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FISCAL IMPACT REPORT

SPONSOR Martinez DATE TYPED 2/9/05 HB _____

SHORT TITLE Waive Court Fees For Parties In Poverty SB 618

ANALYST Hanika-Ortiz

APPROPRIATION

| Appropriation Contained | | Estimated Additional Impact | | Recurring or Non-Rec | Fund Affected |
|-------------------------|-------|-----------------------------|---------------|----------------------|---------------|
| FY05 | FY06 | FY05 | FY06 | | |
| | \$0.1 | | See Narrative | Recurring | |

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Defender Department (PDD)

Administrative Office of the Courts (AOC)

Office of the Attorney General (AGO)

SUMMARY

Synopsis of Bill

Senate Bill 618 mandates free process for filing civil and criminal actions for persons at or below 150% of the Federal Poverty Guideline (FPG) in the Supreme Court, Probate Court, District Courts, Magistrate and Metropolitan Courts and indigent appeals. The court may also waive any fees or order free process in special circumstances upon a showing of inability to pay. The provision for free process does not apply if the trial court certifies in writing that the appeal is not taken in good faith (frivolous).

Significant Issues

Section 2, subsection B, paragraph 1, on page 3, amends the District Court fee policy, but a distinction is made between civil and criminal action. In a civil action the court shall order free process following the poverty guideline cited above. In a criminal action, the court shall apply the standard for indigence pursuant to the Public Defender Act, which is lower.

The AGO has the following comment:

SB 618 would impact existing local rules for eligibility determination for indigent defense services.

“Construction of the Public Defender Act (PDA) or other statutes addressing legal representation of indigent criminal defendants must recognize and support fact that courts are vested with statutory authority to evaluate indigence of criminal defendants in protecting constitutional right to counsel.” See State ex rel. Quintana v. Schnedar.

The PDA states that "a needy person who is being detained by a law enforcement officer" is "entitled to be represented by an attorney" who "shall be provided at public expense." Section 31-16-3. Section 31-16-5, "Determination of indigence," states: A. The determination of whether a person ...is a needy person shall be deferred until his first appearance...thereafter, the court concerned shall determine, with respect to each proceeding, whether he is a needy person. B. In determining whether a person is a needy person and the extent of his inability to pay, the court may consider such factors as income, property owned, outstanding obligations and the number and ages of his dependents. The PDA repeatedly refers to the courts as the proper authority for assessing a defendant's indigence.

Construction of the PDA or other statutes addressing legal representation of indigent criminal defendants must therefore recognize and support the fact that courts are vested with the statutory authority to evaluate the indigence of criminal defendants in protecting the constitutional right to counsel.

PERFORMANCE IMPLICATIONS

The AGO states SB 618 may create a potential conflict between the courts and the legislature and a separation of powers issue.

SB 618 would not change the *In Forma Pauperis* standard used by the Court of Appeals. The PDD believes access to the courts (particularly the highest court of the state) is a right of all citizens and should not be denied because of inability to pay fees.

FISCAL IMPLICATIONS

The AGO reports SB 618 could reduce court income while increasing administrative expenses.

ADMINISTRATIVE IMPLICATIONS

AOC reports a minimal increase in staff time and resources necessary to process applications, monitor changes in federal guidelines and to evaluate the income of a person. The AGO disagrees and believes there could be a considerable increase in staff time and resources, but acknowledges AOC, DFA, and other agencies have more practical expertise in this area.

TECHNICAL ISSUES

The AGO reports a conflict between the *In Forma Pauperis* standard used at the Court of Appeals and the 150% of FPG used in other courts. The AGO also reports the additional conflict between civil and criminal cases at the District Court level, requiring the 150% standard for civil

cases and the PDD standard for criminal cases (lower).

The AGO states SB 618 may create a two step process that would first require a judge to grant free process upon a showing of indigence, and then make a determination if appeal is frivolous.

ALTERNATIVES

The AGO suggests creating a uniform system based upon *In Forma Pauperis*.

The Legislature could agree to recognize and support the statutory authority of the courts to determine indigence.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

The law would remain as it is.

AHO/yr