

**COURT APPOINTMENT OF OUTSIDE OR PRIVATE COUNSEL:  
IMPLEMENTATION OF RELEVANT STATUTORY AUTHORITY,  
PROCEDURE, AND RELATED COUNTY COSTS**

94-3

FEBRUARY, 1994

**Advisory Council on Intergovernmental Relations**

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Created in 1977, the Advisory Council on Intergovernmental Relations is a public entity that facilitates the development of intergovernmental policies and practices. Because the intergovernmental element is key in its purpose and functioning, the ultimate challenge facing the Florida ACIR is improving coordination and cooperation between state agencies, local governments, and the Federal government.

**WHAT ISSUES HAVE BEEN ADDRESSED BY THE ACIR?**

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**COURT APPOINTMENT OF OUTSIDE OR PRIVATE COUNSEL:  
IMPLEMENTATION OF RELEVANT STATUTORY AUTHORITY,  
PROCEDURES, AND RELATED COUNTY COSTS NCJRS**

OCT 10 1994

**Abstract**

**ACQUISITIONS**

This research responds to a mandate by the 1993 Legislature, (Senate Bill 1802) directing the ACIR to determine the extent to which public defenders move the court to have outside or private counsel appointed when they can not represent an indigent due to a conflict or an overload. In addition, the research reviews the cost to counties for paying for court appointed attorneys. Finally, the research reviews the extent to which courts are imposing liens on guilty defendants and how much was collected by counties to offset the cost of paying for court appointed attorneys. The research was presented to the ACIR on February 7, 1994 and the Council approved the update and recommendations. This is not a final report. ACIR staff will continue to obtain information in this area during the 1994 Legislative Session and the 1994-95 interim session.

The current document covers two issues. The first issue addresses the question, "What is the county's fiscal responsibility related to court appointed attorneys in public defender conflict and overload cases and how many trial and appellate cases are handled by court appointed attorneys? The second issue addresses the question, "Have counties collected money from guilty defendants to offset the expense of representing an indigent as authorized in sections 27.52(3) and 27.56, Florida Statutes?"

**Acknowledgements**

The principal analyst for this project was John D. Dew, Legislative Analyst with the ACIR. Dr. Mary Kay Falconer, Executive Director of the ACIR, provided guidance for the duration of the relevant research activity. Ms. Sandy Brooks and Gaye Danforth Hill of the ACIR staff also assisted in the preparation of the research.

Appreciation is extended to those chief judges, county administrators, and clerks of the court who took time to respond to our survey. Additionally, we would like to thank all those who devoted time to answering inquiries both over the phone and in person. In particular, Dade County staff involved in this issue, Bay County Clerk staff, and staff from the Florida Public Defenders Coordination Office, and Florida Association of Court Clerks and Comptrollers provided valuable information for this research effort.

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# Court Appointment of Outside or Private Counsel: Implementation of Relevant Statutory Authority, Procedures, and Related County Costs

## Background

Prior to 1972, Florida's Judicial System had most of the trial courts funded entirely at the local level. There was concern that with the pre-1972 system, individuals were not receiving the same quality of representation in one county in comparison to another due to different levels of funding.<sup>1</sup> However, "the people of Florida created a new Court System" in 1972 by approving a new Article V of the Florida Constitution. "The promise of the new Article V was threefold: first, a uniform system of courts following rules of procedure with statewide application; second, the elimination of 'cash register' courts wherein the fines and filing fees were set by judicial officers who were constrained by their 'employers' to fund their courts and generate revenue; and third, and perhaps most importantly, the creation and maintenance of a state-funded, independent Judicial Branch of government embracing all courts in the state. The principal objective of these changes was to create a court system that would insure equal justice throughout the state without regard to the financial ability of a particular county or municipality to fund court operations. Likewise, it was envisioned that the cost of support staff and expenses necessary to operate these state courts would be transferred from local governments to the state and funded through state revenues rather than continuing to rely on the grossly divergent financial resources of various counties."<sup>2</sup>

To date, the state has not assumed responsibility for the complete funding of Article V costs.<sup>3</sup> One court-related cost not covered by the state is court appointed attorneys representing an indigent when the public defender's office is unable to do so. The fees and some expenses for these court appointed counsel are funded by each county. In most cases in Florida, an indigent is represented by an Assistant Public Defender whose salary is paid by the state. However, there are two instances when a state funded assistant public defender does not represent an indigent and therefore the court is moved to appoint private outside counsel to represent the indigent. First, if there is a conflict due to having more than one indigent defendant in a case, the public defender's office may represent only one individual. Second, if the public defender's office is assigned more cases than it can handle, it can request that the court appoint private counsel to represent the indigent.

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<sup>1</sup> *A Report of the Judicial Council of Florida, A Review of Article V Costs and Revenues. Prepared by the Article V Subcommittee of the Florida Judicial Council, July 1991.*

<sup>2</sup> *Report of the Judicial Council of Florida, page 1.*

<sup>3</sup> *Florida Comptroller's Report of the Statewide Revenues and Expenditures of Additional Court Costs for Fiscal Year ended 1992. Section 27.3455(4), F.S. requires counties to submit annually to the Comptroller and Auditor General a statement of revenues and expenditures for specific expenditures outlined in statutes.*

## Research Objectives

The research identified relevant statutory authority related to the appointment of outside counsel, attempted to determine the extent to which such counsel were being appointed, identified the procedures used by judicial circuits and counties to implement this statutory authority, and attempted to determine the cost to the counties and the extent to which courts may have implemented statutory authority to impose and collect payments for this defense from guilty defendants having been represented by a public defender or court appointed attorney. More specifically, this research attempted to determine the number of court appointments by county for public defender conflict and overload cases, the type of cases, such as, capital felony, misdemeanor, or appeal cases, and the costs associated with each case. Additionally, information on the extent to which courts were imposing liens on guilty defendants and how much was collected by counties to offset the cost of paying for court appointed attorneys was studied.

Direction for the research came, in part, from Senate Bill 1802, which passed during the regular 1993 Legislative Session, and mandated that the following be reviewed by the ACIR.

- o First, determine the number of trial and appellate cases in each judicial circuit and county in the state in which the court appointed outside counsel to represent a criminal defendant as a result of the public defender's inability to provide adequate representation without a conflict of interest, and the costs borne by counties in paying attorney fees and expenses in such cases;
- o Second, determine the number of trial and appellate cases in each judicial circuit and county in the state in which the court appointed outside counsel to represent a criminal defendant upon a motion by the public defender seeking such appointment as a result of that office's inability to provide adequate representation due to a state lack of resources, and the costs borne by counties in paying attorneys fees and expenses in such cases; and
- o Third, determine the number of legal and support staff funded by counties and supervised by a public defender's office and the number of trial and appellate cases handled by such staff along with the costs to the county for funding these positions.

In addition, a member of the Council, Commissioner Warren Newell from Palm Beach County, requested the Council address issues relevant to county support of the court system. Of interest to Commissioner Newell was the manner in which liens are being imposed against a defendant for covering attorney fees and related costs.

This update of the research is divided into two sections. The first addresses the cost to counties for court appointed attorneys due to the public defender's office stating they have a conflict in representing an indigent or more cases than it can handle. The second section reviews the extent to which counties are seeking to collect money from an indigent represented by counsel when the defendant is determined to be guilty or has been determined to be improperly considered indigent and received the services of the public defender or a court appointed attorney. Each section gives the legal and or statutory authority for implementation, relevant fiscal aspects, the methodology used, the results of the research, and recommendations either for statutory change, procedural change, or further research.

### ISSUE # 1

#### **What is the County's Fiscal Responsibility Related to Court Appointed Attorneys in Public Defender Conflict and Overload Cases and How Many Trial and Appellate Cases Are Handled By Court Appointed Attorneys?**

#### **Relevant Statutory Authority and Case Law**

Sections 27.53(3) and 925.035(1) of the Florida Statutes give the Public Defender's Office the authority to move the court to appoint outside counsel if the public defender determines a conflict exists. Under section 27.53(3), F.S. if "at any time during the representation of two or more indigents the public defender shall determine that the interests of those accused are so adverse or hostile that they cannot be represented by the public defender or his staff without conflict of interest, or that none can be counseled by the public defender or his staff because of conflict of interest, it shall be his duty to move the court to appoint other counsel". Section 925.035(1), F.S. provides that if "the public defender appointed to represent two or more defendants found to be insolvent determines that neither he nor his staff can counsel all of the accused without conflict of interest, it shall be his duty to move the court to appoint one or more members of The Florida Bar, who are in no way affiliated with the public defender in his capacity as such or in his private practice, to represent those accused". In addition, section 27.54(2)(b), F.S. provides that the counties may employ legal and support staff to be supervised by the Public Defender's Office when the public defender certifies that they have inadequate resources and cannot accept additional appointments.

