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IN THE SUPREME COURT OF FLORIDA

Supreme Court No. 79,839

DISTRICT COURT OF APPEAL,
SECOND DISTRICT, NO. 91-1332

BOARD OF COUNTY COMMISSIONERS,
PINELLAS COUNTY, FLORIDA,

Petitioner,

vs.

TOM F. SAWYER,

Respondent.

_____/

AMICUS CURIAE BRIEF

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STATEMENT OF THE CASE AND FACTS

This is an appeal from an Order of the Second District Court of Appeal holding that investigative costs are recoverable against the County under Section 939.06, Florida Statutes (1989).

The Second District reversed the trial court ruling which denied Mr. Sawyer, who is a solvent acquitted criminal defendant, the right of reimbursement of approximately $9,000.00 from Pinellas County for the investigative costs he incurred in his defense. R.29. The Second District resolved the case under statutory interpretation and certified that its holding was in conflict with decisions of the Third and Fifth District Courts of Appeal. Pinellas County invoked the discretionary jurisdiction of this Court and this Court accepted jurisdiction on September 23, 1992. This Court also granted Metropolitan Dade County leave to file an Amicus Curiae brief.

SUMMARY OF THE ARGUMENT

The sole issue before this Court is whether the Second District properly found that the investigative costs of an acquitted and solvent defendant should be reimbursed by a county under Section 939.06, Florida Statutes (1989). Earlier decisions by the Third and Fifth Districts have held that such costs are not recoverable.

Dade County asserts that the Third and Fifth District decisions are correct as they properly read Sec. 939.06 as lacking clear indication the legislature intended to impose on the counties this staggering expense in derogation of the common law principle of sovereign immunity.

Dade County further argues that the Second District erred by looking beyond Sec. 939.06 to the 1987 amendments to Sec. 939.01 since the language of Sec. 939.06 was facially clear. However, even assuming Sec. 939.01 is instructive, its clear language, purpose, operation, and legislative history demonstrate that the Legislature in no way meant investigative costs be recoverable against the county.

Finally, this Court must consider the severe financial impact allowing the Second District decision to stand would have on the counties. The Florida Constitution is explicit as to how new obligations in county governments should be imposed, and the Second District's ruling would give effect to a legislative act in a manner which would violate the spirit if not the letter of the Florida Constitution.

I. THIS COURT SHOULD REVERSE THE SECOND DISTRICT'S DECISION AS IT FAILED TO CONSTRUE SEC. 939.06 STRICTLY AGAINST IMPOSING COSTS AGAINST THE COUNTY.

This Court has long held that at common law neither party could be charged with the costs of the other, and it is only by statute that such costs are allowed. Even then costs are not charged against the state unless there is an express provision in the law to authorize such costs. Buckman v. Alexander, 24 Fla. 46, 3 So. 817 (1888). The relevant statute under review provides simply that

> 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. If he shall paid any

> taxable costs in the case,...[they] shall be refunded to him by the county. Sec. 939.06, Fla. Stat. (1989).

Two other District Courts have interpreted Sec. 939.06 and have ruled that investigative costs are not recoverable. Osceola County v. Otte 530 So. 2d 478 (Fla. 5th DCA 1988); Benitez v. State, 350 So. 2d 1100 (Fla. 3d DCA 1977), cert. denied 359 So. 2d 1211 (Fla. 1978). See also Goldberg v. Dade County, 378 So. 2d 1242 (Fla. 3d DCA 1979). In Goldberg, the Third District court held that attorney fees were not recoverable under Sec. 939.06. While it acknowledged that an attorney is an officer of the court, "it cannot be said that his fees are those of the court or that he maintains a ministerial office." 378 at 1244. The Court applied the same logic to deny the cost of a forensic psychologist who assisted in the selection of a jury. id.

In so doing, these courts followed the caution they should be reluctant to read into the law a necessity for the imposition upon the public where a "staggering expense" would follow if reimbursement were required. See Holton v. State, 311 So. 2d 711 (Fla. 3d DCA 1975). This common sense caution is supported by the established rule of statutory construction that a statute in derogation of the common law principle of sovereign immunity shall be strictly construed. Carlile v. Game and Fish Comm., 354 So. 2d 362 (Fla. 1978); Spangler v. Florida State Turnpike Auth., 106 So. 2d 421 (Fla. 1958); Davis v. Love, 99 Fla. 333, 126 So.2d 374 (1930).

In contrast to the straight-forward analysis employed by the Third and Fifth Districts in reading Sec. 939.06, the Second

District came to the opposite conclusion based on the 1987 amendments to Sec. 939.01 allowing certain agencies receive a judgment against a convicted defendant for the cost of their investigative work.[1] The Second District reasoned that since such costs can now be obtained from a convicted defendant they are also "taxable costs" that an acquitted defendant can recover from the county under Sec. 939.06. The Second District justified this result by citing the Legislature's inaction subsequent to its decision in Powell v. State, 314 So. 2d 788 (Fla. 2d DCA 1975) holding expert witness fees were taxable under Sec. 939.06, and amendments providing attorney fees to a prevailing party in a civil proceeding as showing legislative approval of "mutual" recovery of costs.

This reasoning is fundamentally flawed as it is contradicted by this Court's instructions on statutory construction, Sec. 939.01's plain language and operation, as well as other parts of the statute and by the legislative history behind the changes to Sec. 939.01.

A. THE PLAIN LANGUAGE OF SEC. 939.01 INDICATES THE LEGISLATURE DID NOT INTEND INVESTIGATIVE COSTS OF ACQUITTED SOLVENT DEFENDANTS BE CHARGED AGAINST THE COUNTY.

