	3%
Total	<u>223</u>	<u>61</u>	27%

¹ Data for traffic court cases were not available for Baker, Dade, and Orange counties.

Source: Office of the Auditor General summary analysis of county-provided data.

Appendix F

Assessment of Penalties

When an offender is convicted of a crime, the judge is required to assess certain fees, court costs and surcharges, and at their discretion, may assess other fees. In addition, Florida Statutes authorize judges to assess a variety of penalties on offenders convicted of felonies, misdemeanors, or traffic crimes. These penalties can include a term of imprisonment, community control, probation, a fine, or a combination of these penalties. The intent of these penalties is to punish offenders for committing crimes. Whether to sentence an offender to incarceration, probation, and the amount of time served is guided by statutes and sentencing guidelines. Whether to assess a fine and the amount is also guided by statutes and unless otherwise provided left to the court's discretion. For example, s. 775.083, F.S., authorizes the courts to assess fines for non-criminal violations of up to \$500 for a second degree misdemeanor conviction, and up to \$15,000 for a life felony conviction.

To identify the penalties imposed by judges, we reviewed 2,647 cases selected from nine counties.¹⁶ See Appendix B and C for the methodology used to select these counties and cases for review.

Penalties Imposed by Judges

Of the cases we reviewed, the most frequently imposed penalty was prison and/or jail, which occurred in 31% of the cases. Prison and/or jail only sentences varied by county ranging from 5% in Charlotte County to 73% in Dade County. Combination sentences, (prison/jail, plus fine and/or probation) were used in about a quarter of the cases, with probation and fine sentences used in 13% of the cases. Fine and probation sentences varied ranging from less than 1% in Dade to 34% in Citrus County. Imposition of fines only was the next preferred

¹⁶ We could not determine complete assessment data for 10 cases and sentence data for 44 cases. As a result we are reporting on 2,593 cases.

sentence, and was imposed in 19% of the cases reviewed. Fine-only sentences were used most frequently in Lee County, almost half the cases. Fine-only sentences were used the least in Dade County, at 2% of the cases. Finally, judges did not impose penalties but may have imposed sanctions, such as community service or fees in 16% of the cases. See Table F-1 for the penalties for cases in our review.

Table F-1

**All Courts: Percentage of Cases by Penalties Imposed
Fiscal Year 1988-89**

County	Number of Cases Reviewed ¹	Penalties Imposed							Other Sanctions ³
		Prison or Jail Only ²	Probation Only	Fine Only	Prison or Jail and Probation Only ²	Prison or Jail and Fine ²	Probation and Fine	Prison or Jail, Probation, and Fine ²	
Baker	112 ⁴	19%	17%	27%	4%	0%	2%	0%	32%
Charlotte	221	5%	4%	14%	2%	1%	20%	3%	51%
Citrus	217	6%	8%	20%	6%	1%	34%	4%	21%
Dade	259 ⁴	73%	17%	2%	2%	1%	— ⁵	0%	5%
Duval	436	52%	8%	8%	6%	1%	3%	3%	18%
Gadsden	224	11%	35%	3%	24%	1%	7%	0%	19%
Lee	449	19%	4%	47%	3%	1%	14%	4%	8%
Orange	230 ⁴	39%	11%	5%	12%	1%	24%	5%	3%
Pinellas	445	30%	13%	26%	4%	2%	14%	3%	8%
Total	<u>2,593</u>	31%	12%	19%	7%	1%	13%	3%	16%

¹ We could only obtain sentencing information on 2,593 cases.

² Of the 1,044 jail sentences in our sample 50% were given credit for time served.

³ Sanctions may include a term of community service, only fees assessed, etc.

⁴ Data for traffic court case were not available for Baker, Dade, and Orange counties.

⁵ Less than 1%.

Source: Office of the Auditor General summary analysis of county-provided data.

Circuit Courts. We further analyzed the cases reviewed by type of court to determine if sentencing patterns varied between the types of courts. We found that judges were sentencing defendants to prison and/or jail in 48% of the cases in circuit court. This penalty usage for circuit courts varied from 73% (97 of 132) in Dade County to 0% (0 of 20) for circuit

courts in Citrus County. Combination sentences were used in 28% of the cases with prison/jail and probation used in 20% of the cases. This combination sentence varied from 49% (49 of 99) in Gadsden County to 4% (5 of 132) in Dade County. Probation only sentences were used in 22% of the cases. This penalty varied from 47% (9 of 19) in Baker County to 7% (6 of 84) in Orange County. Fine only sentences were used in about 1% of the cases. This varied by county from 5% (1 of 20) in Citrus County to 0% in Baker (0 of 19), Charlotte (0 of 17), Duval (0 of 76), Orange (0 of 84), and Pinellas (0 of 84). See Table F-2 for percentage of circuit court cases by type of penalties imposed.

