

1985

Session Law 85-213

Florida Senate & House of Representatives

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LEGISLATIVE SUPPLEMENT "B" - SESSION LAW ABSTRACT

Sess. Law # 85-213	Sec. # 66	LOF cite
Prime Bill # 115-3	Comp./Sim. Bills	HB 196 HB 901
JLHC Hist. Cites	Senate House	Comms. of Ref. Senate House
		Judi Civ, Judi Crim (in ...) Gov Exs (Subcommittee) Gov Exs

COMMITTEE RECORDS

H/S	Committee	Year	Record Series: Folder title, etc.	Loc. Cite	✓
H	Crim Just	1985	Bill files: HB 928	19/1436	✓
"	" "	"	" " HB 1023	"	✓
"	Gov Exs	"	" " HB 1196	19/1457	✓
S	Judi Civ	1985	Bill files: SB 259	18/1552	✓
"	" "	"	" " SB 455	18/1553	✓
"	" "	"	" " SB 557	"	✓
"	" "	"	" " SB 571	"	✓
"	Judi Crim	"	" " SB 557 and SB 591	18/1518	✓
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Senate/House Journals

Page #	?	Date	Page #	?	Date

Committee/Floor Tapes

H/S	c/f	Committee/subcommittee name	Date	#	Location Cite

Other Documentation

Record Series Title, folder title, etc.	Location Cite

By Representative Titone

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This publication was produced at an average cost of 1.5 cents per single page in compliance with the Rules and for the information of members of the Legislature and the public.

A bill to be entitled
An act relating to indigent defendants in
criminal trials; amending s. 914.06, F.S.;
requiring payment by the county for the
services of expert witnesses required by an
indigent defendant in a criminal case; amending
s. 914.11, F.S.; requiring payment of the
defendant's cost of procuring the subpoena of
witnesses and cost of copies of certain
depositions and transcripts; authorizing
payment of travel expenses for such witnesses
under certain circumstances; amending s.
939.07, F.S.; allowing such defendants to
subpoena witnesses without a court
determination of necessity; removing certain
limitations on the right of a defendant to
summon witnesses; providing an effective date.

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

Section 1. Section 914.06, Florida Statutes, is
amended to read:

914.06 Compensation of expert witnesses in criminal
felony cases.--In a criminal felony case ~~when~~~~-on-motion-of~~
the state or an indigent defendant requires~~-the-court-may~~
require the services attendance of an expert witness whose
opinion is relevant to the issues of the case, ~~the~~ court
shall award reasonable compensation to the expert witness that
shall be taxed and paid by the county as costs in the same
manner as other costs.

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1 Section 2. Section 914.11, Florida Statutes, is 1.22
2 amended to read:
3 914.11 Indigent defendants.--If a court decides, on 1.23
4 the basis of an affidavit, that a defendant in a criminal case 1.24
5 preliminary hearing or trial is indigent and unable to pay the 1.25
6 cost of procuring the attendance of witnesses, such defendant 1.26
7 may subpoena the witnesses and that certain witnesses are 1.27
8 necessary to the defense; the court shall order the witnesses 1.28
9 subpoenaed, and the costs, including the cost of the 1.29
10 defendant's copy of all depositions and transcripts which are
11 certified by the defendant's attorney as serving a useful 1.30
12 purpose in the disposition of the case, shall be paid by the 1.31
13 county. When depositions are taken outside the circuit in 1:lus
14 which the case is pending, travel expenses shall be paid by 1.33
15 the county in accordance with s. 112.061 and shall also be
16 taxed as costs. 1.34
17 Section 3. Section 939.07, Florida Statutes, is 1.35
18 amended to read:
19 939.07 Pay of defendant's witnesses.--In all criminal 1.36
20 cases prosecuted in the name of the state in the circuit 1.37
21 courts or county courts in this state where the defendant is 1.38
22 indigent insolvent or discharged, the county shall pay the 1.40
23 legal expenses and costs, as is prescribed for the payment of 1.41
24 costs incurred by the county in the prosecution of such cases, 1.42
25 including the cost of the defendant's copy of all depositions
26 and transcripts which are certified by the defendant's 1.43
27 attorney as serving a useful purpose in the disposition of the
28 case; provided, that there shall not be more than two 1.44
29 witnesses summoned and paid to prove the same fact; and 1.45
30 provided further, that before any witness is subpoenaed on 1.46
31 behalf of a defendant in the circuit or county court an

1 ~~application shall be made to the judge, in writing, on behalf~~ 1.47
2 ~~of the defendant, setting forth the substance of the facts~~ 1.48
3 ~~sought to be proved by the witness or witnesses, making~~ 1.49
4 ~~affidavit that the defendant is insolvent, and if upon such~~
5 ~~showing the judge is satisfied that the witness or witnesses~~ 1.50
6 ~~are necessary for the proper defense of the defendant, he~~ 1.51
7 ~~shall order that subpoena issue, and that the costs as herein~~ 1.52
8 ~~provided shall be paid by the county, and not otherwise.~~ 1.53
9 Section 4. This act shall take effect July 1, 1985 or 1.54
10 upon becoming a law, whichever occurs later. 1.55
11
12
13 *****
14 SENATE SUMMARY
15 Authorizes payment by the county of an expert witness
16 required by an indigent defendant in a criminal case.
17 Permits such defendant to subpoena witnesses and requires
18 the county to pay the costs. Provides for payment of the
19 cost of the defendant's copies of certain depositions and
20 transcripts. Authorizes the payment of travel expense by
21 the county when depositions are taken outside the circuit
22 in which the case is pending.
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FLORIDA LEGISLATURE—REGULAR SESSION—1985
HISTORY OF HOUSE BILLS

H 1023 GENERAL BILL/ENG by Mitchell; Clements and others (Identical CS/S 591, Compare H 443, H 901, CS/S 557, S 622)
State Attorneys, requires counties included within state attorney's judicial circuit to provide certain services to state atty , imposes additional court cost in certain criminal & misdemeanor cases, provides for use of such amounts to fund costs of state atty 's office, public defender's office, & medical examiner's & victim witness programs, requires payment by county of certain expenses of public defender's office, etc. Amends Cha 27, 914, 939 Effective Date 07/01/85

04/05/85 HOUSE Filed, Introduced, referred to Criminal Justice, Appropriations -HJ 96

04/15/85 HOUSE Subreferred to Subcommittee on Crimes and Penalties, On subcommittee agenda—Criminal Justice, 04/17/85, 8 00 am, 314 HOB

04/17/85 HOUSE Subcommittee Recommendation pending ratification by full Committee Favorable

04/25/85 HOUSE On Committee agenda—Criminal Justice, 04/29/85, 3 30 pm, 314 HOB

04/29/85 HOUSE Preliminary Committee Report by Criminal Justice Favorable

05/01/85 HOUSE Comm Report Favorable by Criminal Justice HJ 242 Now in Appropriations

05/09/85 HOUSE Subreferred to Subcommittee on HRS/Criminal Justice, On subcommittee agenda— Appropriations, 05/13/85, 8 30 am, 413C

05/13/85 HOUSE Subcommittee Recommendation pending ratification by full Committee Favorable

05/23/85 HOUSE On Committee agenda—Appropriations, 05/23/85, 1 15 pm, Morris Hall, Preliminary Committee Report by Appropriations Favorable, to Calendar

05/24/85 HOUSE Comm Report Favorable by Appropriations, placed on Calendar -HJ 583

05/29/85 HOUSE Placed on Special Order Calendar, Read second time, Amendments adopted, Read third time, Passed as amended, YEAS 111 NAYS 1 -HJ 847

05/29/85 SENATE In Messages

05/30/85 SENATE Received, Substituted for CS/SB 591, Passed, YEAS 29 NAYS 0 -SJ 922

05/30/85 Ordered enrolled

06/11/85 Signed by Officers and presented to Governor

06/18/85 Approved by Governor, Chapter No 85-213

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By Representative R C Johnson

1 A bill to be entitled
2 An act relating to state attorneys and public
3 defenders; amending ss. 27.54 and 27.34, F.S.;
4 allowing state attorneys and public defenders
5 in certain circuits to provide their own office
6 space and utilities; providing that
7 expenditures for office space and utilities are
8 for a valid public purpose; providing an
9 effective date.

10
11 Be It Enacted by the Legislature of the State of Florida:

12
13 Section 1 Subsection (3) of section 27.54, Florida
14 Statutes, is amended to read:

15 27.54 Expenditures for public defender's office.--

16 (3) The public defenders shall be provided by the
17 counties within their judicial circuits with such office
18 space, utilities, telephone services, and custodial services
19 as may be necessary for the proper and efficient functioning
20 of these offices. The office space and utilities to be
21 provided by the counties shall not be less than the standards
22 for space allotment promulgated by the Department of General
23 Services. The counties shall not provide less of these
24 services than were provided in the previous fiscal year. In
25 those circuits where the public defender has provided all or a
26 substantial portion of these services during 1984, he may
27 continue to do so, and expenditures to secure such services
28 shall be considered as being for a valid public purpose.

29 Section 2. Subsection (2) of section 27.34, Florida
30 Statutes, is amended to read:

31

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1	27.34 Salaries and other related costs of state	1.21
2	attorneys' offices; limitations.--	1.22
3	(2) The state attorney shall be provided by the	1.22
4	counties within their judicial circuits with such office	1.23
5	space, utilities, telephone service, custodial services,	1.24
6	library services, transportation services, and communication	
7	services as may be necessary for the proper and efficient	1.25
8	functioning of these offices. The office space to be provided	1.26
9	by the counties shall not be less than the standards for space	1.27
10	allotment promulgated by the Department of General Services	
11	nor shall these services and office space be less than were	1.28
12	provided in fiscal year 1972-1973. <u>In those circuits where</u>	1.29
13	<u>the state attorney has provided all or a substantial portion</u>	1.30
14	<u>of these services during 1984, he may continue to do so, and</u>	1.31
15	<u>expenditures to secure such services shall be considered as</u>	1.32
16	<u>being for a valid public purpose.</u>	
17	Section 3. This act shall take effect October 1, 1985.	1.33
18		
19		
20		
21	*****	
22	HOUSE SUMMARY	
23	Allows state attorneys and public defenders in certain	
24	circuits to provide their own office space and utilities	
25	if they substantially provided these services in 1984.	
26	Provides that expenditures for these services are for a	
27	valid public purpose.	
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STORAGE NAME: 85-0928 HB

Date: April 16, 1985

Subcommittee: II

Revised: _____

Final: _____

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HOUSE OF REPRESENTATIVES
COMMITTEE ON CRIMINAL JUSTICE
STAFF ANALYSIS

BILL# HB 928 SPONSOR Rep. Ron Johnson

EFFECTIVE DATE October 1, 1985 IDENTICAL/SIMILAR BILLS SB 259

RELATING TO State attorneys and public defenders/office space

OTHER COMMITTEES OF REFERENCE Appropriations

I. SUMMARY:

Present Situation:

Chapter 27 governs duties, conduct and funding of the offices of State Attorney and Public Defender. In Part I (State Attorneys), section 27.34(2), F.S., requires the several counties to furnish necessary office space, utilities, telephones, custodial services, library, transportation, and communication services for the state attorneys. In Part II (Public Defenders), section 27.54(3), F.S., requires the counties to provide office space, utilities, telephone, and custodial services for the public defenders.

Effect of Proposed Changes:

The bill incorporates into the statutes proviso language necessarily inserted in the appropriations implementing bills of the last 2 years. Historically, in certain judicial circuits (among them the Second, Third, and Fourteenth Judicial Circuits) funding for the operations of the appellate offices have been handled by general revenue appropriations. However, 2 years ago the comptroller rejected requests for payment of these services with state funds because of the language of sections 27.34 and 27.54, F.S.

II. ECONOMIC IMPACT:

A. Public:

None apparent.

B. Government:

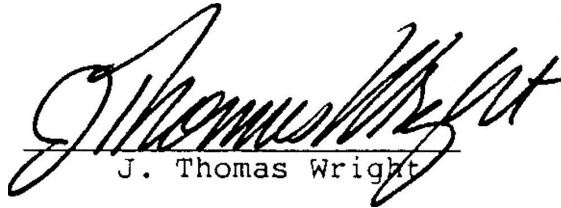
Page
Bill # HB 928
Date: April 16, 1985

None apparent.

III. COMMENTS:

IV. AMENDMENTS:

VI. STAFF DIRECTOR



J. Thomas Wright

Date: April 16, 1985
Subcommittee: I
Revised: _____
Final: _____

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HOUSE OF REPRESENTATIVES
COMMITTEE ON CRIMINAL JUSTICE
STAFF ANALYSIS

BILL# HB 1023 SPONSOR Rep. Mitchell, Clements and others

EFFECTIVE DATE October 1, 1985 IDENTICAL/SIMILAR BILLS SB 591

RELATING TO Funding of the offices of the State Attorney and Public Defender

OTHER COMMITTEES OF REFERENCE Appropriations

I. SUMMARY:

Present Situation:

Currently s. 27.34(2) requires the respective counties within the various judicial circuits to provide the state attorney with office space, utilities, telephone service, custodial services, library services, transportation services, and communication services as may be necessary for the proper and efficient operation of that office.

At present there is no such requirement respecting any other kinds of pretrial expenditures incurred by the state attorney in connection with pretrial activities and trial preparation.

With respect to court costs in criminal proceedings there are provisions for taxing of certain costs. These costs are taxable only for specific expenses of a party in connection with the prosecution or defense in a criminal matter before the courts. There is currently no provision in the law for any add-on court costs.

Effect of Proposed Changes:

The bill would amend section (2) of s. 27.34 and require the counties within a state attorney's circuit to provide him with funds for:

- 1) Pre-trial consultation fees for expert and other potential witnesses consulted before trial;
- 2) Travel expenses incurred in criminal cases in connection with out-of-jurisdiction depositions;

3) Out-of-state travel expenses incurred by assistant state attorneys or by investigators of state attorneys while attempting to locate and interrogate witnesses;

4) Court reporter costs incurred by the state attorney during the course of an investigation and criminal prosecution which costs are included in a judgment rendered by the trial court against the county in which the crime was committed;

5) Post-indictment and post-information deposition costs incurred during the course of a criminal prosecution of an insolvent defendant, when ordered by the court against the county and included in its judgment against the county under s. 939.15;

6) Cost of copying depositions of state witnesses taken by the public defender, court-appointed counsel or privately-retained counsel, if the trial court finds that the copies were necessary for the prosecution or served a useful purpose in the prosecution and includes such cost in its judgment against the county.

Section 2 of the bill creates s. 27.3455 and provides for imposition of additional court costs on any person who pleads guilty or nolo-contendere to or is found guilty of any felony, misdemeanor or criminal traffic offense under the laws of the state or the violation of any municipal or county ordinance which adopts by reference any misdemeanor under state law, as follows:

- a. Felonies-----\$200
- b. Misdemeanors-----\$50
- c. Criminal traffic offenses--\$50

The clerk of the court must collect such additional costs and notify the convicted person's supervising agency upon full payment of fees. The clerk must retain \$3 of the costs for each misdemeanor or criminal traffic case and \$5 for each felony case as a service charge of the clerk's office with the remainder being forwarded to the Treasurer for deposit in the Local Government Criminal Justice Trust Fund to be administered by the Governor after consultation with the chairpersons of the Appropriations Committees of the Senate and House of Representatives.

No political subdivision will be held liable for the payment of the additional cost imposed by this section.

All applicable fees and court costs must be paid in full prior to the granting of any gain time accrued.

Indigent persons must be sentenced by the court to a term of community service to commence at the termination of incarceration. Each hour of community service is credited against the additional cost imposed at a rate equivalent to the minimum wage. The governing body of the county concerned will supervise the community service program.

The priority for the distribution of funds deposited in the trust fund are as follows;

- 1) Quarterly distribution to the governmental unit which provides to the state attorney and to the public defender the services outlined in s. 27.34(2) and s. 27.54(3) except that such funds may not be used to pay for office space, utilities or custodial services;
- 2) Remaining funds on deposit will be distributed to the Medical Examiners Commission within the Department of Law Enforcement for distribution to the boards of county commissioners to supplement the actual cost of operations and services of medical examiners, including the costs associated with the investigation of state prison inmate deaths. Funds distributed for such purposes in any year must not exceed \$1 per capita statewide.
- 3) Counties establishing or having in existence a comprehensive victim-witness program meeting applicable standards are eligible to receive available 50 percent matching trust fund moneys. There is a cap of 25 cents per capita statewide. Funds for the comprehensive victim-witness programs are to be transferred from the trust fund to the Bureau of Crimes Compensation for distribution to the counties.

Distribution of funds to a particular county is limited to the county's pro-rata share based upon the county's collections as a percentage of total collections statewide. No funds may be distributed to a governmental unit until the governmental unit submits documentation substantiating the expenditures.

At the end of each fiscal year unencumbered funds remaining in the trust funds are to be distributed as follows:

- 1) 25% of the unencumbered funds to remain in the trust fund.
- 2) 75% of the unencumbered funds to be transferred to the General Revenue Fund of the State.

II. ECONOMIC IMPACT:

A. Public:

All additional costs would be assessed and collected from defendants in criminal cases.

B. Government:

It is estimated that additional costs for the state will be as follows:

State Attorneys	\$6,000,000
Public Defenders	\$3,000,000
Medical Examiners	<u>\$3,500,000</u>
TOTAL	\$12,500,000

Based on 1982 court statistics, it is also estimated that this bill could generate \$40,809,300, and based upon 1983 statistics, it could generate \$44,942,100.

However, these figures assume that 100% of the collections authorized under this bill are realized. The actual collection rate will probably fall substantially below the 100% level.

This information is based on the number of non-indigent cases disposed of as guilty or where adjudication is withheld from the Florida Supreme Court Summary Reporting System for January 1 thru December 31, 1982, January 1 thru December 31, 1983 and Public Defenders' Workload Reports for the same period.

A non-indigent case load was determined by subtracting the Public Defenders' case load received from the Supreme Court's report of total cases received into the Judicial System. The remainder, representing non-indigent cases, was divided by the total cases received to arrive at a percentage of non-indigent cases. This number was then applied to the total case disposition to arrive at the number of non-indigent cases with guilty dispositions. (Please see attached.)

The local comprehensive victim-witness program, if available, and the General Revenue Fund, stand to potentially benefit from the collection of these fines as well. However, the actual amount to be received is indeterminable at this time.

III. COMMENTS:

Funding of integral aspects of the state attorneys offices would be dependent, under this bill, on the levy and collection of fines. Problems may arise regarding the ability of the various court clerks and state attorneys to actually collect assessed costs.

This bill represents an effort by the legislature to assign more of the costs of administering the criminal justice system to the wrongdoers, the people who are primarily responsible for this enormous drain on the public's resources and treasure.

IV. AMENDMENTS:

V. PREPARED BY _____
Royall P. Terry, Jr.
Special Counsel

VI. STAFF DIRECTOR _____
J. Thomas Wright

PCB 18

007-109-4-5

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1	A bill to be entitled	1:btc
2	An act relating to state expenditures; amending	1.1
3	ss. 25.382, 27.34 and 27.54, F.S.; providing	1.2
4	for the disposition of certain funds	1.3
5	appropriated to the state courts system, the	1.3
6	state attorneys and the public defenders,	1.4
7	respectively; providing an effective date.	1.4
8		
9	Be It Enacted by the Legislature of the State of Florida:	1:enc
10		
11	Section 1. Subsection (4) is added to section 25.382,	1.4
12	Florida Statutes, to read:	1.5
13	25.382 State courts system.--	1.6
14	<u>(4) All funds provided in the General Appropriations</u>	1.7
15	<u>Act for purchases shall be used only for purchases made in</u>	
16	<u>conformance with purchasing rules adopted by the Supreme Court</u>	1.8
17	<u>for the state courts system.</u>	1.9
18	Section 2. Subsection (2) of section 27.34, Florida	1.9
19	Statutes, is amended, and subsection (4) is added to said	1.11
20	section, to read:	
21	27.34 Salaries and other related costs of state	1.12
22	attorneys' offices; limitations.--	1.13
23	(2)(a) The state attorney shall be provided by the	1.13
24	counties within their judicial circuits with such office	1.15
25	space, utilities, telephone service, custodial services,	1.16
26	library services, transportation services, and communication	
27	services as may be necessary for the proper and efficient	1.17
28	functioning of these offices. The office space to be provided	1.18
29	by the counties shall not be less than the standards for space	1.19
30	allotment promulgated by the Department of General Services	
31		

1	nor shall these services and office space be less than were	1.20
2	provided in fiscal year 1972-1973.	1.21
3	<u>(b) State attorneys may expend state funds for the</u>	1:lus
4	<u>services provided in this section that may otherwise be</u>	1.22
5	<u>provided by the respective counties. However, the total state</u>	1.23
6	<u>expenditures for such services by each state attorney shall</u>	
7	<u>not exceed the total amount spent for such services by each</u>	1.27
8	<u>state attorney during the previous fiscal year.</u>	1.28
9	<u>Notwithstanding the provisions of s. 286.001, each state</u>	1.29
10	<u>attorney shall, not later than October 1 of each year, submit</u>	1.31
11	<u>a report to the legislative appropriations committees and the</u>	
12	<u>Executive Office of the Governor indicating the amount of</u>	1.32
13	<u>state funds expended during the previous fiscal year for the</u>	
14	<u>services provided in this section. The Comptroller shall</u>	1.33
15	<u>prescribe the report format.</u>	1.34
16	<u>(4) All funds provided in the General Appropriations</u>	1:lus
17	<u>Act for purchases shall be used only for purchases made in</u>	1.35
18	<u>conformance with purchasing rules adopted by the state</u>	
19	<u>attorneys.</u>	1.36
20	Section 3. Subsection (3) of section 27.54, Florida	1.37
21	Statutes, is amended, and subsection (5) is added to said	1.38
22	section, to read:	
23	27.54 Expenditures for public defender's office.--	1.40
24	(3)(a) The public defenders shall be provided by the	1.40
25	counties within their judicial circuits with such office	1.42
26	space, utilities, telephone services, and custodial services	1.43
27	as may be necessary for the proper and efficient functioning	1.44
28	of these offices. The office space and utilities to be	1.45
29	provided by the counties shall not be less than the standards	1.46
30	for space allotment promulgated by the Department of General	1.47
31		

1	Services. The counties shall not provide less of these	1.49
2	services than were provided in the previous fiscal year.	
3	<u>(b) Public defenders may expend state funds for the</u>	1:lus
4	<u>services provided in this section that may otherwise be</u>	1.51
5	<u>provided by the respective counties. However, the total state</u>	1.53
6	<u>expenditures for such services by each public defender shall</u>	
7	<u>not exceed the total amount spent for such services by each</u>	1.55
8	<u>public defender during the previous fiscal year.</u>	1.57
9	<u>Notwithstanding the provisions of s. 286.001, each public</u>	1.58
10	<u>defender shall, not later than October 1 of each year, submit</u>	1.60
11	<u>a report to the legislative appropriations committees and the</u>	
12	<u>Executive Office of the Governor indicating the amount of</u>	1.61
13	<u>state funds expended during the previous fiscal year for the</u>	
14	<u>services provided in this section. The Comptroller shall</u>	1.62
15	<u>prescribe the report format.</u>	1.63
16	<u>(5) All funds provided in the General Appropriations</u>	1:lus
17	<u>Act for purchases shall be used only for purchases made in</u>	1.64
18	<u>conformance with purchasing rules adopted by the public</u>	
19	<u>defenders.</u>	1.65
20	Section 4. This act shall take effect July 1, 1985.	1.65
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1	*****	1:hbs
2	HOUSE SUMMARY	1:hbs
3	Provides that all funds provided in the General	1.66
4	Appropriations Act for purchases shall be used only for	1.67
5	purchases made in conformance with purchasing rules	
6	adopted by the Supreme Court for the state courts system,	1.68
7	state attorneys, and public defenders, respectively.	
8	With respect to state attorneys and public defenders,	1.70
9	provides for the use of state funds in lieu of local	1.71
10	funds. Requires a report to the legislative	1.72
11	appropriations committees and the Executive Office of the	
12	Governor annually on the amount of state funds expended.	1.73
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STORAGE NAME: PCB #18(85)

Date: April 2, 1985

Revised: _____

Final: _____

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HOUSE OF REPRESENTATIVES
COMMITTEE ON GOVERNMENTAL OPERATIONS
STAFF ANALYSIS

BILL# PCB #18 SPONSOR Governmental Operations

EFFECTIVE DATE _____ IDENTICAL/SIMILAR BILLS _____

RELATING TO State Court System Expenditures

OTHER COMMITTEES OF REFERENCE _____

I. SUMMARY:

The bill would require the state court system, state attorneys, and public defenders to promulgate and comply with purchasing rules.