While there have been questions from several county administrators as to why the counties are paying the cost associated with Article V funding, which they believe is the

state's fiscal responsibility, there have been several court cases related to the topic and several cases concerning this matter are still pending. Court cases, such as a 1990 Florida Supreme Court decision known as the Order on Prosecution of Criminal Appeals By the Tenth Judicial Circuit Public Defender, conclude that when the public defender's office cannot handle a case, then the county is responsible for paying the cost of court appointed attorneys.<sup>4</sup>

## Methodology

In an attempt to determine the fiscal impact on counties covering court appointed attorneys, the information clerks of court are required to submit to the Justice Administration Commission on an annual basis was reviewed first.<sup>5</sup> Information for FY 91/92 was reviewed because this was the most complete data. Clerks are not required to report FY 92/93 data until April 1994. (See Appendix 1 for an example of the form required to be submitted by April 1st of each year.) Second, in order to get more detailed information, each county was contacted through the ACIR FAXNET and information for County Fiscal Year 1991-92 was requested.<sup>6</sup> (See Appendix 2 for a copy of our FAXNET request.) Finally, information from a survey of counties conducted by the State Attorney's Office in January 1993 for FY 1991/92 was reviewed. Using all three sources of information, the counties that paid for the cost of court appointed attorneys, assistant public defenders, and legal staff to represent an indigent in FY 91/92 were identified.

Using the available information, the cost to counties for representing an indigent for FY 1993/94 was projected employing two methodologies. In the first methodology, the average case cost for FY 1991/92 was multiplied by the expected number of cases for FY 1993/94 based on preliminary case reporting available through the Florida Public Defenders Coordination Office. The second methodology multiplied the preliminary cases reported by the Florida Public Defender's Coordination Office by the cost of each case using the maximum compensation for attorney representation as set by Florida Statute.

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<sup>4</sup> Three recent cases of relevance are cited as 561 So.2d 1130 (Fla. 1990); 612 So.2d 597 (Fla.App.2 Dist. 1992); and 622 So.2d 2 (Fla.App.2 Dist. 1993). Due to time limitations, ACIR staff was not able to review and analyze all the court cases relating to this subject. If further study is recommended by the ACIR, an indepth review of all relevant cases will be completed.

<sup>5</sup> Section 925.037(5)(a), F.S., requires that the clerk of court of each county is required to submit to the Justice Administrative Commission a statement identifying the total expenditures incurred by the county on fees of counsel appointed by the court to represent an indigent.

<sup>6</sup> The ACIR FAXNET is a research tool maintained and operated by the Florida ACIR. With this network, we are able to obtain a variety of information from all counties and 65 municipalities.

In order to determine the number of trial and appellate cases handled by court appointed attorneys in each county for FY 1991/92, counties were surveyed through the ACIR FAXNET System during January 1993.

### Number of Cases, Types, and County Fiscal Impact for FY 1991/92

None of the sources of information available provided a complete and/or detailed understanding of the number and type of cases in which the courts appointed outside counsel. For example, while Senate Bill 1802 required the ACIR to determine the number of trial and appellate cases in each judicial circuit and county and the costs to the counties, the current form used by counties to submit information to the state does not identify trial versus appellate cases. Likewise, an attempt to identify this information through FAXNET provided a response rate of 50%. Because of these limitations, it was not possible to determine the number of trial and appellate cases for each county during FY 1991/92. However, by combining some of the information reviewed, an estimate of the expense paid by counties for representing an indigent in FY 1991/92 was derived. Estimated cost to the counties during FY 1991/92 was approximately \$28 million. (See Appendix 3 for the cost reported by each county with the sources and methodology employed.)

Another item Senate Bill 1802 directed the ACIR to determine was the number of assistant public defenders and legal staff covered by those counties which chose to do so in accordance with section 27.54(2), F.S. To obtain this information, a questionnaire was mailed in November 1993 to each of 67 counties. Questionnaire results, as of February 7, 1994, show that most counties are not covering the costs for such staff. For example, of the 36 questionnaires returned, only 6 counties mentioned funding staff to be supervised by the Public Defenders' Office in FY 1992/93. An additional 2 counties started funding staff for their public defender's office in FY 1993/94. Through telephone interviews, additional information from each of the eight counties was compiled on the number of staff funded by the county and supervised by the public defender. Estimates on the level of funding required to cover these staff for FY 1992/93 are presented below:

Alachua:	2 attorneys at a cost of approximately \$68,500.
Charlotte:	1 attorney at a cost of approximately \$35,000.
Collier:	1 attorney and 1 support staff at a cost of approximately \$45,000.
Dade:	over 70 attorneys at a cost of approximately \$2,000,000.
Hillsborough:	11 attorneys and 1 support staff at a cost of approximately \$403,000.
Lee:	1 attorney and one support staff at a cost of approximately \$44,970.

Some counties did not start this practice until FY 93/94. For example, both Brevard and Seminole counties funded positions beginning October 1, 1993. Brevard allocated approximately \$300,000 for approximately seven attorneys and 3 support staff. Seminole county allocated \$150,000 for 4 attorneys and 2 support staff to be supervised by the Public Defender's Office in the 18th Judicial Circuit.

#### **Projected Costs for Counties During FY 1993/94**

While there are many reasons a projection of costs for this purpose has limitations, it is possible to calculate projections based on available information. Two methodologies for projecting were used. First, a cost per case in FY 1991/92 using data submitted from some, but not all counties, to the Justice Administrative Commission was calculated and multiplied by the number of cases which might occur using preliminary numbers from the Florida Public Defenders Coordination Office. This method projected a cost of at least \$24 million dollars. (See Appendix 4 for our methodology and results.) However, the information used to determine the cost per case, was neither verified by the Justice Administrative Commission nor ACIR staff. Furthermore, the numbers submitted by the Public Defender's Coordination Office were not verified.

The second method for projecting costs for FY 93/94 consisted of using preliminary case numbers submitted by the Public Defender's Coordination Office and the maximum statutory compensation levels allowed for each type of case under section 925.036(2), F.S. If appointed counsel were provided the maximum compensation levels allowed by law, and the Coordination Office's projections are valid, the cost to the counties could be over \$54 million dollars. (See Appendix 5 for our methodology and results.)

#### **Recommendations Addressing Issue #1**

**Recommendation #1:** The Legislature should provide at least a partial reimbursement to counties based on the projected costs associated with court appointed attorneys for FY 1993/94.

**Rationale:** Because the Legislature has not provided any reimbursement to counties for this purpose for the last three fiscal years, it is understandable why some counties are not complying with the law to submit information under section 925.037, F.S.<sup>7</sup> Of the 63 counties that indicated they funded court appointed attorneys in FY 1991/92, only 34 (54%) provided this required information to the Justice Administrative Commission.

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<sup>7</sup> The last year the Florida Legislature provided any reimbursements was in FY 1990/91. From FY 82/83 through 90/91, the Legislature provided partial reimbursement to the counties. (See Appendix 6 for the reimbursement amounts by year.)

**Recommendation #2:** Subsequent annual reimbursements should be dependent on counties sufficiently following the statutory criteria outlined in section 925.037, F.S., or a suitable replacement.

**Rationale:** Some clerks are not reporting as required by section 925.037, F.S. Also some counties are not participating in Circuit Conflict Committees as required by this section. Thirteen of the 36 counties (36%), responding to our survey, noted they do not participate on a Circuit Conflict Committee. Funds are not to be reimbursed to a county unless the court appointed attorney is first approved by a circuit conflict committee. These committees help assure the attorneys selected meet uniform criteria and prevent the appearance of "favoritism." County officials, in the future, that follow the statutory requirement, or a suitable replacement, should receive reimbursements for their respective county.