Table F-2

**Circuit Courts: Cases by Penalties Imposed
Fiscal Year 1988-89**

County	Number of Cases Reviewed	Penalties Imposed							Other Sanctions ²
		Prison or Jail Only ¹	Probation Only	Fine Only	Prison or Jail and Probation Only ¹	Prison or Jail and Fine ¹	Probation and Fine	Prison or Jail, Probation, and Fine ¹	
Baker	19	8	9	0	1	0	1	0	0
Charlotte	17	4	2	0	3	2	2	4	0
Citrus	20	0	4	1	4	0	6	5	0
Dade	132	97	21	3	5	3	1	0	2
Duval	76	50	10	0	15	0	0	0	1
Gadsden	99	15	32	1	49	0	0	0	2
Lee	45	18	7	1	7	0	8	4	0
Orange	84	49	6	0	20	0	3	6	0
Pinellas	84	36	34	0	12	1	0	0	1
Total	<u>576</u>	277	125	6	116	6	21	19	6
<i>Percent of Total</i>		<i>48%</i>	<i>22%</i>	<i>1%</i>	<i>20%</i>	<i>1%</i>	<i>4%</i>	<i>3%</i>	<i>1%</i>

¹ Of the 417 circuit court jail sentences in our sample 23% were given credit for time served.

² Sanctions may include a term of community service, only fees assessed, etc.

Source: Office of the Auditor General summary analysis of county-provided data.

County Courts. Our analysis also showed that judges in county courts imposed jail-only sentences in 35% of the cases. This sentence varied from 72% (91 of 127) in Dade County to 8% (5 of 59) in Charlotte County. Fine-only sentences were used in 23% of the cases and varied from 32% (30 of 93) in Baker County to 1% (1 of 76) in Gadsden County. Combination sentences were next often used in 18% of the cases with probation and fine combinations being used in 12% of the cases. This varied from 36% (52 of 146) in Orange County to 0% (0 of 127) in Dade County. Finally, no penalties were imposed but other sanctions may have been used in 13% of the cases varying from 49% (29 of 59) in Charlotte County to 3% (6 of 172) in Pinellas County. Typically, these cases were assessed fees. See Table F-3 for percentage of county court cases by type of penalties imposed.

Table F-3

**County Courts: Percentage of Cases by Penalties Imposed
Fiscal Year 1988-89**

County	Number of Cases Reviewed	Penalties Imposed							
		Prison or Jail Only ¹	Probation Only	Fine Only	Prison or Jail and Probation Only ¹	Prison or Jail and Fine ¹	Probation and Fine	Prison or Jail, Probation, and Fine ¹	Other Sanctions ²
Baker	93	13	10	30	3	0	1	0	36
Charlotte	59	5	5	9	1	0	9	1	29
Citrus	78	10	9	15	5	1	19	2	17
Dade	127	91	22	2	1	0	0	0	11
Duval	209	130	20	15	11	3	1	1	28
Gadsden	76	9	34	1	5	2	10	0	15
Lee	237	47	8	131	6	5	27	1	12
Orange	146	41	20	12	7	3	52	5	6
Pinellas	172	75	5	57	3	5	20	1	6
Total	1,197	421	133	272	42	19	139	11	160
Percent of Total		35%	11%	23%	3%	2%	12%	1%	13%

¹ Of the 475 county court jail sentences in our sample 73% were given credit for time served.

² Sanctions may include a term of community service, only fees assessed, etc.

Source: Office of the Auditor General summary analysis of county-provided data.