The bill would also authorize state attorneys and public defenders to expend state funds to pay for those items and services provided by counties under sections 27.34 and 27.54, Florida Statutes; the funds would be limited to not more than the total paid by each state attorney in the preceding year. These items would include office space, utilities, telephone, and custodial service. The bill would require annual reporting of those expenditures to the legislative Appropriations Committees and the Executive Office of the Governor (EOG).

The provisions contained in this bill, excluding the one providing for reports to the EOG, were previously contained in either proviso language for the General Appropriations Act or its implementing legislation.

II. ECONOMIC IMPACT:

A. Public:

None

B. Government:

Because this bill is only setting in statutory language authority previously provided in proviso language or implementing legislation for the General Appropriations bill, there is no new cost associated with the authority given.

Page 2
PCB #18
Date: April 2, 1985

III. COMMENTS:

This bill was requested by the EOG.

IV. AMENDMENTS:

None

V. PREPARED BY Monica Lasseter

VI. STAFF DIRECTOR Jack C. Overstreet

BI

Date: April 2, 1985
Revised: April 10, 1985
Final: _____

COPY

HOUSE OF REPRESENTATIVES
COMMITTEE ON GOVERNMENTAL OPERATIONS
STAFF ANALYSIS

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BILL# HB 1196 SPONSOR Governmental Operations
EFFECTIVE DATE July 1, 1985 IDENTICAL/SIMILAR BILLS _____
RELATING TO State Court System Expenditures
OTHER COMMITTEES OF REFERENCE Appropriations

I. SUMMARY:

The bill would require the state court system, state attorneys, and public defenders to promulgate and comply with purchasing rules.

The bill would also authorize state attorneys and public defenders to expend state funds to pay for those items and services provided by counties under sections 27.34 and 27.54, Florida Statutes; the funds would be limited to not more than the total paid by each state attorney in the preceeding year. These items would include office space, utilities, telephone, and custodial service. The bill would require annual reporting of those expenditures to the legislative Appropriations Committees and the Executive Office of the Governor (EOG).

The provisions contained in this bill, excluding the one providing for reports to the EOG, were previously contained in either proviso language for the General Appropriations Act or its implementing legislation.

II. ECONOMIC IMPACT:

A. Public:

None

B. Government:

Because this bill is only setting in statutory language authority previously provided in proviso language or implementing legislation for the General Appropriations bill, there is no new cost associated with the authority given.

Page 2
HB 1196
April 10, 1985

III. COMMENTS:

This bill was requested by the EOG.

IV. AMENDMENTS:

None

V. PREPARED BY Monica Lasseter

VI. STAFF DIRECTOR Jack C. Overstreet

Date: April 2, 1985
Revised: April 10, 1985
Final: June 6, 1985

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BILL# HB 1196 SPONSOR Governmental Operations
EFFECTIVE DATE July 1, 1985 IDENTICAL/SIMILAR BILLS _____
RELATING TO State Court System Expenditures
OTHER COMMITTEES OF REFERENCE Appropriations

I. SUMMARY:

The bill would require the state court system, state attorneys, and public defenders to promulgate and comply with purchasing rules.

The bill would also authorize state attorneys and public defenders to expend state funds to pay for those items and services provided by counties under sections 27.34 and 27.54, Florida Statutes; the funds would be limited to not more than the total paid by each state attorney in the preceding year. These items would include office space, utilities, telephone, and custodial service. The bill would require annual reporting of those expenditures to the legislative Appropriations Committees and the Executive Office of the Governor (EOG).

The provisions contained in this bill, excluding the one providing for reports to the EOG, were previously contained in either proviso language for the General Appropriations Act or its implementing legislation.

II. ECONOMIC IMPACT:

A. Public:

None

B. Government:

Because this bill is only setting in statutory language authority previously provided in proviso language or implementing legislation for the General Appropriations bill, there is no new cost associated with the authority given.

III. COMMENTS:

This bill was requested by the EOG.

IV. AMENDMENTS:

None

V. FINAL ACTION:

HB 1196 passed the House, but died in the Senate Judiciary Civil Committee. The substance of HB 1196 was again included with the general appropriations act but was not put in statutory law.

VI. PREPARED BY Monica Lasseter *nal*

VII. STAFF DIRECTOR Jack C. Overstreet *J*

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5-470-85

SB 259
GRANT

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Series 18 Carton 1552

1 A bill to be entitled
2 An act relating to state attorneys and public
3 defenders; amending ss. 27.54, 27.34, F.S.;
4 allowing state attorneys and public defenders
5 in certain circuits to provide their own office
6 space and utilities; providing that
7 expenditures for office space and utilities are
8 for a valid public purpose; providing an
9 effective date.

10

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

12

13 Section 1. Subsection (3) of section 27.54, Florida
14 Statutes, is amended to read:

15 27.54 Expenditures for public defender's office.--

16 (3) The public defenders shall be provided by the
17 counties within their judicial circuits with such office
18 space, utilities, telephone services, and custodial services
19 as may be necessary for the proper and efficient functioning
20 of these offices. The office space and utilities to be
21 provided by the counties shall not be less than the standards
22 for space allotment promulgated by the Department of General
23 Services. The counties shall not provide less of these
24 services than were provided in the previous fiscal year. In
25 those circuits where the public defender has provided all or a
26 substantial portion of these services during the 1984-1985
27 fiscal year, he may continue to do so, and expenditures to
28 secure such services shall be considered as being for a valid
29 public purpose.

30 Section 2. Subsection (2) of section 27.34, Florida
31 Statutes, is amended to read:

1 27.34 Salaries and other related costs of state
2 attorneys' offices; limitations.--
3 (2) The state attorney shall be provided by the
4 counties within their judicial circuits with such office
5 space, utilities, telephone service, custodial services,
6 library services, transportation services, and communication
7 services as may be necessary for the proper and efficient
8 functioning of these offices. The office space to be provided
9 by the counties shall not be less than the standards for space
10 allotment promulgated by the Department of General Services
11 nor shall these services and office space be less than were
12 provided in fiscal year 1972-1973. In those circuits where
13 the state attorney has provided all or a substantial portion
14 of these services during the 1984-1985 fiscal year, he may
15 continue to do so, and expenditures to secure such services
16 shall be considered as being for a valid public purpose.

17 Section 3. This act shall take effect October 1, 1985.
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SENATE SUMMARY

Allows state attorneys and public defenders in certain circuits to provide their own office space and utilities if they substantially provided these services during the 1984-1985 fiscal year. Provides that expenditures for these services are for a valid public purpose.

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GENERAL BILL by Grant

State Attorneys & Public Defenders; allows state attorneys & public defenders in certain circuits to provide their own office space & utilities; provides that expenditures for office space & utilities are for valid public purpose.

Amends 27.54,.34. EFFECTIVE DATE: 10/01/85.

02/26/85 S Prefiled

03/13/85 S Referred to Judiciary-Civil; Appropriations

ORIGINAL SENATE BILL No. 259

5-470-15

A BILL relating to
(Brief statement of subject)

state attorneys and public defenders;

by Senator *Bill Grant* of the 5th District
by the Committee on

Chairman's signature

Vertical line for signature

SENATE ACTION

Read 1st Time APR 2 1955
Referred to Committees on

JUDICIARY-CIVIL
Fav Unfav With Amend Com Sub
APPROPRIATIONS
Fav Unfav With Amend Com Sub
Fav Unfav With Amend Com Sub

Read 2nd Time
Read 3rd Time
and

Secretary of Senate

- Immediately Certified to House
- Laid on Table
- Motion to Reconsider by Senator

HOUSE ACTION

Read 1st Time
Referred to Committees on

Fav Unfav With Amend Com Sub
Fav Unfav With Amend Com Sub
Fav Unfav With Amend Com Sub

Read 2nd Time
Read 3rd Time
and

Clerk House of Representa...

- Immediately Certified to Senate
- Laid on Table under Rule
- Motion to Reconsider pending

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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Tallahassee, FL 32399-0259
SERIES 18 Carton 1582

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Skuthan Jy</u>	<u>Lester DL</u>	1. <u>JCI</u>	<u>Fav</u>
2. _____	_____	2. <u>AP</u>	_____
3. _____	_____	3. _____	_____

SUBJECT: State Attorneys & Public Defenders

BILL NO. AND SPONSOR: SB 259 by Senator Grant

I. SUMMARY:

A. Present Situation:

Section 27.54(3), F.S., provides that the office space, utilities, telephone services, and custodial services necessary for the proper functioning of a public defender's office shall be provided by the counties within that judicial circuit.

Section 27.34(2), F.S., contains a comparable provision regarding office space, etc., for state attorneys. This section further requires the counties to provide state attorneys with necessary library services, transportation services, and communication services.

The office space provided for both the state attorney's office and the public defender's office must meet the standards for space allotment promulgated by the Department of General Services.

B. Effect of Proposed Changes:

The bill provides that in those circuits where the public defender or state attorney provided all or a substantial portion of these services during the 1984-1985 fiscal year, he may continue to do so, and the expenditures to secure such services will be considered a valid public purpose for the appropriation of state funds.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

State funds will continue to be expended to provide for services which would otherwise have to be paid for by the counties.

III. COMMENTS:

Despite the statutory requirements, the offices of the state attorneys and public defenders in some judicial circuits have been providing a portion of their own office space and services. These offices have experienced difficulty in acquiring funds to cover the costs of these services from the counties within their circuit. This situation necessitates that state funds be expended to cover costs which under the current statute should be incurred by the counties.

REVISED: _____

BILL NO. SB 259

DATE: April 3, 1985

Page 2

A similar bill, SB 391, was reported favorably by the Senate Judiciary-Civil Committee last year.

IV. AMENDMENTS:

None.

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<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>E. Davis</u>	<u>Liepshutz</u>	1. <u>JCR</u>	<u>Fav/2</u>
2. <u>Christensen</u>	<u>Lester</u>	2. <u>JCI</u>	<u>Fav/CS</u>
3. _____	_____	3. <u>AP</u>	_____

Carton 1553

SUBJECT:

Indigent Defendants

BILL NO. AND SPONSOR:

CS/SB 557 by
Judiciary-Civil Committee
& Senator Weinstein

I. SUMMARY:

A. Present Situation:

Subsection (3) of s. 27.54, F.S., requires the various counties to provide their public defender with office space, utilities, and the following services: telephone and custodial. A county is prohibited from providing less of these services than were provided in the previous fiscal year.

Section 914.06, F.S., provides that, in a felony case, the court may require the attendance of an expert witness on motion of the state or an indigent defendant. The expert witness shall be awarded reasonable compensation to be taxed as costs.

Section 914.11, F.S., provides that a court, after deciding on the basis of an affidavit that a defendant in a preliminary hearing or trial is indigent and unable to pay for procuring necessary witnesses, shall subpoena such witnesses, and that the witness costs shall be paid by the county.

Section 939.07, F.S., provides that the county shall pay prescribed costs incurred in a state prosecution of a criminal case against an insolvent or discharged defendant. Among other things, it provides that no more than two witnesses shall be summoned to prove the same fact.

E. Effect of Proposed Changes:

A paragraph is added to s. 27.54(3), F.S., to require the counties to provide the public defender's office with the following: pretrial consultation fees for expert or other potential witnesses; travel expenses incurred in criminal cases by out-of-jurisdiction depositions and by out-of-state witness location and interrogation; court reporter costs incurred by the public defender included in a judgment against the county; certain deposition costs incurred by the public defender during the prosecution of an insolvent defendant if taxed against the county; and costs for copying certain other depositions.

Section 914.06, F.S., is amended to provide that when the state or an indigent defendant requires the services of an expert witness in a criminal case, the court shall award reasonable compensation to the expert witness to be taxed and paid by the county as costs.

Section 914.11, F.S., is amended to provide that if a court decides on the basis of an affidavit that a defendant in a criminal case is indigent and unable to pay for procuring witnesses, such defendant may subpoena the witnesses and that witness costs, including the defendant's copy of certain

depositions and transcripts, shall be paid by the county. If depositions are taken outside of the circuit, travel expenses shall be paid by the county pursuant to s. 112.061, F.S., (travel expenses for state employees) and taxed as costs.

Section 939.07, F.S., is amended to provide that the county shall pay prescribed costs incurred in a state prosecution of a criminal case against an indigent or discharged defendant, including costs for the defendant's copy of depositions and transcripts certified by his attorney as certifying a useful purpose. The provision prohibiting more than two witnesses to prove the same fact is deleted.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Not ascertainable.

B. Government:

This legislation would increase the services provided to indigent defendants by the counties. As a result, the counties would be required to incur additional expenses to provide such increased services.

III. COMMENTS:

Two Attorney General Opinions, AGO 84-26 and AGO 84-94, were issued in 1984 concerning the entity responsible for specific court costs in criminal cases. In these two opinions, the Attorney General's office stated, in pertinent part, that:

- (1) Counties have no liability for pre-trial consultation fees for expert or other potential witnesses consulted before trial by either the state attorney or the public defender.
- (2) Counties are not liable for travel expenses incurred in criminal cases by public defenders or state attorneys in connection with out-of-jurisdiction depositions; such expenses must be borne by the state attorneys or public defenders as operational expense of their office.

The services provided to the public defender's office by the counties pursuant to the amendatory language in s. 27.54(3), F.S., of this bill are identical to services provided to the state attorney's office by way of amendatory language in SB 591 (1985). In SB 591, a funding source (additional court costs for guilty defendants in criminal cases) is created to reimburse counties for these services to the state attorneys. Moreover, the funding source created in SB 591 also reimburses counties for services provided to the public defender's office pursuant to s. 27.54(3), F.S., although SB 591 does not amend s. 27.54(3), F.S., to provide public defenders with the additional services as set forth in this bill. In any event, this bill contains no funding source to reimburse counties for these additional public defender services. It appears that the effective date of this bill, conditioning its enactment upon the enactment of SB 591 or similar legislation, is meant to insure that this bill will not take effect unless a funding source (i.e., that of SB 591) is already in place.

This bill is substantially similar to HB 901 (1985), which was reported favorably by the House Judiciary Committee, with amendments, and is presently in the House Appropriations Committee.

IV. AMENDMENTS:

None.

See ACS COPY
SB 557 WEINSTEIN
Filed by RESEARCH ARCHIVES
STATE
1983
1994-0250
Don LSS

1 A bill to be entitled
2 An act relating to indigent defendants in
3 criminal trials; amending s. 914.06, F.S.;
4 requiring payment by the county for the
5 services of expert witnesses required by an
6 indigent defendant in a criminal case; amending
7 s. 914.11, F.S.; requiring payment of the
8 defendant's cost of procuring the subpoena of
9 witnesses and cost of copies of certain
10 depositions and transcripts; authorizing
11 payment of travel expenses for such witnesses
12 under certain circumstances; amending s.
13 939.07, F.S.; allowing such defendants to
14 subpoena witnesses without a court
15 determination of necessity; removing certain
16 limitations on the right of a defendant to
17 summon witnesses; providing an effective date.

18
19 Be It Enacted by the Legislature of the State of Florida:
20

21 Section 1. Section 914.06, Florida Statutes, is
22 amended to read:

23 914.06 Compensation of expert witnesses in criminal
24 felony cases.--In a criminal felony case when~~on motion of~~
25 the state or an indigent defendant requires~~the court may~~
26 require the services attendance of an expert witness whose
27 opinion is relevant to the issues of the case, the court
28 shall award reasonable compensation to the expert witness that
29 shall be taxed and paid by the county as costs in the same
30 manner as other costs.
31

1 Section 2. Section 914.11, Florida Statutes, is
2 amended to read:

3 914.11 Indigent defendants.--If a court decides, on
4 the basis of an affidavit, that a defendant in a criminal case
5 ~~preliminary-hearing-or-trial~~ is indigent and unable to pay the
6 cost of procuring the attendance of witnesses, such defendant
7 ~~may subpoena the witnesses and-that-certain-witnesses-are~~
8 ~~necessary-to-the-defense,-the-court-shall-order-the-witnesses~~
9 ~~subpoenaed,~~ and the costs, including the cost of the
10 defendant's copy of all depositions and transcripts which are
11 certified by the defendant's attorney as serving a useful
12 purpose in the disposition of the case, shall be paid by the
13 county. When depositions are taken outside the circuit in
14 which the case is pending, travel expenses shall be paid by
15 the county in accordance with s. 112.061 and shall also be
16 taxed as costs.

17 Section 3. Section 939.07, Florida Statutes, is
18 amended to read:

19 939.07 Pay of defendant's witnesses.--In all criminal
20 cases prosecuted in the name of the state in the circuit
21 courts or county courts in this state where the defendant is
22 indigent insolvent or discharged, the county shall pay the
23 legal expenses and costs, as is prescribed for the payment of
24 costs incurred by the county in the prosecution of such cases,
25 including the cost of the defendant's copy of all depositions
26 and transcripts which are certified by the defendant's
27 attorney as serving a useful purpose in the disposition of the
28 case.; ~~provided;~~ ~~that there shall not be more than two~~
29 ~~witnesses summoned and paid to prove the same fact;~~ ~~and~~
30 ~~provided further;~~ ~~that before any witness is subpoenaed on~~
31 ~~behalf of a defendant in the circuit or county court an~~

1 ~~application shall be made to the judge, in writing, on behalf~~
2 ~~of the defendant, setting forth the substance of the facts~~
3 ~~sought to be proved by the witness or witnesses, making~~
4 ~~affidavit that the defendant is insolvent, and if upon such~~
5 ~~showing the judge is satisfied that the witness or witnesses~~
6 ~~are necessary for the proper defense of the defendant, he~~
7 ~~shall order that subpoena issue, and that the costs as herein~~
8 ~~provided shall be paid by the county, and not otherwise.~~

9 Section 4. This act shall take effect July 1, 1985 or
10 upon becoming a law, whichever occurs later.

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SENATE SUMMARY

Authorizes payment by the county of an expert witness required by an indigent defendant in a criminal case. Permits such defendant to subpoena witnesses and requires the county to pay the costs. Provides for payment of the cost of the defendant's copies of certain depositions and transcripts. Authorizes the payment of travel expense by the county when depositions are taken outside the circuit in which the case is pending.

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1 A bill to be entitled
2 An act relating to indigent defendants in
3 criminal trials; amending s. 27.54, F.S.;
4 requiring a county to pay certain costs of the
5 public defender; amending s. 914.06, F.S.;
6 requiring payment by the county for the
7 services of expert witnesses required by an
8 indigent defendant in a criminal case; amending
9 s. 914.11, F.S.; requiring payment of the
10 defendant's cost of procuring the subpoena of
11 witnesses and cost of copies of certain
12 depositions and transcripts; authorizing
13 payment of travel expenses for such witnesses
14 under certain circumstances; amending s.
15 939.07, F.S.; requiring payment of the
16 defendant's cost of copies of certain
17 depositions and transcripts; removing certain
18 limitations on the right of a defendant to
19 summon witnesses; providing an effective date.
20

21 Be It Enacted by the Legislature of the State of Florida:
22

23 Section 1. Subsection (3) of section 27.54, Florida
24 Statutes, is amended to read:

25 27.54 Expenditures for public defender's office.--

26 (3)(a) The public defenders shall be provided by the
27 counties within their judicial circuits with such office
28 space, utilities, telephone services, and custodial services
29 as may be necessary for the proper and efficient functioning
30 of these offices. The office space and utilities to be
31 provided by the counties shall not be less than the standards

1 | for space allotment promulgated by the Department of General
 2 | Services. The counties shall not provide less of these
 3 | services than were provided in the previous fiscal year.

4 | (b) The public defender's office shall also be
 5 | provided by the counties within their judicial circuits with
 6 | pretrial consultation fees for expert or other potential
 7 | witnesses consulted before trial by the public defender;
 8 | travel expenses incurred in criminal cases by a public
 9 | defender in connection with out-of-jurisdiction depositions;
 10 | out-of-state travel expenses incurred by public defenders or
 11 | by investigators of public defenders while attempting to
 12 | locate and interrogate witnesses for the public defender in
 13 | the defense of a criminal case; court reporter costs incurred
 14 | by the public defender during the course of an investigation
 15 | and criminal prosecution which costs are included in a
 16 | judgment rendered by the trial court against the county in
 17 | which the crime was committed; post-indictment and post-
 18 | information deposition costs incurred by the public defender
 19 | during the course of a criminal prosecution of an indigent
 20 | defendant, when taxed by the court against the county and
 21 | included in its judgment against the county under s. 939.15;
 22 | and the cost of copying depositions of defense witnesses taken
 23 | by the state attorney if the trial court finds that the copies
 24 | were necessary for the defense or served a useful purpose in
 25 | the disposition of the case and includes such cost in its
 26 | judgment against the county.

27 | Section 2. Section 914.06, Florida Statutes, is
 28 | amended to read:

29 | 914.06 Compensation of expert witnesses in criminal
 30 | felony cases.--In a criminal felony case when, on motion of
 31 | the state or an indigent defendant requires, the court may

1 require the services attendance of an expert witness whose
2 opinion is relevant to the issues of the case, the court
3 shall award reasonable compensation to the expert witness that
4 shall be taxed and paid by the county as costs in the same
5 manner as other costs.

6 Section 3. Section 914.11, Florida Statutes, is
7 amended to read:

8 914.11 Indigent defendants.--If a court decides, on
9 the basis of an affidavit, that a defendant in a criminal case
10 ~~preliminary-hearing-or-trial~~ is indigent and unable to pay the
11 cost of procuring the attendance of witnesses, such defendant
12 ~~may subpoena the witnesses and that certain witnesses are~~
13 ~~necessary to the defense, the court shall order the witnesses~~
14 ~~subpoenaed,~~ and the costs, including the cost of the
15 defendant's copy of all depositions and transcripts which are
16 certified by the defendant's attorney as serving a useful
17 purpose in the disposition of the case, shall be paid by the
18 county. When depositions are taken outside the circuit in
19 which the case is pending, travel expenses shall be paid by
20 the county in accordance with s. 112.061 and shall also be
21 taxed as costs.

22 Section 4. Section 939.07, Florida Statutes, is
23 amended to read:

24 939.07 Pay of defendant's witnesses.--In all criminal
25 cases prosecuted in the name of the state in the circuit
26 courts or county courts in this state where the defendant is
27 indigent insolvent or discharged, the county shall pay the
28 legal expenses and costs, as is prescribed for the payment of
29 costs incurred by the county in the prosecution of such cases,
30 including the cost of the defendant's copy of all depositions
31 and transcripts which are certified by the defendant's

1 attorney as serving a useful purpose in the disposition of the
2 case; provided, that ~~there shall not be more than two~~
3 ~~witnesses summoned and paid to prove the same fact; and~~
4 ~~provided further, that~~ before any witness is subpoenaed on
5 behalf of a defendant in the circuit or county court an
6 application shall be made to the judge, in writing, on behalf
7 of the defendant, setting forth the substance of the facts
8 sought to be proved by the witness or witnesses, making
9 affidavit that the defendant is insolvent, and if upon such
10 showing the judge is satisfied that the witness or witnesses
11 are necessary for the proper defense of the defendant, he
12 shall order that subpoena issue, and that the costs as herein
13 provided shall be paid by the county, and not otherwise.