**Recommendation #3:** Florida Association of Court Clerks and Comptrollers staff, and Justice Administrative Commission staff, should work with the ACIR to improve the information being submitted. This information should include cost and number of cases associated with conflict and overload cases at both the trial and appellate levels.

**Rationale:** The detailed information on types of court cases, which SB 1802 mandated the ACIR obtain, is not currently required on the reporting form used by clerks and submitted to the Justice Administrative Commission. In order to improve the detail of the reporting requirements, the form would need to be changed and the Florida Association of Court Clerks and Comptrollers has agreed to work with ACIR staff to achieve this goal. Association staff are also examining the possibility of having the information reported by the clerks using on-line computer systems.

## ISSUE # 2

**Have Counties Collected Money from Guilty Defendants to Offset the Expense of Representing an Indigent as Authorized in Sections 27.52(3) and 27.56, Florida Statutes?**

### Relevant Statutory Authority

Section 27.56, F.S. provides that the court may be moved to assess fees and costs against any defendant determined to be guilty of a criminal act by the court or jury or

plea of guilty and receiving the assistance of a public defender, a special public defender, or a private attorney appointed by the court. Also, the state attorney's office, through section 27.52(3), F.S., can proceed to collect attorney fees and costs against a defendant who was erroneously or improperly determined to be an indigent and was given a public defender or court appointed attorney.

### **Methodology**

In order to determine if counties were implementing the statutory authority referenced, all 67 counties and the chief judges of each judicial circuit were surveyed. (See Appendix #7 for a copy of the survey instrument sent to each county and Appendix #8 for a copy of the survey instrument sent to each of the 20 chief judges.) In those counties where the statutory authority was imposed, follow-up calls were made to determine the amount collected. Chief judges and county administrators were also asked if there were problems with the way in which the current statutes were written.

### **Relevant Fiscal and Program Information**

No statewide system is in place to collect information on the number of cases on which liens were imposed under sections 27.52(3) and 27.56, F.S. nor the amount of money collected by counties. Neither staff at the Office of the State Court Administrator nor individual counties have this information readily available. This research was dependent on the surveys of county administrators and the chief judges of each judicial circuit to determine the extent to which the statutory authority was being implemented. Based on limited survey results, (36 of 67 counties for a 54% response rate and 11 of 20 chief judges for a 55% response rate) it is observed that the majority of counties and judicial circuits are not implementing the statutory authority under section 27.52(3), F.S. to get reimbursement from persons improperly declared indigent. However, some counties are seeking to obtain payments from some guilty defendants as allowed under section 27.56, F.S.

#### Seeking Payment From Individuals Improperly Declared Indigent

In the Chief Judge survey, all 11 respondents replied that the circuit had never taken any recourse against such defendants. Only 1 of the 36 counties responding noted that they had ever attempted to collect costs from a defendant improperly declared indigent. Based on this information, it appears that counties have not benefited fiscally from offsetting the cost of representing an indigent through the implementation of s. 27.52(3), F.S.

Seeking Payment From Guilty Indigent Defenders Under S. 27.56, F.S.

Surveys of the Chief Judge of each judicial circuit and each county administrator to determine the extent to which liens were being imposed on guilty defendants that had used the services of a public defender or court appointed attorney were also conducted. Follow-up calls were made to those counties that collected money from defendants when liens were imposed to determine the amount of money collected and the perceived success of imposing and collecting money from an indigent. Nearly all of the responding chief judges, 10 of 11, said that their circuits exercised the authority under section 27.56, F.S. to impose liens on guilty defendants. However, 2 of the 10 submitted additional comments that the liens were rarely imposed or imposed in only some of the counties in their judicial circuit.

Of the 36 counties responding to the survey, 26 (72%) indicated they had attempted to collect money based on liens being imposed on guilty defendants under

Alachua:	Only recently started. Not aware if any money has been collected.
Brevard:	Approximately \$45,000 per year is collected.
Broward:	\$21,220 collected in FY 91/92 and \$20,608 in FY 92/93.
Charlotte:	\$6,922 collected during two fiscal years- 91/92 and 92/93.
Collier:	\$13,648 collected in FY 91/92 and \$27,760 in FY 92/93.
Columbia:	\$70,721 collected in FY91/92 and \$39,895 in FY 92/93.
Hardee:	\$8,249 collected in FY 91/92 and \$6,788 in FY 92/93.
Hillsborough:	\$66,450 in FY 91/92 and \$86,825 in FY 92/93
Lake:	\$3,570 in FY 92/93.
Lee:	\$21,243 in FY 91/92 and \$27,712 in FY 92/93.
Okeechobee:	\$Approximately \$1,000 in FY 91/92 and \$1,000 in FY 92/93.
Orange:	\$99,892 collected in FY 91/92 and \$91,222 in FY 92/93.
Pinellas:	\$164,074.80 in FY 91/92 and \$190,109.15 in FY 92/93.
Sarasota:	\$35,900 collected in FY 91.92 and \$36,525 in FY 92/93.
Taylor:	Approximately \$300 in FY 91/92 and \$300 in FY 92/93.
Volusia:	\$67,751 in FY 91/92 and \$52,294 in FY 92/93.

section 27.56, F.S. (See Appendix 9 for a copy of the survey results as of 1/26/94.) Due to time limitations, it was possible to only get estimates of the amounts collected through this statutory authority from 16 counties. As can be seen below, the amount collected ranged from only a few hundred dollars in one county to nearly \$200,000 in another

county.<sup>8</sup>

To determine the success and effectiveness of the statutory authority to impose liens on defendants, further research is required. Such research should consider the number of guilty defendants handled each year by public defenders and court appointed attorneys, the number of liens imposed, and the percentage of lien amount collected over a period of time. None of the county staff interviewed had an evaluation system in place to determine the success of imposing liens.

### **Cost-Benefit of Imposing Liens on Indigent Defendants**

Some county officials noted that the cost of imposing liens on indigent defendants may outweigh the amount collected from these individuals. For example, according to staff interviewed at the Clerk of Courts Office in Lake County, it cost nearly twice as much to impose the liens as was collected for FY 92/93. Officials in Dade County also stated that one reason they do not seek to have the court impose liens is because they do not believe it would offset the cost of imposing and collecting such liens. However, some counties have had a successful experience collecting funds through imposing liens. Pinellas county, for example, collected over \$160,000 in FY 1991/92 and \$190,000 in FY 92/93. This amount is still low, considering the cost to the county for public defender conflict and overload cases in FY 1991/92 was over \$892,000, but would certainly help offset the expense to the county.

### **Barriers to Imposing and Collecting Liens**

The research concluded thus far identified three barriers to imposing and collecting liens. First, the statutory authority to impose liens in section 27.56, F.S. may be limited. Second, indigent defendants may not be able to pay liens when they are imposed. And third, counties have not developed an effective mechanism for seeking payment from an indigent having a lien imposed.

One barrier to fully implementing section 27.56, F.S. for the purpose of imposing liens on guilty defendants is that the county, even though it covers the cost in many of these cases, does not have the statutory authority to move the court to impose liens. Statutes currently only allow the public defender's office or private attorney to move the court to impose liens and it is only under their discretion to determine when the court should be moved to impose a lien. The current method of having the public defender's office seek to impose liens may not be in the best interest of the county. For example, selected Public Defenders indicated that they do not always seek to impose liens due to

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<sup>8</sup> *These numbers are estimates provided by county administrators and court clerks through telephone interviews. These staff were not able to determine what percentage of these monies came from liens imposed in juvenile delinquency matters but estimated the proportion to be insignificant.*

the awkward responsibilities of defending their client, and then if they lose, attempting to charge the client for their services. Also, while counties are responsible for paying for court appointed attorneys for indigent persons, in other court hearings, such as child dependency cases, the statutes limit the imposition of liens to only guilty defendants and child delinquency cases.<sup>9</sup>

Another barrier to success in collecting liens imposed on an indigent is the limited resources of an indigent defendant. In order for a defendant to be declared indigent, the individual must be declared indigent by the court after meeting statutory criteria outlined in section 27.52(2), F.S. These criteria, for example, provides that the person being declared indigent must not own cash in excess of \$500.00, have a gross income of over \$100 per week, if he or she has no dependents, and have been released on bail in the amount of \$5,000 or more. If indeed, the persons being declared indigent meet these criteria, it may be difficult to collect the cost of attorney representation and other expenses from such individuals. Dade County staff, familiar with the process, indicated that individuals declared indigent by their courts cannot afford to pay the court costs and, therefore, they do not impose liens on such individuals.

Finally, a barrier to the success of counties collecting money through section 27.56, F.S. is that the counties may not have an effective system of tracking and collecting money from imposed liens. Selected county staff mentioned that their counties did not have any developed mechanism to track and collect money from liens placed on individuals. Usually liens were paid only when the guilty defendant decided to pay it, not because a collection agency visited the individual.

## **Recommendations Relevant to Issue #2**

**Recommendation #1:** The Legislature should consider extending the statutory authority for imposing liens. First, consider extending other parties, such as county officials the authority to move the court to order the defendant to pay the costs assessed by the court, or revise the statutes to require the court to automatically assess attorney fees and costs and order payment by guilty defendants under section 27.56, F.S. Second, allow liens to be imposed in other instances where an indigent is provided a court appointed attorney.

**Rationale:** One reason more money is not collected by counties may be because liens are not imposed in cases where the guilty defendant could pay. Currently, some public defenders may not be moving the court to impose liens. Also, counties are paying for court appointed attorneys in other cases, such as for child dependency hearings, but

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<sup>9</sup> Proposed HB 101 passed out of the Judiciary Subcommittee on Real Property and Family Law on 12/1/93. This bill provides that in child dependency cases when a parent is appointed an attorney and is considered indigent, the courts may impose a lien to collect the cost of attorneys and some expenses. This bill would amend s. 27.56, F.S. to include child dependency cases.

there is no statutory authority to impose a lien. If liens can be imposed in criminal proceedings and juvenile delinquency proceedings, then liens should also be allowed under other proceedings where a court appointed attorney is covered by the county.

**Recommendation #2:** The ACIR should conduct a case study in at least two judicial circuits to determine the effectiveness of implementing a lien collection program. Such case studies should help determine the cost benefit of having a lien collection program.

**Rationale:** The cost benefit of imposing liens and collecting payment from persons being represented by the public defender's office or court appointed attorney is not clear. Some counties claim there would be no cost benefit while one county in our survey collected nearly \$200,000 a year. For future appropriation and substantive statutory amendment decisions, it is important to know if collection of liens could help offset the costs in this area.

**ACIR Study of  
County Costs Associated with the Court Appointment of Outside or Private Counsel:  
The Implementation of Relevant Statutory Authority and Requirements**

**Appendices List**

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| <b>Appendix #1-</b> | Example of a Statement of Conflict Counsel Fees Form (2 pages) |
| <b>Appendix #2-</b> | ACIR FAXNET Response Sheet faxed to counties (1 page)          |
| <b>Appendix #3-</b> | FY 91/92 County Cost for Court Appointed Attorneys (2 pages)   |
| <b>Appendix #4-</b> | 1st Methodology used to project FY 93/94 County Cost (1 page)  |
| <b>Appendix #5-</b> | 2nd Methodology used to project FY 93/94 County Cost (1 page)  |
| <b>Appendix #6-</b> | Legislative Appropriations to counties (1 page)                |
| <b>Appendix #7-</b> | Copy of County Survey (6 pages)                                |
| <b>Appendix #8-</b> | Copy of Chief Judge Survey (10 pages)                          |
| <b>Appendix #9-</b> | County Survey Tabulations (2 pages)                            |

**ACIR STUDY  
APPENDIX #1**

**STATEMENT OF CONFLICT COUNSEL FEES FORM  
SUBMIT TO THE JUSTICE ADMINISTRATIVE COMMISSION  
Section 925.037(5)(a), F.S.**

**EXPENDITURE REPORTING**

County of:

Section A:

**REPORTING PERIOD:**

**NUMBER OF CASES:**

**TOTAL EXPENDITURES:**

---

Section B:

**NUMBER OF CASES:**

**TOTAL EXPENDITURES:**

The above figures are true and correct

\_\_\_\_\_  
Accounting Supervisor

Date

**ACIR STUDY  
APPENDIX #1**

**STATE OF CONFLICT COUNSEL, EXPENSES AND COSTS FORM  
SUBMIT TO THE JUSTICE ADMINISTRATIVE COMMISSION  
Section 925.037(5)(b), F.S.**

County of:

REPORTING PERIOD:

**Section A: TOTAL COUNTY EXPENDITURES**

- 1)Number of Cases:
- 2)Witness fees and expenses
- 3)Court Reporter fees and costs:
- 4)Defense counsel travel and per diem
- 5)Other expenses and costs

TOTAL

---

**Section B: APPOINTED COUNSEL DUE TO A STATED LACK OF PUBLIC  
DEFENDER RESOURCES**

- 1)Number of cases
- 2)Witness fees and expenses
- 3)Court Reporter fees and costs
- 4)Defense counsel travel and per diem
- 5)Other expenses and costs

TOTAL

FAXNET RESPONSE SHEET

When completed, Please Fax to: David Cooper, ACIR (904) 487-6587 or SC 277-6587  
FROM: (Local Government Correspondent) \_\_\_\_\_

COUNTY: \_\_\_\_\_

TRIAL COURT LEVEL

- 1) In FY 91-92, did the county pay attorney fees and expenses in criminal cases at the TRIAL COURT LEVEL where the court appointed OUTSIDE COUNSEL upon the motion of the public defender for CONFLICT OF INTEREST or WORKLOAD considerations? \_\_\_\_\_ YES \_\_\_\_\_ NO

IF YES please specify the NUMBER of clients and the DOLLARS spent on attorney fees & expenses at the TRIAL COURT LEVEL:

	NUMBER OF Clients	TOTAL COST	
		Attorney Fees	Expenses
Outside Counsel Provided because of Public Defender CONFLICT OF INTEREST _____ #		\$ _____	\$ _____
Outside Counsel Provided because of Public Defender OVERLOAD _____ #		\$ _____	\$ _____

Does the county contract on a case-by-case basis or employ county attorneys for this purpose? \_\_\_\_\_ Case-by-case basis  
\_\_\_\_\_ County Attorneys (Include in costs above)  
\_\_\_\_\_ # (Include number of attorneys if full-time county staff.)

APPELLATE COURT LEVEL

- 2) In FY 91-92, did the county pay attorney fees and expenses in criminal cases at the APPELLATE COURT LEVEL where the court appointed OUTSIDE COUNSEL upon the motion of the public defender for CONFLICT OF INTEREST or WORKLOAD considerations: \_\_\_\_\_ YES \_\_\_\_\_ NO

IF YES, please specify the NUMBER of clients and the DOLLARS spent on attorney fees & expenses at the APPELLATE COURT LEVEL:

	NUMBER OF Clients	TOTAL COST:	
		Attorney Fees	Expenses
Outside Counsel Provided because of Public Defender CONFLICT OF INTEREST: _____ #		\$ _____	\$ _____
Outside Counsel Provided because of Public Defender OVERLOAD: _____ #		\$ _____	\$ _____

Does the county contract on a case-by-case basis or employ county attorneys for this purpose? \_\_\_\_\_ Case-by-case basis  
\_\_\_\_\_ County Attorneys (Include in costs above)  
\_\_\_\_\_ # (Include number of attorneys if full-time county staff)

**APPENDIX 3**  
**COUNTY COST FOR COURT APPOINTED ATTORNEY**  
**FY 1991-92**

<u>Circuit</u>	<u>County</u>	<u>Expenditure</u>	<u>Circuit Subtotal</u>	<u>Source*</u>
1st Circuit	Santa Rosa	126,747		SA
	Walton	66,933		SA
	Escambia	220,000		JAC
	Okaloosa	147,640		SA
			561,320	
2nd Circuit	Leon	504,000		SA
	Wakulla	46,431		SA
	Liberty	0		
	Gadsden	71,990		SA
	Jefferson	36,908		SA
	Franklin	15,348		SA
			674,677	
3rd Circuit	Dixie	25,968		SA
	Columbia	80,717		SA
	Suwannee	30,885		SA
	Hamilton	12,429		SA
	Taylor	12,254		SA
	Lafayette	12,000		SA
	Madison	8,246		SA
			182,499	
4th Circuit	Nassau	46,235		JAC
	Duval	681,570		JAC
	Clay	N/R		SA
			727,805	
5th Circuit	Citrus	22,000		SA
	Sumter	25,000		SA
	Marion	170,102		JAC
	Hernando	44,930		JAC
	Lake	150,076		JAC
			412,108	
6th Circuit	Pasco	896,384		JAC
	Pinellas	892,354		JAC
			1,788,738	
7th Circuit	St. Johns	60,000		SA
	Flagler	29,671		JAC
	Volusia	407,198		JAC
	Putnam	29,615		JAC
			526,484	
8th Circuit	Union	5,209		SA
	Alachua	917,993		JAC
	Baker	19,421		SA
	Levy	25,629		SA
	Bradford	37,126		SA
	Gilchrist	12,693		JAC
			1,018,071	

**APPENDIX 3  
COUNTY COST FOR COURT APPOINTED ATTORNEY  
FY 1991-92**

<u>Circuit</u>	<u>County</u>	<u>Expenditure</u>	<u>Circuit Subtotal</u>	<u>Source*</u>
9th Circuit	Osceola	212,151		JAC
	Orange	2,396,231		JAC
			2,608,382	
10th Circuit	Highlands	118,216		SA
	Hardee	75,091		JAC
	Polk	1,156,000		SA
			1,349,307	
11th Circuit	Dade	6,975,106		JAC
			6,975,106	
12th Circuit	Sarasota	142,660		JAC
	Manatee	470,745		JAC
	Desoto	12,809		JAC
			626,214	
13th Circuit	Hillsborough	1,675,207		JAC
			1,331,007	
14th Circuit	Holmes	32,508		SA
	Gulf	0		
	Jackson	38,000		SA
	Calhoun	0		
	Washington Bay	3,615		SA
		37,054		JAC
			111,177	
15th Circuit	Palm Beach	3,920,664		JAC
			3,920,664	
16th Circuit	Monroe	424,876		SA
			424,876	
17th Circuit	Broward	3,106,000		JAC
			3,106,000	
18th Circuit	Seminole	102,039		JAC
	Brevard	483,245		JAC
			585,284	
19th Circuit	Indian River	125,770		JAC
	Okeechobee	81,105		JAC
	St. Lucie	418,526		JAC
	Martin	164,150		SA
			789,551	
20th Circuit	Lee	440,314		SA
	Glades	8,983		SA
	Hendry	18,528		JAC
	Charlotte	22,646		JAC
	Collier	265,053		JAC
			755,524	
Total			28474793.39	

\* SA - Senate Appropriations  
JAC - Justice Administrative Commission

**ACIR STUDY  
APPENDIX #4**

**1st Methodology for Projecting Conflict and Overload Cost to Counties**

- I Project cost based on information submitted from counties to the Justice Administrative Commission combined with Public Defender numbers.

Information used:

- o 1991/92 reported cost and number of cases from 33 counties that submitted this information. (Note: We will add Dade County separately.)
- o Number of cases each judicial circuit reported was conflicted out or had an overload according to public defenders during the first quarter of FY 93/94- July through September.
- o Dade County estimated cost and number of cases for FY 93/94 as received from their County Finance Office.

Methodology:

1. Divide the total cost reported by the 33 counties by the total number of cases for those counties for conflict and overload cases, separately:

Results: Conflict -  $\$14,958,076 / 15,164 \text{ cases} = \$986.42 \text{ per case}$   
Overload -  $\$367,975 / 7030 \text{ cases} = \$52.34 \text{ per case}$

2. Multiply per case figures by the number of reported cases to state Public Defenders Coordination Office by each Public Defender. Multiply that number by 4 to get an annual estimate.

Results: Conflict -  $4,393 \text{ cases} \times \$986.42 = \$4,333,343$ . Times 4 to get  $\$17,333,372$   
Overload -  $3,170 \text{ cases} \times \$52.34 = \$165,918$ . Times 4 to get  $\$663,671$ .

3. Add Dade County projected cost. (This is done separately because of the significant amounts expended in Dade County for conflict and overload cases in comparison to other counties.)

Results: Conflict -  $\$17,333,372 + 3,400,000 = \$20,733,372$   
Overload -  $\$663,671 + 2,700,000 = \$3,363,671$   
Total Projection for FY 93/94 =  $\$24,097,043$

**ACIR STUDY  
APPENDIX #5**

**2nd Methodology for Projecting Conflict and Overload Cost to Counties**

I. Project cost based on maximum pay limits for type of case as set in s. 925.036, F.S. Use Public Defender numbers submitted to the Public Defender Coordination Office for the 1st quarter of 93/94 to project the annual cost. (Dade County will be added at the end because of the significant amounts incurred by that county and because Dade County staff were able to provide us cost projections for FY 1993/94.)

1. Multiply the number of Conflict and Overload cases by the maximum statutory compensation allowed for each type of case.

**Results:**

Conflict Cases: Capital Felony: 31 cases x \$3,500 = \$108,500 times 4 = \$434,000  
Non-capital: 2857 cases x \$2,500 = \$7,142,500 times 4 = \$28,570,000  
Misdemeanor: 512 cases x \$1,000 = \$512,000 times 4 = \$2,048,000  
Criminal Traffic: 151 cases x \$1,000 = \$151,000 times 4 = \$604,000  
Juvenile Cases: 835 cases x \$1,000 = \$835,000 times 4 = \$3,340,000  
Appeal Cases: 3 cases x \$2,000 = \$6,000 times 4 = \$24,000

**TOTAL = \$35,020,000**

Overload Cases:

Capital Felony: 0 cases  
Non-capital: 68 cases x \$2,500 = \$170,000 times 4 = \$680,000  
Misdemeanor: 1197 cases x \$1,000 = \$1,197,000 times 4 = \$4,788,000  
Criminal Traffic: 717 cases x \$1,000 = \$717,000 times 4 = \$2,868,000  
Juvenile Cases: 1183 cases x \$1,000 = \$1,183,000 times 4 = \$4,732,000  
Appeal Cases: 0 cases

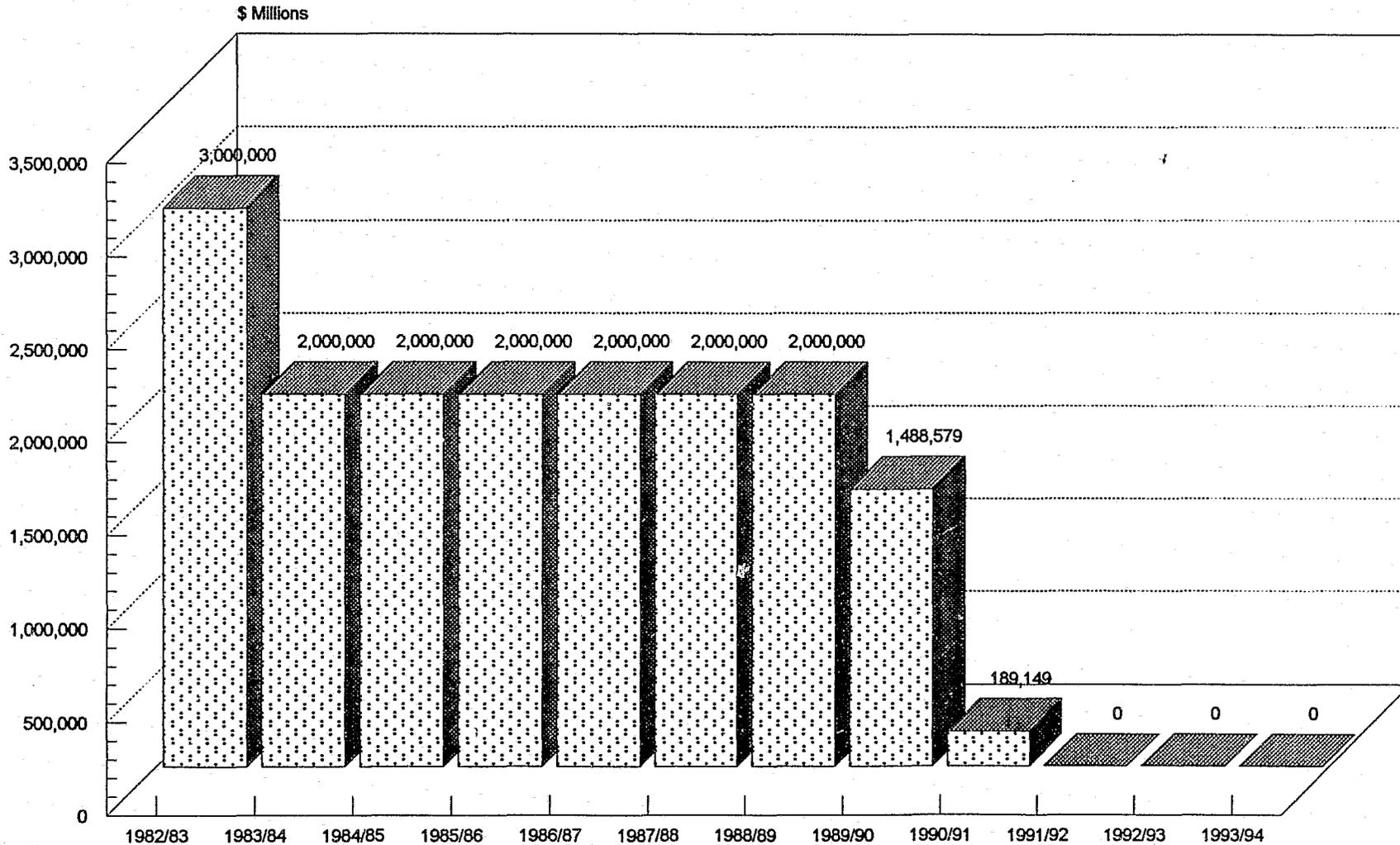
**TOTAL = \$13,068,000**

2. Add Dade County projected cost to other 66 counties projected total costs

Conflict : \$35,020,000 + Dade's \$3,400,000 = \$38,420,000  
Overload: \$13,068,000 + Dade's \$2,700,000 = \$15,768,000

**STATEWIDE PROJECTED TOTAL = \$54,188,000**

**FIGURE 2**  
**APPROPRIATIONS FOR CONFLICT AND OVERLOAD CASES**  
 State Fiscal Years 1982/83 - 1993/94



Information extracted from Appropriation Acts.  
 Prepared by Florida ACIR, October 21, 1993.



The Florida Legislature  
**FLORIDA ADVISORY COUNCIL  
ON INTERGOVERNMENTAL RELATIONS**



House Office Building, Tallahassee, FL 32399-1300 Ph. (904)488-9627 Suncom 278-9627 Fax 487-6587

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Dr. Mary Kay Falconer  
Tallahassee

**MEMORANDUM**

**TO:** County Administrators  
County Attorney(s)

**FROM:** Dr. Mary Kay Falconer, Executive Director  
John D. Dew, Legislative Analyst *J.D.*

**RE:** Distribution and Completion of an ACIR Survey of Counties  
Addressing Public Defender Conflict/Overload Cases and  
Relevant Statutory Authority

**DATE:** November 19, 1993

The Florida Advisory Council on Intergovernmental Relations (ACIR) is conducting a study for the Florida Legislature, as required by Senate Bill 1802, on the impact of public defender conflict and overload cases on counties. Also, as recommended by our Council, we are collecting information from counties on the extent to which relevant statutory provisions have been implemented in each county.

Please distribute this survey to both the county administrator and county attorney(s) familiar with this area. Completed surveys can be either FAXed to us at 904/487-6587 or mailed to ACIR, c/o House Office Building, Tallahassee, FL. 32399-1300. We would appreciate a response by **December 6, 1993.**

Upon your request, your participation in this survey entitles you to receive a copy of the report prepared using your response and those submitted by other counties. Questions should be directed to John Dew or Lynda Redner, ACIR Legislative Analysts, at suncom 278-9627 or 904/488-9627.

**EX-OFFICIO MEMBERSHIP**

Florida Association of Counties - James Shipman Florida Association of District School Superintendents - Dr. John Gaines  
Florida League of Cities - Raymond Sittig School Board Association of Florida - Dr. Wayne Blanton  
Florida Association of Special Districts - Peter L. Pimentel

**County Survey Addressing Public Defender Conflict and Overload Cases  
and Relevant Statutory Authority**

**Prepared and Distributed by the Florida Advisory Council  
on Intergovernmental Relations  
November 1993**

The Florida Advisory Council on Intergovernmental Relations (ACIR) is conducting a study, as directed by the 1993 Florida Legislature (SB 1802), on the impact of public defender conflict and overload cases on counties. With this survey, we intend to collect information from counties on the extent to which relevant statutory provisions have been implemented in each of the counties.

Specifically, this survey will allow the identification of those counties that pay the salary of an assistant public defender and legal and support staff to be supervised by the public defender's office. We are also attempting to determine if the statutory authority related to collecting payment from an indigent given legal services has been implemented. Additional follow-up telephone interviews may be conducted by ACIR staff for selected counties.

Please distribute this survey to both the county administrator and county attorney(s) familiar with this subject. Your assistance in completing this questionnaire will help us develop a more thorough understanding of the impact of public defender conflict and overload cases on counties as well as the extent to which counties have implemented statutory authority to collect payment from an indigent for legal services. In addition, your opinions on these issues will help us identify which statutes may need revision or clarification. Please take the time to answer the following questions and return the survey by December 6, 1993 to:

**ACIR  
c/o House Office Building  
Tallahassee, FL 32399-1300**

**or, FAX: 904/487-6587, suncom 277-6587.**

If you have questions regarding this survey, please contact John Dew or Lynda Redner at 904/488-9627, suncom 278-9627.

County: \_\_\_\_\_  
Respondent: \_\_\_\_\_  
Position of Respondent: \_\_\_\_\_  
Address of Respondent: \_\_\_\_\_  
Phone Number of Respondent: \_\_\_\_\_  
FAX Number of Respondent: \_\_\_\_\_

Public Defender Conflict and Overload Cases Survey  
Florida Advisory Council on Intergovernmental Relations  
c/o House Office Building, Tallahassee, FL 32399-1300  
Phone: 904/488-9627, FAX: 904/487-6587

**I. Assistant Public Defender, Legal, and Support Staff**  
(Please see attachment A, s. 27.54(2), F.S. for a copy of this statutory authority.)

1. Does your county currently pay the salary of an assistant public defender and legal and support staff in accordance with Section 27.54(2), F.S.?  
Yes \_\_\_\_\_ No \_\_\_\_\_; (If no, please skip to question 3.)

2. When was the first year your county allocated funds for this purpose?  
Year \_\_\_\_\_ Please provide the name, position, and telephone number of a person we can call back to get more information on this subject.  
Name \_\_\_\_\_, Position \_\_\_\_\_, # \_\_\_\_\_

3. Is it your opinion that s. 27.54, F.S. has limitations and should be revised?  
Yes \_\_\_\_\_ (Please briefly explain.) No \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Public Defender Conflict and Overload Cases Survey  
Florida Advisory Council on Intergovernmental Relations  
c/o House Office Building, Tallahassee, FL 32399-1300  
Phone: 904/488-9627, FAX: 904/487-6587

**II. Collection of Court Costs Provided by the County**  
(Please see attachment B for a copy of s. 27.52(3), F.S. and s. 27.56, F.S. authorizing collection of court costs.)

1. Are you aware of your county ever collecting costs from a defendant who was "improperly" considered indigent by the court as outlined in S. 27.52(3), F. S.?

Yes \_\_\_\_\_ Please provide the name, position, and telephone number of a person we can call back to get more information.

Name \_\_\_\_\_, Position \_\_\_\_\_, # \_\_\_\_\_

No \_\_\_\_\_ (If no, please skip to question #3)

2. If your county is involved in the process of determining which defendants were "improperly" declared indigent, please briefly explain how your county identifies those defendants and solicits the help of the state attorney's office.

County not involved in this process \_\_\_\_\_

County involved by (explain below)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Public Defender Conflict and Overload Cases Survey  
Florida Advisory Council on Intergovernmental Relations  
c/o House Office Building, Tallahassee, FL 32399-1300  
Phone: 904/488-9627, FAX: 904/487-6587

3. Are you aware of your county ever collecting liens imposed on guilty defendants in accordance with s. 27.56, F.S.?

Yes \_\_\_\_\_ Please provide the name, position, and telephone number of a person we can call back to get more information in this area.  
Name \_\_\_\_\_, Position \_\_\_\_\_, # \_\_\_\_\_

No \_\_\_\_\_

4. Is it your opinion that s. 27.52(3), F.S. and s. 27.56, F.S. have limitations and as such need to be revised?

Yes \_\_\_\_\_ (Please briefly explain.) No \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**III. Circuit Conflict Committee**  
(Please see attachment C for a copy of s. 925.037, F.S. which authorizes this committee.)

1. Does your county participate on this committee?

Yes \_\_\_\_\_ (If yes, please skip to question 3.) No \_\_\_\_\_

Public Defender Conflict and Overload Cases Survey  
Florida Advisory Council on Intergovernmental Relations  
c/o House Office Building, Tallahassee, FL 32399-1300  
Phone: 904/488-9627, FAX: 904/487-6587

2. Reasons your county may not participate are (You may check more than one answer.)

- Not aware of the Committee until this survey.
- No one has informed us of membership, dates, or times of meeting.
- This committee is not important because we have no conflict cases.
- Other (Please explain)

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3. Do you have any recommendations related to the statutory authority for the Circuit Conflict Committee?

Yes \_\_\_\_\_ (Please explain.)                      No \_\_\_\_\_

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**End of Survey- Thank You!**



The Florida Legislature  
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**EXECUTIVE DIRECTOR**

Dr. Mary Kay Falconer  
Tallahassee

**MEMORANDUM**

**TO:** Chief Judges of each Judicial Circuit

**FROM:** Dr. Mary Kay Falconer, Executive Director  
John D. Dew, Legislative Analyst *J.D.*

**RE:** Distribution and Completion of ACIR Survey Addressing the Implementation of Circuit Conflict Committees and the Imposition of Liens on Defendants Defended by Court Appointed Attorneys.

**DATE:** November, 30, 1993

The Florida Advisory Council on Intergovernmental Relations (ACIR), housed in the legislative branch of state government, is mandated to help facilitate the development of intergovernmental policies and practices. ACIR is conducting a study for the Florida Legislature, as required by Senate Bill 1802, on the impact of public defender conflict and overload cases on counties. As part of this study, we are collecting information from chief circuit judges on the implementation of Circuit Conflict Committees and the extent to which relevant statutory authority in this area is being imposed. This survey will also provide us with suggestions and recommendations for improving the process of providing counsel to defendants determined to be indigent by the courts. Your help in expeditiously completing these surveys will be greatly appreciated.

Please either FAX us the completed survey at 904/487-6587 or mail it to ACIR, c/o House Office Building, Tallahassee, FL 32399-1300. We would appreciate a response by December 17, 1993. We expect to present a report to our Legislative Council in January 1994. If you have any questions or concerns, please direct them to John D. Dew or Lynda Redner, ACIR Legislative Analysts, at suncom 278-9627 or 904/488-9627.

**EX-OFFICIO MEMBERSHIP**

Florida Association of Counties - James Shipman Florida Association of District School Superintendents - Dr. John Gaines  
Florida League of Cities - Raymond Sittig School Board Association of Florida - Dr. Wayne Blanton  
Florida Association of Special Districts - Peter L. Pimentel

**Judicial Circuit Chief Judge Survey Addressing Circuit Conflict Committees  
and Other Relevant Statutory Authority**

**Prepared and Distributed by the Florida Advisory Council  
on Intergovernmental Relations  
November 1993**

The Florida Advisory Council on Intergovernmental Relations (ACIR) is conducting a study of each judicial circuit's implementation of Circuit Conflict Committees and the extent to which the courts are requested by attorneys to collect the costs of services provided an indigent. Additionally, we are soliciting opinions from chief judges on how the process for identifying an indigent and appointing outside counsel to represent the indigent could be improved.

Specifically, this survey will allow the identification of those circuits that have established a Circuit Conflict Committee and have implemented relevant statutes as outlined in Section 925.037, Florida Statutes. This survey will also provide information on any barriers or problems with the implementation of these statutes. In addition, this survey will help identify those courts that have implemented the authority under Section 27.52(3), Florida Statute and Section 27.56, Florida Statutes which allows the state and counties to collect some costs of services provided an indigent. Finally, this survey will provide recommendations from chief judges on improvements to the process for identifying an indigent and appointing an outside attorney to represent an indigent. Additional follow-up interviews may be conducted by ACIR staff for selected judicial circuits.

Your assistance in completing this survey will be greatly appreciated. Please take the time to answer the following questions and return the survey by **December 17, 1993** to:

**ACIR  
c/o House Office Building  
Tallahassee, FL 32399-1300  
or, FAX: 904/487-6587, suncom 277-6587.**

If you have any questions regarding this survey, please contact John D. Dew or Lynda Redner at 904/488-9627, suncom 278-9627.

Respondent- Please fill in the information as requested below:

Judicial Circuit: \_\_\_\_\_  
Respondent: \_\_\_\_\_  
Title of Respondent: \_\_\_\_\_  
Phone Number of Respondent: \_\_\_\_\_  
FAX Number of Respondent: \_\_\_\_\_

Judicial Circuit Chief Judge Survey  
Florida Advisory Council on Intergovernmental Relations  
c/o House Office Building, Tallahassee, FL 32399-1300  
Phone: 904/488-9627, FAX: 904/487-6587

**I. Determination of Indigency**  
(Please see attachment A, s. 27.52, F.S., for the section providing criteria for determining indigency.)

1. Are there limitations with the current statute (s. 27.52, F.S.) defining indigency and seeking to receive payment from defendants erroneously determined to be indigent?

No \_\_\_\_\_

Yes \_\_\_\_\_ (Please check those areas that you believe need revision. You may check more than one.)

\_\_\_\_\_ The statutory criteria for determining indigency as it relates to gross income needs to be updated to increase the amount of income. (Please provide suggestions below.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ More criteria should be provided in the statute for defining indigency. (Please provide suggestions below.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ Some criteria for determining indigency should be deleted from the statutes. (Please provide suggestions below.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Judicial Circuit Chief Judge Survey  
Florida Advisory Council on Intergovernmental Relations  
c/o House Office Building, Tallahassee, FL 32399-1300  
Phone: 904/488-9627, FAX: 904/487-6587

\_\_\_\_\_ The statutes outlining how the state may proceed against a defendant, who is erroneously determined to be indigent, need to be revised. (Please provide suggestions below.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ Other (Please describe below.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. How is a defendant determined to be indigent in your judicial circuit? (You may check more than one answer.)

- \_\_\_\_\_ Information is submitted by the defendant at the same time a hearing is held in the court room to determine indigency.
- \_\_\_\_\_ Defendants who may be indigent have to complete a form stating such prior to any court hearing.
- \_\_\_\_\_ Information submitted by the defendant is verified by the court prior to any court hearing.
- \_\_\_\_\_ Other, please describe below.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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3. Has your circuit taken any recourse against a defendant, as authorized in s. 27.52(3), F.S., when the defendant was improperly determined to be indigent and received the assistance of a public defender or court appointed attorney ?

No \_\_\_\_\_  
Yes \_\_\_\_\_ (Please estimate the number of times this has been done in your circuit since January 1, 1993.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**II. Appointing an Attorney for an Indigent**  
(Please see attachment B, s. 27.53, F.S., for the statute allowing appointment of counsel for an indigent.)

1. How is a determination made by the court that a Public Defender Conflict exists and the indigent must be represented by a court appointed attorney? (You may check more than one answer.)

\_\_\_\_\_ Hearing before a Judge  
\_\_\_\_\_ Written information is submitted by the public defender and reviewed by the Judge  
\_\_\_\_\_ The Public Defender makes the determination  
\_\_\_\_\_ Other (Please describe below)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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2. Please provide information on how outside counsel is appointed by the court to represent an indigent. (You may check more than one answer.)

A list of attorneys is produced by the Circuit Conflict Committee from which the judge can appoint an attorney.  
 The county provides the list of outside counsel available and an attorney is recommended from this list.  
 The court has its own list of available counsel.  
 Other (Please describe below.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Please estimate how often the court determines that a court appointed attorney is to be compensated more than the maximum limits set in s. 925.036, F.S. because of "extraordinary" circumstances. (Check only one please.)

0% of the appointments  
 Less than 5% of the appointments  
 5 to 15% of the appointments  
 16 to 25% of the appointments  
 26 to 50% of the appointments  
 51 to 75% of the appointments  
 76 to 100% of the appointments  
 Don't know

4. What criteria does your circuit have for determining that an "extraordinary" circumstance exist and a court appointed attorney should receive payment which exceeds the limit set in s. 925.036, F.S.? (Please provide us with some examples of extraordinary circumstances in the space below.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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**III. Circuit Conflict Committee**

(Please see attachment C, s. 925.037, F.S., for a copy of the statute authorizing Circuit Conflict Committees.)

1. Has your judicial circuit ever established a Circuit Conflict Committee pursuant to s. 925.037(3), F.S.? If yes, please provide the approximate date it was established.

Yes \_\_\_\_\_, Date Established: Month \_\_\_\_\_, Year \_\_\_\_\_.

No \_\_\_\_\_ If no, after providing a brief explanation of the reason or reason/s your circuit does not currently have such a committee, please skip to question #6.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. How often has the committee formally met since it was established?

Number \_\_\_\_\_, Approximate dates \_\_\_\_\_; \_\_\_\_\_;  
\_\_\_\_\_;

3. Other than those responsibilities listed in s. 925.037(4), F.S., has your Circuit Conflict Committee undertaken any additional responsibilities or purposes?

No \_\_\_\_\_

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Yes \_\_\_\_\_ (Please list those additional responsibilities.)

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4. Which members regularly attend these meetings?

Name	Title or Position	Phone #
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

5. Does the Conflict Committee provide a list of attorneys eligible for the judge to appoint as outside counsel for an indigent?

Yes \_\_\_\_\_ (Please describe how attorneys are placed on this list and how the judges determine which attorneys are appointed to represent an indigent.)

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No \_\_\_\_\_

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6. Is it your opinion that the statute authorizing Circuit Conflict Committees needs to be revised?

Yes \_\_\_\_\_ (Please explain in the space below. )                      No \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**IV. Recovering Costs Associated with Representing An Indigent**  
(Please see attachment D, s. 27.56, F.S. for the statute authorizing recovering legal costs from an indigent.)

1. Do the trial courts in your circuit exercise authority under s. 27.56, F.S. to impose liens on defendants found guilty that have used the services of a public defender, special assistant public defender, or an attorney appointed by the court?

Yes \_\_\_\_\_

No \_\_\_\_\_ (If no, please provide some reasons this is not done. Please skip to question #3))

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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2. How does your circuit determine under what circumstances a lien may be imposed as authorized by s. 27.56, F.S.? (You may check more than one response.)

- Public Defender moves the court
- Assistant Special Public Defender moves the court
- Court Appointed Attorney moves the court
- Through another process - If so, please describe below

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3. Is it your opinion that s. 27.56, F.S. has imitations and as such needs to be revised?

Yes \_\_\_\_\_ (Please briefly explain.) No \_\_\_\_\_

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**End of Survey- Thank You!**

**COUNTY SURVEY ADDRESSING PUBLIC DEFENDER CONFLICT  
AND OVERLOAD CASES AND RELEVANT STATUTORY AUTHORITY**

County	Pay in Accordance with s. 27.54(2), F.S.			First Year Funds Allocated for This Purpose			Should s. 27.54, F.S. be Revised?			Has county ever collected costs from defendant "improperly" considered indigent?			Has county ever collected liens imposed on guilty defendants?			Should s. 27.52(3), F.S. and s. 27.56, F.S. be revised?			Does county participate on Circuit Conflict Committee?			Reasons county may not participate.*				Recommendations related to statutory authority for the Circuit Conflict Committee.		
	Y	N	NC	Y	N	NC	Y	N	NC	Y	N	NC	Y	N	NC	Y	N	NC	Y	N	NC	A	B	C	D	Y	N	NC
Alachua	Yes			1992			Yes				No			Yes			Yes								Yes			
Baker		No						No			No				No			Yes			*		*			No		
Bay		No							*		No			Yes				*								No		
Bradford																												
Brevard	Yes			1993			Yes				No			Yes			Yes									No		
Broward		No					Yes				No			Yes			Yes								Yes			
Calhoun																												
Charlotte	Yes			92/93				No			No			Yes				No								No		
Citrus																												
Clay																												
Collier	Yes			92/93			Yes				No			Yes			Yes								Yes			
Columbia		No					Yes				No			Yes			Yes		No		*	*				No		
Dade	Yes			1989			Yes				No				No		Yes									No		
DeSoto		No						No			No			Yes				*			*						*	
Dixie																												
Duval		No					Yes				No			Yes			Yes									No		
Escambia																												
Flagler																												
Franklin		No						No			No				No		Yes									No		
Gadsden		No							*		No				No		Yes									No		
Gilchrist																												
Glades		No						No			No			Yes				No					*		Yes			
Gulf		No							*		No				No		Yes		No		*					No		
Hamilton																												
Hardee		No					Yes				No			Yes			Yes		No		*	*				No		
Hendry																												
Hernando																												
Highlands																												
Hillsborough	Yes			1985			Yes				No			Yes				No								No		
Holmes		No					Yes				No				No		Yes								Yes			
Indian River																												
Jackson																												
Jefferson																												
Lafayette																												
Lake		No						No			No			Yes				No								No		
Lee	Yes			91/92			Yes				No			Yes			Yes									No		

**COUNTY SURVEY ADDRESSING PUBLIC DEFENDER CONFLICT  
AND OVERLOAD CASES AND RELEVANT STATUTORY AUTHORITY**

County	Pay in Accordance with s. 27.54(2), F.S.			First Year Funds Allocated for This Purpose			Should s. 27.54, F.S. be Revised?			Has county ever collected costs from defendant "improperly" considered indigent?			Has county ever collected liens imposed on guilty defendant's?			Should s. 27.52(3), F.S. and s. 27.56, F.S. be revised?			Does county participate on Circuit Conflict Committee?			Reasons county may not participate.*				Recommendations related to statutory authority for the Circuit Conflict Committee.		
	Y	N	NC	Y	N	NC	Y	N	NC	Y	N	NC	Y	N	NC	Y	N	NC	Y	N	NC	A	B	C	D	Y	N	NC
Leon		No						No				Yes			Yes				No			*				No		
Levy																												
Liberty		No						No					No		Yes				No					*			No	
Madison																												
Manatee		No					Yes					No		Yes			No	Yes									No	
Marion		No					Yes					No		Yes			No	Yes								Yes		
Martin																												
Monroe																												
Nassau																												
Okaloosa																												
Okeechobee		No					Yes					No		Yes		No	Yes										No	
Orange		No						No				No		Yes			Yes										No	
Osceola		No					Yes					No		Yes			Yes		No				*			Yes		
Palm Beach		No					Yes					No		Yes			Yes									Yes		
Pasco		No					Yes					No			No	Yes											No	
Pinellas		No					Yes					No		Yes			Yes									Yes		
Polk																												
Putnam		No						No				No			No			No					*				No	
St. Johns																												
St. Lucie																												
Santa Rosa																												
Sarasota		No					Yes			Yes				Yes		*	Yes						*			Yes		
Seminole	Yes			1993			Yes				No		Yes		Yes			No			*					No		
Sumter		No							*		No		Yes			*		No				*				Yes		
Suwannee																												
Taylor		No						No				No		Yes			No				*						No	
Union																												
Volusia		No					Yes					No		Yes		Yes			Yes							Yes		
Wakulla																												
Walton																												
Washington																												
TOTAL	8	28					21	11	4	1	35		26	10		18	12	6	23	13					12	23	1	

Notes:

\*(a) Not aware of the Committee until this survey.

(b) No one has informed us of membership, dates, or times of meeting.

(c) This committee is not important because we have no conflict cases.

(d) Other