Traffic Courts. Our analysis further showed that judges in traffic courts frequently did not impose formal penalties, as jail, probation, or fine sentences were not imposed in 29% of the cases we reviewed, but other sanctions such as community service or fees may have been imposed. Typically these cases were assessed fees. The rate of non-imposition of formal penalties varied from 57% (83 of 145) in Charlotte County to 14% (23 of 167) in Lee County. Combination sentences were used in 28% of the traffic court cases, with probation and fine the most frequently used combination, being used in 21% of the cases. Imposition of this combination sentence varied from 41% (49 of 119) in Citrus County to 8% (12 of 151) in Duval County. Fine-only sentences were imposed in 26% of the traffic court cases, and varied in use from 46% (77 of 167) in Lee County to 15% (22 of 145) in Charlotte County. Jail-only sentences were imposed in 11% of the traffic court cases, varying from 30% (45 of 151) in Duval County to 0% (0 of 49) in Gadsden County. Probation-only sentences were imposed in 6% of the traffic court cases, varying from 27% (13 of 49) in Gadsden County to 1% (1 of 145) in Charlotte County. See Table F-4 for percentage of traffic cases by type of penalties imposed.

Table F-4

**Traffic Courts: Cases by Penalties Imposed
Fiscal Year 1988-89**

County	Number of Cases Reviewed	Penalties Imposed							Other Sanctions ²
		Prison or Jail Only ¹	Probation Only	Fine Only	Prison or Jail and Probation Only ¹	Prison or Jail and Fine ¹	Probation and Fine	Prison or Jail, Probation, and Fine ¹	
Baker	— ³	—	—	—	—	—	—	—	—
Charlotte	145	2	1	22	0	1	34	2	83
Citrus	119	4	4	27	4	2	49	1	28
Dade	— ³	—	—	—	—	—	—	—	—
Duval	151	45	6	22	2	3	12	10	51
Gadsden	49	0	13	5	0	0	6	0	25
Lee	167	19	5	77	2	0	30	11	23
Orange	— ³	—	—	—	—	—	—	—	—
Pinellas	189	24	19	57	4	3	40	14	28
Total	<u>820</u>	94	48	210	12	9	171	38	238
Percent of Total		11%	6%	26%	1%	1%	21%	5%	29%

¹ Of the 152 criminal court jail sentences in our sample 51% were given credit for time served.

² Sanctions may include a term of community service, only fees assessed, etc.

³ Survey data do not include traffic court cases for Baker, Dade, and Orange counties.

Source: Office of the Auditor General summary analysis of county-provided data.

Amounts of Fines Assessed

Our analysis of the amount of fines assessed shows that the average assessment was \$153 for all courts, and varied from \$90 in Baker County to \$468 in Dade County.¹⁷ Fines imposed in individual cases ranged from a low of \$1 to a high of \$3,500. See Table F-5, page 67, for data on fines assessed by all courts.

¹⁷ We did not include two cases in Orange County with fines of \$50,000 and \$100,000, respectively, or one case in Pinellas County with a fine of \$50,000, as inclusion of these cases would skew the average.

Table F-5

**All Courts: Data on Fines
Fiscal Year 1988-89**

County	Number of Cases With a Fine Assessed	Average Assessment	Range of Assessments
Baker ¹	32	\$ 90	\$11 - \$1,400
Charlotte	86	258	\$10 - \$1,000
Citrus	131	161	\$14 - \$1,050
Dade ¹	9	468	\$105 - \$1,500
Duval	74	258	\$15 - \$3,500
Gadsden	26	150	\$16 - \$525
Lee	296	99	\$1 - \$1,500
Orange ¹	90	145 ²	\$15 - \$1,500
Pinellas	200	145 ³	\$1 - \$2,550
Total	<u>944</u>	<u>\$153</u>	\$1 - \$3,500

¹ Survey data do not include traffic court cases for Baker, Dade, and Orange counties.

² We did not include two cases in the average which were fined \$50,000 and \$100,000, respectively, as these cases would skew the average.

³ We did not include one case in the average which was fined \$50,000 as this case would skew the average.

Source: Office of the Auditor General summary analysis of county-provided data.

Circuit Court. We further analyzed the cases reviewed by type of court to determine if the assessment pattern varied between the types of courts. We found that the average fine imposed by circuit court judges which assessed this penalty was \$610. Individual fines imposed ranged from a low of \$20 to a high of \$1,500. See Table F-6, page 68, for data on fines assessed by circuit courts.

Table F-6

**Circuit Courts: Data on Fines
Fiscal Year 1988-89**

County	Number of Cases With a Fine Assessed	Average Assessment	Range of Assessments
Baker ¹	1	— ¹	\$1,400
Charlotte	8	\$638	\$250 - \$1,000
Citrus	12	421	\$100 - \$1,000
Dade	7	557	\$200 - \$1,500
Duval	1	— ¹	\$1,500
Gadsden	1	— ¹	\$525
Lee	13	735	\$300 - \$1,500
Orange 1	7	496 ²	\$20 - \$1,500
Pinellas	0	0 ³	N/A
Total	<u>50</u>	<u>\$610</u>	\$20 - \$1,500

¹ Only one case, average not calculated.