14 Section 5. This act shall take effect on the effective
15 date of Senate Bill 591, House Bill 1023, the committee
16 substitute for either bill, or any other act of the 1985
17 Regular Session of the Legislature which provides for
18 additional court costs for the purpose of additional funding
19 for the offices of state attorney and public defender. If
20 this act becomes a law after such other act has taken effect,
21 this act shall take effect upon becoming a law.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR SENATE BILL 557

A new paragraph is added to s. 27.54(3), F.S., to require counties to provide the public defender's office with the following services: pretrial consultation fees for expert or other potential witnesses; travel expenses incurred in criminal cases by out-of-jurisdiction depositions and by out-of-state witness location and interrogation; court reporter costs incurred by the public defender included in a judgment against the county; certain deposition costs incurred by the public defender during the prosecution of an insolvent defendant if taxed against the county; and costs for copying certain other depositions.

Present language requiring an insolvent defendant to petition the court to subpoena witnesses on the defendant's behalf and requiring court approval of such petition, deleted in the original bill, is reinstated.

The effective date of this bill is made conditional upon the passage of SB 591, HB 1023, the committee substitute for either bill, or other similar legislation.

Committee on Judiciary-Civil

Bob Lester
Staff Director



JIM SMITH
Attorney General
State of Florida

DEPARTMENT OF LEGAL AFFAIRS

OFFICE OF THE ATTORNEY GENERAL
THE CAPITOL

TALLAHASSEE, FLORIDA 32301

March 23, 1984

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INFORMATION COPY

84-26

Mr. Burt L. Saunders
County Attorney
Collier County
Building F
Collier County Courthouse
Naples, Florida 33962

Attention: Bruce Anderson
Assistant County Attorney

Re: COUNTIES--COURT COSTS--responsibility for
court reporter and expert witness costs.
§§939.01, 939.07, and 939.15, F.S.

Dear Mr. Saunders:

This is in response to your request for an opinion on substan-
tially the following questions:

1. WHETHER THE BOARD OF COUNTY COMMISSIONERS
IS OBLIGATED TO PAY COURT REPORTER COSTS IN-
CURRED BY THE STATE ATTORNEY IN THE INVESTI-
GATION OR TRIAL OF CRIMINAL DEFENDANTS?
2. WHETHER THE BOARD OF COUNTY COMMISSIONERS
IS OBLIGATED TO PAY THE FEES AND COSTS OF
EXPERTS AND OTHER POTENTIAL WITNESSES CON-
SULTED PRIOR TO TRIAL BY EITHER THE STATE
ATTORNEY OR THE PUBLIC DEFENDER?

The general rule of law regarding the recovery and allowance of
court costs is that independent of statutory authorization, no
right to or liability for such costs exists. See, *Warren v.*
Capuano, 269 So.2d 380 (4 D.C.A. Fla., 1972); *Lindsey v. Dykes*,
175 So. 792 (Fla. 1937); *Wood v. City of Jacksonville*, 248 So.2d
176 (1 D.C.A. Fla., 1971). See generally, 20 Am.Jur.2d Cost §108.
The word "costs" for purposes of this opinion is defined to include
only those expenses of prosecution allowed by statute that can be
taxed as costs against a person convicted of a crime or those

expenses of the defendant allowed by statute to be taxed as costs. This rule of law has been applied by this office on a number of occasions in determining whether a county has the responsibility for the court costs of indigent defendants. See, e.g., AGO's 74-301 (county responsible for court costs of convicted insolvent defendant, including costs of deposition taken pursuant to Rule 3.220, Fla.R.Crim.P. [1974], expert witness fees and expenses of expert witnesses used at trial, but does not have the responsibility to pay for costs incurred by the State Attorney's Office in preindictment or preinformation investigations not permitted to be assessed as court costs by the statutes and laws of the state); 72-39 (only those expenses of the state attorney and the public defender that are recoverable as "court costs" from the defendant, if convicted and solvent, or from the county if the defendant is discharged or is insolvent, are required to be paid from county funds; the expense of pretrial preliminary hearing or criminal investigation does not ordinarily become a "court cost" and thus is not required to be paid by the county; however, under paragraph [i] of Rule 1.220 [now Rule 3.220(k), Fla.R.Crim.P., the reasonable cost of the operation of the discovery rules is required to be taxed against the county after a defendant is adjudged insolvent); AGO 75-271 (preindictment and preinformation investigation expenses are not the responsibility of the county unless they are assessable as court costs under an applicable statute or rule; cost of discovery pursuant to Rule 3.220, Fla.R.Crim.P., by the state attorney is borne by that office unless the deposition is placed into evidence and becomes a court cost). See generally, 20 C.J.S. Costs §441 (liability of county for costs of the defendant is governed by statute and its liability is limited in accordance with the statutory provisions).

Section 939.01, F.S., provides: "In all cases of conviction for crime the costs of prosecution shall be included and entered up in the judgment rendered against the convicted person." (e.s.) However, §19, Art. I, State Const., provides: "No person charged with crime shall be compelled to pay costs before a judgment of conviction has become final." Section 939.15, F.S., provides the statutory basis for a county's responsibility for court costs:

When the defendant in any criminal case pending in any circuit or county court, a district court of appeal or the Supreme Court of this state has been adjudged insolvent by the circuit judge or the judge of the county court, upon affidavit

and proof as required by s. 924.17 in cases of appeal, or when the defendant is discharged or the judgment reversed, the costs allowed by law shall be paid by the county in which the crime was committed, upon presentation to the county commissioners of a certified copy of the judgment of the court against such county for such costs.

Section 939.07, F.S., in relevant part, provides, that "[i]n all criminal cases prosecuted in the name of the state in the circuit courts or county courts in this state where the defendant is insolvent or discharged, the county shall pay the legal expenses and costs, as is prescribed for the payment of costs incurred by the county in the prosecution of such cases" These statutes operate to excuse convicted and insolvent or discharged defendants from the payment of court costs but provide for the payment of properly assessed costs by the county. See also, §939.06, F.S., which provides that if an acquitted or discharged defendant in a criminal prosecution has "paid any taxable costs in the case, the clerk or judge shall give him a certificate of the payment of such costs, with the items thereof, which, when audited and approved according to law, shall be refunded to him by the county." And see, §939.03, F.S., specifying liability for court costs in capital cases.

A claim against the county for court costs shall be submitted as an itemized bill or statement to the board of county commissioners and "shall not be paid until the board of county commissioners shall have approved it and certified thereon that the same is just, correct and reasonable, and that no unnecessary or illegal item is contained therein." Section 939.08, F.S. Section 142.01, F.S., establishing a fine and forfeiture fund for each county of the state provides that "[s]aid funds shall be paid out only for criminal expenses, fees, and costs, where the crime was committed in the county and the fees and costs are a legal claim against the county[.]" See, e.g., AGO's 79-24 and 76-183. Applying these general principles of law, your questions are specifically answered as follows.

QUESTION ONE

In general, the county is responsible to pay only those court reporter costs that are provided by statute or court rules as taxable court costs assessed against an insolvent or discharged defendant. See generally, AGO 72-39. In AGO 75-271, this office

stated: "The county is required to pay only those expenses incurred in the actual trial proceedings and not expenses incurred in preliminary investigations by the state attorney prior to the finding or filing of an information or indictment charging the commission of a crime." Thus, that opinion concluded that there is no statute or rule of procedure providing that the expense of procuring a copy of a deposition taken pursuant to Rule 3.220, Fla.R.Crim.P., may be taxed as a court cost pursuant to §939.01, F.S., and therefore, the county was not responsible for such expense under §§939.07 and 939.15, F.S. Such expense must be borne by the state attorney and paid out of his operational budget. Cf., §939.14, F.S., which relieves the county of responsibility for certain court costs, provides that a person held to bail or committed to answer a criminal charge in a county or circuit court, "and an information is not filed nor an indictment found against such person, the costs of such committing trial shall not be paid by the county, except the costs for executing the warrant."

No substantive changes have been made in the statutes since that opinion was rendered to alter the conclusion reached therein. See also, AGO 72-39, wherein this office stated that "[t]he expense of a pretrial preliminary hearing or criminal investigation does not ordinarily become a 'court cost' and thus is not required to be paid by the county." The rule of law was summarized in AGO 74-301: "The pretrial expenses of preliminary hearings, criminal investigations, and grand jury hearings that do not become a part of the court costs are payable from funds allocated to the operating expense of the state attorney's office and may not be charged against the county." The one narrow exception for this rule exists when a deposition or transcript of a court reporter is used at the trial of the criminal defendant and placed into evidence thus becoming a taxable court cost under the statutes. See, AGO 75-271 (the cost of discovery pursuant to Rule 3.220, Fla.R.Crim.P., by the state attorney is borne by that office, unless the deposition is placed into evidence and becomes a court cost).


It is therefore my opinion, unless and until judicially or legislatively determined otherwise, that the county is not responsible for court reporter costs incurred by the state attorney in the investigation of a criminal case, unless the deposition or transcript is later placed into evidence at the trial and becomes part of the taxable court costs payable by the county as provided in §939.15, F.S.

QUESTION TWO

Concerning expenses incurred prior to trial for fees and costs of experts and other potential witnesses, the rule relating to liability for costs is equally applicable. Unless some statute or provision of law places responsibility on the county for such costs, the county is not liable for these costs. I am not aware of, nor has my attention been brought to, any statute or rule of court that makes the fees and costs of experts and other potential witnesses consulted prior to trial by either the state attorney or the public defender taxable court costs. Thus, the county is not responsible for such pre-trial expert and other witness fees and costs pursuant to §§939.07 and 939.15.

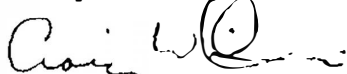
In summary, it is therefore my opinion, unless and until judicially or legislatively determined otherwise, that the county is not responsible for court reporter costs incurred by the state attorney in the investigation of a criminal case, unless the transcript of the deposition is later placed into evidence at the trial and becomes part of the taxable court costs payable by the county as provided in §939.15, F.S.; the county is not responsible for fees and costs incurred prior to trial by either the state attorney or public defender for consulting experts and other potential witnesses.

Sincerely



JIM SMITH
ATTORNEY GENERAL

Prepared by: ---



Craig Willis
Assistant Attorney General

JS/CW/bw



JIM SMITH
Attorney General
State of Florida

DEPARTMENT OF LEGAL AFFAIRS
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84-94

Mr. Burt L. Saunders
County Attorney
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Collier County Courthouse
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Attention: Bruce Anderson
Assistant County Attorney

Re: COUNTIES--STATE ATTORNEYS--PUBLIC DEFENDERS--
COSTS- counties' responsibility for payment of
legal costs and expenses in criminal prosecu-
tions. §§27.33, 27.34, 27.54, 92.142, 92.231,
914.06, 939.01, 939.06, 939.07, 939.15, F.S.;
§9, Art. XVI, 1885 Const.

Dear Mr. Saunders:

Subsequent to the issuance of AGO 84-26, this office has received numerous inquiries from various State Attorneys and Public Defenders concerning the counties' liability for "costs" incurred in the course of criminal prosecutions. With your concurrence, I am in the public interest, issuing this supplemental opinion, which addresses specific questions that have been posed by various public officials. To the extent there is any conflict with that opinion or with any earlier opinion of this office (particularly with respect to issues presented by the specific questions discussed herein), this opinion represents this office's interpretation of current statutory and decisional law and supersedes all other earlier opinions of this office. Specific questions which have been posed are as follows:

1. WHETHER THE BOARD OF COUNTY COMMISSIONERS IS OBLIGATED TO PAY THE FEES AND COSTS OF EXPERTS AND OTHER POTENTIAL WITNESSES CONSULTED PRIOR TO TRIAL BY EITHER THE STATE ATTORNEY OR THE PUBLIC DEFENDER?

2. WHETHER THE BOARD OF COUNTY COMMISSIONERS IS OBLIGATED TO PAY COURT REPORTER COSTS INCURRED BY THE STATE ATTORNEY IN THE INVESTIGATION OR TRIAL OF CRIMINAL DEFENDANTS?

3. IS THE BOARD OF COUNTY COMMISSIONERS OBLIGATED TO PAY FOR THE COSTS OF A DEPOSITION BY THE STATE ATTORNEY OF A DEFENSE WITNESS IN CRIMINAL CASES WHEN SAID DEPOSITION IS TAKEN AFTER THE FILING OF AN INFORMATION OR INDICTMENT?

4. IS THE BOARD OF COUNTY COMMISSIONERS OBLIGATED TO PAY FOR THE COST OF THE STATE ATTORNEY OBTAINING A COPY OF A DEPOSITION OF A STATE WITNESS TAKEN BY THE PUBLIC DEFENDER, COURT APPOINTED COUNSEL, OR PRIVATELY RETAINED COUNSEL IN CRIMINAL CASES AFTER THE FILING OF AN INFORMATION OR INDICTMENT?

5. WHEN TRAVEL EXPENSES ARE INCURRED BY A PUBLIC DEFENDER OR STATE ATTORNEY IN CONNECTION WITH OUT-OF-JURISDICTION DEPOSITIONS PURSUANT TO FLA.R.CR.P. 3.220(k), MUST THE COUNTY PAY SUCH TRAVEL EXPENSES, OR MUST SUCH COSTS BE TAXED AGAINST THE PUBLIC DEFENDER'S OR STATE ATTORNEY'S RESPECTIVE OPERATING BUDGETS?

6. IF AFTER THE FILING OF AN INFORMATION, A STATE ATTORNEY'S INVESTIGATOR TRAVELS OUT OF THE STATE IN ORDER TO LOCATE A CERTAIN WITNESS NEEDED IN THE PROSECUTION OF THAT CASE AND INTERROGATES THE WITNESS, SHOULD THE TRAVEL EXPENSES OF THE STATE ATTORNEY'S INVESTIGATOR BE PAID PURSUANT TO THE STATE BUDGET AS SET OUT IN FLORIDA STATUTE 27.33(d) OR WOULD THE TRAVEL EXPENSES BE SUBJECT TO PAYMENT BY THE COUNTY?

As stated in AGO 84-26, the general rule of law and the rule recognized in Florida regarding the recovery and allowance of costs incurred in criminal cases is that no right to or liability for such costs exists independent of statutory authorization.

Citing, Warren v. Capuano, 269 So.2d 380 (4 D.C.A. Fla., 1972), aff'd., 282 So.2d 873 (Fla. 1973); Lindsey v. Dykes, 175 So. 792 (Fla. 1937); Wood v. City of Jacksonville, 248 So.2d 176 (1 D.C.A. Fla., 1971). See generally, 20 Am.Jur.2d Costs §100; 20 C.J.S. Costs §§435, 437b., 441, 453, 454, and 456. The courts of this state have applied this general, prevailing rule when a determination of the costs for which a county is liable in criminal prosecutions must be made. See, e.g., Doran v. State, 296 So.2d 86 (2 D.C.A. Fla., 1974); Benitez v. State, 350 So.2d 1100 (3 D.C.A. Fla., 1977), cert. denied, 359 So.2d 1211 (Fla. 1978); Holton v. State, 311 So.2d 711 (3 D.C.A. Fla., 1975). The courts, however, in recent years have supplemented this general rule in the exercise of the judiciary's inherent power in order to implement certain constitutional principles securing to indigent defendants the right to a fair trial under the Sixth Amendment to the United States Constitution. See, e.g., Rose v. Palm Beach County, 361 So.2d 135 at 137 (Fla. 1978) (where fundamental rights are concerned every court has inherent power to do all things reasonably necessary for the administration of justice within the scope of its jurisdiction). This opinion is an effort to provide guidelines to the respective counties in determining their liability for costs and expenses incurred by the Public Defenders and the State Attorneys in the course of criminal prosecutions.

In Doran v. State, supra, the court was faced with the issue of whether an acquitted defendant was entitled to reimbursement, by way of taxing the items as costs against the county, for his pretrial bail bond premium and for the fee charged to tow his automobile off the streets following his arrest. The court concluded that such expenses were not taxable against the county. After setting forth that there is both constitutional authority under §19, Art. I, State Const. (1968 revision) (which provides that no person charged with a crime shall be compelled to pay costs before a judgment of conviction has become final) and statutory authority under §939.06, F.S., for the reimbursement of taxable court costs to an acquitted or discharged defendant, the court stated: "There are many expenses which one may incur because he is charged with a crime. Yet, only those items reasonably within the scope of statutory authority are taxable." Id. at 87. This language has been used by subsequent judicial decisions for the proposition that statutory authority must exist for a county to have responsibility for criminal court costs. See, e.g., Powell v. State, 314 So.2d 788 (2 D.C.A. Fla., 1975); Benitez v. State, supra; Holton v. State, supra; and see for an earlier decision on this

point, *Warren v. Capuano*, supra. However, the courts have made it clear that the judiciary has the power to determine what expenses an acquitted or discharged defendant incurs are taxable court costs within the scope of statutory authority for which the county has liability. See, e.g., *Doran v. State*, supra at 87: (determination of which costs may be taxed has been left to the courts); *Lunetto v. State*, 274 So.2d 251, 252 (2 D.C.A. Fla., 1973) (decision as to what costs should be taxed should be made by the trial court). See also, *Holton v. State*, supra at 711; and compare discussion in *Orange County v. Davis*, 414 So.2d 278 at 280 (5 D.C.A. Fla., 1983). The statute relied upon by the courts for determining the county is responsible for refunding the costs incurred by acquitted or discharged defendants in criminal prosecutions is §939.06, F.S., which in pertinent part, provides: "No defendant in a criminal prosecution who is acquitted or discharged shall be liable for any costs or fees of the court or any ministerial office, or for any charge of subsistence while detained in custody." This statute goes on to provide that if a defendant "shall have paid any taxable costs in the case, the clerk or judge shall give him a certificate of the payment of such costs, with the items thereof, which, when audited and approved according to law, shall be refunded to him by the county." In *Warren v. Capuano*, supra, the court held that costs of private process and reimbursement for mileage and per diem for out-of-state witness were taxable costs under §939.06, F.S., and §142.09, F.S. The Warren decision further determined that not only is there authority for the payment of costs in the aforecited statutes but it is also contained in §19, Art. I, of the Revised Constitution of 1968. After quoting §9, Art. XVI, of the Constitution of 1885 and stating that such constitutional provision was preserved by §10, Art. X, Constitution of 1968, as a statute, the court stated: "The courts have historically followed the direction of the constitution and the statutes and have held that the defendants in criminal cases who are acquitted or discharged be allowed cost, and that the cost should be paid by the county." Id. at 382. The Warren decision was affirmed by the Florida Supreme Court, 282 So.2d 873, which, at 874, refers to and discusses the opinion of the district court and its interpretation of the above cited provisions of the 1968 and 1885 Constitutions and the application of §§939.06, 939.07 and 939.08, F.S., §§142.09, 48.021, and Ch. 942, F.S., to that case, and sets forth the above quoted statement of the district court. The First District Court of Appeal in *Dinauer v. State*, 317 So.2d 792 (1 D.C.A. Fla., 1975), a case in which the state entered a nolle prosequi, ruled that the defendant's deposition costs (court reporter's fee for taking 3 depositions--per diem--\$25.00,

original--\$68.75) were properly taxable against the county, but that the defendant's claim for travel expense from his home in Milwaukee, Wisconsin to attend the trial, his hotel expenses and meals for three days and nights and bail bond expense were not "proper taxable costs."

In *Powell v. State*, supra, the Second District relying on its earlier decision in *Doran v. State*, supra, and §939.06, F.S. concluded that "[s]ince under §914.06 the county could tax the reasonable compensation of its expert witnesses as costs against a convicted defendant, we think that an acquitted, non-indigent defendant may do likewise against the county." (e.s.) On a Petition for Rehearing the court further concluded: "If upon remand the trial court finds that [depositions of expert and other witnesses] served a useful purpose in appellant's defense, the costs attendant thereto shall be allowed appellant as taxable costs." (e.s.) Id. at 789. This language is the source of the so-called "useful purpose" test alluded to in several of the earlier opinions of this office. It should be noted that in *Powell v. State*, supra, the defendant was acquitted and therefore had statutory authority pursuant to §939.06 and §914.06, F.S., to have his "taxable costs" refunded by the county. The "useful purpose" test was set forth as a condition to aid the trial court in making a determination whether the deposition costs in question were proper (served a useful purpose in the defense of the charges) "taxable costs" under §939.06, F.S. While this office in earlier opinions had concluded that in order for the costs of taking depositions to be taxed such depositions had to be placed into evidence (see, e.g., AGO's 75-271, 72-39), the Powell decision would allow such costs where they served a "useful purpose." But the decision did not announce any new rule applicable to all costs and expenses and thus would be limited to deposition costs. This case, therefore, would not appear to depart from the general rule of law regarding the recovery and allowance of legal costs and expenses in criminal cases or the counties' liability therefor or establish any new rule with regard to a county's liability for such costs and expenses, notwithstanding any earlier opinions of this office to the contrary.

The law is more complicated with regard to the costs, incurred by either the Public Defender for and on behalf of insolvent defendants or the State Attorney for the state (or any other public officer) in the prosecution of a convicted indigent defendant, for which the counties are responsible. Section 939.01, F.S., provides: "In all cases of conviction for crime the costs of

prosecution shall be included and entered up in the judgment rendered against the convicted person." (e.s.) The Florida appellate courts have held in a number of cases that the trial courts are not authorized to assess costs against defendants adjudged to be insolvent. See, e.g., Cox v. State, 334 So.2d 568 (Fla. 1976); Brown v. State, 427 So.2d 271 (2 D.C.A. Fla., 1983); Armstrong v. State, 377 So.2d 205 (2 D.C.A. Fla., 1979). Where the defendant has been adjudged insolvent, the county pursuant to §939.15, F.S., shall bear the responsibility for the costs allowed by law. If the payment of the costs or expenses incurred in the defense or prosecution of an indigent defendant is not the legal responsibility of the county, then such costs and expenses must be borne by the State Attorney or Public Defender as an operating expense of those offices. Applicable to the question of the liability of the county for costs and legal expenses incurred in criminal prosecutions of insolvent defendants, §939.15, F.S., provides:

When the defendant in any criminal case pending in any circuit or county court, a district court of appeal or the Supreme Court of this state has been adjudged insolvent by the circuit judge or the judge of the county court, upon affidavit and proof as required by s. 924.17 in cases of appeal, or when the defendant is discharged or the judgment reversed, the costs allowed by law shall be paid by the county in which the crime was committed, upon presentation to the county commissioners of a certified copy of the judgment of the court against such county for such costs. (e.s.)

This statute and emphasized portion would appear to apply to costs incurred either by the Public Defender for and on behalf of an insolvent defendant or by the State Attorney for the state (or other public officer) but is limited to those "costs allowed by law." Examples of statutes specifically providing for certain types of criminal "costs" and legal expenses to be taxed against the defendant or the county can be found throughout the Florida Statutes. See, e.g., §§29.05, 92.231, 142.09, 914.06, 914.11, 916.11, 939.06, 939.07, 939.15, F.S. Cf., former §9, Art. XVI, Constitution of 1885, preserved and converted to a statute by §10 of Art. XII of the 1968 Revised Constitution.

Complicating this murky state of constitutional, statutory and decisional law is a provision of the 1885 Florida Constitution. Section 9, Art. XVI, 1885 Const., provided in pertinent part: "In all criminal cases prosecuted in the name of the State, when the defendant is insolvent or discharged, the legal costs and expenses, including the fees of officers, shall be paid by the counties where the crime is committed, under such regulations as shall be prescribed by law, and all fines and forfeitures . . . [shall be] applied to such legal costs and expenses." (e.s.) Although this provision was not carried forward by the 1968 Revised Constitution, §10, Art XII, State Const., provides that all provisions of Articles I - IV, VII, and IX - XX of the 1885 Constitution, as amended, which are not inconsistent with the 1968 revision shall become statutes subject to modification or repeal as are other statutes. Section 9, Art. XVI, 1885 Const., has never been republished in the Florida Statutes. See, Tracing Tables, page 313, Vol. 4, F.S. Nor to my knowledge has this provision been modified or repealed by any statute enacted by the Florida Legislature. The courts of this state have recognized that former §9, Art. XVI, 1885 Const., has been preserved as a statute. See, e.g., Benitez v. State, supra; Warren v. Capuano, supra. Therefore, I must presume the continued viability and relevance of these former constitutional provisions to the counties' liability for the legal costs and expenses incurred in the criminal prosecution or defense of an insolvent or discharged defendant.