The Second District's reliance on Sec. 939.01 to read into Sec. 939.06 the recovery of investigative costs is at odds with

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[1] The Second District's decision also seems to contradict its recent ruling in Short v. State, 579 So.2d 163 at 164 (Fla. 2d DCA 1991) (relying on Goldberg and Holton to hold trial court did not abuse discretion in refusing to certify investigative costs).

this Court's instruction that where the words of a statute are clear and not unreasonable the court should not search for excuses to give a different meaning to words used in the statute. Holly v. Auld, 450 So. 2d 217 (Fla. 1984). In Powell, the Second District held that the cost of expert witnesses was recoverable against the county under Sec. 939.06. However, in reaching that conclusion, Powell looked to Sec. 914.06 and Sec. 918.11, and each explicitly provided that such were "taxable." So even assuming Powell's approach was proper, there was explicit textual support that such limited fees were "taxable." Accordingly, the Court's attendant argument that the Legislature by inaction subsequent to its 1975 Powell opinion approved some sort of "mutuality" ignores the more likely view that in drafting the amendments to Sec. 939.01 in 1987 the Legislature deliberately avoided all mention of the word "taxable" to ensure such would not be taxed against the county:

> In all criminal cases the costs of prosecution, including investigative costs incurred by law enforcement agencies, and by fire departments for arson investigations, if requested and documented by such agencies, shall be included and entered in the judgment rendered against the convicted person. Sec. 939.01(1).

Unlike other statutory provisions which "tax" costs against a convicted defendant, nowhere does Sec. 939.01 state such costs are "taxable;" but rather incorporates such costs in the "judgment" entered against the defendant. This distinction was apparently not lost on the drafters of the statute as throughout

its provisions only certain costs are declared to be "taxable."[3] Furthermore, in those instances where costs are not "taxable", the Legislature had no difficulty expressly stating the county is nevertheless responsible for their payment.[4]

Also, as the dissent below correctly noted, the Legislature had abundant opportunities to specifically address investigative costs, and in none did it choose to make the county responsible for those of an acquitted solvent defendant.[5]

B. THAT THE LEGISLATURE DID NOT INTEND THE PROVISIONS OF SEC. 939.01 TO APPLY "MUTUALLY" IS DEMONSTRATED BY SEC. 939.01'S DISCRETIONARY AND PUNITIVE NATURE.

A fair reading of the full text of Sec. 939.01 bears out the proposition that the Legislature never intended to make such costs recoverable against the county but rather to give trial courts greater leeway in fashioning appropriate judgments against

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[3] See e.g. Sec. 914.06 (expert witnesses for the State or indigent defendants "be taxed and paid by the county..."); Sec. 914.09 (a witness summoned in two or more cases may charge the full per diem and mileage when such are "taxed against the defendant."); Sec. 914.11 (the travel expenses of deposing an indigent defendants out of circuit witnesses "shall be paid by the county...and shall also be taxed as costs."); and Sec. 916.11 (fees of an expert witness used to determine the mental condition of a defendant be "paid by the county" and "taxed as costs").

[4] See e.g. Sec. 921.09 (fee of physician who determines sanity of defendant at time of sentence "be paid by the county."); Sec. 921.12 (fee of physician who determines pregnancy at time of sentencing "be paid by the county."); Sec. 925.035 (court appointed attorney fees "shall be paid by the county."); Sec. 939.07 (requiring the "county...pay the legal expenses and costs" incurred in the prosecution of indigent or discharged defendants including depositions and subpoenas.)

[5] See Secs. 27.56(1)(a); 45.061(3)(a); 253.03(13); 373.129(6); 489.132(3); 631.54(5); 895.05(7); 895.07(8); 939.01(1).

convicted defendants. See Wood v. State, 544 So. 2d 1004 (Fla. 1989) (reversing judgment imposing costs due to court's lack of notice and failure to consider defendant's ability to pay).

The following excerpts serve to highlight the punitive nature of this remedy:

> 939.01(3)(a) The court may require that the defendant pay the costs within a specified period or in specified installments.
>
> (b) The end of such period or the last such installment shall not be later than:
>
> 1. The end of the period of probation or community control if probation or community control is ordered;
>
> 2. Five years after the end of the term of imprisonment imposed if the court does not order probation or community service; or
>
> 3. Five years after the date of sentencing in any other case.
>
> ....
>
> (4) If a defendant is placed on probation or community control, any costs ordered ... shall be a condition of such probation or community control. The court may revoke probation or community control if the defendant fails to comply with such order.

In fact, the court has the discretion to award or not to award any costs:

> 939.01(2) If the court does not enter costs, or orders only partial costs under this section, it shall state on the record the reasons therefor.

Perhaps the true intent of Sec. 939.01 is best captured by Judge Edmund Palmer's remarks in response to objections to his application of a similar federal provision:

> Here is a rich criminal with fantastic assets who has probably laundered his ill-gotten gains. And you say that all of the fantastic funds that the government has spent to investigate and to try this case should be a burden on the community, in addition to the harm that was done by his criminal activities. I am surprised that you even think that that should be done.
> U.S. v. Glover, 588 F.2d 876 (2d Cir. 1978).

It follows that to the extent Sec. 939.01 is a punitive remedy it is illogical to hold such provisions can be "mutually" applied against the county as a "non-prevailing" party. It can hardly be argued the county, which is not even a party to the criminal proceeding, should be punished by the acquittal of a defendant. It is very difficult to argue that given this interplay with the punitive aspects of a judgment the Legislature intended these costs also apply against the county.[5]

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[5] That the Legislature did not intend to impose investigative costs of all acquitted or discharged defendants on the counties is manifest from the language of the bill enacting the amendments and the House of Representatives Committee on Criminal Justice Staff Analysis. The amendments to Sec. 939.01 were part of a much larger omnibus crime prevention bill that was introduced by the following:

> WHEREAS, Florida is facing a crisis of dramatic proportions due to a rapidly increasing crime rate, which crisis demands urgent and creative remedial action, and ....
>
> WHEREAS, the crime rate crisis throughout the state has ramifications which reach far beyond the confines of the

(Footnote Continued)

The Court's reliance on White v. Board of County Commissioners, 537 So.2d 1376 (Fla. 1989) for the proposition that "mutuality" is integral to a criminal proceeding is confusing. In White, this Court held that a trial court may exceed the statutory limitations on the compensation of court appointed attorney fees to protect an indigent defendant's right to effective counsel. As has already been noted the county is already responsible for all the costs associated with proceedings against indigents. Sec. 939.07. In cases involving solvent

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(Footnote Continued)

> traditional criminal justice system and cause deterioration and disintegration of businesses, schools, communities, and families, and
>
> WHEREAS, the Joint/Legislative Task Force on Drug Abuse and Prevention strongly recommends legislation to combat Florida's substance abuse and crime problems, and asserts that the crime rate crisis must be the highest priority of every department of government within the state whose functions touch upon the issue, so that a comprehensive battle can be waged against this most insidious enemy, and
>
> WHEREAS, this crucial battle requires a major commitment of resources and a nonpartisan, nonpolitical cohesive, well planned approach, and ....
>
> WHEREAS, in striving to eliminate the fragmentation, duplication, and poor planning which would doom this fight against crime, it is necessary to coordinate all efforts toward a unified attack on the common enemy, crime.

