

1989

Session Law 89-129

Florida Senate & House of Representatives

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S 1042 GENERAL BILL/CS/1ST ENG by Judiciary-Criminal; Langley (Compare CS/H 885, CS/CS/H 1056, H 1444, S 1021, CS/CS/S 1022) Indigent Defendants/Court Costs; provides that costs incurred by public defenders shall be paid by counties upon certification by public defender; authorizes counties to contest reasonableness of expenses; provides for reduction in costs assessed re certain cases where defendant has used public defender; provides for reimbursement of counties for expenses incurred in compensating certain appointed counsel, etc. Amends 939.15, 27.56; creates 925.037. Effective Date: 07/01/89.

04/05/89 SENATE Filed
04/14/89 SENATE Introduced, referred to Judiciary-Criminal; Judiciary-Civil -SJ 146
04/20/89 SENATE On Committee agenda—Judiciary-Criminal, 04/24/89, 10:00 am, Room-2C-(301)
04/24/89 SENATE Comm. Report: CS by Judiciary-Criminal -SJ 212
04/25/89 SENATE CS read first time -SJ 228; Now in Judiciary-Civil -SJ 212
04/28/89 SENATE Extension of time granted Committee Judiciary-Civil
05/05/89 SENATE On Committee agenda—Judiciary-Civil, 05/09/89, 3:15 pm, Room-1C-(309)
05/09/89 SENATE Comm. Report: Favorable by Judiciary-Civil, placed on Calendar -SJ 311
06/01/89 SENATE Placed on Special Order Calendar -SJ 686; CS passed as amended; YEAS 36 NAYS 0 -SJ 756
06/01/89 HOUSE In Messages
06/02/89 HOUSE Received, placed on Calendar; Read second time; Read third time; CS passed; YEAS 114 NAYS 0 -HJ 1156
06/02/89 Ordered enrolled -SJ 1406
06/12/89 Signed by Officers and presented to Governor
06/26/89 Approved by Governor; Chapter No. 89-129

NOTES: Above bill history from Division of Legislative Information's *FINAL LEGISLATIVE BILL INFORMATION, 1989 SESSIONS*. Staff Analyses for bills amended beyond final committee action may not be in accordance with the enacted law. Journal page numbers (HJ & SJ) refer to daily Journals and may not be the same as final bound Journals.

REVISED: _____

BILL NO. CS/SB 1042

DATE: May 3, 1989

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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>Liepshutz</u>	<u>Liepshutz</u>	1. <u>JCR</u>	<u>Fav/CS</u>
2. <u>Smawley</u>	<u>Smawley</u>	2. <u>JCI</u>	<u>Favorable</u>
3. _____	_____	3. _____	_____
4. _____	_____	4. _____	_____

SUBJECT:

Witness Compensation Awards

BILL NO. AND SPONSOR:

CS/SB 1042 by
Judiciary-Criminal and
Senator Langley

I. SUMMARY:

A. Present Situation:

Under current law, s. 27.54(3), F.S., establishes county liability for a wide range of case preparation costs of the public defender. In so doing, it does not specify as an additional requirement that a court order taxing such costs against the county be obtained. Section 939.15, F.S., however, requires a court order to establish county liability for certain costs, including those addressed in s. 27.54(3).

Section 27.3455, F.S., provides for the mandatory imposition of court costs upon guilty defendants. Such costs are used to reimburse the counties for costs incurred pursuant to s. 27.54(3), F.S., as well as certain costs of the state attorney and the medical examiner.

In theory, the requirement for obtaining a court order to establish county liability for case preparation costs of the public defender is intended to insure that such costs were "reasonable" and served a useful purpose in the preparation of the criminal defense. On the basis of research and testimony of the ACIR Subcommittee on Article V Financing, it has been determined that in many areas of the state the court order serves no useful purpose in controlling costs to the counties, and that in many cases the counties are incurring costs in the absence of a court order. Research and testimony further indicated that in the absence of a court order taxing costs against the county, reimbursement for costs out of s. 27.3455, F.S., revenues is subject to question.

B. Effect of Proposed Changes:

The bill would amend s. 939.015, F.S., to remove the court order requirement for establishing county liability for public defender case preparation costs and substitutes a certification by the public defender that such costs were useful and necessary for the preparation of the criminal defense. The bill would also provide an express right for the county to contest the reasonableness of the expenditure in the criminal proceeding.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

According to the Advisory Council on Intergovernmental Relations, the bill is expected to have a positive fiscal

impact in those counties that have incurred expenditures for case preparation costs of the public defender in the absence of a court order taxing costs against the county insofar as these counties will be able to apply s. 27.3455, F.S., revenues as reimbursements for such expenditures. The provision allowing for the county to contest the reasonableness of the expenditure in the criminal proceeding is expected to minimize the assessment of unreasonable or unnecessary case preparation costs against the county.