However, as stated earlier, the courts faced with federal constitutional principles, such as those coming within the parameters of the Sixth Amendment to the United States Constitution which guarantee a fair trial for all criminal defendants, have invoked their inherent power in order to insure that due process, equal protection, and other constitutional considerations do not result in a conviction of a guilty party being overturned because of a failure to provide a fair trial. See, Rose v. Palm Beach County, supra. In Rose v. Palm Beach County, the Florida Supreme Court addressed the issue of whether a trial court has the inherent power to order prepayment of traveling and lodging expenses of witnesses to ensure a fair trial to a criminal defendant in excess of the statutory maximum contained in §90.14, F.S. 1977, now §92.142, F.S., when the witnesses are indigent. The court concluded that the statute was merely declaratory of a guideline pertaining to a matter within the competence of the court to determine. Id. at 139. In a footnote the court quoted Carrigan, Inherent Powers of the Courts 8 (1973). "A statute which attempts to restrict the inherent powers will be broadly

interpreted as laying down reasonable guidelines within which the power operates rather than as a sole or actual source of the power." Id. The court in Rose answered the certified question in the affirmative finding that the expenditure of public funds was required to protect the constitutional rights of the defendant, and subject to the qualification of "clear necessity" for invoking the doctrine of inherent power for expenditures deemed essential to the fair administration of justice. Thus, the county under the circumstances of that case, would be responsible for witness allowance (per diem and mileage) in excess of that set in the statute when so ordered by the trial court.

The Florida Supreme Court, in Shuman v. State, 358 So.2d 1333 (Fla. 1978), was faced with the question of whether the cost for preparation of a transcript necessary for an indigent's appeal from a hearing officer's order of continued involuntary hospitalization in a mental institution, entered pursuant to Ch. 394, F.S., should be taxed against the county in which the hearing is held or against the office of the public defender appointed to represent such indigent as an expense of that office. The indigent petitioners contended that since the right to appeal from an order requiring continued involuntary hospitalization is provided by law to all, this right cannot constitutionally be denied to those unable to pay the cost of the transcript necessary for review. Petitioners further maintained that to hold otherwise would deny indigents equal access to the courts, due process and equal protection of the law in violation of the Florida and the Federal Constitutions. The court accepted petitioners' contention and concluded that "[a] transcript of the hearing provided by Section 394.467(4)(a), Florida Statutes (1975), upon which an order requiring continued involuntary hospitalization is based, is necessary for meaningful appellate review." The court therefore held that the indigent petitioners in that case had a right to a transcript of the commitment proceedings, provided at public expense under both the Florida and the Federal Constitutions. The court at page 1335 stated: "Those whom the state seeks to involuntarily commit to a mental institution are entitled to the protection of our Constitutions, as are those incarcerated in our correctional institutions." The court based its holding on the reasoning in Williams v. Oklahoma City, 395 U.S. 458, 459-460, (1969): "This Court has never held that the States are required to establish avenues of appellate review, but it is now fundamental that, once established, these avenues must be kept free of unreasoned distinctions that can only impede open and equal access to the courts. . . ." The court rejected the contention that Florida Appellate Rule 6.8

addresses indigents seeking appellate review under §394.457(6)(d), F.S. 1975, of an order requiring continued involuntary hospitalization. The court also rejected the proposition that legislative appropriations are provided for these expenses by §27.51(4)(e), F.S. 1975.

That statute provided:

A sum shall be appropriated annually to the public defender of those judicial circuits enumerated in paragraphs (a) - (d) for the employment of attorneys as part-time public defenders, clerical employees, and expenses, including those incurred in cases on appeal. (e.s.)

Section 27.51(4)(e), F.S. 1975.

After citing subsection (2) of §27.54, F.S. 1975, the prohibition against counties and municipalities appropriating or contributing funds to the operation of the offices of the various public defenders, the court succinctly stated:

An examination of Section 27.54 in its entirety reflects that the enactment relates solely to operation expenses of the public defenders' offices, such as for employment of personnel and travel expenses. It is clear, therefore, that subsection (2) of the statute was intended only to prohibit counties from contributing to such operation expenses; it does not proscribe contributions for costs of appeals - those appellate expenditures which are not related to internal operation of the public defender's office. Costs have been defined to include payments to a court reporter for preparation of a record on appeal.
(emphasis supplied by the court)

Id. at 1336-1337.

Thus, in a few words the Florida Supreme Court clearly articulated the dichotomy of responsibility for legal costs and expenses incurred by the various public defenders in the defense of indigent defendants in civil proceedings or criminal

prosecutions. As to criminal prosecutions, if the item in question is determined by the trial court to be taxable as costs, then the county has financial responsibility for its payment or reimbursement, as the case may be; otherwise, the item must be assumed by the public defender incurring the expense, as an operational expense of the public defender's office - an expense which should be properly budgeted and appropriated by the Legislature. The court clearly indicates or implies that it has the authority to assure that an indigent criminal defendant receives a fair trial. While the Supreme Court could not point to any statute or court rule making the county liable for such costs, the court, in effect, invoked its inherent power, later articulated in *Rose v. Palm Beach County*, supra, in determining that the transcript in question was necessary for meaningful appellate review and the indigents had a right thereto, at public expense under State and Federal Constitutions.

Court rules are also applicable to this issue. Rule 3.220, Fla.R.Cr.P., applies to discovery matters in criminal prosecutions. Paragraph (k) of that rule, titled "Costs of Indigents," provides: "After a defendant is adjudged insolvent, the reasonable costs incurred in the operation of these rules shall be taxed as costs against the county." Paragraph (d) provides: "At any time after the filing of the indictment or information the defendant may take the deposition upon oral examination of any person who may have information relevant to the offense charged." The heading or title to paragraph (k) and the language used in paragraph (d) refer only to discovery by the defendant; no statute specifically authorizes the defendant to take discovery depositions or provides for the recovery of the expenses thereof. The committee notes appended to the predecessor Rule 3.220(i), Fla.R.Cr.P. (1967) - which is identical to present Rule 3.220(k) - state that the purpose of the rule (new to the practice at the time of its adoption) is to comply with the trend of federal decisions which held that due process is violated when a person who has the money with which to resist criminal prosecution gains an advantage over the person who is not so endowed. Cf., *Shuman v. State*, supra, at pp. 1335-1336, concerning the discussion as to unreasoned distinctions which effectively deny right of appeal to impoverished defendants being forbidden by the Fourteenth Amendment; *Grissom v. Dade County*, 293 So.2d 59 (Fla. 1974), holding that application of statutes to indigents which requires that a person seeking to adopt a child, where the natural mother's whereabouts are unknown, publish notice of the suit and bear the cost thereof unconstitutionally denies such persons access to the courts in matters where fundamental rights

are involved; *Bell v. State*, 208 So.2d 474 (1 D.C.A. Fla., 1968), which held that in order to provide an indigent defendant convicted of a crime with the same opportunity of an effective appellate review as that which is provided a solvent defendant able to pay the cost of reporting and transcribing counsel's closing argument to the jury, a stenographic report of such argument must be provided at state expense when timely motion therefor is made. The aforementioned committee notes go on to state: "The committee questioned whether the subsection could be accomplished by a rule of procedure in view of the fact of the substantive nature of its contents but the committee recognized had the subsection not been adopted, there was a likelihood that a constitutional infirmity such as equal protection of the law would be found and either the entire rule with all subsections would be held void, or a confusion in application would result. The committee recognized that a legislative act could well be unpopular with the Legislature and not enacted, and recommended the inclusion in the rule." See, *In re Florida Rules of Criminal Procedure*, 196 So.2d 124 at p. 155 (Fla. 1967). Paragraph (d) of Rule 3.220 provides for discovery depositions by the defendant after filing of the indictment or information, and paragraph (k) provides for "costs of indigents" and assures indigent defendants equal protection of the law. The State Attorney derives his power to summon and examine witnesses not from this rule but from both the common law and the Florida Statutes. See, *State ex rel. Martin v. Mitchell*, 188 So.2d 684 (4 D.C.A. Fla., 1966), opinion adopted 192 So.2d 281 (Fla. 1966); and, §27.04, F.S. As my predecessor in office stated in an earlier opinion, the intent in promulgating Rule 3.220(k) was to eliminate the disparity among defendants. See AGO 75-271. The committee notes appended to Rule 3.220(d) state that the discovery rule was a compromise between the philosophy that the defendant should be allowed unlimited discovery depositions and the philosophy that he should not be allowed any discovery depositions at all. See, *In re Florida Rules of Criminal Procedure*, supra, at 154. Thus, this office is unable to say that this rule places any liability on the county to pay for the costs of copies of depositions obtained by the state attorney in the absence of judicial decisions construing the rule to this effect. In *State ex rel. McCrinnon v. Lester*, 354 So.2d 381 at 383 (Fla. 1977), cert. denied, 439 U.S. 877 (1978), a case pre-dating the Shuman and Rose decisions, the court was presented with a situation where a number of indigent criminal defendants alleged collectively that their cases required the taking of numerous depositions and that they could not be properly prepared for trial without the depositions. They further alleged that without copies of the depositions they would

be denied the effective assistance of counsel. The court found that with regard to the indigents' asserted right to deposition copies at county expense under Fla.R.Cr.P. 3.220(k), "existing statutes and court rules do not authorize taxing the cost of all deposition copies to a county." (e.s.) Id. at 383. The court went on in a footnote to make it clear "that copy costs may be taxed to a county in specific cases when, upon application, a trial judge approves the taxation based on express finding that transcription copies are necessary for trial." However, the court determined that the original depositions would be available in the court file for trial preparation, and therefore, while the public defender would suffer some inconvenience in not having individual copies of the depositions at his office, that the defendants were not denied the effective assistance of counsel. Cf., Johnson v. Snyder, 417 So.2d 783 (3 D.C.A. Fla., 1982) in which the court determined that an insolvent defendant is not required to accept the services of the public defender in order to obtain the reasonable costs for discovery under rule 3.220, Fla.R.Cr.P. In Johnson the defendant's family had obtained private counsel to represent her. The court stated that the defendant's "needs fall within the clear provisions of the rules and case law requiring the trial court to allow reasonable discovery costs." Id. at 784.

Against this statutory and judicial decisional background, specific inquiries regarding the counties' responsibility for the costs incurred by or on behalf of acquitted or discharged defendants or defendants adjudged insolvent are addressed as follows.

QUESTION ONE

Several provisions of the Florida Statutes authorize the payment of witness fees and provide for such fees being taxed as costs. In felony cases, §914.06, F.S., provides that "on motion of the state or an indigent defendant, the court may require the attendance of an expert witness whose opinion is relevant to the issues of the case. The court shall award reasonable compensation to the expert witness that shall be taxed as costs in the same manner as other costs." This statute provides authority for the state attorney to have expert witness costs taxed against a convicted solvent defendant pursuant to §939.01, F.S., and the authority for a defendant adjudged insolvent by the trial court to have such costs charged to the county in which the crime was committed pursuant to §939.15, F.S. Section 914.06, however, does not authorize or address, the payment of or

liability for expenses of expert witnesses who are merely consulted before trial by either the state attorney or the public defender or court appointed counsel.

Section 92.231(2), F.S., provides:

Any expert or skilled witness who shall have testified in any cause shall be allowed a witness fee including the cost of any exhibits used by such witness in the amount of \$10 per hour or such amount as the trial judge may deem reasonable, and the same shall be taxed as costs.

For purposes of this statute subsection (1), in relevant part, defines the term "expert witness" to include "any witness who offers himself in the trial of any civil action as an expert witness or who is subpoenaed to testify in such capacity before a state attorney in the investigation of a criminal matter, or before a grand jury, and who is permitted by the court to qualify and testify as such, upon any matter pending before any court." In AGO 72-84 (cited as AGO 72-82 in *State v. Board of County Commissioners of Glades County*, 370 So.2d 1214 [2 D.C.A. Fla., 1979] at 1215 for the principle that an expert witness must come within the terms of §914.06, F.S., in order to be entitled to an expert witness fee), this office concluded that this statute "authorizes the payment of expert witness fees only when the expert witness testifies in a civil case, before a state attorney in a criminal investigation, or before a grand jury. The result is that the cited statute does not apply when an expert witness testifies in a pending criminal case." Accord, *Bannister v. State*, 358 So.2d 1182, 1184 (2 D.C.A. Fla., 1978), which concluded that "[t]he only expert witness fees taxable to a defendant as costs are those reasonable fees of an expert subpoenaed to appear and testify before the state attorney or of a court appointed psychiatrist who testifies in a criminal trial." Citing §§90.231 (now 92.231), 914.06, 918.11, F.S. The court in Bannister went on to make it clear that "[i]n all other instances costs incurred by a witness in a criminal case, including one who qualifies and testifies as an expert, are taxable only to the extent authorized by Section 90.14 [now 92.142], Florida Statutes, that is five dollars per day of attendance plus six cents per mile travel expenses." Id. at 1184. Cf., *Powell v. State*, supra at 789: "Reasonable fees for expert witnesses are authorized and taxable as costs in civil cases, Fla.Stat. § 90.231 (1973) and are statutorily authorized in criminal cases under certain

circumstances." Citing, §914.06, F.S. See also, State v. Board of County Commissioners of Glades County, supra. Section 914.06, F.S., of course, provides that in felony cases on the motion of the state or an indigent defendant, the court may require the attendance of an expert witness, and may award a reasonable fee to be taxed as costs.

Section 939.07, F.S., pertaining to payment for witnesses in general of an insolvent or discharged defendant provides:

In all criminal cases prosecuted in the name of the state in the circuit courts or county courts in this state where the defendant is insolvent or discharged, the county shall pay the legal expenses and costs, as is prescribed for the payment of costs incurred by the county in the prosecution of such cases; provided, that there shall not be more than two witnesses summoned and paid to prove the same fact; and provided further, that before any witness is subpoenaed on behalf of a defendant in the circuit or county court an application shall be made to the judge, in writing, on behalf of the defendant, setting forth the substance of the facts sought to be proved by the witness or witnesses, making affidavit that the defendant is insolvent, and if upon such showing the judge is satisfied that the witness or witnesses are necessary for the proper defense of the defendant, he shall order that subpoena issue, and that the costs as herein provided shall be paid by the county, and not otherwise.

None of these statutes, however, impose any liability upon the counties for pretrial consulting services of experts or other individuals in criminal cases. All of these statutes appear to contemplate that the fees and costs for which the counties are liable are for services performed as a witness in the criminal prosecution or defense (or when testifying before a state attorney in a criminal investigation or before a grand jury).

The courts, however, have made it clear that the witness need not actually testify in order to subject the county to liability for witness fees. The Second District Court of Appeal in *State v. Board of County Commissioners of Glades County*, supra, at 1216, stated that "if the witness is subpoenaed and does testify (or, as was the case here, he appears at trial, but his testimony is rendered unnecessary due to a change of plea or the declaration of a mistrial), he is entitled to an expert witness fee." The expert witness in the Glades County case had performed the autopsy on the victim and was subpoenaed by the prosecutor to testify at trial. He testified at trial concerning the victim's cause of death and the prosecutor also intended to call him as an expert witness on other matters, but the defendant unexpectedly pled guilty in the middle of the trial and the other testimony was not needed. The court decided that under these circumstances the county was responsible for the expert witness fee. In *Garner v. State*, 445 So.2d 413 (4 D.C.A. Fla., 1984), the issue was "whether the trial court erred in denying the public defender's motion to tax as costs two experts' fees incurred by counsel on behalf of his indigent client without prior permission of the trial court." Id. at 414. While it does not appear in the decision itself, the record reveals that the experts did not actually testify at trial, but were used in negotiating a plea in the case. The experts involved were a medical expert who did testify at a Motion to Suppress Hearing and a hypnotist who examined the defendant but did not testify. The District Court of Appeal found that the two witnesses were expert and "were useful to the defense." Id. at 414. The district court reversed the lower court upon the authority of *State v. Board of County Commissioners of Glades County*, supra, and remanded with instructions to grant the public defender's motion. Compare, *Goldberg v. County of Dade*, 378 So.2d 1242 (3 D.C.A. Fla., 1979), in which the defendant-appellant filed for a certificate of payment of taxable costs pursuant to §939.06, F.S. One charge had been dismissed and on the other charges, the jury returned a verdict of not guilty. The trial court disallowed an expert fee for a forensic psychologist who assisted defendant's counsel in the selection of the jury. The district court noted that §939.06 refers to "taxable costs" which have been defined as only those items reasonably within the scope of statutory authority. The court considered this definition in conjunction with §939.15, F.S., providing that the county shall pay those costs allowed by law, and found no authority to tax such costs. Thus, while the courts have not always required that an expert witness actually testify at the trial in order for such fees or costs to be taxed against the county, in the cases cited above such experts were

either intended to be used as witnesses and subpoenaed for that purpose, but whose testimony became unnecessary due to a change of plea or were useful or necessary in negotiating a plea either in the prosecution or defense.

Therefore, it is my opinion that, the counties have no liability for pretrial consultation fees for expert or other potential witnesses consulted before trial by either the state attorney or the public defender.

QUESTION TWO

In those instances where a defendant has been adjudged insolvent by the trial court and the court has rendered judgment therefor against the county, the county in which the crime was committed would be liable for the costs allowed by law pursuant to §939.15, F.S. In AGO 84-26 this office stated that "[i]n general, the county is responsible to pay only those court reporter costs that are provided by statute or court rules as taxable court costs assessed against an insolvent or discharged defendant." More specifically, AGO 75-271 stated: "The county is required to pay only those expenses incurred in the actual trial proceedings and not expenses incurred in preliminary investigations by the state attorney prior to the finding or filing of an information or indictment charging the commission of a crime." That opinion went on to conclude that since there was no statute or rule of procedure which provided that the expense of the state attorney in procuring a copy of a deposition taken pursuant to Rule 3.220, Fla.R.Cr.P., could be taxed against the county, the county was not responsible for such expense under §939.07 and §939.15, F.S. As discussed above, Rule 3.220 is directed towards granting the criminal defendant the right to take the deposition of persons having information relevant to the offense charged and insuring that indigent defendants receive a fair trial. This purpose would not be furthered by extending the liability of the county to the expense incurred by the state attorney in procuring a copy of a deposition taken by an indigent criminal defendant.

Specifically relating to court reporters, Ch. 29, F.S., sets forth the duties and responsibilities of the official court reporters as well as specifying the compensation for their services. The duties of the court reporter, relevant to criminal proceedings, are set forth in §29.02, F.S.:

The official court reporter shall, upon the request of the presiding judge, or that of the state attorney or defendant, report the testimony and proceedings, with objections made, the ruling of the court, the exceptions taken, and oral or written charges of the court in the trial of any criminal case in the circuit court, and the testimony in any preliminary hearing when so requested by the circuit judge or state attorney of that circuit

Section 29.03, F.S., pertaining to compensation for the services of the court reporter provides that "said reporter shall also, when ordered by either party in a criminal case or by the presiding judge report the arguments of counsel arguing the facts to the jury, and shall receive as compensation therefor not less than \$10 for reporting each such argument." This statute goes on to provide that "[s]uch reporter shall receive for each type-written transcript of his notes of the testimony and proceedings taken at the trial of any civil or criminal cause, and furnished on demand of either party to the suit for which the testimony and proceedings are taken, the amount of 50 cents per page for the original and the amount of 25 cents per page for each carbon copy thereof" These fees are permitted to be charged by an administrative order. See, Rule 2.070(e), Fla.R.Jud.Admin. And see, Anderson v. State ex rel. Kriser, 374 So.2d 591 (1 D.C.A. Fla., 1979) holding that an administrative order establishing a schedule of court reporters' fees, which was promulgated pursuant to rules of Florida Supreme Court superseded conflicting statutory provision governing such fee schedules. Subsection (3) of §29.04, F.S., provides: "The funds necessary to pay the costs of reporting in criminal proceedings shall be supplemented by the respective counties as necessary to provide competent reporters in such proceedings."

This office in AGO 72-39 concluded that the official court reporter's fees for reporting arguments of counsel in a criminal trial and for transcribing the trial proceedings for use in the trial are taxable as court costs, and thus may become a liability of the county in the case of an indigent defendant. That opinion, however, also concluded that the expense of a pretrial preliminary hearing or criminal investigation does not ordinarily become a "court cost" and thus is not required to be paid by the county. I am not aware of any recent statute or judicial decision which would alter the validity of this conclusion.

However, it should be made clear that that opinion was addressing the question, relevant to this inquiry of whether the county is obligated to pay the expense of a court reporter for reporting and transcribing, at the request of the state attorney, a portion of the grand jury proceedings. In AGO 76-72 it was declared that two district courts of appeal had adopted the so-called "useful purpose" test in determining what costs are properly taxable costs in criminal actions. That opinion used this test to reach the conclusion that when a defendant is discharged or adjudged insolvent pursuant to §§936.06, 939.07, and 939.15, F.S., "the county should pay all costs of prosecution, including preindictment, preinformation, and deposition costs, when it is determined by the court that such served a 'useful purpose.'" Some of the costs questioned therein included whether the county should pay court reporter charges for the purpose of sworn statements of various prospective witnesses prior to or after the information or indictment has been filed as well as pay for the various forms such as affidavits used in line with the input of the state attorney and public defender. After a reexamination of the cases cited in AGO 76-72 for support of the conclusions reached therein, it is my opinion that AGO 76-72 is overbroad. Those decisions are Powell v. State, supra; Dinauer v. State, supra. In Powell the court in deciding whether the costs of taking depositions are proper taxable costs, stated that "[i]f upon remand the trial court finds that such depositions served a useful purpose in appellant's defense, the costs attendant thereto shall be allowed appellant as taxable costs." Id. at 789. Again, while this office has in the past concluded that depositions must be placed into evidence in order to be taxed as costs, the Powell decision did not so limit the taxability of deposition costs. The court did not announce any new general test that could be applied in all situations in determining whether any particular expense is a proper taxable cost. The language, "served a useful purpose," was applied to making the determination of whether the deposition costs were taxable. Deposition costs have historically been considered to be taxable court costs and therefore the court did not establish a new rule of law with this decision. In Dinauer v. State, supra, the defendant expended \$93.75 for the court reporter's fee for taking the depositions of three police officers. The court concluded "that the sum of \$93.75 expended for taking the officers' depositions is a proper taxable cost and that the trial court erred in not assessing same." Id. at 793. Nowhere in the Dinauer decision does the court refer to a "useful purpose" test or cite to the Powell case. Thus, while it would appear that court reporter's fees are "proper taxable costs" that

can become a liability of the county when the defendant is insolvent or discharged, the courts have not announced a "useful purpose" test that could be applied to all types of expenses that could be incurred in the course of a criminal prosecution. To the extent that AGO 76-72 is inconsistent with the conclusions reached herein, that opinion is hereby superseded.

Therefore, it is my opinion that the county is obligated to pay such court reporter costs as are incurred by the state attorney during the course of a criminal prosecution which are included in a judgment rendered by the trial court against the county in which the crime was committed, but the county is not obligated to pay such costs incurred in the course of a criminal investigation conducted by the state attorney.