J. Fla. H. Rep., at 1341-1365 (June 5, 1989). The Staff Analysis is attached at "A" and the amendments are analyzed at p. 178.

defendant's however, "mutuality" is not present as such a defendant is not entitled to attorney's fees even if acquitted.[6]

C. THE OBVIOUS NON-SEQUITORS THAT RESULT FROM A MUTUAL APPLICATION OF SEC. 939.01 FURTHER DEMONSTRATE THE LEGISLATURE DID NOT INTEND SUCH COSTS BE TAXED AGAINST THE COUNTY.

Should any mutuality exist under Section 939.01 it should run against that particular agency that shouldered the burden of investigating the discharged defendant and stands to gain by a conviction. Under our municipal structure, that agency may or may not be a county agency. Accordingly, in urban counties with confederated municipalities and perhaps may different law enforcement agencies, it is illogical to hold that the county is somehow liable for all costs in all cases where a defendant is acquitted or discharged.

Second, Sec. 939.01 provides that the court must consider the financial resources of the defendant in furnishing an award. Sec. 939.01(5). Accordingly, in a truly "mutual" application of this statute a trial court would need to take into account the county's "financial resources" and its "financial needs and earning ability" as well as "such other factors it deems appropriate." id. The county would presumably have the right to bring forward its assessment of expenditures and income, and the trial court would be asked whether the existing county

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[6] However, under a logical extension of the Second District's holding such fees could be recoverable as Sec. 939.01 states "all costs of prosecution, including investigative costs... shall be included...." Surely such a radical departure from existing law was not contemplated by the Legislature either.

appropriations are justified. The unwieldly nature of such an inquiry not only calls into question the appropriate role of the judiciary and executive branches, but serves to underscore the Legislature did not contemplate Sec. 939.01's mutual application.

The Second District's application of "mutuality" as developed by the Legislature in civil litigation to criminal proceedings is misguided. Section 57.105(2), Florida Statutes (1991) which allows a court to award attorney's fees to a prevailing party in a contract action deals with disputes limited to private parties that were of equal stature. A criminal proceeding is of course a vastly different setting. There the proceedings are between an indicted individual defendant and the State as a representative of the people. In no sense do these parties come together as they do in a contract setting, and the impact of the proceedings affects a host of interests not party to the dispute.[7] Accordingly, the equity informing the concept of "mutuality" needs to consider far broader social and political questions not present in private dealings.

The Third District addressed some of these issues and held that absent some clear legislative change, the cost of investigative fees should not be taxed against the county as a matter of sound public policy noting the following:

> The enforcement of the criminal laws is for the benefit of all and the fact that some

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[7] That there are vastly different standards of proof also demonstrates that "mutuality" is misplaced in criminal proceedings. The state may show not only a preponderance but clear and convincing proof of guilt and yet still not be the "prevailing party."

> citizens are financially burdened by this enforcement is not a sufficient reason to further handicap the process of criminal law enforcement at this critical time in the struggle of the state to control the criminal element in society. Benitez at 1102.

This Court should note such a critical time has not yet subsided and the existing demands on the public treasury have grown -- not lessened. To add this "incalculable burden" on the counties is ill advised and unwarranted under any reasonable reading of the statutory language cited by the Second District.

II. THE FINANCIAL IMPLICATIONS OF THE SECOND DISTRICT'S RULING ARE SO BURDENSOME ON THE COUNTIES THAT THIS COURT SHOULD REVERSE THE RULING UNTIL A CLEAR SIGNAL FROM THE LEGISLATURE THAT SUCH IS CONTEMPLATED.

In determining whether the Legislature intended to so vastly increase the obligation of the counties this Court should take judicial notice that many counties have reached the limit of their taxing authority so that the imposition of such an obligation will of necessity mean the curtailment of certain services. The people of Florida have responded to this situation by amending the Florida Constitution to provide that no county shall be bound by a law to spend funds unless the Legislature has also appropriate or authorized a source for appropriate funding for the new obligation:

> Laws requiring counties or municipalities to spend funds or limiting their ability to raise revenue or receive state tax revenue - (a) No county or municipality shall be bound by any general law requiring such county or municipality to spend funds or to take any action requiring the expenditure of funds unless the legislature has determined that

> such law fulfills an important state interest and unless: funds have been appropriated that have been estimated at the time of enactment to be sufficient to fund such expenditure; the legislature authorizes or has authorized a county or municipality to enact a funding source not available on February 1, 1989, that can be used to generate the amount of funds estimated to be sufficient to fund such expenditure by simple majority vote of the governing body of such county...; the law requiring such expenditure is approved by two-thirds of the membership for each house of the legislature; the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments; or the law is either required to comply with a federal requirement or required for eligibility for a federal entitlement.... Art. 7, Sec. 18, Fla. Const. (1991).

Irrespective of whether the Court finds this provision applicable in the instant appeal, it serves to demonstrate the seriousness with which the Florida Constitution contemplates the imposition of obligations on county governments. The imposition of staggering costs against the counties based on what is at best a strained interpretation of statutory language violates the spirit, if not the letter of the Florida Constitution. A reversal would be consonant with this Court's stated preference to construe enactments to confirm with the Constitution without violating the plain intent of the Legislature. See generally, Fla. Jur. 2d Constitutional Law Sec. 80.

CONCLUSION

For the above stated reasons, METROPOLITAN DADE COUNTY respectfully requests this Court reverse the decision of the Second District.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed to James T. Miller, Esquire, 407 Duval County Courthouse, Jacksonville, Florida 32202; Sondra Goldenfarb, Esquire, 2454 McMullen Booth Road, Suite 501-A, Clearwater, Florida 34619; and Susan Daly, Esquire, 315 Court Street, Clearwater, Florida 34616, this 16th day of November, 1992.