² We did not include two cases in the average which were fined \$50,000 and \$100,000, respectively, as these cases would skew the average.

³ We did not include one case in the average which was fined \$50,000 as this case would skew the average.

Source: Office of the Auditor General summary analysis of county-provided data.

County Court. Our analysis showed that fines assessed by county judges averaged \$71, varying from a low of \$43 in Lee County to a high of \$158 in Dade County. The range of individual fines varied from \$4 to \$1,050. See Table F-7, page 69, for data on fines assessed by county courts.

Table F-7

**County Courts: Data on Fines
Fiscal Year 1988-89**

County	Number of Cases With a Fine Assessed	Average Assessment	Range of Assessments
Baker ¹	31	\$ 47	\$11 - \$110
Charlotte	19	104	\$10 - \$390
Citrus	39	105	\$14 - \$1,050
Dade	2	158	\$105 - \$210
Duval	20	131	\$25 - \$400
Gadsden	14	83	\$25 - \$150
Lee	165	43	\$4 - \$253
Orange ¹	83	116	\$15 - \$300
Pinellas	86	53	\$5 - \$386
Total	<u>459</u>	<u>\$71</u>	\$4 - \$1,050

Source: Office of the Auditor General summary analysis of county-provided data.

Traffic Court. Our analysis further showed that judges in traffic court who imposed fines assessed an average of \$187. The range of average fines varied from a low of \$108 in Lee County to a high of \$256 in Charlotte County. The range of individual fines imposed varied from a low of \$1 to a high of \$3,500. See Table F-8, page 70, for data on fines assessed by traffic courts.

Table F-8

**Traffic Courts: Data on Fines
Fiscal Year 1988-89**

County	Number of Cases With a Fine Assessed	Average Assessment	Range of Assessments
Baker ¹	— ¹	— ¹	— ¹
Charlotte	59	\$256	\$50 - \$1,000
Citrus	80	150	\$20 - \$750
Dade	— ¹	— ¹	— ¹
Duval	53	282	\$15 - \$3,500
Gadsden	11	202	\$16 - \$500
Lee	118	108	\$1 - \$963
Orange ¹	— ¹	— ¹	— ¹
Pinellas	114	215	\$1 - \$2,550
Total	<u>435</u>	<u>\$187</u>	\$1 - \$3,500

¹ Survey data do not include traffic court cases for Baker, Dade, and Orange counties.

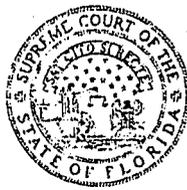
Source: Office of the Auditor General summary analysis of county-provided data.

Appendix G

Response from the Supreme Court of Florida

In accordance with the provisions of s. 11.45(7)(d), F.S., a list of preliminary and tentative audit findings was submitted to the Chief Justice of the Supreme Court of Florida for his review and response.

The Chief Justice's written response is reprinted herein beginning on page 72.



SUPREME COURT OF FLORIDA
TALLAHASSEE
32399-1925

LEANDER J. SHAW, JR.
CHIEF JUSTICE
BEN F. OVERTON
PARKER LEE McDONALD
ROSEMARY BARKETT
STEPHEN H. GRIMES
GERALD KOGAN
MAJOR B. HARDING
JUSTICES

SID J. WHITE
CLERK
WILSON E. BARNES
MARSHAL

November 6, 1991

Mr. Charles L. Lester, C.P.A.
Auditor General
Room G74, Claude Pepper Building
Tallahassee, Florida 32301

Dear Mr. Lester:

Following is a response to the preliminary and tentative findings of the audit on the assessment of criminal fees performed by the Auditor General's staff.

Recommendation 1

To simplify the assessment process, we recommend that the Legislature consolidate into one chapter of the statutes all requirements for assessing criminal fines and fees. Consolidation of criminal fine and fee assessment requirements into one place would allow for easy identification of laws pertaining to assessing fines and fees. The Legislature may want to develop a chapter of the statutes similar to Ch. 939, F.S., to clarify judges' responsibilities for assessing fines and fees.

Response

The court system concurs in this recommendation. In addition to the consolidation in one location of authority for the assessment of fees, it would be of assistance to the trial courts if the Legislature would clarify the definition of terms such as fee, cost, surcharge, and fine, and then review the text of existing statutes to standardize the use of these terms. The authority to assess required fees in criminal cases must flow from legislative enactments. The court system would welcome the needed clarification to better understand what fees are required.

Mr. Charles L. Lester, C.P.A.
Auditor General
November 6, 1991
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Recommendation 2

Because of the number of fees required to be assessed and the aggregate dollar amount of fees to be assessed, we recommend that the Legislature review the cumulative affect of required fees and determine if individual defendants should be required to pay this total amount of surcharges in addition to other authorized penalties. It may not be reasonable to expect that all offenders could pay from \$73 to \$223 in required fees plus other penalties the judge is authorized to assess.

Response

The court system concurs in this recommendation.

Recommendation 3

To assist in a more uniform application of the statutes and caselaw relative to fee assessment, we recommend that the Supreme Court develop uniform assessment procedures, at the level they deem necessary, to assist in the assessment process. At a minimum, these assessment procedures should include a standard assessment form for each type of court (circuit, county, and traffic) to be used by all judges in their assessment decisions. The assessment procedures should also provide judges with guidelines for assessing fees based on individual charges or persons; and adjudication versus adjudication withheld. The developed assessment procedures should provide sufficient information about defendants and crime victims to enable judges to make assessment decisions. If the Supreme Court determines that to adhere to the separation of powers doctrine that the Legislature should provide more specific criteria, then the Court should make such recommendations to the Legislature.

Response

The State Courts System notes that, as a result of recent supreme court rulings in State v. Beasley, 580 So.2d 139 (Fla. 1991) and State v. Vamper, 579 So.2d 730 (Fla. 1991), a trial court need not determine whether a defendant has an ability to pay prior to assessing costs. These rulings and their effect were discussed in detail at judicial education programs conducted in June and September, 1991, so that trial judges would be thoroughly familiar with the court's interpretation of the law. We also note that the findings contained in this audit report are based on judicial practices that predated the cases cited above, when the need to determine indigence prior to assessment was still an unsettled issue.

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Additionally, there is currently pending before the Supreme Court a recommendation to expand the Uniform Judgment and Sentencing forms to include a listing of the statutory authority for the assessment of fines, fees, and costs. It has been recommended that the sentence form be reviewed annually to facilitate revisions to conform the listing to legislative enactments. Through judicial education activities and the proposed annual review and revision of the uniform sentencing form, trial courts will be provided guidance on the assessment of required fees and costs in criminal cases.

Finally, the Auditor General should present the remaining portion of this recommendation directly to the Legislature. The assessment of costs and fees in specific situations, such as those involving multiple charges or where adjudication of guilt has been withheld, are issues of substantive law and are matters for the Legislature to determine. Under the Constitution, the courts are not empowered to promulgate procedures that would create or alter substantive law. Likewise, the definition of indigence and the criteria to be considered in determining ability to pay are matters for the Legislature to determine.

Recommendation 4

We also recommend that the Supreme Court establish a reporting system to collect information on the assessment of fines and fees. This information should be compiled and distributed to Chief Circuit Judges to assist in their administrative supervision of the judicial system within their circuits. The Supreme Court should provide Chief Circuit Judges with criteria to evaluate the information. This information will allow the Supreme Court and Chief Circuit Judges to evaluate trial judges' effectiveness in fulfilling the requirements of law.

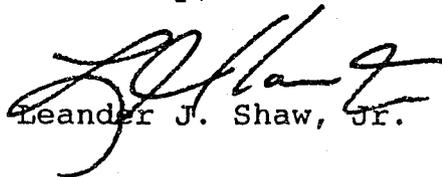
Response

The establishment of a reporting function within the Judicial Branch to monitor the assessment of costs and fees would require the creation of an expensive, redundant system that the court does not have the resources or authority to implement. Since the collection of revenues is an executive function that cannot be constitutionally delegated to the Judicial Branch, this recommendation would require the creation of two separate systems: a reporting system in the Judicial Branch to monitor assessments and a reporting system in the Executive Branch to

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monitor collections. This is a costly and unnecessary bifurcation of monitoring responsibilities. Because an executive branch entity must capture both assessment and collection data in order to effectively monitor collections, this same entity should be responsible for reporting assessment information to the supreme court for analysis and distribution through the state courts system.

Sincerely,



Leander J. Shaw, Jr.

LJSjr:MUB:ger.ltr