III. COMMENTS:

None.

IV. AMENDMENTS:

None.

****AS PASSED BY THE 1989 LEGISLATURE****

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DATE: June 13, 1989

**HOUSE OF REPRESENTATIVES
COMMITTEE ON CRIMINAL JUSTICE
FINAL STAFF ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: CS/SB 1042

RELATING TO: Indigent Defendants/Court Costs

SPONSOR(S): Judiciary-Criminal and Senator Langley

EFFECTIVE DATE: July 1, 1989, or upon becoming law, whichever occurs later.

DATE BECAME LAW: June 26, 1989

CHAPTER #: 89-129, Laws of Florida

COMPANION BILL(S): CS/HB 885, CS/CS/HB 1056, HB 1444

OTHER COMMITTEES OF REFERENCE: (1) Appropriations

(2)

I. SUMMARY:

A. PRESENT SITUATION:

Currently, s. 914.06, F. S., provides that when the state or an indigent defendant requires the services of an expert witness, the court shall award reasonable compensation to the expert witness, and the compensation shall be paid by the county.

Currently, s. 27.56(1), F. S., provides the state's criminal trial courts with authority to assess attorney's fees and costs upon guilty defendants who have received the assistance of a public defender. Such costs may include the costs of depositions, deposition transcripts, and copies; investigative costs; witness fees; and other costs incurred by county for the defense of the defendant. Under s. 27.56(2), F.S., such an order creates a lien upon the real and personal property of the defendant in the name of the county.

Section 27.3455, F. S., requires the state's criminal trial courts to impose mandatory costs of \$200 and \$50, respectively, on convicted felony and misdemeanor defendants. Revenues collected pursuant to the imposition of such costs are used to reimburse the counties for expenditures made in a number of areas of trial court system operations, including certain case preparation costs of the public defender. Among the public defender costs that are eligible for reimbursement out of s. 27.3455, F. S., revenues are court reporter costs, certain

witness and investigative costs, and other costs assessed against the county by a judgment of the court.

Section 914.11, F. S., provides for indigent defendant's costs of procuring the attendance of witnesses, and all the costs certified by the defendant's attorney as serving a useful purpose in the disposition of the case, and that the costs shall be paid by the county.

Under current law, s. 27.53, F. S., the counties are liable for all fees, expenses, and costs of attorneys appointed by the court in public defender (criminal) conflict of interest cases. Since 1983, the state has appropriated funds to partially reimburse the counties for attorney fee expenditures incurred in such cases. In recent years, pursuant to proviso language contained in the General Appropriations Act, the clerks of court in the respective counties are required to prepare requests for reimbursement in order to secure the county's proportionate share of state conflict case appropriations. In addition, the proviso language has provided that individual county shares in multi-county circuits are to be determined by the circuit conflict committee through a process of bargaining and negotiating among representatives of the affected county governing bodies, the chief judge of the circuit, and the public defender.

B. EFFECT OF PROPOSED CHANGES:

Section 939, F. S., is amended not to apply to indigent defendants represented by the public defender. In such cases, costs incurred pursuant to s. 27.54 (3) shall be paid by the county upon certification by the public defender as being useful and necessary in the preparation of a criminal defense, provided that the reasonableness of such expenses may be contested by the county in the criminal proceeding.

The amendment to s. 27.56, F. S., provides for the court to reduce the amount entered into judgment against the defendant pursuant to s. 27.56(1) by an amount equal to the costs assessed by the court pursuant to s. 27.3455, F. S.

This bill would create a new section in the Florida Statutes (s. 925.037 F. S.), in order to establish the following process:

1. For the 1990 and 1991 fiscal years, the Legislature would continue to allocate state conflict appropriations among the state's twenty judicial circuits for distribution to individual counties as determined by the respective circuit conflict committees. Conflict committee membership however, would be expanded to include a clerk of court from a county within the circuit. Commencing in fiscal 1992, individual county shares of the state appropriation would be based on public defender caseload data reported to the Supreme Court by the clerks of court.
2. The clerks of court within the respective counties would submit a summary "statement of conflict counsel fees" to the

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Justice Administrative Commission at least annually. These statements would identify total county expenditures on attorney fees in public defender conflict of interest cases during the reporting period.

3. On the basis of the statement of conflict counsel fees, the Justice Administrative Commission would release state appropriations to the circuit conflict committee for distribution to the county.
4. Before April 1 of each year, the clerks of court in the respective counties would submit to the Justice Administrative Commission a report of conflict counsel fees which would identify total county expenditures on witness fees, court reporter costs, and travel and per diem costs of the defense in public defender conflict of interest cases during the preceding fiscal year.
5. No additional documentation would be required to accompany the summary statements transmitted by the clerks to the Justice Administrative Commission to support the accuracy of the expenditure data noted therein or the legality of such expenditures. Instead, verification would be addressed through the local government independent auditing process provided for by Chapter 11, Florida Statutes.