Augusto E. Maxwell
Assistant County Attorney

APPENDIX

AM#: CS/HB 1467/sa

May 11, 1987

d: June 22, 1987

: June 22, 1987

HOUSE OF REPRESENTATIVES
COMMITTEE ON CRIMINAL JUSTICE
STAFF ANALYSIS

: CS/HB 1467 (Enrolled version)

TING TO: Crime Prevention and Control

SOR(S): Criminal Justice Committee

CTIVE DATE: Generally October 1, 1987, with some sections July 1, 1987

ANION BILL(S):

COMMITTEES OF REFERENCE: (1) Finance and Tax

(2) Appropriations

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SUMMARY:

This act is known as the "Crime Prevention and Control Act." It is designed to deal in a comprehensive manner with Florida's crime problem by incorporating numerous changes in various areas of Florida's criminal code. The act not only increases penalties and creates new offenses in some areas, it also attempts to deal with the causes of crime by providing for comprehensive K-12 substance abuse education, the creation and maintenance of "Safe Neighborhoods," and the creation of study commissions to study the causes of crime and methods of coordinating and integrating criminal justice information systems.

SECTION BY SECTION ANALYSIS:

Section 1. (Page 10)

Entitles the act the "Crime Prevention and Control Act."

Section 2. (Page 10)

Section 893.03, F.S., lists chemical substances and drugs which it is unlawful to possess or sell ("controlled substances"). Schedule IV controlled substances have a low potential for abuse and are currently accepted for medical treatment in some cases. Abuse of a Schedule IV substance may lead to physical or psychological dependence. Section 2 of the act adds anabolic steroids (except those labeled for animal use) to the list of Schedule IV substances, and describes them as leading to "physical damage." Steroids are sometimes used by athletes for body building purposes. Placing steroids on Schedule IV makes the sale or delivery of them, or possession with intent to sell or deliver them, a third degree

felony. Selling or delivering them to a minor will be a second degree felony, and bringing them into the state will be a third degree felony. Steroids may still be used for approved medical purposes. The fiscal impact of this section is indeterminate at this time, because the number of people who would be affected by it is unknown.

Section 3. (Page 13)

Section 893.035, F.S., gives the Attorney General the authority to identify new "Designer Drugs" and administratively classify such drugs according to their potential for abuse. Designer drugs are substances which are created and manufactured to be used as substitutes for existing controlled substances. Section 3 of the act creates a new section 893.0356, F.S., which defines "controlled substance analogs" and provides that any such analog shall automatically be treated as a Schedule I controlled substance. The act's definition of controlled substance analog is substantially the same as the definition of designer drugs. The purpose of this section is to provide a more efficient method of declaring these substances illegal, rather than relying on the slower process of substance-by-substance administrative rule-making. The fiscal impact of this section is indeterminate.

Section 4. (Page 17)

Section 893.13, F.S., lists certain prohibited acts involving controlled substances. These include the sale, manufacture, delivery, or possession with intent to sell, manufacture, or deliver, of a controlled substance; selling or delivering a controlled substance to a minor; and bringing such a substance into the state. Section 4 of the act adds purchasing to the list of prohibited activities. It also creates two new offenses: using or hiring a minor in the sale or delivery of a controlled substance, and selling or delivering such a substance within 1000 feet of an elementary, middle, or secondary school. For most Schedule I and Schedule II substances, violation of these provisions will be a first degree felony. In addition, this section brings the penalties for methaqualone, a Schedule I substance, into line with the penalties for most other Schedule I substances. This section of the act is likely to add a number of new offenders to the state prison system, although the exact number is indeterminate at this time.

Section 5. (Page 23)

Section 893.135, F.S., prohibits the sale, manufacture, delivery, bringing into the state, or actual or constructive possession of certain amounts of marijuana, cocaine, opium, phencyclidine, or methaqualone. This offense is known as "trafficking," and includes minimum mandatory sentences according to the substance and quantity involved. Section 5 adds purchasing to the list of activities which may constitute trafficking. In addition, it adds a new subsection (2) to section 893.135, F.S., which defines the word "knowingly" as it is used in the statute. The purpose of this is to clarify the [illegible] behind the statute. Florida courts had recently

old that, when a person intends to traffic in one of the five listed substances, but, by mistake, traffics in another one of the substances, that person cannot be convicted of trafficking because he does not have the requisite intent. The act provides that an intent to traffic in any one of the substances shall constitute a sufficient intent to traffic in any of the listed substances. Finally, section 893.135, F.S., provides that the State Attorney may move to reduce or suspend the sentences of any person who provides substantial assistance in the identification, arrest, or conviction of any of his accomplices, accessories, coconspirators, or principals. The act amends this section by stating that such assistance may also be rendered toward the identification, arrest, or conviction of "any other person engaged in trafficking in controlled substances."

Section 6. (Page 27)

Section 782.04, F.S., provides that a death which results from the unlawful distribution of opium, when the opium is the proximate cause of death, is first-degree murder. The act expands this first-degree murder offense by including the unlawful distribution of cocaine or any Schedule I controlled substance in addition to opium. Any death resulting from the unlawful distribution of any of these substances would also be first-degree murder if the substance is the proximate cause of death.

Section 7. (Page 29)

Section 7 of the act authorizes cities and counties to create administrative boards to hear complaints regarding "public nuisances" The board may declare as a public nuisance any place or premises which is shown to have been used more than twice as the site of the unlawful sale or delivery of controlled substances. Once a place is declared a public nuisance, the board may issue an order prohibiting the maintenance or operation of the place, or certain activities on that place, for a period of up to one year. This section of the act is based on a recommendation by the 1986 Joint Executive-Legislative Task Force on drug abuse and prevention. It is patterned after "padlock" laws in existence in New York and on procedures already used by a few cities in the State of Florida. The intent is to allow cities and counties to deal on a local level with the abatement of drug-related nuisances, and to allow them to abate the nuisance through "shutting down" the place for a period of time, after notice to the owner and a hearing.

Section 8. (Page 29)

Section 60.05, F.S., provides that the Attorney General, State Attorney, or any citizen of the county may sue to enjoin the maintenance of a public nuisance, including nuisances caused by drug activities. Section 8 of the act confers standing upon city and county attorneys to bring such injunctive actions as well. This provision is also intended to allow such nuisances to be dealt with at the local level.

Section 9. (Page 29)

CS/HB 1467
June 22, 1987

Chapter 817, F.S., lists various fraudulent practices which are prohibited. Section 9 of the act creates a new section 817.565, F.S., making it unlawful to defraud or attempt to defraud any lawfully administered urine test designed to detect chemical substances or controlled substances. It also makes unlawful the manufacture, advertising, sale, or distribution of any substance or device intended to achieve such defrauding. Violation of the newly created section would be a first degree misdemeanor.

Section 10. (Page 31)

Section 232.26, F.S., authorizes district school boards to immediately expel any pupil who is adjudicated guilty of a felony. The section also authorizes school principals to discipline, suspend, or expel any student for specified reasons, including violations of the law. Section 232.26(2), F.S., provides that any pupil who is subject to discipline or expulsion for possession of a controlled substance "may be entitled" to a waiver of the discipline or expulsion by providing information about who supplied the drug, or by voluntarily disclosing such possession prior to his arrest. Additionally, any such student "may" receive a waiver by committing himself to, or being referred by the court to, a state-licensed drug abuse program and successfully completing the program. The act merely combines these two waiver provisions such that a student "may be entitled" to a waiver by taking either specified course of action.

Section 11. (Page 33)

Section 240.133, F.S., provides that a university or community college president may, after notice and a hearing, expel, suspend, or discipline any student found to have violated any law. The act amends this section by providing that a student may be entitled to a waiver of the expulsion by providing substantial assistance in the identification, arrest, or conviction of persons engaged in illegal drug activities; by voluntarily disclosing his own drug violations; or by committing himself to and successfully completing a state licensed drug abuse program.

It is apparent that the Legislature intended this waiver provision to apply only to those students subject to expulsion as a result of drug violations or possession of controlled substances.

Section 12. (Page 34)

Section 12 of the act creates a new section 322.055, F.S., providing for the revocation or suspension of a person's driver's license when the person is found guilty of any drug offense involving a Schedule I or Schedule II controlled substance. The revocation or suspension would be discretionary with the sentencing court, and would be for a period of up to 2 years. If the person does not yet have a driver's license, even though he is old enough to have one, the court could order that the person not be issued a license for up to 2 years. If the person is ineligible for a license because of age, the court [illegible] that the person's eligibility be delayed for up to 2

evocation, the court could order such suspension or revocation to be xtended for up to 2 years. Anyone whose license is revoked or uspended pursuant to this new section would be entitled to a ardship reinstatement hearing according to normal departmental rocedure.

ections 13-19. (Pages 36-48)

hese sections create the "Florida Comprehensive Health Education and Substance Abuse Prevention Act." It amends the state comprehensive ealth education plan (section 233.067, F.S.) by requiring each school district to develop a substance abuse education program for grades K-12, to be implemented in each public school no later than the 1988-89 school year. The act also requires each district to provide inservice training for all classroom teachers and guidance counselors in substance abuse prevention education. Each district's substance abuse education program will be subject to approval or disapproval by the Commissioner of Education, and to evaluation and monitoring by the Department of Education. Implementation of this part of the act will be partially paid for with federal appropriations emanating from enactment of the omnibus Anti-Drug Abuse Act of 1986 (P.L. 99-570).

Section 20. (Page 48)

This section of the act amends section 319.33, F.S., which prohibits the altering, forging, or fradulent use of motor vehicle certificates of title. The act provides that any motor vehicle used in violation of this section is contraband and subject to forfeiture under sections 932.701-932.704, F.S. Section 319.33, F.S., also provides that if all the identifying numbers of a motor vehicle or motor home have been destroyed, removed, covered, altered, or defaced, and its real identity cannot be determined, that vehicle is contraband and subject to forfeiture. The act amends this provision by changing "all" numbers to "any" numbers, and by stating that if any identifying numbers "do not exist" the vehicle is subject to forfeiture as well. In addition, under the act, the vehicle would be contraband either if the numbers were destroyed or altered or if the vehicle's real identity cannot be determined. The current law requires both of these elements to exist.

Section 21. (Page 49)

Section 329.10, F.S., prohibits the possession of an aircraft which is not registered or which is falsely registered, and makes it a third degree felony. The act amends this section by providing that any violation of section 329.10, F.S., shall constitute the aircraft to which it related as contraband, and such aircraft will be subject to forfeiture under sections 932.701-932.704, F.S.

Section 22. (Page 49)

Section 330.40, F.S., makes it a third degree felony to have an aircraft with fuel tanks or other fuel containers which do not conform to federal regulations. The act declares any aircraft in

violation of this section to be contraband and subject to forfeiture under sections 932.701-932.704, F.S.

Section 23. (Page 50)

Section 329.11(1), F.S., makes it a third degree felony to buy, sell, offer for sale, receive, dispose of, conceal, or possess any aircraft or aircraft part on which the identification numbers do not meet federal regulations. The act amends this section by providing that if any of the identification numbers of an aircraft have been knowingly omitted, altered, removed, destroyed, covered, defaced, or the real identity of the aircraft cannot be determined due to an intentional act of the owner or possessor, the aircraft is contraband and subject to forfeiture under sections 932.701-932.704, F.S.

Additionally, the act provides that the aircraft may not be sold or operated unless the Federal Aviation Administration has issued it a replacement identification number. Further, the act makes it unlawful to possess, manufacture, sell, or give away any counterfeit manufacturer's aircraft identification number plate or decal. Any person who violates any of these provisions would be guilty of a third degree felony.

Section 24. (Page 51)

ection 327.30, F.S., requires the operator of a vessel which is involved in an accident or collision to report such accident to the Department of Natural Resources Division of Law Enforcement within 24 hours. The act changes this requirement to say that the accident must be reported "as soon as practicable." Section 327.30, F.S., also makes it unlawful for a person operating a vessel involved in an accident or injury to leave the scene of the accident or injury without rendering aid to persons involved, or without making a reasonable effort to notify law enforcement official. The act amends this provision by making it a third degree felony to leave the scene when the accident results in personal injury, and a second degree misdemeanor when the accident involves property damage only.

Section 25. (Page 52)

Section 327.351, F.S., prohibits the operation of a vessel while the operator is intoxicated "to such extent as to deprive him of full possession of his normal faculties" The act changes this language to say that it is unlawful for a person to operate a vessel when that person is intoxicated "to the extent that his normal faculties are impaired." This change brings section 327.351, F.S., into line with the language in section 316.193, F.S., which prohibits driving a motor vehicle while intoxicated.

Section 26. (Page 53)

ection 327.353, F.S., provides some of the guidelines for the use of blood tests for impairment or intoxication in the case of operating a vessel while intoxicated. Section 327.352, F.S., provides certain situations in which the operator may refuse to take a blood test.

ction 327.353, F.S., however, provides that, notwithstanding these visions, the operator may be compelled, through reasonable force necessary, to submit to such a test if the law enforcement officer probable cause to believe that the operation of the vessel caused death or serious injury of any person other than the operator self. The act changes this to provide that the test may be mpelled even if the only person injured is the operator himself. A containing a change identical to this in the motor vehicle iving under the influence statute (CS/HB 364) failed to pass in the gislature in the 1987 session.

Section 27. (Page 54)

his section of the act creates a new section 327.36, F.S., providing hat a court may not suspend, defer, or withhold adjudication of uilt or imposition of sentence for any violation of section 327.351, .S., (operating a vessel while intoxicated) for manslaughter esulting from the operation of a vessel, or for vessel homicide. he act also provides that any person charged with any of these ffenses may not plead guilty to any lesser offense when the person as been determined as having a blood alcohol content at the time of he offense of .20 percent or higher. The level at which the blood lcohol content becomes illegal for purposes of operating a vessel is .10 percent. Additionally, under the act any person charged with a elony violation of section 327.351(2), F.S., (causing damage or eath by operating a vessel while intoxicated), manslaughter esulting from the operation of a vessel, or vessel homicide, may not lead guilty to a lesser offense.

Section 28. (Page 54)

Section 328.05(3), F.S., prohibits the altering, forging, or fraudulent use of certificates of title to vessels or other documents indicating ownership of a vessel. Violation is a third degree felony. The act amends this section by providing that any vessel used in connection with a violation of the section is contraband and subject to forfeiture under sections 932.701-932.704, F.S.

Section 29. (Page 56)

Section 843.18, F.S., makes it unlawful for the operator of any vessel, when directed by an authorized law enforcement officer to stop such vessel, to willfully fail or refuse to stop, or to flee in an attempt to elude such officer. Violation is a third degree felony. The act amends this section by providing that any vessel used in violation of the section is contraband and subject to forfeiture under sections 932.701-932.704, F.S.

Sections 30-36. (Pages 56-60)

These sections of the act are referred to as the "Money Laundering Control Act." The proposed act requires all persons engaged in a trade or business who receive more than $10,000 in currency in one transaction to disclose such transaction to the Florida Department of Revenue. The information required to be disclosed is identical to

hat required to be disclosed to the federal government under 26 U.S.C. s. 6050I. The act would make such information available to state law enforcement agencies as well. Failure to comply with the reporting requirements would be a first degree misdemeanor, punishable by imprisonment, a fine, or both. The act exempts from these reporting requirements financial institutions which report to the Comptroller under section 665.50, F.S. The act authorizes the Department of Revenue to enforce compliance with the reporting requirements, and states that any information reported will be confidential, but will be available to law enforcement agencies and the Department of Legal Affairs when there is a clear need for it for investigative purposes.

The act also makes it a second degree felony for a person to conduct any financial transaction in which the person knows the proceeds of racketeering activity are involved, and knows that the transaction is designed to cover up such activity or to avoid reporting requirements.

$158,500 has been appropriated to the Department of Revenue to handle the administration of the reporting requirements.

Sections 37-38. (Page 60)

These sections of the act require stores that sell money orders to keep, in the form of a log, records of sale of any money orders sold which are in the amount of $700.00 or more. The act also requires such records to be available upon request to any state or federal law enforcement agency for three years. Any seller who fails to maintain such records would be guilty of a non-criminal violation punishable by a fine of not more than $250.

Section 39. (Page 61)

Creates section 790.165, F.S., to provide that it is a third degree felony to manufacture, possess, sell, deliver, mail or send a hoax bomb. It is a second degree felony to commit a felony while possessing, displaying, or threatening to use a hoax bomb. This section provides mandatory adjudication of guilt and imposition of sentencing. However, the state attorney or defense attorney may move the court to reduce or suspend the sentence for a person providing substantial assistance to law enforcement officers in prosecuting co-conspirators.

Section 40. (Page 62)

Amends section 715.041, F.S., to provide that pawnbrokers must maintain records of their transactions regarding the purchase of property by the pawnbroker or the pledging of property as security for a loan. These records must consist of uniform cards available to law enforcement officers upon request. Law enforcement officers are authorized to recover the property if a lawful owner, other than the pawnbroker, provides proof of ownership. If the lawful owner reclaims the property, the person who sold or pledged such property must make full restitution to the pawnbroker.

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ion 41. (page 63)

reates section 715.0415, F.S., to provide that persons selling or pledging property to a pawnbroker must sign a statement verifying ownership of such property. A person knowingly giving false verification of ownership and receiving less than $300 for the property is guilty of a first degree misdemeanor. A person giving false verification and receiving $300 or more is guilty of a third degree felony. In either instance, the person selling or pledging the property must make full restitution to the pawnbroker.

Section 42. (Page 64)

Provides that entrapment occurs when a law enforcement officer induces or encourages, and as a result, causes a person to engage in criminal activity and the method used by the law enforcement officer creates a substantial risk that the offense would be committed by someone who was not predisposed to commit the offense. The issue of entrapment shall be decided by the trier of fact and must be proven by a preponderance of the evidence by the defendant.