QUESTION THREE

The discussion in Question Two is equally applicable to this question. Where a defendant has been adjudged insolvent by the trial court and the court has rendered judgment against the county for any deposition costs incurred by a state attorney during the course of a criminal prosecution of such adjudged insolvent defendant, the county is liable for such costs as provided in §939.15, F.S. While my research has not revealed any appellate judicial decision which has ruled on the question of whether a post-indictment or post-information deposition taken by the state attorney of a defense witness is a proper taxable cost against the defendant, it would appear, in the absence of a judicial determination to the contrary, that if the trial court found that the state attorney's deposition costs were reasonable and incidental to and served a useful purpose in the prosecution, such costs could be taxed against the county pursuant to former §9, Art. XVI, Constitution of 1885, and §939.15, F.S. Thus, such post-indictment or post-information deposition costs taxed against the county in which the crime was committed by the trial court and included in its judgment therefor against the county would become the liability of the county under §939.15, F.S.

QUESTION FOUR

The cases and principles set forth in the general discussion and the first three questions are applicable to this question. See particularly the discussion of State ex rel. McCrimmon v. Lester, supra. Therefore, if the trial court finds that the deposition

copy was necessary for the prosecution or served a useful purpose in the prosecution, that expense could be included in the judgment against the county pursuant to §939.15, F.S. (and §9, Art. XVI, Constitution of 1885), and would thereupon become the responsibility of and impose liability on the county for payment thereof.

QUESTION FIVE

It is my opinion that travel expenses incurred in criminal cases by the public defender or the state attorney in connection with out-of-jurisdiction depositions are not taxable court costs. While the appellate courts have not addressed the issue of travel expenses incurred in taking depositions, the courts have disallowed travel expenses incurred in attending the trial itself. See, e.g., *Dinauer v. State*, supra, wherein the court concluded that "defendant-appellant's travel expenses, hotel expenses, meals, and bail bond expense are not 'proper taxable costs.'" (e.s.) See also, *Warren v. Capuano*, supra. Compare, *Shuman v. State*, supra, at 1336-1337, wherein the Supreme Court in distinguishing "operation expenses" from "costs" of appeals included travel expenses as an operational expense of the public defenders' office within the purview of §27.54(2), F.S. 1975 as complemented by §27.51(4)(e), F.S. 1975, now §27.51(5), F.S. And see, *Powell v. State*, supra, wherein the court concluded that since under §914.06, F.S., the county could tax the costs of its expert witnesses against the solvent defendant, the defendant could do likewise against the county.

This conclusion is consistent with the legislative intent expressed in the state budget process for state attorneys. On an annual basis each state attorney must "submit to the Executive Office of the Governor a written report containing an estimate in itemized form showing the amount needed for operational expenses for the year" Section 27.33(1), F.S. Thus, items or expenditures contained within this budget are yearly appropriated to the state attorneys and are paid by the state. Items in this budget may not be passed on to the county by taxing them against the county in which the crime was committed as "costs of prosecution" or "legal costs and expenses" in criminal prosecutions. Each budget estimate is to itemize the expenditures which includes paragraph (e) of subsection (1): "Travel expenses of state attorney and assistant state attorneys." Section 27.34(1), F.S., in relevant part, makes clear this dichotomy of state/local financial responsibility: "No county or municipality shall

appropriate or contribute funds to the operation of the various state attorneys." Compare, Rule 3.190(j), Fla.R.Cr.P., which provides that if after an indictment or information is filed the state takes the deposition of a prospective witness who resides beyond the territorial jurisdiction of the court, "[t]he State shall pay to the defendant's attorney and to a defendant not in custody the expenses of travel and subsistence for attendance at the examination." And see, §27.54(1) and (2), F.S., pertaining to public defenders. Subsection (1), in relevant part concerning the necessary expenses of the public defenders' offices, provides that "[t]ravel expenses shall be paid in accordance with the provisions of s. 112.061." Subsection (2) in pertinent part, states: "No county or municipality shall appropriate or contribute funds to the operation of the offices of the various public defenders"

Applying these statutory provisions which are in harmony with the judicial decisions on travel expenses, it is my opinion that such expenses must be borne by the various state attorneys and public defenders as an operational expense of their offices.

QUESTION SIX

The same analysis applied in Question Five applies equally to this question. In *Benitez v. State*, supra, the court expressly held "that as a matter of law, investigative costs are not recoverable as taxable costs." The issue presented therein was "whether investigative costs incurred by a defendant in a criminal proceeding may be recovered from the State as taxable costs upon defendant's acquittal of the crime charged in the criminal proceeding." *Id.* at 1101. The court noted that the defendant was solvent and not entitled to the benefits of the public defender system or any of the statutes enacted for the protection of insolvent defendants. *Id.* at 1102. After quoting §939.06, F.S., which pertains to acquitted or discharged defendants, the court held that "[t]he only way in which the investigative costs could be held to be taxable costs would be for this court to hold that the term 'taxable costs,' as used in Section 939.06, Florida Statutes (1975) means all reasonable and necessary costs. Such an interpretation would be contrary to the holding of the courts of this state." Citing, *Doran v. State*, supra; *Holton v. State*, supra. See also, 20 C.J.S. Costs §457b (1940). This decision is consistent with the budgetary provisions for state attorneys' offices. See, §27.33(1)(d), F.S. As the question indicates, paragraph (d) of §27.33(1),

F.S., provides that one of the items included in the annual budget report to the Governor, are the "[s]alaries and travel expenses of investigators." Thus, it is my opinion that the travel expenses of the investigators of the various State Attorneys are an operational expense of that office, unless and until judicially determined to the contrary.

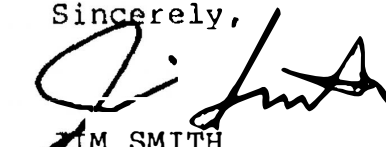
In summary, it is my opinion:

1. Counties have no liability for pretrial consultation fees for expert or other potential witnesses consulted before trial by either the state attorney or the public defender.
2. Counties are obligated to pay such court reporter costs as are incurred by the state attorney during the course of a criminal prosecution which are included in a judgment rendered by the trial court against the county in which the crime was committed, but they are not obligated to pay such costs incurred in the course of a criminal investigation conducted by the state attorney.
3. Counties are liable for the post-indictment and post-information deposition costs incurred by the state attorney during the course of a criminal prosecution of an insolvent defendant when taxed by the court against the county and included in its judgment therefor against the county under §939.15, F.S., where such costs were reasonable and served a useful purpose in the prosecution.
4. Counties are liable under §939.15, F.S. for the costs of copies of depositions of state witnesses taken by the public defender, court appointed counsel or private retained counsel, if the trial court finds that the copies were necessary for the prosecution or served a useful purpose in the prosecution and includes such costs in its judgment against the county.

5. Counties are not liable for travel expenses incurred in criminal cases by public defenders or state attorneys in connection with out-of-jurisdiction depositions; such expenses must be borne by the state attorneys or the public defenders as operational expense of their offices.

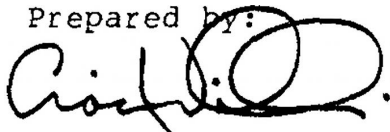
6. Counties are not liable for out-of-state travel expenses incurred by investigators of state attorneys to locate and interrogate witnesses for the state attorney in the prosecution of a criminal case.

Sincerely,



JIM SMITH
ATTORNEY GENERAL

Prepared by:



Craig Willis
Assistant Attorney General

JS/CW/bmc

COPY

SB 591
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ET AL.

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1 A bill to be entitled

2 An act relating to state attorneys; amending s.

3 27.34, F.S.; requiring counties included within

4 a state attorney's judicial circuit to provide

5 certain services to the state attorney;

6 creating s. 27.3455, F.S., imposing an

7 additional court cost in certain criminal and

8 misdemeanor cases; providing procedures for

9 collecting such costs; providing for use of

10 such amounts to fund the costs of the state

11 attorney's office, public defender's office,

12 and medical examiner's and victim-witness

13 programs; providing an effective date.

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

17 Section 1. Subsection (2) of section 27.34, Florida
18 Statutes, is amended to read:

19 27.34 Salaries and other related costs of state
20 attorneys' offices; limitations.--

21 (2) The state attorney shall be provided by the

22 counties within their judicial circuits with such office

23 space, utilities, telephone service, custodial services,

24 library services, transportation services, and communication

25 services as may be necessary for the proper and efficient

26 functioning of these offices. The state attorney's office

27 shall also be provided with pretrial consultation fees for

28 expert or other potential witnesses consulted before trial by

29 the state attorney; travel expenses incurred in criminal cases

30 by a state attorney in connection with out-of-jurisdiction

31 depositions; out-of-state travel expenses incurred by

1 assistant state attorneys or by investigators of state
 2 attorneys while attempting to locate and interrogate witnesses
 3 for the state attorney in the prosecution of a criminal case;
 4 court reporter costs incurred by the state attorney during the
 5 course of an investigation and criminal prosecution which
 6 costs are included in a judgment rendered by the trial court
 7 against the county in which the crime was committed; post-
 8 indictment and post-information deposition costs incurred by
 9 the state attorney during the course of a criminal prosecution
 10 of an insolvent defendant, when taxed by the court against the
 11 county and included in its judgment against the county under
 12 s. 939.15; and the cost of copying depositions of state
 13 witnesses taken by the public defender, court appointed
 14 counsel, or private retained counsel, if the trial court finds
 15 that the copies were necessary for the prosecution or served a
 16 useful purpose in the prosecution and includes such cost in
 17 its judgment against the county. The office space to be
 18 provided by the counties shall not be less than the standards
 19 for space allotment promulgated by the Department of General
 20 Services nor shall these services and office space be less
 21 than were provided in fiscal year 1984-1985 ~~1972-1973~~.

22 Section 2. Section 27.3455, Florida Statutes, is
 23 created to read:

24 27.3455 Additional court costs.--

25 (1) When any person pleads guilty or nolo contendere
 26 to, or is found guilty of, any felony, misdemeanor, or
 27 criminal traffic offense under the laws of this state or the
 28 violation of any municipal or county ordinance which adopts by
 29 reference any misdemeanor under state law, there shall be
 30 imposed as a cost in the case, in addition to any other cost
 31

1 required to be imposed by law, a sum in accordance with the
2 following schedule:

- 3 (a) Felonies\$200
- 4 (b) Misdemeanors\$50
- 5 (c) Criminal traffic offenses.....\$50

6
7 The clerk of the court shall collect such additional costs and
8 shall notify the agency supervising a person upon whom costs
9 have been imposed upon full payment of fees. The clerk shall
10 forward all but \$3 for each misdemeanor or criminal traffic
11 case and all but \$5 for each felony case to the Treasurer.
12 The Treasurer shall deposit such funds in the Local Government
13 Criminal Justice Trust Fund to be administered by the
14 Governor, following consultation with the chairpersons of the
15 appropriations committees of the Senate and the House of
16 Representatives. Such funds shall be used exclusively for
17 those purposes set forth in subsection (2). The clerk shall
18 retain \$3 for each misdemeanor or criminal traffic case, and
19 \$5 for each felony case of each scheduled amount collected as
20 a service charge of the clerk's office. A political
21 subdivision shall not be held liable for the payment of the
22 additional cost imposed by this section. All applicable fees
23 and court costs shall be paid in full prior to the granting of
24 any gain-time accrued. However, the court shall sentence
25 those persons whom it determines to be indigent to a term of
26 community service in lieu of the costs prescribed in this
27 section, and such indigent persons shall be eligible to accrue
28 gain-time and shall serve the term of community service at the
29 termination of incarceration. Each hour of community service
30 shall be credited against the additional cost imposed by the
31 court at a rate equivalent to the minimum wage. The governing

1 body of a county shall supervise the community service
2 program.

3 (2) The priority for the distribution of funds
4 deposited in the trust fund shall be as follows:

5 (a) Funds shall be distributed quarterly to the
6 governmental unit which provides to the state attorney and
7 public defender the services outlined in s. 27.34(2) and s.
8 27.54(3), except that such funds may not be used to pay for
9 office space, utilities, or custodial services.

10 (b) Funds remaining on deposit shall be distributed
11 quarterly to the Medical Examiners Commission within the
12 Department of Law Enforcement for distribution to the boards
13 of county commissioners to supplement the actual cost of
14 operations and services of medical examiners, including the
15 costs associated with the investigation of state prison inmate
16 deaths. Funds distributed in any year to supplement the cost
17 of operations and services of medical examiners shall not
18 exceed \$1 per capita statewide.

19 (c) Counties establishing or having in existence a
20 comprehensive victim-witness program which meets the standards
21 set by the Bureau of Crimes Compensation shall be eligible to
22 receive available 50 percent matching trust fund moneys.
23 Funds distributed in any year to supplement such programs
24 shall not exceed 25 cents per capita statewide. Funds for the
25 comprehensive victim-witness programs shall be transferred
26 from the trust fund to the Bureau of Crimes Compensation for
27 distribution to the counties.

28
29 No county may receive funds distributed pursuant to this
30 subsection in an amount which exceeds that county's prorata
31 share which share is based upon the county's collections as a

1 percentage of total collections statewide. Such funds shall
2 be remitted to the counties pursuant to the provisions of this
3 section. No funds may be distributed to a governmental unit
4 until the governmental unit submits documentation
5 substantiating the expenditure.

6 (3) At the end of each fiscal year unencumbered funds
7 remaining in the trust fund shall be distributed as follows:

8 (a) Twenty-five percent of the unencumbered balance
9 shall remain in the trust fund; and

10 (b) Seventy-five percent of the unencumbered balance
11 shall be transferred to the General Revenue Fund of the state.

12 Section 3. This act shall take effect October 1, 1985.

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SENATE SUMMARY

Provides a list of additional services which counties must provide to state attorneys. Imposes additional court costs of \$200 for felonies, \$50 for misdemeanors, and \$50 for criminal traffic offenses. Provides procedures for collecting such costs. Provides for the use of such fees to fund the costs of the state attorney's office, the public defender's office, and the medical examiners and victim-witness programs. See bill for details.

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>
1. <u>Christensen</u>	<u>JC Lester</u>
2. _____	_____
3. _____	_____

<u>REFERENCE</u>
1. <u>JCI</u>
2. <u>JCR</u>
3. <u>AP</u>

<u>ACTION</u>
<u>Fav</u>

SUBJECT:

State Attorneys

BILL NO. AND SPONSOR:

SB 591 by
Senators Malchon, Langley,
Johnson, Jenne, W.D. Childers

I. SUMMARY:

A. Present Situation:

Subsection (2) of s. 27.34, F.S., requires the various counties to provide their state attorney with office space, utilities, and the following services: telephone, custodial, library, transportation, and communications. A minimum floor for such office space and services is based upon office space and services provided in fiscal year 1972-1973.

Subsection (3) of s. 27.54, F.S., requires the various counties to provide their public defender with office space, utilities, and the following services: telephone and custodial. A county is prohibited from providing less of these services than were provided in the previous fiscal year.

Section 43.35, F.S., requires each court administrator to establish a witness coordinating office in each of the counties within his judicial circuit.

Sections 406.07 and 406.08, F.S., provide for the funding of medical examiners' offices by the various counties.

Section 939.015, F.S., 1984 Supplement, imposes an additional cost of \$10 against a person pleading guilty or nolo contendere to, or convicted of, a felony or misdemeanor in which any victim of such crime is handicapped or elderly. This additional cost is collected by and deposited into the Handicapped and Elderly Security Assistance Trust Fund by the clerks of the court.

B. Effect of Proposed Changes:

This bill adds language to s. 27.34(2), F.S., to require that the state attorney's office be also provided with the following: pretrial consultation fees for expert witnesses; travel expenses incurred by out-of-jurisdiction depositions and by out-of-state witness location and interrogation; court reporter costs incurred by the state attorney included in a judgment against the county; certain deposition costs incurred by the state attorney when prosecuting an insolvent defendant if taxed against the county; and costs for copying certain other depositions. Further, the minimum floor for office space and services would be based upon fiscal year 1984-1985 levels rather than 1972-1973 levels.

The bill creates s. 27.3455, F.S., to provide a state funding source for reimbursement to, in order of priority: (1) the governmental unit which provides to the state attorney and public defender the services outlined in sections 27.34(2) and

27.54(3), F.S., except for office space, utilities, and custodial services; (2) the Medical Examiners Commission for distribution to the boards of county commissioners to supplement the cost of medical examiner services; and (3) to counties for comprehensive victim-witness programs as 50% matching funds.

Specifically, the bill would impose additional court costs against a person pleading guilty or nolo contendere to, or convicted of, a felony, misdemeanor, or criminal traffic offense in a range from \$200 to \$50; proceeds from these levies would be deposited into a Local Government Criminal Justice Trust Fund for quarterly distribution to governmental units supplying services for state attorneys, public defenders, medical examiners and victim-witness programs. A limit on reimbursements is placed on each category. Unencumbered trust funds for each fiscal year would be divided, with 25% of the balance remaining in the trust fund and 75% distributed to general revenue.

The "Local Government Criminal Justice Trust Fund" created by this bill is to be administered by the Governor, following consultation with the chairpersons of the Senate and House appropriations committees.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

A person pleading guilty or nolo contendere to, or found guilty of, one of the following categories of crimes will be subject to the additional court costs noted below:

Felonies.....	\$200
Misdemeanors.....	50
Criminal traffic offenses....	50

B. Government:

According to a report prepared by the State Attorney's Office, it is estimated that county reimbursement costs will be as follows:

State Attorneys	\$ 9.0 Million
Public Defenders	1.5 Million
Medical Examiners	8.0 Million
Victim Assistance	<u>2.5 Million</u>
TOTAL	\$21.0 Million

According to this report, based on 1982 court statistics, it is estimated that the bill will generate \$40,799,800, and, based upon 1983 statistics, will generate \$44,931,250.

However, these figures assume that 100% of the collections authorized under this bill are realized. The actual collection rate may fall below the 100% level.

III. COMMENTS:

This bill is identical to 1985 House bill 1023.

IV. AMENDMENTS:

None.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>E. Davis</u> <i>EMD</i>	<u>Liepshutz</u> <i>MM</i>	1. <u>JCR</u>	_____
2. _____	_____	2. <u>JCI</u>	_____
3. _____	_____	3. <u>APP</u>	_____

SUBJECT:

Indigent Defendants
in Criminal Trials

BILL NO. AND SPONSOR:

SB 557 by
Senator Weinstein

I. SUMMARY:

A. Present Situation:

Under current law, the state or an indigent defendant may move the trial court to require the attendance of an expert witness in a felony case. The court will award reasonable compensation to the expert witness and the fee is taxed in the same manner as other costs. (s. 914.06, F.S.)

When the court determines from an affidavit that a defendant at a preliminary hearing or trial needs the attendance of certain witnesses for the indigent's defense, the court will direct that the witnesses be subpoenaed, and the costs will be paid by the county. (s. 914.11, F.S.)

If a defendant in a criminal case is insolvent or discharged, the county pays his legal expenses and costs. However, no more than two witnesses may be summoned and paid to prove the same fact. Additionally, before any witness is summoned on a defendant's behalf, a written application must be made to the judge stating the facts to be proved by the witness as well as an affidavit that the defendant is insolvent. If the judge finds the witness to be necessary for the defense, he then orders the subpoena to be issued for the witness, and that costs will be paid by the county. (s. 939.07, F.S.)

B. Effect of Proposed Changes:

Section I would liberalize the current law with regard to the services of an expert witness.

(1) The case would no longer need to be a "felony" but simply a "criminal" case for the indigent defendant or the state to be entitled to an expert witness whose fee would be paid by the county.

(2) A motion by the state or indigent defendant would not be necessary for the court to request the expert witness's attendance. The criteria would simply be that the state or indigent defendant "require" the expert witness.

(3) The former section stated that the expert witness's "attendance" could be compelled. This legislation states that his "services" could be retained. Services could be interpreted to be broader in scope than "attendance" and might include pre-trial appearances for depositions.

(4) The county in which the case is held would pay the costs for the expert testimony.

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Section 2 would also expand the list of items needed by the defendant which would be paid by the county.

(1) The indigent defendant would not have to be in a preliminary hearing or trial to subpoena witnesses. It would only have to be a criminal case.

(2) The indigent defendant would be authorized to subpoena witnesses without the court ordering that they be subpoenaed.

(3) The costs which would be paid by the county would include the defendant's copy of depositions and transcripts certified by the defendant's attorney as necessary to the case.

(4) If depositions are taken outside the circuit in which the case is pending, the county would pay the travel expenses in accordance with s. 112.061, as costs.

Section 3 changes the requirement that the defendant be "insolvent or discharged" to "indigent or discharged." The section adds the requirement that the costs of a defendant's copy of all depositions and transcripts which are certified by the defendant's attorney as being useful to the case shall be paid by the county.

The provision that no more than two witnesses may be called to prove the same fact is removed from the statute. The provision is also removed that requires a defendant to submit to a judge an affidavit attesting to his insolvency as well as the facts to be proved by a witness before the witness subpoena will be issued.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

This legislation would increase the services provided to indigent defendants by the counties. As a result, the counties would be required to spend more money to provide these additional services. According to the Public Defender Association these fees are paid from money received from fines levied in criminal cases.

III. COMMENTS:

Two Attorney General Opinions were issued in 1984 concerning who was liable for specific court costs in criminal cases. In these two opinions, AGO 84-26 and AGO 84-94, the Attorney General's office stated, in pertinent part:

(1) Counties are not responsible for pre-trial fees and costs incurred by public defenders or state attorneys for consulting expert or other potential witnesses.

(2) Counties are liable for post-indictment and post-information deposition costs incurred by the state attorney during the prosecution of an indigent criminal defendant. They must be taxed by the court against the county and included in its judgment as well as determined to be reasonable and to have served a useful purpose in the prosecution.

(3) Counties are liable for the costs of copies of depositions of state witnesses taken by the indigent defendant's counsel if the court finds that the copies were necessary or served a useful

purpose in the prosecution. The court must include the costs in its judgment against the county.

(4) Counties are not liable for travel expenses incurred by public defenders or state attorneys in connection with out-of-jurisdiction depositions. The state attorney and public defenders must bear these expenses as operational expenses of their offices.

(5) Counties are not liable for out-of-state travel expenses incurred by investigators of state attorneys to locate and interrogate witnesses for the state attorney in the prosecution of a criminal case.

The Public Defender of the Seventeenth Judicial Circuit has filed an action for declaratory judgment on the issues presented in this legislation.

IV. AMENDMENTS:

None.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

COPY

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>
1. <u>E. Davis</u>	<u>Liepshutz</u>
2. _____	_____
3. _____	_____

<u>REFERENCE</u>	<u>ACTION</u>
1. <u>JCR</u>	<u>Fav/2 amend.</u>
2. <u>JCI</u>	_____
3. <u>APP</u>	_____

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SUBJECT:

Indigent Defendants
in Criminal Trials

BILL NO. AND SPONSOR:
SB 557 by
Senator Weinstein

I. SUMMARY:

A. Present Situation:

Under current law, the state or an indigent defendant may move the trial court to require the attendance of an expert witness in a felony case. The court will award reasonable compensation to the expert witness and the fee is taxed in the same manner as other costs. (s. 914.06, F.S.)

When the court determines from an affidavit that a defendant at a preliminary hearing or trial needs the attendance of certain witnesses for the indigent's defense, the court will direct that the witnesses be subpoenaed, and the costs will be paid by the county. (s. 914.11, F.S.)

If a defendant in a criminal case is insolvent or discharged, the county pays his legal expenses and costs. However, no more than two witnesses may be summoned and paid to prove the same fact. Additionally, before any witness is summoned on a defendant's behalf, a written application must be made to the judge stating the facts to be proved by the witness as well as an affidavit that the defendant is insolvent. If the judge finds the witness to be necessary for the defense, he then orders the subpoena to be issued for the witness, and that costs will be paid by the county. (s. 939.07, F.S.)

B. Effect of Proposed Changes:

Section I would liberalize the current law with regard to the services of an expert witness.

(1) The case would no longer need to be a "felony" but simply a "criminal" case for the indigent defendant or the state to be entitled to an expert witness whose fee would be paid by the county.

(2) A motion by the state or indigent defendant would not be necessary for the court to request the expert witness's attendance. The criteria would simply be that the state or indigent defendant "require" the expert witness.

(3) The former section stated that the expert witness's "attendance" could be compelled. This legislation states that his "services" could be retained. Services could be interpreted to be broader in scope than "attendance" and might include pre-trial appearances for depositions.

(4) The county in which the case is held would pay the costs for the expert testimony.

Section 2 would also expand the list of items needed by the defendant which would be paid by the county.

(1) The indigent defendant would not have to be in a preliminary hearing or trial to subpoena witnesses. It would only have to be a criminal case.

(2) The indigent defendant would be authorized to subpoena witnesses without the court ordering that they be subpoenaed.

(3) The costs which would be paid by the county would include the defendant's copy of depositions and transcripts certified by the defendant's attorney as necessary to the case.

(4) If depositions are taken outside the circuit in which the case is pending, the county/would pay the travel expenses in accordance with s. 112.061, as costs.

Section 3 changes the requirement that the defendant be "insolvent or discharged" to "indigent or discharged." The section adds the requirement that the costs of a defendant's copy of all depositions and transcripts which are certified by the defendant's attorney as being useful to the case shall be paid by the county.

The provision that no more than two witnesses may be called to prove the same fact is removed from the statute. The provision is also removed that requires a defendant to submit to a judge an affidavit attesting to his insolvency as well as the facts to be proved by a witness before the witness subpoena will be issued.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

This legislation would increase the services provided to indigent defendants by the counties. As a result, the counties would be required to spend more money to provide these additional services. According to the Public Defender Association these fees are paid from money received from fines levied in criminal cases.

III. COMMENTS:

Two Attorney General Opinions were issued in 1984 concerning who was liable for specific court costs in criminal cases. In these two opinions, AGO 84-26 and AGO 84-94, the Attorney General's office stated, in pertinent part:

(1) Counties are not responsible for pre-trial fees and costs incurred by public defenders or state attorneys for consulting expert or other potential witnesses.

(2) Counties are liable for post-indictment and post-information deposition costs incurred by the state attorney during the prosecution of an indigent criminal defendant. They must be taxed by the court against the county and included in its judgment as well as determined to be reasonable and to have served a useful purpose in the prosecution.

(3) Counties are liable for the costs of copies of depositions of state witnesses taken by the indigent defendant's counsel if the court finds that the copies were necessary or served a useful

purpose in the prosecution. The court must include the costs in its judgment against the county.

(4) Counties are not liable for travel expenses incurred by public defenders or state attorneys in connection with out-of-jurisdiction depositions. The state attorney and public defenders must bear these expenses as operational expenses of their offices.

(5) Counties are not liable for out-of-state travel expenses incurred by investigators of state attorneys to locate and interrogate witnesses for the state attorney in the prosecution of a criminal case.

The Public Defender of the Seventeenth Judicial Circuit has filed an action for declaratory judgment on the issues presented in this legislation.

IV. AMENDMENTS:

Amendment #1 by Judiciary-Criminal Committee:

Counties shall provide public defenders in their judicial circuits with pretrial consultation fees for expert and potential witnesses, travel expenses incurred while taking out-of-jurisdiction depositions, out-of-state travel expenses for investigators while locating or interrogating witnesses, court reporter costs included in a judgment against the county, post-indictment and post-information deposition costs incurred by the public defender during the course of a prosecution when included in the judgment against the county, cost of copying depositions of defense witnesses taken by the state attorney when the trial court finds the copies to be necessary for the disposition of the case and the costs are included in the judgment against the county.

Amendment #2 by Judiciary-Criminal Committee:

Title Amendment.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

NOTE: This analysis reflects the nature of the bill as it left the Committee on Judiciary-Criminal. Any further changes to the bill are not included in this analysis. See the "Comments" section for the final procedural action taken by the Legislature.

	<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1.	<u>E. Davis</u>	<u>Liepshutz</u>	1. <u>JCR</u>	<u>Fav/2 amend.</u>
2.	<u> </u>	<u> </u>	2. <u>JCI</u>	<u> </u>
3.	<u> </u>	<u> </u>	3. <u>APP</u>	<u> </u>

SUBJECT:

Indigent Defendants
in Criminal Trials

BILL NO. AND SPONSOR:

SB 557 by
Senator Weinstein

I. SUMMARY:

A. Present Situation:

Under current law, the state or an indigent defendant may move the trial court to require the attendance of an expert witness in a felony case. The court will award reasonable compensation to the expert witness and the fee is taxed in the same manner as other costs. (s. 914.06, F.S.)

When the court determines from an affidavit that a defendant at a preliminary hearing or trial needs the attendance of certain witnesses for the indigent's defense, the court will direct that the witnesses be subpoenaed, and the costs will be paid by the county. (s. 914.11, F.S.)

If a defendant in a criminal case is insolvent or discharged, the county pays his legal expenses and costs. However, no more than two witnesses may be summoned and paid to prove the same fact. Additionally, before any witness is summoned on a defendant's behalf, a written application must be made to the judge stating the facts to be proved by the witness as well as an affidavit that the defendant is insolvent. If the judge finds the witness to be necessary for the defense, he then orders the subpoena to be issued for the witness, and that costs will be paid by the county. (s. 939.07, F.S.)

B. Effect of Proposed Changes:

Section I would liberalize the current law with regard to the services of an expert witness.

(1) The case would no longer need to be a "felony" but simply a "criminal" case for the indigent defendant or the state to be entitled to an expert witness whose fee would be paid by the county.

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(2) A motion by the state or indigent defendant would not be necessary for the court to request the expert witness's attendance. The criteria would simply be that the state or indigent defendant "require" the expert witness.

(3) The former section stated that the expert witness's "attendance" could be compelled. This legislation states that his "services" could be retained. Services could be interpreted to be broader in scope than "attendance" and might include pre-trial appearances for depositions.

(4) The county in which the case is held would pay the costs for the expert testimony.

Section 2 would also expand the list of items needed by the defendant which would be paid by the county.

(1) The indigent defendant would not have to be in a preliminary hearing or trial to subpoena witnesses. It would only have to be a criminal case.

(2) The indigent defendant would be authorized to subpoena witnesses without the court ordering that they be subpoenaed.

(3) The costs which would be paid by the county would include the defendant's copy of depositions and transcripts certified by the defendant's attorney as necessary to the case.

(4) If depositions are taken outside the circuit in which the case is pending, the county would pay the travel expenses in accordance with s. 112.061, as costs.

Section 3 changes the requirement that the defendant be "insolvent or discharged" to "indigent or discharged." The section adds the requirement that the costs of a defendant's copy of all depositions and transcripts which are certified by the defendant's attorney as being useful to the case shall be paid by the county.

The provision that no more than two witnesses may be called to prove the same fact is removed from the statute. The provision is also removed that requires a defendant to submit to a judge an affidavit attesting to his insolvency as well as the facts to be proved by a witness before the witness subpoena will be issued.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

This legislation would increase the services provided to indigent defendants by the counties. As a result, the counties would be required to spend more money to provide these additional services. According to the Public Defender Association these fees are paid from money received from fines levied in criminal cases.

III. COMMENTS:

Two Attorney General Opinions were issued in 1984 concerning who was liable for specific court costs in criminal cases. In these

two opinions, AGO 84-26 and AGO 84-94, the Attorney General's office stated, in pertinent part:

(1) Counties are not responsible for pre-trial fees and costs incurred by public defenders or state attorneys for consulting expert or other potential witnesses.

(2) Counties are liable for post-indictment and post-information deposition costs incurred by the state attorney during the prosecution of an indigent criminal defendant. They must be taxed by the court against the county and included in its judgment as well as determined to be reasonable and to have served a useful purpose in the prosecution.

(3) Counties are liable for the costs of copies of depositions of state witnesses taken by the indigent defendant's counsel if the court finds that the copies were necessary or served a useful purpose in the prosecution. The court must include the costs in its judgment against the county.

(4) Counties are not liable for travel expenses incurred by public defenders or state attorneys in connection with out-of-jurisdiction depositions. The state attorney and public defenders must bear these expenses as operational expenses of their offices.

(5) Counties are not liable for out-of-state travel expenses incurred by investigators of state attorneys to locate and interrogate witnesses for the state attorney in the prosecution of a criminal case.

The Public Defender of the Seventeenth Judicial Circuit has filed an action for declaratory judgment on the issues presented in this legislation.

Final Update: The general substance of SB 557 was amended on to SB 591 in the Committee on Appropriations. When SB 591 was placed on the Special Order Calendar, the House companion, HB 1023, was substituted in its place. Therefore, the basic contents of SB 557 are now found in HB 1023. HB 1023 passed both Houses of the Legislature, was signed by the Governor on June 18, 1985, and was incorporated into the Laws of Florida as Chapter 85-213.

IV. AMENDMENTS:

Amendment #1 by Judiciary-Criminal Committee:

Counties shall provide public defenders in their judicial circuits with pretrial consultation fees for expert and potential witnesses, travel expenses incurred while taking out-of-jurisdiction depositions, out-of-state travel expenses for investigators while locating or interrogating witnesses, court reporter costs included in a judgment against the county, post-indictment and post-information deposition costs incurred by the public defender during the course of a prosecution when included in the judgment against the county, cost of copying depositions of defense witnesses taken by the state attorney when the trial court finds the copies to be necessary for the disposition of the case and the costs are included in the judgment against the county.

Amendment #2 by Judiciary Criminal Committee:

Title Amendment.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>E. Davis</u> <i>EMD</i>	<u>Liepshutz</u> <i>ML</i>	1. <u>JCR</u>	<u>T.P.</u>
2. _____	_____	2. <u>JCI</u>	_____
3. _____	_____	3. <u>APP</u>	_____

SUBJECT:

Indigent Defendants
in Criminal Trials

BILL NO. AND SPONSOR:

SB 557 by
Senator Weinstein

I. SUMMARY:

A. Present Situation:

Under current law, the state or an indigent defendant may move the trial court to require the attendance of an expert witness in a felony case. The court will award reasonable compensation to the expert witness and the fee is taxed in the same manner as other costs. (s. 914.06, F.S.)

When the court determines from an affidavit that a defendant at a preliminary hearing or trial needs the attendance of certain witnesses for the indigent's defense, the court will direct that the witnesses be subpoenaed, and the costs will be paid by the county. (s. 914.11, F.S.)

If a defendant in a criminal case is insolvent or discharged, the county pays his legal expenses and costs. However, no more than two witnesses may be summoned and paid to prove the same fact. Additionally, before any witness is summoned on a defendant's behalf, a written application must be made to the judge stating the facts to be proved by the witness as well as an affidavit that the defendant is insolvent. If the judge finds the witness to be necessary for the defense, he then orders the subpoena to be issued for the witness, and that costs will be paid by the county. (s. 939.07, F.S.)

B. Effect of Proposed Changes:

Section I would liberalize the current law with regard to the services of an expert witness.

(1) The case would no longer need to be a "felony" but simply a "criminal" case for the indigent defendant or the state to be entitled to an expert witness whose fee would be paid by the county.

(2) A motion by the state or indigent defendant would not be necessary for the court to request the expert witness's attendance. The criteria would simply be that the state or indigent defendant "require" the expert witness.

(3) The former section stated that the expert witness's "attendance" could be compelled. This legislation states that his "services" could be retained. Services could be interpreted to be broader in scope than "attendance" and might include pre-trial appearances for depositions.

(4) The county in which the case is held would pay the costs for the expert testimony.

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Section 2 would also expand the list of items needed by the defendant which would be paid by the county.

(1) The indigent defendant would not have to be in a preliminary hearing or trial to subpoena witnesses. It would only have to be a criminal case.

(2) The indigent defendant would be authorized to subpoena witnesses without the court ordering that they be subpoenaed.

(3) The costs which would be paid by the county would include the defendant's copy of depositions and transcripts certified by the defendant's attorney as necessary to the case.

(4) If depositions are taken outside the circuit in which the case is pending, the county would pay the travel expenses in accordance with s. 112.061, as costs.

Section 3 changes the requirement that the defendant be "insolvent or discharged" to "indigent or discharged." The section adds the requirement that the costs of a defendant's copy of all depositions and transcripts which are certified by the defendant's attorney as being useful to the case shall be paid by the county.

The provision that no more than two witnesses may be called to prove the same fact is removed from the statute. The provision is also removed that requires a defendant to submit to a judge an affidavit attesting to his insolvency as well as the facts to be proved by a witness before the witness subpoena will be issued.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

This legislation would increase the services provided to indigent defendants by the counties. As a result, the counties would be required to spend more money to provide these additional services. According to the Public Defender Association these fees are paid from money received from fines levied in criminal cases.

III. COMMENTS:

Two Attorney General Opinions were issued in 1984 concerning who was liable for specific court costs in criminal cases. In these two opinions, AGO 84-26 and AGO 84-94, the Attorney General's office stated, in pertinent part:

(1) Counties are not responsible for pre-trial fees and costs incurred by public defenders or state attorneys for consulting expert or other potential witnesses.

(2) Counties are liable for post-indictment and post-information deposition costs incurred by the state attorney during the prosecution of an indigent criminal defendant. They must be taxed by the court against the county and included in its judgment as well as determined to be reasonable and to have served a useful purpose in the prosecution.

(3) Counties are liable for the costs of copies of depositions of state witnesses taken by the indigent defendant's counsel if the court finds that the copies were necessary or served a useful

purpose in the prosecution. The court must include the costs in its judgment against the county.

(4) Counties are not liable for travel expenses incurred by public defenders or state attorneys in connection with out-of-jurisdiction depositions. The state attorney and public defenders must bear these expenses as operational expenses of their offices.

(5) Counties are not liable for out-of-state travel expenses incurred by investigators of state attorneys to locate and interrogate witnesses for the state attorney in the prosecution of a criminal case.

The Public Defender of the Seventeenth Judicial Circuit has filed an action for declaratory judgment on the issues presented in this legislation.

IV. AMENDMENTS:

None.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Christensen</u>	<u>Lester</u>	1. <u>JCI</u>	<u>Fav</u>
2. <u>E.Davis</u> <i>EMD</i>	<u>Liepshutz</u> <i>MA</i>	2. <u>JCR</u>	<u>FAV.</u>
3. _____	_____	3. <u>AP</u>	_____

SUBJECT: State Attorneys

BILL NO. AND SPONSOR: SB 591 by Senators Malchon, Langley, Johnson, Jenne, W.D. Childers

I. SUMMARY:

A. Present Situation:

Subsection (2) of s. 27.34, F.S., requires the various counties to provide their state attorney with office space, utilities, and the following services: telephone, custodial, library, transportation, and communications. A minimum floor for such office space and services is based upon office space and services provided in fiscal year 1972-1973.

Subsection (3) of s. 27.54, F.S., requires the various counties to provide their public defender with office space, utilities, and the following services: telephone and custodial. A county is prohibited from providing less of these services than were provided in the previous fiscal year.

Section 43.35, F.S., requires each court administrator to establish a witness coordinating office in each of the counties within his judicial circuit.

Sections 406.07 and 406.08, F.S., provide for the funding of medical examiners' offices by the various counties.

Section 939.015, F.S., 1984 Supplement, imposes an additional cost of \$10 against a person pleading guilty or nolo contendere to, or convicted of, a felony or misdemeanor in which any victim of such crime is handicapped or elderly. This additional cost is collected by and deposited into the Handicapped and Elderly Security Assistance Trust Fund by the clerks of the court.

B. Effect of Proposed Changes:

This bill adds language to s. 27.34(2), F.S., to require that the state attorney's office be also provided with the following: pretrial consultation fees for expert witnesses; travel expenses incurred by out-of-jurisdiction depositions and by out-of-state witness location and interrogation; court reporter costs incurred by the state attorney included in a judgment against the county; certain deposition costs incurred by the state attorney when prosecuting an insolvent defendant if taxed against the county; and costs for copying certain other depositions. Further, the minimum floor for office space and services would be based upon fiscal year 1984-1985 levels rather than 1972-1973 levels.

The bill creates s. 27.3455, F.S., to provide a state funding source for reimbursement to, in order of priority: (1) the governmental unit which provides to the state attorney and public defender the services outlined in sections 27.34(2) and

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27.54(3), F.S., except for office space, utilities, and custodial services; (2) the Medical Examiners Commission for distribution to the boards of county commissioners to supplement the cost of medical examiner services; and (3) to counties for comprehensive victim-witness programs as 50% matching funds.

Specifically, the bill would impose additional court costs against a person pleading guilty or nolo contendere to, or convicted of, a felony, misdemeanor, or criminal traffic offense in a range from \$200 to \$50; proceeds from these levies would be deposited into a Local Government Criminal Justice Trust Fund for quarterly distribution to governmental units supplying services for state attorneys, public defenders, medical examiners and victim-witness programs. A limit on reimbursements is placed on each category. Unencumbered trust funds for each fiscal year would be divided, with 25% of the balance remaining in the trust fund and 75% distributed to general revenue.

The "Local Government Criminal Justice Trust Fund" created by this bill is to be administered by the Governor, following consultation with the chairpersons of the Senate and House appropriations committees.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

A person pleading guilty or nolo contendere to, or found guilty of, one of the following categories of crimes will be subject to the additional court costs noted below:

Felonies.....	\$200
Misdemeanors.....	50
Criminal traffic offenses....	50

B. Government:

According to a report prepared by the State Attorney's Office, it is estimated that county reimbursement costs will be as follows:

State Attorneys	\$ 9.0 Million
Public Defenders	1.5 Million
Medical Examiners	8.0 Million
Victim Assistance	<u>2.5 Million</u>
TOTAL	\$21.0 Million

According to this report, based on 1982 court statistics, it is estimated that the bill will generate \$40,799,800, based upon 1983 statistics, it will generate \$44,931,250, and based upon 1984 statistics, it will generate \$45,074,450.

However, these figures assume that 100% of the collections authorized under this bill are realized. The actual collection rate may fall below the 100% level.

III. COMMENTS:

This bill is identical to 1985 House bill 1023.

IV. AMENDMENTS:

None.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Christensen</u>	<u>Lester</u>	1. <u>JCI</u>	<u>Fav</u>
2. <u>E. Davis EMD</u>	<u>Liepshutz</u> <i>ML</i>	2. <u>JCR</u>	_____
3. _____	_____	3. <u>AP</u>	_____

SUBJECT:	BILL NO. AND SPONSOR:
State Attorneys	SB 591 by Senators Malchon, Langley, Johnson, Jenne, W.D. Childers

I. SUMMARY:

A. Present Situation:

Subsection (2) of s. 27.34, F.S., requires the various counties to provide their state attorney with office space, utilities, and the following services: telephone, custodial, library, transportation, and communications. A minimum floor for such office space and services is based upon office space and services provided in fiscal year 1972-1973.

Subsection (3) of s. 27.54, F.S., requires the various counties to provide their public defender with office space, utilities, and the following services: telephone and custodial. A county is prohibited from providing less of these services than were provided in the previous fiscal year.

Section 43.35, F.S., requires each court administrator to establish a witness coordinating office in each of the counties within his judicial circuit.

Sections 406.07 and 406.08, F.S., provide for the funding of medical examiners' offices by the various counties.

Section 939.015, F.S., 1984 Supplement, imposes an additional cost of \$10 against a person pleading guilty or nolo contendere to, or convicted of, a felony or misdemeanor in which any victim of such crime is handicapped or elderly. This additional cost is collected by and deposited into the Handicapped and Elderly Security Assistance Trust Fund by the clerks of the court.

Effect of Proposed Changes:

This bill adds language to s. 27.34(2), F.S., to require that the state attorney's office be also provided with the following: pretrial consultation fees for expert witnesses; travel expenses incurred by out-of-jurisdiction depositions and by out-of-state witness location and interrogation; court reporter costs incurred by the state attorney included in a judgment against the county; certain deposition costs incurred by the state attorney when prosecuting an insolvent defendant if taxed against the county; and costs for copying certain other depositions. Further, the minimum floor for office space and services would be based upon fiscal year 1984-1985 levels rather than 1972-1973 levels.

The bill creates s. 27.3455, F.S., to provide a state funding source for reimbursement to, in order of priority: (1) the governmental unit which provides to the state attorney and public defender the services outlined in sections 27.34(2) and

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27.54(3), F.S., except for office space, utilities, and custodial services; (2) the Medical Examiners Commission for distribution to the boards of county commissioners to supplement the cost of medical examiner services; and (3) to counties for comprehensive victim-witness programs as 50% matching funds.

Specifically, the bill would impose additional court costs against a person pleading guilty or nolo contendere to, or convicted of, a felony, misdemeanor, or criminal traffic offense in a range from \$200 to \$50; proceeds from these levies would be deposited into a Local Government Criminal Justice Trust Fund for quarterly distribution to governmental units supplying services for state attorneys, public defenders, medical examiners and victim-witness programs. A limit on reimbursements is placed on each category. Unencumbered trust funds for each fiscal year would be divided, with 25% of the balance remaining in the trust fund and 75% distributed to general revenue.

The "Local Government Criminal Justice Trust Fund" created by this bill is to be administered by the Governor, following consultation with the chairpersons of the Senate and House appropriations committees.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

A person pleading guilty or nolo contendere to, or found guilty of, one of the following categories of crimes will be subject to the additional court costs noted below:

Felonies.....	\$200
Misdemeanors.....	50
Criminal traffic offenses....	50

B. Government:

According to a report prepared by the State Attorney's Office, it is estimated that county reimbursement costs will be as follows:

State Attorneys	\$ 9.0 Million
Public Defenders	1.5 Million
Medical Examiners	8.0 Million
Victim Assistance	<u>2.5 Million</u>
TOTAL	\$21.0 Million

According to this report, based on 1982 court statistics, it is estimated that the bill will generate \$40,799,800, based upon 1983 statistics, it will generate \$44,931,250, and based upon 1984 statistics, it will generate \$45,074,450.

However, these figures assume that 100% of the collections authorized under this bill are realized. The actual collection rate may fall below the 100% level.

III. COMMENTS:

This bill is identical to 1985 House bill 1023.

IV. AMENDMENTS:

None.

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

NOTE: This analysis reflects the nature of the bill as it left the Committee on Judiciary-Criminal. Any further changes to the bill are not included in this analysis. See the "Comments" section for the final procedural action taken by the Legislature.

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Christensen</u>	<u>Lester</u>	1. <u>JCI</u>	<u>Fav</u>
2. <u>E.Davis</u>	<u>Liepshutz</u>	2. <u>JCR</u>	<u>FAV.</u>
3. _____	_____	3. <u>AP</u>	_____

SUBJECT:

State Attorneys

BILL NO. AND SPONSOR:

SB 591 by
Senators Malchon, Langley,
Johnson, Jenne, W.D. Childers

I. SUMMARY:

A. Present Situation:

Subsection (2) of s. 27.34, F.S., requires the various counties to provide their state attorney with office space, utilities, and the following services: telephone, custodial, library, transportation, and communications. A minimum floor for such office space and services is based upon office space and services provided in fiscal year 1972-1973.

Subsection (3) of s. 27.54, F.S., requires the various counties to provide their public defender with office space, utilities, and the following services: telephone and custodial. A county is prohibited from providing less of these services than were provided in the previous fiscal year.

Section 43.35, F.S., requires each court administrator to establish a witness coordinating office in each of the counties within his judicial circuit.

Sections 406.07 and 406.08, F.S., provide for the funding of medical examiners' offices by the various counties.

Section 939.015, F.S., 1984 Supplement, imposes an additional cost of \$10 against a person pleading guilty or nolo contendere to, or convicted of, a felony or misdemeanor in which any victim of such crime is handicapped or elderly. This additional cost is collected by and deposited into the Handicapped and Elderly Security Assistance Trust Fund by the clerks of the court.

B. Effect of Proposed Changes:

This bill adds language to s. 27.34(2), F.S., to require that the state attorney's office be also provided with the

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Tallahassee, FL 32399-0250

Series 4 Carton 1

following: pretrial consultation fees for expert witnesses; travel expenses incurred by out-of-jurisdiction depositions and by out-of-state witness location and interrogation; court reporter costs incurred by the state attorney included in a judgment against the county; certain deposition costs incurred by the state attorney when prosecuting an insolvent defendant if taxed against the county; and costs for copying certain other depositions. Further, the minimum floor for office space and services would be based upon fiscal year 1984-1985 levels rather than 1972-1973 levels.

The bill creates s. 27.3455, F.S., to provide a state funding source for reimbursement to, in order of priority: (1) the governmental unit which provides to the state attorney and public defender the services outlined in sections 27.34(2) and 27.54(3), F.S., except for office space, utilities, and custodial services; (2) the Medical Examiners Commission for distribution to the boards of county commissioners to supplement the cost of medical examiner services; and (3) to counties for comprehensive victim-witness programs as 50% matching funds.

Specifically, the bill would impose additional court costs against a person pleading guilty or nolo contendere to, or convicted of, a felony, misdemeanor, or criminal traffic offense in a range from \$200 to \$50; proceeds from these levies would be deposited into a Local Government Criminal Justice Trust Fund for quarterly distribution to governmental units supplying services for state attorneys, public defenders, medical examiners and victim-witness programs. A limit on reimbursements is placed on each category. Unencumbered trust funds for each fiscal year would be divided, with 25% of the balance remaining in the trust fund and 75% distributed to general revenue.

The "Local Government Criminal Justice Trust Fund" created by this bill is to be administered by the Governor, following consultation with the chairpersons of the Senate and House appropriations committees.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

A person pleading guilty or nolo contendere to, or found guilty of, one of the following categories of crimes will be subject to the additional court costs noted below:

Felonies.....	\$200
Misdemeanors.....	50
Criminal traffic offenses....	50

B. Government:

According to a report prepared by the State Attorney's Office, it is estimated that county reimbursement costs will be as follows:

State Attorneys	\$ 9.0 Million
Public Defenders	1.5 Million
Medical Examiners	8.0 Million
Victim Assistance	<u>2.5 Million</u>
TOTAL	\$21.0 Million

FINAL UPDATE: July 12, 1985

REVISED: April 29, 1985

BILL NO. SB 591

DATE: April 19, 1985

Page 3

According to this report, based on 1982 court statistics, it is estimated that the bill will generate \$40,799,800, based upon 1983 statistics, it will generate \$44,931,250, and based upon 1984 statistics, it will generate \$45,074,450.

However, these figures assume that 100% of the collections authorized under this bill are realized. The actual collection rate may fall below the 100% level.

III. COMMENTS:

This bill is identical to 1985 House bill 1023.

Final Update: HB 1023 was substituted for the CS/SB 591 on the Senate Calendar. HB 1023 passed both Houses of the Legislature, was signed by the Governor on June 18, 1985 and was incorporated into the Laws of Florida as Chapter 85-213.

IV. AMENDMENTS:

None.

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A bill to be entitled

An act relating to criminal proceedings;
amending ss. 914.06, 914.11, and 939.07, F.S.,
providing county liability for certain costs
associated with criminal cases involving
indigent defendants; providing an effective
date.

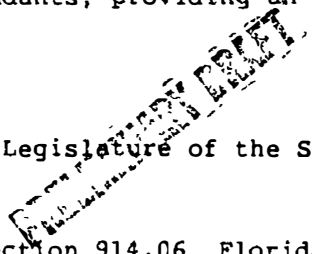
Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 914.06, Florida Statutes, is
amended to read:

914.06 Compensation of expert witnesses in criminal
felony cases.--In a criminal felony case, where on-motion-of
the state or an indigent defendant requires the services,~~the~~
~~court may require the attendance~~ of an expert witness whose
opinion is relevant to the issues of the case, the court
shall award reasonable compensation to the expert witness that
shall be taxed and paid by the county as costs in the same
manner as other costs.

Section 2. Section 914.11, Florida Statutes, is
amended to read:

914.11 Indigent defendants.--If a court decides, on
the basis of an affidavit, that a defendant in a criminal case
~~preliminary-hearing-or-trial~~ is indigent and unable to pay the
cost of procuring the attendance of witnesses and that certain
witnesses are certified by the defendant's attorney as serving
a useful purpose to the disposition of the case necessary to
~~the defense,~~ the court shall order the witnesses subpoenaed,
and the costs shall be paid by the county. When depositions
are taken outside the circuit in which the case is pending,



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1 travel expenses shall be paid by the county in accordance with
2 the provisions of s. 112.061, and shall also be taxed as
3 costs.

4 Section 3. Section 939.07, Florida Statutes, is
5 amended to read:

6 939.07 Pay of defendant's witnesses.--In all criminal
7 cases prosecuted in the name of the state in the circuit
8 courts or county courts in this state where the defendant is
9 indigent insolvent or discharged, the county shall pay the
10 legal expenses and costs, as is prescribed for the payment of
11 costs incurred by the county in the prosecution of such cases;
12 provided, that there shall not be more than two witnesses
13 summoned and paid to prove the same fact; and provided
14 further, that before any witness is subpoenaed on behalf of a
15 defendant in the circuit or county court an application shall
16 be made to the judge, in writing, on behalf of the defendant,
17 setting forth the substance of the facts sought to be proved
18 by the witness or witnesses, making affidavit that the
19 defendant is insolvent, and if upon such showing the judge is
20 satisfied that the witness or witnesses serve a useful purpose
21 to the disposition of the case ~~are necessary for the proper~~
22 ~~defense of the defendant~~, he shall order that subpoena issue,
23 and that the costs as herein provided shall be paid by the
24 county, and not otherwise.

25 Section 4. This act shall take effect October 1, 1985.
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HOUSE SUMMARY

Provides county liability for the payment of expert witnesses in all criminal cases involving indigent defendants. Provides county liability for travel expenses incurred by indigent defendants in deposing certain witnesses.

STORAGE NAME: SS HB 901-85

Date: April 19, 1985

Revised: _____

Final: _____

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HOUSE OF REPRESENTATIVES
COMMITTEE ON JUDICIARY
STAFF ANALYSIS

BILL# HB 901 SPONSOR Rep. Titone

EFFECTIVE DATE Becoming law IDENTICAL/SIMILAR BILLS SB 557

RELATING TO Appropriations

OTHER COMMITTEES OF REFERENCE Appropriations

I. SUMMARY:

A. Present Situation:

Section 914.06, F.S., provides the procedure for compensation of expert witnesses in felony cases, allowing the court to award reasonable compensation to the witness that shall be taxed as costs in the same manner as other costs.

Section 914.11, F.S., provides for the county to pay the cost of attendance of witnesses found by the Court to be necessary to the defense of an indigent defendant in a preliminary hearing or trial.

Section 939.07 F.S. specifies payment by the county of legal expenses and costs in criminal cases of an insolvent defendant. It further sets forth a limit of no more than two witnesses summoned to prove the same fact, requiring an application to the judge for approval of the witness as necessary to the proper defense of the defendant.

Section 939.15, F.S. provides that where the defendant has been adjudged insolvent the county shall bear the responsibility for the costs allowed by law.

Other examples of statutes specifically providing for certain types of criminal "costs" to be taxed against the defendant or the county can be found throughout the statutes. See, e.g. s.29.05 F.S., s.92.231 F.S., s.142.09 F.S., s.916.11 F.S., s.939.06 F.S. CF., Former s.9 Art.XVI, Constitution of 1885, preserved and converted to a statute by s.10 of Art XII of the 1968 Revised Constitution.

B. Effect of Proposed Changes:

HB 901 amends s.914.06, F.S., to provide that in any criminal case the county shall pay the fee for expert witness services when required by the state or an indigent defendant.

Section 914.11, F.S., is amended to provide that in any criminal case where a defendant is indigent the county shall pay the costs to subpoena witnesses and the costs of depositions and transcripts which are certified as serving a useful purpose by the defendant's attorney. Section 939.07 is similarly conformed, and the provisions restricting an indigent defendant from calling additional witnesses are repealed.

II. ECONOMIC IMPACT:

A. Public: None

B. Government:

Counties have in the past paid for expert witness fees and public defender travel expenses for depositions taken pursuant to Rule 3.220, Florida Rules of Criminal Procedure. This bill would increase the services provided indigent defendants and would require additional expenditures by the counties.

The salaries of the Public Defender and assistants in each circuit is funded by the state pursuant to ss.27.53 and 216.181, F.S.

III. COMMENTS

A 1984 opinion of the Attorney General, AGO 84-94, provided that counties have no liability for pretrial consultation fees for expert witnesses consulted before trial by either the state attorney or the public defender.

The same opinion held that counties were not liable for travel expenses incurred by public defenders in connection with out-of-jurisdiction depositions in criminal cases.

The Public Defender of the Seventeenth Judicial Circuit is presently seeking declaratory relief on the issues presented in this bill.

IV. AMENDMENTS:

V. PREPARED BY Kent J. Perez *KJP*

VI. STAFF DIRECTOR Richard Hixson

AMENDMENT -- FOR DRAFTING ONLY

(MUST BE TYPED ON FORM H-29 OR H-39 BEFORE PRESENTATION)

Representative g / The Committee on Court Systems and Miscellaneous

HB 901

offered the following amendment

SB _____

On page 3, line 9, ~~XXXXX~~ INSERT:

Section 4. Subsection (3) of section 27.54, Florida Statutes,
is amended to read:

27.54 Expenditures for public defender's office --

(3) The public defenders shall be provided by the counties within
their judicial circuits with such office space, utilities, telephone ser-
vice, and custodial services as may be necessary for the proper and effi-
cient functioning of these offices. The public defender's office shall
also be provided with pretrial consultation fees for expert of other
potential witnesses and consulted before trial by the public defender;
travel expenses incurred in criminal cases by a public defender in con-
nection with out-of-jurisdiction depositions; out-of-state travel expen-
ses incurred by public defenders or by investigators of public defenders
while attempting to locate and interrogate witnesses for the public
defender in the defense of a criminal case; court reporter costs incurred
by the public defender during the course of an investigation and criminal
prosecution which costs are included in a judgment rendered by the trial
court against the county in which the crime was committed; post-indictment
and post-information deposition costs incurred by the public defender
during the course of a criminal prosecution of an indigent defendant,
when taxed by the court against the county and included in its judgment
against the county under s.939.15; and the cost of copying depositions of
defense witnesses taken by the state attorney if the trial court finds
that the copies were necessary for the defense or served a useful purpose
in the disposition of the case and includes such cost in its judgment
against the county. The office space and utilities provided by the
counties shall not be less than the standards for space allotment pro-
mulgated by the Department of General Services. The counties shall not
provide less of these services than were provided in the previous fiscal
year.

(renumber remaining section accordingly)

STORAGE NAME: SS HB 901-85

Date: April 19, 1985

Revised: April 24, 1985

Final: _____

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HOUSE OF REPRESENTATIVES
COMMITTEE ON JUDICIARY
STAFF ANALYSIS

BILL# HB 901 SPONSOR Rep. Titone

EFFECTIVE DATE Becoming law IDENTICAL/SIMILAR BILLS SB 557

RELATING TO Indigent defendants in criminal trials

OTHER COMMITTEES OF REFERENCE Appropriations

I. SUMMARY:

A. Present Situation:

Section 914.06, F.S., provides the procedure for compensation of expert witnesses in felony cases, allowing the court to award reasonable compensation to the witness that shall be taxed as costs in the same manner as other costs.

Section 914.11, F.S., provides for the county to pay the cost of attendance of witnesses found by the Court to be necessary to the defense of an indigent defendant in a preliminary hearing or trial.

Section 939.07 F.S. specifies payment by the county of legal expenses and costs in criminal cases of an insolvent defendant. It further sets forth a limit of no more than two witnesses summoned to prove the same fact, requiring an application to the judge for approval of the witness as necessary to the proper defense of the defendant.

Section 939.15, F.S. provides that where the defendant has been adjudged insolvent the county shall bear the responsibility for the costs allowed by law.

Other examples of statutes specifically providing for certain types of criminal "costs" to be taxed against the defendant or the county can be found throughout the statutes. See, e.g. s.29.05 F.S., s.92.231 F.S., s.142.09 F.S., s.916.11 F.S., s.939.06 F.S. CF., Former s.9 Art.XVI, Constitution of 1885, preserved and converted to a statute by s.10 of Art XII of the 1968 Revised Constitution.

B. Effect of Proposed Changes:

HB 901 amends s.914.06, F.S., to provide that in any criminal case the county shall pay the fee for expert witness services when required by the state or an indigent defendant.

Section 914.11, F.S., is amended to provide that in any criminal case where a defendant is indigent the county shall pay the costs to subpoena witnesses and the costs of depositions and transcripts which are certified as serving a useful purpose by the defendant's attorney. Section 939.07 is similarly conformed, and the provisions restricting an indigent defendant from calling additional witnesses are repealed.

II. ECONOMIC IMPACT:

A. Public: None

B. Government:

Counties have in the past paid for expert witness fees and public defender travel expenses for depositions taken pursuant to Rule 3.220, Florida Rules of Criminal Procedure. This bill would increase the services provided indigent defendants and would require additional expenditures by the counties.

The salaries of the Public Defender and assistants in each circuit is funded by the state pursuant to ss.27.53 and 216.181, F.S.

III. COMMENTS


A 1984 opinion of the Attorney General, AGO 84-94, provided that counties have no liability for pretrial consultation fees for expert witnesses consulted before trial by either the state attorney or the public defender.


The same opinion held that counties were not liable for travel expenses incurred by public defenders in connection with out-of-jurisdiction depositions in criminal cases.

The Public Defender of the Seventeenth Judicial Circuit is presently seeking declaratory relief on the issues presented in this bill.

IV. AMENDMENTS:

The bill was amended to clarify those expenses of the Office of the Public Defender under s.27.54, F.S., which shall be paid by the counties.

V. PREPARED BY Kent J. Perez 

VI. STAFF DIRECTOR Richard Hixson 



Florida House
of Representatives

Carl Selph
Representative, 34th District

221 The Capitol
Tallahassee, Florida 32301
(904) 488-0468

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Casselberry, Florida 32707
(305) 834-0808

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MEMORANDUM TO THE FILES

DATE: November 26, 1984

SUBJECT: Charges for Public Defender Services in Appellate Court Actions,
F.S. 27.56

Through letter dated November 21, 1984 (attached) and telephone conversation, this date, Assistant State Attorney Ralph Eriksson brought the subject matter to my attention.

FACTS: Ralph recently suggested to the trial court judge (18th Judicial Circuit) that charges for the Public Defender's services in a DCA action be levied upon the unsuccessful defendant, as had been done in the trial court action, pursuant to F.S. 27.56.

The trial court judge denied the suggestion on the basis of:

1. F.S. 27.56 probably does not apply to appellate court actions.
2. The trial court judge did not believe he should levy a charge for the services of a public defender from another circuit, even though both circuits are in the same DCA district. (NOTE: The P.D.'s office in Volusia handles all DCA work in the 5th District.)

DESIRED SOLUTION: Prepare a Bill allowing charges to be levied for Public Defender services in Appellate Court actions.

ITEMS TO CONSIDER IN DRAFTING LEGISLATION:

1. Appellate judges probably do not want the responsibility to levy charges, since a separate hearing may be necessary (F.S. 27.56(7)). Therefore, it is probably desirable to have the trial court judge assess the charge.
2. Perhaps the levy should not be in favor of the appropriate county, since the state appropriates money to certain P.D. offices for appeal work (F.S. 27.51(4) & (5)).
3. If the levy is in favor of the state, does the State Attorney become the collection agent? (F.S. 27.12). If so, the S.A.'s may not be thrilled with the added duty.

ACTION: Requested Nancy Stewart to work with Judiciary Committee staff to draft satisfactory legislation.

Statewide prosecutor idea heads for a vote in 1986

By MARK SILVA
(Capitol Bureau Chief)

TALLAHASSEE — Stepping up the governor's campaign to appoint a special statewide prosecutor to fight organized crime, members of the House and Senate said Wednesday that they will attempt to take the issue to Florida's voters.

If Gov. Bob Graham, Attorney General Jim Smith and the legislative sponsors are successful, voters will be asked in November 1986 to create a new prosecutor's office with authority throughout the state. They're asking the Legislature to approve a bill that offers the proposed constitutional amendment.

"We need a statewide prosecutor who can chase criminals from one end of the state to the other and not be hampered by [county] lines," said Sen. Bob Crawford, D-Winter Haven, sponsor of the proposal in the Senate.

Florida was the nation's 33rd largest

state at the turn of the century. It is expected to become the third largest state by the year 2000.

"Yet, to my knowledge, the prosecution procedures have not changed," said Rep. Hamilton Upchurch, D-St. Augustine, House sponsor of the move to appoint a statewide prosecutor. "Crime is organized. There is no reason that Florida can not be organized."

Florida's state attorneys traditionally have opposed the idea of creating an office that has authority throughout the state. Now, some state attorneys are supporting the idea, and the governor says he is confident he can overcome the remaining opposition.

State attorneys have the power to prosecute criminals only within their own counties in Florida's most populated areas, and within broader multi-county districts — known as circuits — in more rural areas.

Public Defender asks court to settle fee issue

By Mary Anderson
Staff Writer

Broward County Public Defender Alan Schreiber filed suit Wednesday to find out whether the county or the state must pay his office's expert witness fees and other expenses for indigent defendants.

Basing their position on an attorney general's opinion, county officials decided they are not responsible for the fees of expert witnesses if the witnesses do not testify in court.

But after Schreiber charged publicly last December that the refusal to pay was creating a crisis in the criminal justice system, the county agreed to keep paying the expenses until the public defender's new budget year begins July 1.

Nonetheless, bureaucratic confusion has continued to hold up payment of some bills despite court approval and proper documentation from his office. Schreiber said Wednesday

And the county's decision to cut off funds it has paid for the past eight years came too late for Schreiber's office to add the expenses to its state budget request, he said.

Circuit Judge Lawrence Kord, to whom the case is assigned, will be asked to decide the issue.

The suit contends that pretrial consultations with experts who could aid the defense can be as important to the case's outcome as the actual testimony.

Assistant County Attorney Bob Hone said Wednesday he had not yet seen the lawsuit.

"It certainly is a definitive way of once and for all resolving it," he said.

But he said that does not mean the county does not object to the lawsuit.

So far, Broward is the only Florida county to follow the attorney general's opinion, which does not carry the force of law but is considered persuasive authority by the County Attorney's office.

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IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

ALAN H. SCHREINER, as Public)
Defender of the Seventeenth)
Judicial Circuit of Florida,)

Plaintiff,)

vs.)

BROWARD COUNTY, FLORIDA, a)
Political Subdivision of the)
State of Florida,)

and)

GERALD A LEWIS, as Comptroller)
of the State of Florida,)

and)

BOB GRAHAM, as Governor of the)
State of Florida,)

Defendants.)

85-05537

OK

CIVIL DIVISION

Case No. _____

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ROBERT E. LOCKWOOD

C O M P L A I N T

COMES NOW the Plaintiff, ALAN H. SCHREIBER, by and through the undersigned counsel, and brings this action against the Defendants, BROWARD COUNTY, FLORIDA, GERALD A. LEWIS, and BOB GRAHAM, and in support of said action alleges the following:

1. This is an action for a declaratory judgment pursuant to Section 86.011, Florida Statutes (1983).

2. Plaintiff is the duly elected Public Defender for the Seventeenth Judicial Circuit of Florida, serving pursuant to authority of Article V, Section 18, Florida Constitution (1968), and Sections 27.50 through 27.59, Florida Statutes (1983).

3. Defendant, Broward County, Florida, (hereinafter referred to as Broward County) is a political subdivision of the State of Florida, and whose principle office location is in Broward County, Florida.

4. Defendant, Gerald A. Lewis, is the duly elected Comptroller of the State of Florida, serving pursuant to authority of Article IV, Section 4, Florida Constitution (1968), and Chapter 17, Florida Statutes (1983).

5. Defendant, Bob Graham, is the duly elected Governor of the State of Florida, serving pursuant to authority of Article IV, Section 1, Florida Constitution (1968), and Chapter 14, Florida Statutes (1983).

6. The Plaintiff, as Public Defender of the Seventeenth Judicial

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Circuit (Broward County), is responsible for providing legal representation to indigent persons charged with felonies, misdemeanors, and other crimes as defined in Section 27.51(1), Florida Statutes (1983).

7. The Office of the Public Defender, Seventeenth Judicial Circuit is funded by state funds pursuant to Sections 27.53 and 216.181, Florida Statutes (1983). All funds paid out of the Public Defender operating budget must be approved by the Comptroller and countersigned by the Governor. Article IV, Section 4(e), Florida Constitution (1968).

8. A controversy has arisen between Plaintiff and Defendant, Broward County, as a result of which Plaintiff is in doubt as to his rights. The controversy arises because of a recent Attorney General's opinion, AGO 84-94, which construes the following provisions of state statutes: Sections 27.33, 27.34, 27.54, 92.142, 92.231, 914.06, 939.01, 939.06, 939.07, 939.15.

9. The Plaintiff is raising the following issues in this complaint:

A. Whether the Plaintiff, Public Defender's Office, or the Defendant, Broward County, is responsible for the payment of expert witness fees, as taxable costs: for an experts time preparing to testify, including pre-trial consultation with attorneys, pre-trial consultation with a defendant, depositions, investigations, etc., even if the experts testimony isn't needed due to a change of plea, mistrial, or other circumstances, which makes the experts testimony unnecessary.

B. Whether the Plaintiff, Public Defender's Office, or the Defendant, Broward County, is responsible for the payment of out-of-jurisdiction discovery depositions taken by a member of the Public Defender's Office pursuant to Rule 3.220, Florida Rules of Criminal Procedure, when the trial court determines that the discovery depositions are necessary and serve a useful purpose.

10. Prior to the issuance of AGO 84-94, Broward County, has for at least eight years, paid for expert witness fees and public defender travel costs to take depositions pursuant to Rule 3.220, Florida Rules of Criminal Procedure.

11. Subsequent to AGO 84-94, Broward County has agreed to continue to pay expert witness fees until June 30, 1985. Beginning July 1, 1985, Broward County says they will no longer pay said costs. Broward County has already cut off all funds for public defender travel costs for out-of-jurisdiction discovery depositions.

12. The Plaintiff submits that Broward County is responsible to pay for reasonable expert witness fees. Section 914.05, Florida Statutes (1983) provides that:

"...on motion of the state or an indigent defendant, the court may require the attendance of an expert witness whose opinion is relevant to the issues of the case. The court shall award reasonable compensation to the expert witness that shall be taxed as costs in the same manner as other costs."

Defendant, Broward County, is responsible to pay all "cost allowed by law," if the defendant is indigent. Section 939.15, Florida Statutes (1983). The question is, what are "costs allowed by law"?

A. Plaintiff maintains that an expert's time preparing to testify, including pre-trial consultation with attorneys, pre-trial consultation with a defendant, depositions, investigations, etc., are necessary and reasonable expenses and taxable against Broward County as costs.

B. Plaintiff further maintains that if the expert spends time in preparation to testify, but doesn't testify, due to a plea, mistrial, or other circumstances, that the expert fees are still taxable against Broward County, as costs.

13. The Defendant, Broward County, contends that only the experts time while actually testifying at trial are taxable as costs and any time the expert spends in preparation to testify is not taxable as costs.

14. The Plaintiff maintains that travel expenses incurred in criminal cases by a member of the Public Defender's Office in connection with out-of-jurisdiction depositions are taxable costs, payable by Broward County, if the trial court determines that the depositions were necessary and served a useful purpose. Plaintiff bases his assertions on Rule 3.220(k), Florida Rules of Criminal Procedure, which provide that:

"After a defendant is adjudged insolvent, the reasonable costs incurred in the operation of these rules shall be taxed as costs against the county."

15. The Defendant, Broward County, submits that they are not responsible for travel costs as described in paragraphs 9(B) and 14 above.

16. Defendant, Broward County, by saying they will cease payment of further expert witness fees (except when they actually testify at trial) and travel expenses for out-of-jurisdiction discovery depositions, places the Plaintiff in the untenable position of trying to plan a budget for the 1985-86 fiscal year which begins July 1, 1985. Pursuant to Section 27.53, Florida Statutes (1983), the Plaintiff has already submitted their budget for the

1985-86 fiscal year.

17. If the Plaintiff is responsible for any costs, either for experts or out-of-jurisdiction discovery depositions, said costs would come from the Plaintiff's general operating budget. Those items are required to be submitted to the Defendant, Gerald A. Lewis, as Comptroller, and, if approved, countersigned by the Defendant, Bob Graham, as Governor. Article IV, Section 4(e), Florida Constitution (1968).

18. Therefore, Plaintiff is in need of a judicial declaration as to the issues presented in this complaint.

19. A declaratory judgment is particularly appropriate to resolve controversies arising within the government of the State of Florida as to the power of a state officer or agency to effect the disbursement of state funds. Jacksonville Expressway Authority v. Duval County, 189 So.2d 837 (Fla. 1st DCA 1966); Overman v. State Board of Control, 62 So.2d 696 (Fla. 1953).

WHEREFORE, the Plaintiff moves this Honorable Court to render a declaratory judgment on the issues presented in this complaint.

Respectfully submitted,

ALAN H. SCHREIBER
Public Defender
17th Judicial Circuit



STEVEN MICHAELSON
Chief Assistant Public Defender
Appellate Division
Fla. Bar. # 257559
201 S.E. 6th Street, Room 740
Broward County Courthouse
Fort Lauderdale, Florida 33301
Telephone No. (305) 765-5350

Counsel for Plaintiff

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Christensen</u>	<u>Lester</u>	1. <u>JCI</u>	<u>Favorable</u>
2. <u>E. Davis</u>	<u>Liepshutz</u>	2. <u>JCR</u>	<u>Favorable</u>
3. <u>Stolting</u>	<u>Smith</u>	3. <u>AP</u>	<u>FAV/CS</u>

SUBJECT: State Attorneys

BILL NO. AND SPONSOR: SB 591 by Appropriations Committee
Senators Malchon, Langley,
Johnson, Jenne and W.D. Childers

I. SUMMARY:

A. Present Situation:

Subsection (2) of s. 27.34, F.S., requires the various counties to provide their state attorney with office space, utilities, and the following services: telephone, custodial, library, transportation, and communications. A minimum floor for such office space and services is based upon office space and services provided in fiscal year 1972-1973.

Subsection (3) of s. 27.54, F.S., requires the various counties to provide their public defender with office space, utilities, and the following services: telephone and custodial. A county is prohibited from providing less of these services than were provided in the previous fiscal year.

Section 43.35, F.S., requires each court administrator to establish a witness coordinating office in each of the counties within his judicial circuit.

Sections 406.07 and 406.08, F.S., provide for the funding of medical examiners' offices by the various counties.

Section 939.015, F.S., 1984 Supplement, imposes an additional cost of \$10 against a person pleading guilty or nolo contendere to, or convicted of, a felony or misdemeanor in which any victim of such crime is handicapped or elderly. This additional cost is collected by and deposited into the Handicapped and Elderly Security Assistance Trust Fund by the clerks of the court.

B. Effect of Proposed Changes:

This bill adds language to s. 27.34(2), F.S., referring to state attorneys, and s. 27.54(3), F.S., referring to public defenders, to require that these offices be also provided with the following: pretrial consultation fees for expert witnesses; travel expenses incurred by out-of-jurisdiction depositions and by out-of-state witness location and interrogation; court reporter costs incurred by the state attorney or public defender included in a judgment against the county; certain deposition costs incurred by the state attorney or public defender when prosecuting an insolvent defendant if taxed against the county; and costs for copying certain other depositions. Further state attorneys, the minimum floor for office space and services would be based upon fiscal year 1984-1985 levels rather than 1972-1973 levels.

The bill creates s. 27.3455, F.S., to provide a state funding source for reimbursement to, in order of priority: (1) the

governmental unit which provides to the state attorney and public defender the services outlined in sections 27.34(2) and 27.54(3), F.S., except for office space, utilities, and custodial services; (2) the Medical Examiners Commission for distribution to the boards of county commissioners to supplement the cost of medical examiner services; and (3) to counties for comprehensive victim-witness programs as 50% matching funds.

Specifically, the bill would impose additional court costs against a person pleading guilty or nolo contendere to, or convicted of, a felony, misdemeanor, or criminal traffic offense in a range from \$200 to \$50; proceeds from these levies would be deposited into a Local Government Criminal Justice Trust Fund for quarterly distribution to governmental units supplying services for state attorneys, public defenders, medical examiners and victim-witness programs. A limit on reimbursements is placed on each category. Unencumbered trust funds for each fiscal year would be divided, with 25% of the balance remaining in the trust fund and 75% distributed to general revenue.

Agencies incurring administrative costs in implementing this act would report those impacts to the Legislature by April 15, 1986. Also, if the emergency release provisions of s. 944.598, F.S., were triggered by a rise in inmate population, no inmate shall be denied release solely as a result of losing gain time under this bill due to non-payment of the additional court costs.

Included is a sunset provision for the entire assessment and trust fund reimbursement plan, effective October 1, 1988.

The "Local Government Criminal Justice Trust Fund" created by this bill is to be administered by the Governor, following consultation with the chairpersons of the Senate and House appropriations committees.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

A person pleading guilty or nolo contendere to, or found guilty of, one of the following categories of crimes will be subject to the additional court costs noted below:

Felonies.....	\$200
Misdemeanors.....	50
Criminal traffic offenses....	50

B. Government:

According to a report prepared by the State Attorney's Office, it is estimated that county reimbursement costs will be as follows:

State Attorneys	\$ 9.0 Million
Public Defenders	4.5 Million
Medical Examiners	8.0 Million
Victim Assistance	<u>2.5 Million</u>
TOTAL	\$21.0 Million

According to this report, based on 1982 court statistics, it is estimated that the bill will generate \$40,799,800, based upon 1983 statistics, it will generate \$44,931,250, and based upon 1984 statistics, it will generate \$45,074,450.

These projections incorporate Department of Corrections estimates of nearly 100 percent compliance by non-indigent persons, based on comparison with programs such as Work Release Restitution. It is estimated that the clerks of court would retain about \$2,406,512 to offset their costs. Counties would incur some costs in operating the community services programs for indigent persons unable to pay the assessment, but cost of such supervision, based on DOC estimates and comparisons, tends to be minimal. There remains some question with regard to administrative and audit cost impacts on the state level, but these should not be prohibitive.

III. COMMENTS:

This bill is identical to 1985 House bill 1023.


IV. AMENDMENTS:

None.

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR SB 591

1. Adds services to subsection 27.54(3), F.S., which the counties are required to provide to public defenders, and for which they may then be eligible for reimbursement under new section 27.3455, F.S.

Committee on Appropriations


Chairman or Staff Director

CL4(4-74) (File 2 copies with Committee Substitutes)

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT, IN
AND FOR LEON COUNTY, FLORIDA

CASE NO. 83-2463

RANDOLPH P. MURRELL,
An Assistant Public Defender,

Plaintiff,

vs.

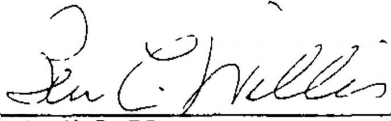
BOB GRAHAM, Governor
of the State of Florida,

Defendant.

ORDER AND FINAL JUDGMENT

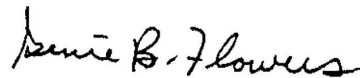
THIS CAUSE having been heard upon the Plaintiff's Motion for a Summary Judgment, and the Court having heard argument of counsel, the Court finds that Chapter 83-256, Laws of Florida, invades the province of the judiciary and forces the Plaintiff to take a position adverse to the interests of his clients. Therefore, this Court holds that Chapter 83.256, Laws of Florida is unconstitutional because it violates Article II, Section 3, of the Florida Constitution. In entering this judgment the Court recognizes the inherent power of the trial court to assess costs and attorney's fees. The Court's holding does not alter that inherent right.

DONE AND ORDERED this 17th day of November, 1983.


BEN C. WILLIS
Circuit Judge

cc: Randolph P. Murrell
Plaintiff

Jim Peters ✓
Assistant Attorney General



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RANDOLPH P. MURRELL,
An Assistant Public Defender,

Plaintiff,

vs.

BOB GRAHAM, Governor
of the State of Florida,

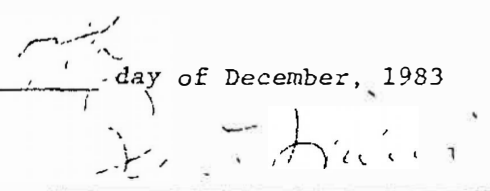
Defendant.

_____ /

AMENDED ORDER AND FINAL JUDGMENT

THIS CAUSE having been heard upon the Plaintiff's Motion for a Summary Judgment, and the Court having heard argument of counsel, the Court finds that Chapter 83-256, Section 1, is unconstitutional because it violates Article II, Section 3, of the Florida Constitution. In entering this judgment the Court recognizes the inherent power of the trial court to assess costs and attorney's fees. The Court's holding does not alter that inherent right.

DONE AND ORDERED this _____ day of December, 1983



BEN C. WILLIS
Circuit Judge

cc. Randolph P. Murrell
Plaintiff

Jim Peters
Assistant Attorney General

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

BOB GRAHAM, Governor of
the State of Florida,

Appellant,

vs.

RANDOLPH P. MURRELL,
An Assistant Public
Defender,

Appellee.

* NOT FINAL UNTIL TIME EXPIRES
* TO FILE REHEARING MOTIONS AND
* DISPOSITION THEREOF IF FILED.

* CASE NO. AW-375

*

*

*

Opinion filed December 18, 1984.

An appeal from the Circuit Court for Leon County.
Ben C. Willis, Judge.

Jim Smith, Attorney General; and James A. Peters,
Assistant Attorney General, Tallahassee, for appellant.

Randolph P. Murrell, Assistant Public Defender,
Tallahassee, for appellee.

Bennett H. Brummer, Public Defender; and Thomas G.
Murray, Assistant Public Defender, Miami, for amicus
curiae Florida Public Defender Association.

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CRIMINAL DIVISION

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DEPT. OF LEGAL AFFAIRS
CRIMINAL DIVISION

WIGGINTON, J.

Appellee, an assistant public defender, filed an amended
complaint for declaratory judgment, seeking a declaration

from the court that chapter 83-256, section 1, Laws of Florida (1983), amending section 27.56(1)(a), Florida Statutes, is unconstitutional. Chapter 83-256, section 1, amended section 27.56(1)(a) to include the following language:

At the sentencing hearing or at such stage in the proceedings as the court may deem appropriate, the public defender, the special assistant public defender, or the private attorney representing such defendant shall move the court to assess attorney's fees and costs against the defendant.

- 1.) Creates rule of procedure
- 2.) Regulates Attorney Conduct.

Upon motion filed by appellee, the trial court entered final summary judgment, declaring chapter 83-256, section 1, to be unconstitutional as violating the separation of powers doctrine embodied in article II, section 3, of the Florida Constitution. We affirm.

The challenged legislation invades the province of the judiciary, and thereby violates the separation of powers doctrine, for two reasons. First, it creates a rule of practice and procedure; the legislature has no constitutional authority to enact any law relating to practice and procedure. In re Clarification of Florida Rules of Practice and Procedure (Florida Constitution, Article V, Section 2(a)), 281 So. 2d 204 (Fla. 1973). By enacting such a law, the legislature directly intrudes upon the Florida Supreme Court's constitutional power to adopt rules for the practice and procedure in all courts, as defined by article V, section 2(a). Johnson v. State, 308 So. 2d 127 (Fla. 1st DCA 1975).

The question of whether a rule relates to substantive law or to practice and procedure was discussed at great length by Justice Adkins in his concurring opinion in In re Florida Rules of Criminal Procedure, 272 So. 2d 65 (Fla. 1972), in which he stated:

Practice and procedure encompass the course, form, manner, means, method, mode, order, process or steps by which a party enforces substantive rights or obtains redress for their invasion.

Id., at 66. Applying the above definition to the instant case, it is clear that chapter 83-256, section 1, sets forth the mechanics to appellee's realizing his substantive right to fees created by section 27.56. Consequently, it is a law clearly relating to practice and procedure and thus void, unless the Florida Supreme Court has formulated a rule conforming with the perceived intent of the legislature framed by the enactment, thereby adopting the statute as its own. See *In re Clarification; State v. Smith*, 260 So. 2d 489 (Fla. 1972); and *Johnson v. State*; cf., *Carter v. Sparkman*, 335 So. 2d 802, 806 (Fla. 1976); and *Wooten v. State*, 332 So. 2d 15, 18 (Fla. 1976).

By Florida Rule of Criminal Procedure 3.720(d)(1), the supreme court adopted the 1979 version of section 27.56 and in particular subsection (7), which grants discretion to the trial court to deem at what stage of the proceedings it would be appropriate to determine the value of the public defender's services. Subsection (7) has remained unchanged, despite the legislature's 1983 amendment of subsection (1), yet the present rules of criminal procedure make no provision for that amendment. Consequently, as the court has made no effort to adopt the amendment as its own, the enactment is void.

Second, the legislative effort invades the province of the judiciary by impermissibly attempting to regulate the conduct of attorneys. The legislature is without any authority to directly or indirectly interfere with or impair an attorney's

exercise of his ethical duties as an attorney and officer of the court. An attorney cannot be put "in the untenable position of choice between a violation of a statute or a violation of a specific Canon [of Ethics] insofar as they clearly conflict." Times Publishing Company v. Williams, 222 So. 2d 470, 475 (Fla. 2d DCA 1969) (emphasis in original).

Appellee's professional conduct is governed by the Code of Professional Responsibility which was promulgated by the supreme court. In re The Florida Bar, 316 So. 2d 45 (Fla. 1975). Canon 7 of the Code requires appellee to represent his client zealously and within the bounds of the law. Yet, despite his ethical obligations, the legislature would have appellee request the court to assess costs and attorney's fees against his client. By so doing, the legislature has forced appellee onto the horns of an ethical dilemma. This it may not constitutionally do.

For the above-stated reasons, we affirm the trial court's finding that chapter 83-256, section 1, is unconstitutional.

AFFIRMED.

JOANOS AND NIMMONS, JJ., CONCUR.

STORAGE NAME: 85-1023 HB

Date: April 16, 1985
Subcommittee: I
Revised: _____
Final: _____

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HOUSE OF REPRESENTATIVES
COMMITTEE ON CRIMINAL JUSTICE
STAFF ANALYSIS

BILL# HB 1023 SPONSOR Rep. Mitchell, Clements and others

EFFECTIVE DATE October 1, 1985 IDENTICAL/SIMILAR BILLS SB 591

RELATING TO Funding of the offices of the State Attorney and Public Defender

OTHER COMMITTEES OF REFERENCE Appropriations

I. SUMMARY:

Present Situation:

Currently s. 27.34(2) requires the respective counties within the various judicial circuits to provide the state attorney with office space, utilities, telephone service, custodial services, library services, transportation services, and communication services as may be necessary for the proper and efficient operation of that office.

At present there is no such requirement respecting any other kinds of pretrial expenditures incurred by the state attorney in connection with pretrial activities and trial preparation.

With respect to court costs in criminal proceedings there are provisions for taxing of certain costs. These costs are taxable only for specific expenses of a party in connection with the prosecution or defense in a criminal matter before the courts. There is currently no provision in the law for any add-on court costs.

Effect of Proposed Changes:

The bill would amend section (2) of s. 27.34 and require the counties within a state attorney's circuit to provide him with funds for:

- 1) Pre-trial consultation fees for expert and other potential witnesses consulted before trial;
- 2) Travel expenses incurred in criminal cases in connection with out-of-jurisdiction depositions;

3) Out-of-state travel expenses incurred by assistant state attorneys or by investigators of state attorneys while attempting to locate and interrogate witnesses;

4) Court reporter costs incurred by the state attorney during the course of an investigation and criminal prosecution which costs are included in a judgment rendered by the trial court against the county in which the crime was committed;

5) Post-indictment and post-information deposition costs incurred during the course of a criminal prosecution of an insolvent defendant, when ordered by the court against the county and included in its judgment against the county under s. 939.15;

6) Cost of copying depositions of state witnesses taken by the public defender, court-appointed counsel or privately-retained counsel, if the trial court finds that the copies were necessary for the prosecution or served a useful purpose in the prosecution and includes such cost in its judgment against the county.

Section 2 of the bill creates s. 27.3455 and provides for imposition of additional court costs on any person who pleads guilty or nolo-contendere to or is found guilty of any felony, misdemeanor or criminal traffic offense under the laws of the state or the violation of any municipal or county ordinance which adopts by reference any misdemeanor under state law, as follows:

- a. Felonies-----\$200
- b. Misdemeanors-----\$50
- c. Criminal traffic offenses--\$50

The clerk of the court must collect such additional costs and notify the convicted person's supervising agency upon full payment of fees. The clerk must retain \$3 of the costs for each misdemeanor or criminal traffic case and \$5 for each felony case as a service charge of the clerk's office with the remainder being forwarded to the Treasurer for deposit in the Local Government Criminal Justice Trust Fund to be administered by the Governor after consultation with the chairpersons of the Appropriations Committees of the Senate and House of Representatives.

No political subdivision will be held liable for the payment of the additional cost imposed by this section.

All applicable fees and court costs must be paid in full prior to the granting of any gain time accrued.

Indigent persons must be sentenced by the court to a term of community service to commence at the termination of incarceration. Each hour of community service is credited against the additional cost imposed at a rate equivalent to the minimum wage. The governing body of the county concerned will supervise the community service program.

The priority for the distribution of funds deposited in the trust fund are as follows;

1) Quarterly distribution to the governmental unit which provides to the state attorney and to the public defender the services outlined in s. 27.34(2) and s. 27.54(3) except that such funds may not be used to pay for office space, utilities or custodial services;

2) Remaining funds on deposit will be distributed to the Medical Examiners Commission within the Department of Law Enforcement for distribution to the boards of county commissioners to supplement the actual cost of operations and services of medical examiners, including the costs associated with the investigation of state prison inmate deaths. Funds distributed for such purposes in any year must not exceed \$1 per capita statewide.

3) Counties establishing or having in existence a comprehensive victim-witness program meeting applicable standards are eligible to receive available 50 percent matching trust fund moneys. There is a cap of 25 cents per capita statewide. Funds for the comprehensive victim-witness programs are to be transferred from the trust fund to the Bureau of Crimes Compensation for distribution to the counties.

Distribution of funds to a particular county is limited to the county's pro-rata share based upon the county's collections as a percentage of total collections statewide. No funds may be distributed to a governmental unit until the governmental unit submits documentation substantiating the expenditures.

At the end of each fiscal year unencumbered funds remaining in the trust funds are to be distributed as follows:

1) 25% of the unencumbered funds to remain in the trust fund.

2) 75% of the unencumbered funds to be transferred to the General Revenue Fund of the State.

II. ECONOMIC IMPACT:

A. Public:

All additional costs would be assessed and collected from defendants in criminal cases.

B. Government:

It is estimated that additional costs for the state will be as follows:

State Attorneys	\$6,000,000
Public Defenders	\$3,000,000
Medical Examiners	<u>\$3,500,000</u>
TOTAL	\$12,500,000

Based on 1982 court statistics, it is also estimated that this bill could generate \$40,809,300, and based upon 1983 statistics, it could generate \$44,942.100.

However, these figures assume that 100% of the collections authorized under this bill are realized. The actual collection rate will probably fall substantially below the 100% level.

This information is based on the number of non-indigent cases disposed of as guilty or where adjudication is withheld from the Florida Supreme Court Summary Reporting System for January 1 thru December 31, 1982, January 1 thru December 31, 1983 and Public Defenders' Workload Reports for the same period.

A non-indigent case load was determined by subtracting the Public Defenders' case load received from the Supreme Court's report of total cases received into the Judicial System. The remainder, representing non-indigent cases, was divided by the total cases received to arrive at a percentage of non-indigent cases. This number was then applied to the total case disposition to arrive at the number of non-indigent cases with guilty dispositions. (Please see attached.)

The local comprehensive victim-witness program, if available, and the General Revenue Fund, stand to potentially benefit from the collection of these fines as well. However, the actual amount to be received is indeterminable at this time.

III. COMMENTS:

Funding of integral aspects of the state attorneys offices would be dependent, under this bill, on the levy and collection of fines. Problems may arise regarding the ability of the various court clerks and state attorneys to actually collect assessed costs.

This bill represents an effort by the legislature to assign more of the costs of administering the criminal justice system to the wrongdoers, the people who are primarily responsible for this enormous drain on the public's resources and treasure.

IV. AMENDMENTS:

V. PREPARED BY _____
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VI. STAFF DIRECTOR _____
J. Thomas Wright

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*Wrong
bill in
is actually
HB 1033*

1	HB 1023 A bill to be entitled	1:btc
2	An act relating to the Pinellas Police	1.2
3	Standards Council, Pinellas County; amending s.	1.3
4	4(k) of chapter 72-666, Laws of Florida, as	1.4
5	created by chapter 75-494, Laws of Florida, and	
6	as amended by chapter 82-370, Laws of Florida;	1.5
7	relating to the Council's funding assessment on	1.6
8	certain civil and criminal cases by the circuit	
9	and county courts; providing a conditional	1.7
10	effective date.	
11		
12	Be It Enacted by the Legislature of the State of Florida:	1:enc
13		
14	Section 1. Subsection (k) of section 4 of chapter 72-	1.8
15	666, Laws of Florida, as created by chapter 75-494, Laws of	1.9
16	Florida, and as amended by chapter 82-370, Laws of Florida, is	
17	amended to read:	1.10
18	Section 4. Powers and duties.--In the performance of	1.11
19	its duties and the execution of its functions under this act,	1.12
20	the council shall have the following powers:	1.13
21	(k)(1) The Council shall provide for a centralized	1.13
22	information center on prospective law enforcement officers in	1.14
23	Pinellas County. The Pinellas Police Academy shall be the	1.15
24	depository for the centralized information center. The	1.16
25	Council shall provide standardized forms, screening, testing,	
26	physical exams, and other necessary background research of	1.17
27	prospective applicants and shall provide information from the	
28	centralized pool to law enforcement agencies in Pinellas	1.18
29	County. Each law enforcement agency shall use the forms	1.19
30	provided by the Council, and shall provide to the Council for	1.20
31	use in the Center copies of applications and results of any	

1	screening and background investigation performed by the	1.21
2	agency. When processing applicants each law enforcement	1.22
3	agency shall request a report from the Center regarding any	1.23
4	prospective employee of that agency. Applicant information	1.24
5	from the Center shall only be released upon the request of a	
6	law enforcement agency and the applicant.	1.25
7	(2) The Council's annual budget shall be submitted to	1.25
8	the Board of County Commissioners for their approval. Funding	1.27
9	for the provisions of this section shall be a <u>two one</u> dollar	
10	<u>assessment on all uncontested payable offenses, to be assessed</u>	1.29
11	and-an-additional-two-(2)-dollar-surcharge by the circuit and	1.30
12	county courts in Pinellas County on all contested <u>and</u>	1.31
13	<u>uncontested</u> traffic cases, criminal and civil, excluding	1.32
14	parking fines, bicycle, and pedestrian violations which are	1.34
15	payable offenses. Additional funding may be secured by the	1.35
16	Council by assessing the police agencies a fee for the cost of	1.36
17	screening the applicants.	
18	(3) The director of the Pinellas Police Academy shall	1.36
19	act as the director for the Centralized Information Center	1.37
20	under the control of the Pinellas Police Standards Council.	1.38
21	Section 2. This act shall take effect upon the	1.38
22	enactment, and effective date, of a general state law that	1.39
23	increases the cap on fines.	
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