If a clerk of the court fails to submit required reports or information, the Justice Administrative Commission may refuse to honor any claim until the clerk or county is in compliance. If the statement of compliance submitted by the county indicates the clerk claimed more than was expended, the Commission may require complete supporting documentation of the county's expenditures on conflict of interest cases for a three year period.

Public defenders would be required to submit a report to the legislative appropriations committees indicating how the appropriated funds were expended, not later than March 1 of the fiscal year subsequent to July 1, 1988 and July 1, 1989.

This bill provides that once the allocation to the counties has been expended, further obligations would continue to be the responsibility of the county pursuant to this chapter.

C. SECTION-BY-SECTION ANALYSIS:

Section 1 provides that s. 939.15, F. S., does not apply to indigent defendants represented by the public defender, and provides an expressed right for the county to contest the reasonableness of the expenditures in the criminal proceeding.

Section 2 provides that the court having jurisdiction over any defendant, who has received the assistance of a public defender, may assess attorney's fees and costs against the defendant. Costs assessed pursuant to Section 2 shall be reduced by an amount assessed against a defendant pursuant to s. 27.3455, F. S.

Section 3 provides for additional court costs, and the collection, use, and distribution of funds.

Section 4 provides for reimbursement of counties for expenses incurred in compensating certain appointed counsel, and prerequisites for such reimbursement. It provides for allocation of funds among the respective judicial circuits, and requires the establishment of a circuit conflict committee in each judicial circuit. The bill provides procedures for reimbursement and designates responsibility for payment upon depletion of appropriated funds.

Section 5 provides an effective date of July 1, 1989, or upon becoming law, whichever occurs later.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

Indeterminate

2. Recurring or Annualized Continuation Effects:

Indeterminate

3. Long Run Effects Other Than Normal Growth:

Indeterminate

4. Appropriations Consequences:

Indeterminate

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

Indeterminate

2. Recurring or Annualized Continuation Effects:

Indeterminate

3. Long Run Effects Other Than Normal Growth:

Indeterminate

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Indeterminate

2. Direct Private Sector Benefits:

Indeterminate

3. Effects on Competition, Private Enterprise, and Employment Markets:

Indeterminate

D. FISCAL COMMENTS:

According to the Florida Advisory Council on Intergovernmental Relations, the implementation of the revised expenditure reporting and reimbursement request process is expected to realize fiscal savings to both the state and county governments. Such savings are expected to result from greater efficiencies in the preparation of requests for reimbursement at the local level, and in the review of such requests by state officials. The magnitude of the savings associated with these efficiency gains as yet has not been determined.

According to ACIR research, under the proposed amendment to s. 27.56, F. S., it is expected that judges will impose s. 27.3455, F. S., costs more frequently. Insofar as s. 27.3455, F. S., costs are collected with greater success than are costs imposed pursuant to s. 27.56, F. S., revenues to the counties will increase. The precise magnitude of this revenue increase as yet has not been determined.

According to Senate Appropriations Subcommittee "C", it is anticipated that with increased revenues from s. 27.3455, F. S., fee, each county will be better able to meet the expenditure requirements of that statute.

III. LONG RANGE CONSEQUENCES:

IV. COMMENTS:

The bill would streamline the process that the clerks of court adhere to in seeking reimbursement out of state conflict case appropriations and also would provide for a more direct formula based distribution to the counties. At the same time, a basis would be provided for identifying the fiscal impact placed upon the counties by public defender in criminal conflict of interest cases.

According to the Florida Advisory Council on Intergovernmental Relations, the current reimbursement request process requires the submission of extensive supporting documentation by the clerks, and places a substantial workload upon these offices, as well as on state level reviewers of the reimbursement requests. At the same time, the

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expenditure data captured in the reimbursement request process fails to comprehensively identify county costs in this area.

Thus constituted, the proposed expenditure reporting and reimbursement process would realize administrative cost savings to the clerks over the current "documentation-intensive" reimbursement request process. At the same time a more objective, formula-based method would be used to determine individual county shares of the state appropriation commencing in fiscal 1992. Finally, more accurate data would be provided under the revised process relative to the costs incurred by the counties pursuant to state mandates in the area of public defender conflict of interest cases.

V. SIGNATURES:

SUBSTANTIVE COMMITTEE:

Prepared by:

Susan J. Bibeck
John McAuliffe

Staff Director:

Robin S. Hassler
Robin S. Hassler

SECOND COMMITTEE OF REFERENCE:

Prepared by:

Staff Director:

APPROPRIATIONS:

Prepared by:

Staff Director:
