

CHAPTER 97-107

Senate Bill No. 1906

An act relating to legal proceedings; amending s. 27.005, F.S.; providing definitions; amending s. 27.51, F.S.; clarifying the procedure by which the court may issue an order stating that a defendant will not be imprisoned if convicted; creating s. 27.512, F.S.; requiring the court to issue an order of no imprisonment in each case in which the defendant is not subject to imprisonment if convicted; prohibiting the court from appointing a public defender to represent the defendant following issuance of such an order; providing for the appointment of a public defender upon the withdrawal of an order of no imprisonment; amending s. 27.52, F.S.; providing for the court to appoint a conflict attorney to represent an indigent defendant if the public defender certifies that the defendant cannot be represented due to a conflict of interest or an excessive caseload; revising requirements for the court in determining whether a defendant is indigent; providing for the determination of indigency to be verified by an indigency examiner; requiring a defendant who claims indigency to pay an application fee; requiring the clerk of the court to transfer the application fee to the Indigent Criminal Defense Trust Fund and to retain a percentage for administrative costs; deleting a provision that authorizes the court to find a defendant indigent but able to contribute; requiring that an indigent defendant agree to report any change in his or her financial situation; amending ss. 27.53 and 925.036, F.S., relating to appointed counsel; prohibiting an attorney appointed to assist the public defender from reassigning the case to another attorney; amending s. 27.56, F.S.; providing for the application fee to be included in the judgment assessed against a defendant following conviction; deleting certain provisions that authorize a defendant to execute a lien upon real or personal property as security for payment of fees and costs; amending s. 27.562, F.S.; providing for the disposition of fees and costs collected from a defendant; amending s. 57.081, F.S.; requiring that the certification of indigency for purposes of waiving court costs be based on an affidavit which certifies that no person has been paid or promised payment for services in connection with the action or proceeding; amending s. 215.22, F.S.; providing that funds in the Indigent Criminal Defense Trust Fund are exempt from certain deductions; amending s. 948.03, F.S.; providing for payment of the indigency application fee to be a condition of probation or community control; amending s. 925.037, F.S.; providing meeting requirements for the circuit conflict committee; amending s. 948.08, F.S.; revising criteria under which an offender may be admitted to a pretrial intervention program; prohibiting the appointment of a public defender to represent an offender released to a pretrial intervention program; requiring the Office of the State Courts Administrator to submit certain reports to the Legislature to assist the Legislature in determining the fiscal effect of certain revisions in the law for establishing the indigency

of defendants; repealing section 775.0121, F.S.; providing for a continuous revision cycle; providing an effective date.

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

Section 1. Section 27.005, Florida Statutes, is amended to read:

27.005 Definitions.—As used in parts II and III of this chapter, the following definitions include, but are not limited to:

(1) “Communication services” includes postage, required printed documents, all data processing equipment, including terminals, modems, software, printers, wiring, and data lines, radio, courier, messenger and subpoena services, fax equipment and supplies, support services, and telegraph, including maintenance, supplies and line charges.

(2) “Conflict attorney” means a private attorney assigned by the court to handle the case of a defendant who is indigent and who cannot be represented by the public defender due to a conflict of interest or due to the public defender’s excessive caseload, as certified to the court by the public defender.

~~(3)~~(2) “Expert witnesses” includes any individual, firm, or service used by the prosecution or defense to provide information and consultation on specialized areas of art, science, profession, business, or other calling.

(4) “Indigency examiner” means the person employed by the court or the board of county commissioners to assist the court in investigating and assessing the indigency of any person who applies for representation by the public defender or a conflict attorney.

~~(5)~~(3) “Library services” includes books, periodicals, automated legal research services and line charges, legal documents, and reference books and materials, including maintenance and supplies.

~~(6)~~(4) “Postindictment and postinformation deposition costs” includes any costs incurred through a deposition, including the use of expert witnesses.

~~(7)~~(5) “Pretrial” includes any case investigation cost incurred at any time prior to the disposition of a case, including preindictment costs.

~~(8)~~(6) “Pretrial consultation fees” includes any costs related to the testing, evaluation, investigation, or other case-related services and materials necessary to prosecute, defend, or dispose of a criminal case.

(9) “Special assistant public defender” means an attorney who performs contractual legal work or voluntary legal work for the public defender, but who is not a full-time assistant public defender.

~~(10)~~(7) “Telephone services” includes any equipment, including fax, cellular telephones, pagers, computer lines, telephone switching equipment, and the maintenance, supplies, software, and line charges necessary for operation.

~~(11)~~(8) "Transportation services" includes the cost of operating any vehicle, aircraft, or watercraft, including gasoline, oil, and maintenance costs, any witness travel expenses, and any witness services.

~~(12)~~(9) "Travel expenses" includes costs incurred under s. 112.061 by the state attorney or public defender, or their designated employees, while on travel prior to the final disposition of a case.

Section 2. Subsection (1) of section 27.51, Florida Statutes, 1996 Supplement, is amended to read:

27.51 Duties of public defender.—

(1) The public defender shall represent, without additional compensation, any person who is determined by the court to be indigent as provided in s. 27.52 and who is:

(a) Under arrest for, or is charged with, a felony;

(b) Under arrest for, or is charged with, a misdemeanor, a violation of chapter 316 which is punishable by imprisonment, criminal contempt, or a violation of a municipal or county ordinance in the county court, unless the court, prior to trial, files in the cause an order of no imprisonment which states a statement in writing that the defendant will not be imprisoned if he or she is convicted;

(c) Alleged to be a delinquent child pursuant to a petition filed before a circuit court; or

(d) Sought by petition filed in such court to be involuntarily placed as a mentally ill person or involuntarily admitted to residential services as a person with developmental disabilities.

Section 3. Section 27.512, Florida Statutes, is created to read:

27.512 Order of no imprisonment.—

(1) In each case in which the court determines that it will not sentence the defendant to imprisonment if convicted, the court shall issue an order of no imprisonment and the court may not appoint the public defender to represent the defendant. If the court issues an order of no imprisonment following the appointment of the public defender, the court shall immediately terminate the public defender's services. However, if at any time the court withdraws the order of no imprisonment with respect to an indigent defendant, the court shall appoint the public defender to represent the defendant.

(2) The form and contents of an order of no imprisonment shall be determined by rules adopted by the Supreme Court.

Section 4. Subsections (1) and (2) of section 27.52, Florida Statutes, 1996 Supplement, are amended to read:

27.52 Determination of indigency.—

(1)(a) ~~The determination of indigency for purposes of appointing the public defender or conflict attorney of any accused person shall be made by the court, and may be made at any stage of the proceedings. Before appointing the public defender or a conflict attorney, the court shall consider a completed affidavit that contains the financial information required under paragraph (f) and shall make a preliminary determination of indigency, pending verification by the indigency examiner.~~

(b) ~~An accused person, or if applicable a parent or legal guardian of an accused minor or an accused adult tax-dependent person, asserting indigency and requesting representation by the public defender or a conflict attorney, shall file with the court a completed affidavit containing the financial factual information required under paragraph (f) subsection (2) and stating that the affidavit is signed under oath and under penalty of perjury.~~

(c) ~~Each person who requests the appointment of the public defender or a conflict attorney shall pay to the clerk of the court an application A fee of \$40, as ordered by the court, shall be paid into the county depository at the time the financial affidavit is filed, or within 7 days thereafter. If not paid within 7 days, the application fee shall be assessed at sentencing or at the final disposition of the case. The application fee shall be assessed for each affidavit filed against a defendant who requests appointment of the public defender or a conflict attorney. A defendant who is found to be indigent may not be refused counsel for failure to pay the application fee. However, the affidavit shall be accepted without the fee if the court finds, after reviewing the financial information contained in the affidavit, that the fee should be reduced, waived, or assessed at the disposition.~~

(d) ~~If the court finds that the accused person applying for representation appears to be indigent based upon the financial affidavit required under paragraph (f) on the factual information provided, the court shall appoint the public defender or a conflict attorney to provide representation. If the application fee is not paid prior to the disposition of the case, the clerk shall advise the sentencing judge shall be advised of this fact and the court shall may:~~

1. ~~Assess the application fee as part of the sentence or as a condition of probation; or~~
2. ~~Assess the application fee pursuant to s. 27.56.~~

If the indigency examiner finds discrepancies between the financial affidavit and the examiner's investigation of assets, the indigency examiner shall submit the information to the court and the court shall determine whether the public defender or conflict attorney shall continue representation. The defendant may be heard regarding the information discovered by the indigency examiner. If the court, based on the information provided, determines that the defendant is not indigent, the court shall order that the public defender or conflict attorney discontinue representation. Notwithstanding any provision of law or local order to the contrary, the clerk of the court collecting entity shall assign the first \$40 of any court assessed fees or costs that are paid by an indigent defendant to the Indigent Criminal Defense

Trust Fund, if created by law; otherwise it shall be deposited in the General Revenue Fund as payment for the application fee. In no event should a person who is found to be indigent be refused counsel for failure to pay the fee.

(e) All application fees ~~The fee shall be remitted into the county depository and transferred monthly by the clerk of the court to the Indigent Criminal Defense Trust Fund, administered by the Justice Administrative Commission, to be used to supplement~~ if created by law; otherwise it shall be deposited in the General Revenue Fund, for the purpose of supplementing the general revenue funds appropriated by the Legislature to the public defenders. The clerk of the court may retain 2 percent of application fees collected monthly for administrative costs prior to remitting the remainder to the Justice Administrative Commission.

(f) The affidavit must contain the following financial information and calculations as to the accused person's income:

1. Net income.—Total salary and wages, minus deductions required by law, including court-ordered support payments.

2. Other income.—Including, but not limited to, social security benefits, union funds, veterans' benefits, workers' compensation, other regular support from absent family members, public or private employee pensions, unemployment compensation, dividends, interest, rent, trusts, and gifts.

3. Assets.—Including, but not limited to, cash, savings accounts, bank accounts, stocks, bonds, certificates of deposit, equity in real estate, and equity in a boat or a motor vehicle or in other tangible property.

(g) The income of an accused minor or an accused adult tax-dependent person who is substantially supported by a parent or parents or by a guardian, or who continues to be claimed as a dependent for tax purposes, shall include the income of that dependent person's parent or parents or guardian, except a parent or guardian who has an adverse interest in the proceeding.

(h) In addition to the financial information, the affidavit must contain the following statement: "I, ...(name of accused person)...., agree to report any change in my financial situation to the court or to the indigency examiner."

(2)(a) After reviewing the affidavit and questioning the accused person, the court shall make one of the following ~~three~~ determinations:

1. The accused person is indigent.
2. ~~The accused person is indigent, but able to contribute.~~
- ~~2.3.~~ 2. The accused person is not indigent.

(b) An accused person, or an accused minor's or accused adult tax-dependent person's parent or guardian, is indigent if:

1. The income of the person is equal to or below 250 ~~125~~ percent of the then-current federal poverty guidelines prescribed for the size of the household of the accused by the United States Department of Health and Human Services or if the person is receiving Aid to Families with Dependent Children (AFDC), poverty-related veterans' benefits, or Supplemental Security Income (SSI); or

2. The person is unable to pay for the services of an attorney without substantial hardship to his or her family.

~~(c) An accused person, or an accused minor's or accused adult tax-dependent person's parent or guardian, is indigent but able to contribute if the person has income of more than 125 percent and less than 250 percent of the then-current federal poverty income guidelines prescribed for the size of the household of the person by the United States Department of Health and Human Services.~~

~~(c)(d)~~ In determining whether a defendant is indigent, the court shall determine whether any of the following facts exist, and the existence of any such fact creates ~~shall create~~ a presumption that the defendant is not indigent:

1. The defendant has been released on bail in the amount of \$5,000 or more.

2. The defendant owns, or has equity in, any intangible or tangible personal property or real property or the expectancy of an interest in any such property.

3. The defendant retained private counsel immediately before or after filing the affidavit asserting indigency pursuant to subsection (1).

~~(d)(e)~~ A nonindigent parent or legal guardian of an accused minor or an accused adult tax-dependent person shall furnish the minor or dependent person with the necessary legal services and costs incident to a delinquency proceeding or, upon transfer of such person for criminal prosecution as an adult pursuant to s. 39.052, a criminal prosecution, in which the person has a right to legal counsel under the Constitution of the United States or the Constitution of the State of Florida. The failure of a parent or legal guardian to furnish legal services and costs under this section does ~~shall~~ not bar the appointment of legal counsel pursuant to s. 27.53. When the public defender, a special assistant public defender appointed pursuant to s. 27.53(2), or appointed private legal counsel is appointed to represent an accused minor or an accused adult tax-dependent person in any proceeding in circuit court or in a criminal proceeding in any other court, the parents or the legal guardian shall be liable for the fees and costs of such representation even if the person is a minor being tried as an adult. Liability for the costs of such representation may be imposed in the form of a lien against the property of the nonindigent ~~or indigent but able to contribute~~ parents or legal guardian of the accused minor or accused adult tax-dependent person, which lien ~~is~~ shall be enforceable as provided in s. 27.56 or s. 27.561. The court shall determine the amount of the obligation; and, in determining the amount of the obligation, the court shall follow the procedure outlined by this section.

Section 5. Subsection (2) of section 27.53, Florida Statutes, is amended to read:

27.53 Appointment of assistants and other staff; method of payment.—

(2) Any member of The Florida Bar, in good standing, may register his or her availability to the public defender of any judicial circuit for acceptance of special assignments without salary to represent indigent defendants. Such persons shall be listed and referred to as special assistant public defenders and be paid a fee and costs and expenses as provided in s. 925.036. A special assistant public defender may not reassign or subcontract a case to another attorney.

Section 6. Section 925.036, Florida Statutes, is amended to read:

925.036 Appointed counsel; compensation; reassignment of case prohibited.—

(1) An attorney appointed pursuant to s. 925.035 or s. 27.53 shall, at the conclusion of the representation, be compensated at an hourly rate fixed by the chief judge or senior judge of the circuit in an amount not to exceed the prevailing hourly rate for similar representation rendered in the circuit; however, such compensation shall not exceed the maximum fee limits established by this section. In addition, such attorney shall be reimbursed for expenses reasonably incurred, including the costs of transcripts authorized by the court. If the attorney is representing a defendant charged with more than one offense in the same case, the attorney shall be compensated at the rate provided for the most serious offense for which he represented the defendant. This section does not allow stacking of the fee limits established by this section.

(2) The compensation for representation shall not exceed the following:

- (a) For misdemeanors and juveniles represented at the trial level: \$1,000.
- (b) For noncapital, nonlife felonies represented at the trial level: \$2,500.
- (c) For life felonies represented at the trial level: \$3,000.
- (d) For capital cases represented at the trial level: \$3,500.
- (e) For representation on appeal: \$2,000.

(3) An attorney appointed in lieu of the public defender to represent an indigent defendant may not reassign or subcontract the case to another attorney.

Section 7. Section 27.56, Florida Statutes, 1996 Supplement, is amended to read:

27.56 Assistance; lien for payment of attorney's fees or costs.—

(1)(a) The court having jurisdiction over any defendant who has been determined to be guilty of a criminal act by a court or jury or through a plea

of guilty or nolo contendere and who has received the assistance of the public defender's office, ~~or a special assistant public defender, or the services of a conflict private attorney~~ shall ~~appointed pursuant to the Florida Statutes or the Florida Rules of Criminal Procedure, but is not indigent under s. 27.52(2), or has been determined indigent but able to contribute,~~ may assess attorney's fees and costs against the defendant, at the sentencing hearing, ~~the court shall assess attorney's fees and costs against the defendant and shall determine the appropriate amount and method of payment.~~ Such costs may include the cost of depositions; cost of transcripts of depositions, including the cost of defendant's copy, which transcripts are certified by the defendant's attorney as having served a useful purpose in the disposition of the case; investigative costs; witness fees; the cost of psychiatric examinations; or other reasonable costs specially incurred by the county for the defense of the defendant in criminal prosecutions within the county. Costs shall not include expenses inherent in providing a constitutionally guaranteed jury trial or expenditures in connection with the maintenance and operation of government agencies that must be made by the public irrespective of specific violations of law. Any ~~costs~~ cost assessed pursuant to this paragraph shall be reduced by any amount assessed against a defendant pursuant to s. 27.3455.

(b) Upon entering a judgment of conviction, the trial court shall ~~may~~ order the defendant to pay the costs assessed by the court in full, or within a time certain as set by the court, after the judgment of conviction becomes final.

(c) After assessment of the application fee under s. 27.52(1)(c) and attorney's fees and costs, the court shall ~~may~~ order the defendant to pay the attorney's fees and costs in full or in installments, at the time or times specified. The court may order payment of the assessed application fee and attorney's fees and costs as a condition of probation, of suspension of sentence, or of withholding the imposition of sentence. All fees and costs may be assessed under one judgment.

(2)(a) When payment of the application fee and attorney's fees and ~~or~~ costs has been ordered by the court, there is ~~hereby~~ created in the name of the county in which such assistance was rendered a lien, enforceable as hereinafter provided, upon all the property, both real and personal, of any person who:

1. Has received any assistance from any public defender of the state, from any special assistant public defender, or from any conflict attorney ~~appointed private legal counsel~~; or

2. Is a parent of an accused minor or an accused adult tax-dependent person who is being, or has been, represented by any public defender of the state, by any special assistant public defender, or by a conflict attorney ~~any appointed private legal counsel~~.

Such lien constitutes ~~shall constitute~~ a claim against the defendant-recipient or parent and his or her estate, enforceable according to law, in an amount to be determined by the court in which such assistance was rendered.

(b) Immediately after the issuance of an order for the payment of the application fee and attorney's fees and or costs, a judgment showing the name and residence of the defendant-recipient or parent shall be filed for record in the office of the clerk of the circuit court in the county where the defendant-recipient or parent resides and in each county in which such defendant-recipient or parent then owns or later acquires any property. Such judgments shall be enforced on behalf of the county by the board of county commissioners of the county in which assistance was rendered.

~~(3) In lieu of the procedure above described, the court is authorized to require that the defendant-recipient of the services of the public defender, special assistant public defender, or appointed private legal counsel, or that the parent of an accused minor or an accused adult tax-dependent person who has received such services, execute a lien upon his or her real or personal property, presently owned or after-acquired, as security for the debt created hereby. Such lien shall be recorded in the public records of the county at no charge by the clerk of the circuit court and shall be enforceable in the same manner as a mortgage.~~

~~(3)~~(4) The board of county commissioners of the county wherein the defendant-recipient was tried or received the services of a public defender, special assistant public defender, or appointed private legal counsel shall enforce, satisfy, compromise, settle, subordinate, release, or otherwise dispose of any debt or lien imposed under this section. A defendant-recipient or parent, who has been ordered to pay attorney's fees or costs and who is not in willful default in the payment thereof, may, at any time, petition the court which entered the order for remission of the payment of attorney's fees or costs or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on such person or his or her immediate family, the court may remit all or part of the amount due in attorney's fees or costs or may modify the method of payment.

~~(4)~~(5) The board of county commissioners of the county claiming such lien is authorized to contract with a collection agency for collection of such debts or liens, provided the fee for such collection shall be on a contingent basis not to exceed 50 percent of the recovery. However, no fee shall be paid to any collection agency by reason of foreclosure proceedings against real property or from the proceeds from the sale or other disposition of real property.

~~(5)~~(6) No lien thus created shall be foreclosed upon the homestead of such defendant-recipient or parent, nor shall any defendant-recipient or parent who is ordered to pay attorney's fees or costs be denied any of the protections afforded any other civil judgment debtor.

~~(6)~~(7) The court having jurisdiction of the defendant-recipient may, at such stage of the proceedings as the court may deem appropriate, determine the value of the services of the public defender, special assistant public defender, or appointed private legal counsel and costs, at which time the defendant-recipient or parent, after adequate notice thereof, shall have opportunity to be heard and offer objection to the determination, and to be represented by counsel, with due opportunity to exercise and be accorded the

procedures and rights provided in the laws and court rules pertaining to civil cases at law.

Section 8. Section 27.562, Florida Statutes, 1996 Supplement, is amended to read:

27.562 Disposition of funds.—All funds collected pursuant to s. 27.56, except the application fee imposed under s. 27.52, shall be remitted to the board of county commissioners of the county in which the judgment was entered ~~wherein the defendant-recipient was tried.~~ Such funds shall be placed in the fine and forfeiture fund of that county to be used to defray the expenses incurred by the county in defense of criminal prosecutions. All judgments entered pursuant to this part ~~the provisions of this act~~ shall be in the name of the county in which the judgment was rendered.

Section 9. Subsection (1) of section 57.081, Florida Statutes, 1996 Supplement, is amended to read:

57.081 Costs; right to proceed where prepayment of costs waived.—

(1) Any indigent person, except a prisoner as defined in s. 57.085, who is a party or intervenor in any judicial or administrative agency proceeding or who initiates such proceeding shall receive the services of the courts, sheriffs, and clerks, with respect to such proceedings, without charge. Such services are limited to filing fees; service of process; certified copies of orders or final judgments; a single photocopy of any court pleading, record, or instrument filed with the clerk; examining fees; mediation services and fees; court-appointed counsel fees; subpoena fees and services; service charges for collecting and disbursing funds; and any other cost or service arising out of pending litigation. In any appeal from an administrative agency decision, for which the clerk is responsible for preparing the transcript, the clerk shall waive the cost of preparing the transcripts and the cost for copies of any exhibits in the record. ~~No~~ Prepayment of costs to any court judge, clerk, or sheriff is not required in any action if when the party has obtained from the clerk in each proceeding a certification of indigency, based on an affidavit of the applicant claiming that the applicant is indigent and unable to pay the charges otherwise payable by law to any of such officers, and providing the details of the applicant's financial condition, and containing a statement that certifies that no person has been paid or promised any payment of any remuneration by the applicant for services performed on behalf of the applicant in connection with the action or proceeding. However, when the person is represented by an attorney, the person need not file an affidavit in order to be exempt from payment of charges under this subsection. A represented person is exempt from charges under this subsection if the attorney of such person files a written certificate, signed by the attorney, certifying that the attorney has made an investigation to ascertain the financial condition of the client and has found the client to be indigent; that the attorney has investigated the nature of the applicant's position and in the attorney's opinion it is meritorious as a matter of law; and that the attorney has not been paid or promised payment of any remuneration for services and intends to act as attorney for the applicant without compensation. On the failure or refusal of the clerk to issue a certificate of indigency,

the applicant is entitled to a review of the application for the certificate by the court having jurisdiction of the cause of action.

Section 10. Paragraph (s) is added to subsection (1) of section 215.22, Florida Statutes, 1996 Supplement, to read:

215.22 Certain income and certain trust funds exempt.—

(1) The following income of a revenue nature or the following trust funds shall be exempt from the deduction required by s. 215.20(1):

(s) The Indigent Criminal Defense Trust Fund.