This section overrules the Florida Supreme Court's decision in Cruz v. State, 465 So. 2d 516 (Fla. 1985) which held that the objective test of whether law enforcement conduct was impermissible was in the discretion of the trial court.

Section 43. (Page 65)

Provides that section 42 (entrapment doctrine) applies only to offenses committed on or after October 1, 1987.

Section 44. (Page 65)

Amends section 810.07, F.S., to provide that proof of the attempt to enter a structure stealthily and without the consent of the owner or occupant is prima facie evidence of attempting to enter with the intent to commit an offense.

Section 45. (Page 65)

Amends section 914.23, F.S., to provide that a person retaliating against a witness, victim or informant, or attempting to do so, is guilty of a second degree felony if such conduct results in bodily injury to another. However, if no bodily injury occurs, such person is guilty of a third degree felony. This deletes the requirement that damage to property is necessary to constitute a third degree felony.

Section 46. (Page 66)

Amends section 924.07, F.S., by adding to the current list of grounds upon which the state may appeal a judgment to include the appeal of a ruling granting a motion for judgment of acquittal after a jury verdict. Furthermore, an appellate court is charged with mandatory

iew and ruling upon a question of law raised by the state's cross-
eal of a defendant's appeal based upon a question of law.

ction 47. (Page 67)

ends section 939.01, F.S., to expand the type of costs assessed
ainst defendants in criminal cases to include investigative costs
curred by law enforcement agencies and by fire departments in arson
vestigations. The agencies must document their requests for cost.
e section authorizes the court to resolve disputes over the amount
such costs and establishes pay schedules and time limits for
yment of costs.

ction 48. (Page 69)

ends section 849.25, F.S., to provide parameters for the court to
nsider in determining whether a person is engaged in the crime of
okmaking. The existence of two or more of the enumerated factors
y constitute prima facie evidence of a commercial bookmaking
eration.

ction 49. (Page 71)

reates section 812.16, F.S., to define "chop shops" as places where
e or more persons are engaged in altering, dismantling or
assembling stolen motor vehicle parts or where there are two or
re stolen vehicles or major component parts from two or more
hicles.

his section makes it a third degree felony to operate or aid in the
peration of a chop shop. It allows the court to order defendants,
pon conviction, to pay restitution to the owners of the stolen
hicles found at the chop shops. Furthermore, this section provides
or forfeiture of vehicles and parts, tools and other equipment used
n dismantling or reassembling motor vehicles and wreckers or car
aulers used to transport stolen vehicles.

ections 50-52. (Pages 72-75)

rovides that in order to more effectively institute crime prevention
programs, it is necessary for all the agencies which impact on the
riminal justice system to utilize standard data and formats to
facilitate the sharing of information among the agencies. Section 51
reates the Risk Assessment Information System Coordinating Council
within the Department of Education. The council will study the data
elements now being used by the agencies involved and determine what
barriers exist to the sharing of information. By March 1, 1989, the
council will establish standard formats and definitions to be used by
all agencies represented on the council. The council will report
annually to the Governor and Cabinet, the Speaker of the House of
Representatives and the President of the Senate. Section 52 repeals
Section 51 on October 1, 1990. $158,500 has been appropriated for
this council.

Section 53. (Page 75)

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...eates section 16.55, F.S., to provide that the Department of Legal Affairs will develop model crime prevention training materials. These materials will be available to each county commission and city commission no later than July 1988. $30,000 has been appropriated to fund the dissemination of the crime prevention data.

Section 54. (Page 76)

Creates a Crime Prevention and Law Enforcement Study Commission to study funding alternatives for corrections and additional measures to be taken regarding increased penalties. $200,000 has been appropriated to fund this commission.

Section 55. (Page 78)

Permits sections 55-73 to be cited as the "Safe Neighborhoods Act."

Section 56. (Page 78)

Enumerates the legislative findings and purposes of the Safe Neighborhoods Act to include:

(1) deterioration of neighborhoods is caused by crime, traffic, land use patterns, etc.;

2) safe neighborhoods are due to planning and implementation of comprehensive crime prevention and environmental design concepts;

(3) powers of neighborhood improvement districts are to enable development of safe neighborhoods by reducing crime and opportunities for crime;

(4) public purpose is to assist local governments in implementing crime prevention techniques to stabilize and revitilize neighborhoods.

Section 57. (Page 79)

Provides definitions.

Section 58. (Page 80)

Authorizes the governing body of a municipality or county to:

(1) adopt a planning ordinance authorizing creation of districts by 3 optional methods. Such districts may not overlap jurisdictional boundaries of a municipality or unincorporated area of a county except by interlocal agreement;

(2) request planning grants from the Safe Neighborhoods Trust Fund which is to be administered by the Department of Community Affairs.

Section 59. (Page 81)

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:es the local governing body to:

:ct a separate ordinance to create each local government :ghborhood improvement district. Such ordinance must include:

boundaries, size and name;
planning grant authorization;
intent to utilize a maximum of 2 mills ad valorem tax or special assessments;
the designation of the local governing body as board of directors of districts;
establishment of an advisory council;
powers of district under section 63 to be determined;

:ecify advisory council duties;

.ssolve the district by rescinding the ordinance; the local :verning body must consider rescinding by petition of 60% of .atrict's residents.

:n 60. (Page 82)

:es for the creation, powers and duties of the property owners' :ation neighborhood improvement district to include:

enactment of separate ordinance to create each property ...ers' association neighborhood improvement district to

a) require 75% of the property owners to join property owners' association; district area encompassed by property owned by members of association;
b) specify boundaries, size and name of district;
c) authorize the governing body via mutual agreement to provide match for grant, technical assistance, and prepare plan;
d) provide for audit;
e) designate officers as board of directors;
f) determine powers of district under section 63.

:ne requirement that property owners' association incorporate; to :rovide for noticing clerk of city or county court of .ncorporation.

:he establishment of association's powers to:

a) negotiate for closing, privatizing or modifying rights of way;
b) restrict and regulate property conveyed to the association;
c) utilize assessments; maintain, repair privatized streets;
d) modify, move, create easements in district.