Section 11. Paragraph (i) of subsection (1) of section 948.03, Florida Statutes, 1996 Supplement, is amended to read:

948.03 Terms and conditions of probation or community control.—

(1) The court shall determine the terms and conditions of probation or community control. Conditions specified in paragraphs (a) through and including (n) do not require oral pronouncement at the time of sentencing and may be considered standard conditions of probation. Conditions specified in paragraphs (a) through and including (n) and (2)(a) do not require oral pronouncement at sentencing and may be considered standard conditions of community control. These conditions may include among them the following, that the probationer or offender in community control shall:

(i) Pay any application fee assessed under s. 27.52(1)(c) and attorney's fees and costs assessed under s. 27.56, subject to modification based on change of circumstances.

Section 12. Subsection (4) of section 925.037, Florida Statutes, 1996 Supplement, is amended to read:

925.037 Reimbursement of counties for fees paid to appointed counsel; circuit conflict committees.—

(4) The responsibility of the circuit conflict committee is to select and approve attorneys for all appointments pursuant to ss. 27.53(3) and 925.035, commonly known as conflict case appointments. The circuit conflict committee shall meet at least once each year.

Section 13. Subsections (2), (3), and (4) of section 948.08, Florida Statutes, are amended to read:

948.08 Pretrial intervention program.—

(2) Any first offender, or any person previously convicted of not more than one nonviolent misdemeanor, who is charged with any misdemeanor or nonviolent felony of the third degree is eligible for release to the pretrial intervention program on the approval of the administrator of the program and the consent of the victim, the state attorney, and the judge who presided at the initial appearance hearing of the offender. As used in this subsection, "nonviolent felony" excludes arson; sexual battery; robbery; kidnapping;

~~aggravated child abuse; aggravated assault; murder; manslaughter; unlawful throwing, placing, or discharging of a destructive device or bomb; aggravated battery; and armed burglary. In no case, However, the defendant may not shall any individual be released to the pretrial intervention program unless, after consultation with his attorney or one made available to him if he is indigent, he has voluntarily agreed to such program and has knowingly and intelligently waived his right to a speedy trial for the period of his diversion. In no case shall The defendant or his immediate family may not personally contact the victim or the victim's his immediate family to acquire the victim's consent under the provisions of this section act.~~

(3) The criminal charges against an offender individual admitted to the program shall be continued without final disposition for a period of 90 days ~~after from~~ the date the offender individual was released to the program, if the offender's participation in the program is satisfactory, and for an additional 90 days upon the request of the program administrator and consent of the state attorney, if the offender's participation in the program is satisfactory.

(4) Resumption of pending criminal proceedings shall be undertaken at any time if the program administrator or state attorney finds that the offender such individual is not fulfilling his obligations under this plan or if the public interest so requires. The court may not appoint the public defender to represent an indigent offender released to the pretrial intervention program unless the offender's release is revoked and the offender is subject to imprisonment if convicted.

Section 14. The Office of the State Courts Administrator shall submit an annual report to the Legislature for the calendar years of 1997, 1998, and 1999 to assist the Legislature in determining the fiscal effect of the changes enacted by chapter 96-232, Laws of Florida, which revised procedures for establishing the indigency of defendants. The indigency examiner within each judicial circuit shall submit the following information to the office each month, which shall be compiled by the office in the report:

(1) The percentage of defendants who request representation by a public defender.

(2) The number of defendants who are interviewed for eligibility for indigency.

(3) The number and percentage of defendants who are determined to be indigent.

Section 15. Section 775.0121, Florida Statutes, 1996 Supplement, is hereby repealed.

Section 16. This act shall take effect upon becoming a law.

Became a law without the Governor's approval May 24, 1997.

Filed in Office Secretary of State May 23, 1997.