--ovide for the continuation of the district in perpetuity as g as the association exists under state laws.

ion 61. (Page 85)

vides for the creation of special neighborhood improvement
:stricts by:

:) the enactment of a separate ordinance to create each special neighborhood improvement district conditioned on a successful referendum that:

(a) establishes 2 mill limit on taxing power;
(b) authorizes special assessment for planning and improvements;
(c) specifies boundaries, size and name of district;
(d) authorizes planning grant;
(e) provides for appointment of 3 member board of directors;
(f) determines the powers of the district under section 63.

2) requiring a referendum within 120 days after:

(a) city or county designates a need for the district and proposes boundaries; or
(b) petition by 40% of electors for creation of special neighborhood residential improvement district or 20% of the property owners for creation of a special neighborhood business improvement district.

(3) directing the clerk or supervisor of elections to carry out the referendum within specific number of days for special neighborhood residential improvement districts.

(4) directing clerk or supervisor of elections to carry out referendum within specific number of days for special neighborhood business improvement districts.

(5) establishing a board of 3 directors - residents and property owners in districts; providing organization, terms of appointment, reappointment, removal from office, employment of staff.

(6) providing 10 year term for district operation - reestablished by referendum in the same manner as originally established.

(7) converting district property to local governing body upon dissolution.

(8) permitting district property owners to arrange for payments of debts upon dissolution.

Section 62. (Page 96).

Provides that all boards of local governments, property owners' associations and special neighborhood improvement districts shall:

(1) collect crime data, surveys, comparisons;

(2) analyze crime as it relates to land use;

determine feasibility of modifying street patterns to provide ighborhood security;

develop short and long range plans utilizing crime prevention through environmental design strategies and tactics;

prepare action to implement safe neighborhood plans - utilizing crime prevention through environmental design strategies and tactics;

participate in implementation activities, including the proper disposition of publicly owned or leased facilities;

require consistency of capital improvements with capital improvement plan of the Local Government Comprehensive Plan.

ction 63, (Page 98)

ess prohibited by city or county ordinance, each district board is powered to:

) contract, sue and be sued as a corporate entity;

) use a corporate seal;

) acquire, own, and manage properties;

) cept grants and donations;

) have exclusive control of funds available to it - subject to limitations;

) enter into intergovernmental agreements;

) contract for planning services of experts in crime prevention through environmental design, defensible space or other areas of board's operations;

) contract with city or county for planning assistance, increased law enforcement, or security;

) promote commercial advantages of district;

0) promote central theme; engage in cooperative advertising;

1) improve street lighting and other public facilities;

2) use innovative approaches to securing neighborhoods - crime prevention through environmental design, environmental security or defensible space;

3) privatize, close, vacate, plan or replan streets;

4) plan and implement safe neighborhood plan;

15) issue revenue bonds pursuant to Chapters 166, F.S. and 125, F.S.;

16) pledge revenue of district to payment of revenue bonds;

17) identify blighted areas;

18) exercise powers incidental to and not in conflict with any permissible powers.

Section 64. (Page 100)

Provides for fiscal management and budget preparation through:

(1) establishment of maintenance of district funds by city or county subject to agreement; distributed solely for district purposes;

(2) requirement that bylaws provide for maintenance of minutes; internal supervision of accounts and records; preparation of annual budget for each fiscal year; annual external audit by independent certified accountant; audit filed with city and county clerk, 90 days after fiscal year;

(3) establishment of a budget pursuant to chapter 200, F.S.; proposed budget and millage rate presented to governing body for approval or disapproval.

tion 65. (Page 101)

Mandates that the safe neighborhood improvement plan include:

(1) demographics;

(2) crime analysis;

(3) land use, zoning, housing and traffic analysis;

(4) crime to environment relationships; neighborhood stability problem statements;

(5) goals and objectives;

(6) assessment of crime prevention through environmental design strategies and tactics;

(7) cost estimates;

(8) implementation schedule;

(9) evaluation guidelines;

(10) diagram and explanations of:

(a) public facilities
(b) planned capital improvement projects

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) land use restrictions
) district promotional campaign
) safety improvements
) increased law enforcement

consistency with adopted local government comprehensive plan;
pproved by the local governing body;

measurement of and methods to reduce crime;

public hearings, and criteria for board adoption, and amendment
earings pursuant to sections 163.3184 and 163,3187, F.S.

plan approval before expenditure or levy of any funds other than
or plan preparation.

ion 66. (Page 105)

tes the Safe Neighborhoods Trust Fund. Planning grants are to be
ed provided the districts comply with the following threshold
eria:

ordinance verification;

local matching commitments;

commitments from neighborhood organizations;

need for crime reduction;

capacity to implement districts.

tion 67. (Page 107)

ates a program within the Department of Legal Affairs to act as a
ository of crime prevention through environmental design
ategies, principles and tactics. The program will provide trained
ff and consultant contracts for statewide training on safe
ighborhood development.

ction 68. (Page 108)

quires Department of Community Affairs to develop rules,
plication and review procedures and review and evaluate program
rformance.

ction 69. (Page 108).

rmits a local governing body to request the Legislature to fund
pital improvement costs of districts inside enterprise zones.

ction 70. (Page 109)

rects counties and municipalities that have created enterprise nes to consider the creation of a neighborhood improvement district thin such zones.

ction 71. (Page 109)

nends section 290.007, F.S., by adding the use of neighborhood provement districts to the list of incentives for encouraging the evitalization of enterprise zones.

ction 72. (Page 109)

mends section 163.340, F.S., to exclude neighborhood improvement istricts from the definition of "public body."

ection 73. (Page 110)

reates section 177.086, F.S, to provide that installation of cul-de-acs on streets or roads does not effectuate vacation or abandonment f right-of-way unless the local governing body adopts a subsequent esolution or ordinance.

ection 74. (Page 110)

The Appropriations Act has appropriated $1,641,500 for the Safe Neighborhoods Act.

Section 75. (Page 110)

Amends section 499.03, F.S., to create the offense of possession of new or legend drugs with the intent to sell, dispense or deliver. This offense would constitute a third degree felony.

Section 76. (Page 112)

Sections 13, 14, 15, 16, 17, 18, 19, 46 and 48 take effect July 1, 1987.

All other sections of the act take effect October 1, 1987.