

Investigative Cost Recovery under F.S. 938.27: An Analysis for Agency Policy Makers

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Abstract

The author examines the process by which Florida law enforcement agencies seek to recover investigative costs incurred during a criminal investigation. By surveying county and municipal agencies throughout the State of Florida, the author studied the various factors that affect, both negatively and positively, an agency's efforts to collect investigative cost revenue under F.S. 938.27.

Introduction

As our nation crawls its way out of the worst economic recession since the great depression, Americans are waking up to the sobering reality that we cannot spend money we do not have. After facing a revenue shortfall of nearly 4 billion dollars, and a Constitutional mandate to balance the budget, the 2011 Florida Legislature was forced to dramatically cut spending. As a result, county and municipal governments, who provide the bulk of services to Floridians, are finding themselves gasping for air as the economic noose tightens. A byproduct of this economic reality is that local governments are searching for ways to recover operating costs to avoid a reduction in services. As we read about "red light" cameras and "traffic accident recovery fees", we begin to realize how cash strapped local governments are, and how creative they can be when their fiscal sensibilities are tested. And for those of us who are students of history, we begin to truly appreciate the cyclical nature of our economy.

One way to offset costs is for county and municipal governments to recover monies expended during a criminal investigation. Florida Statute 938.27 provides that law enforcement officers can submit a request for reimbursement for their costs associated with the investigation of a criminal law or probation violation. This law provides that upon conviction, and with a properly documented request, courts are required to order that the agency be reimbursed by the defendant. By assessing a fee for the time and equipment used, law enforcement agencies are able to offset some of the costs to their agency, and at least in theory, shift the costs to the convicted criminal. See Exhibit "A" as an example of investigative cost revenue collected in Lake County from 10/1/2010 to 7/15/2011.

To date there has been little discussion as to how effective Florida Statute 938.27 is at recovering costs. Thus far, examinations of this topic have been limited to the occasional newspaper article highlighting an agency's "crime doesn't pay" policy. These articles provide merely a snap shot of an existing policy, with no real evaluation

of its effectiveness as a method for offsetting costs. Upon closer examination, this research will reveal that there are ways agencies can improve their cost recovery. We will examine the statute in its early form as well as discuss its revisions, and offer suggestions to agencies seeking to improve investigative cost recovery.

Literature Review

For many years the Florida Legislature has recognized the need to impose court costs upon those convicted of violating State laws. Chapter 938 of the Florida Statutes outlines literally dozens of costs, some mandatory, some discretionary, that courts have the authority to order upon conviction. Weaving one's way through this statutory maze can be difficult and time consuming. Many costs are earmarked for particular trust funds. For example, Florida Statute 938.03 creates the *Crimes Compensation Trust Fund* which requires \$50 to be collected on every criminal case at the time of conviction to be used to help compensate victims of crime. There are special costs for DUI cases, domestic violence cases and drug cases, many of which were created with the specific intent to alleviate the State's burden of funding the criminal justice system. In some instances the legislature has even vested counties and municipalities with the authority to impose their own special fees, to support local initiatives.

In 1987, the Florida Legislature addressed the need for local law enforcement agencies to collect and recover costs by enacting Florida Statute 939.01 (re-numerated as F.S. 938.27). As a result, many agencies drafted policies designed to capitalize on their ability to recuperate investigative costs. The realization that these costs would be returned directly to the agency, said Chief Fred Cobb of the Eustis Police Department, provided the incentive for agencies to take cost recovery efforts seriously. However, with little guidance from the legislature on how to define "investigative costs" agencies were given wide latitude when it came time to draft their policies. As a result, there was little consistency among agencies, an issue that is still evident today.

For over 20 years, investigative cost recovery has been a part of Florida's criminal justice landscape. And, like many other cost recovery measures, it has provided a small source of revenue to law enforcement agencies statewide. In 1995, (Silverman, J.) summarized the basic procedure by which a law enforcement agency may go about recovering investigative costs. In doing so, he suggested that cost recovery will be more effective if the State Attorney's Office works closely with the police agency because the burden to prove the amount of costs rests with the State. He also concluded that the statute has many strengths, including that the "defendant has the burden of demonstrating his or her financial needs and resources", and that any costs ordered can be a special condition of probation.

During the 1990's, as the use of F.S. 939.01 (938.27) became more frequent, courts began to interpret some of the more ambiguous language of the statute, providing assistance to agency policy makers, and in some instances limiting its application. See: *Shawn Detra Smith v. State*, 606 So.2d 427 (1st DCA, 1992), holding that the early version of the statute did not include attorney's fees sought by the

prosecutor; *Board of County Commissioners, Pinellas County v. Sawyer*, 620 So.2d 1993 (Fla. 1993) holding that investigative costs are not “taxable costs” as defined in F.S. 939.06 and therefore not reimbursable to an acquitted defendant; *Xaviar Smith v. State of Florida* 714. So.2d 1152 (2nd DCA 1998) holding that it was improper to award investigative costs when there is a lack of documentation by the agency; *Lambert v. State of Florida*, 912 So.2d 1275 (2nd DCA 2005) holding that the court is not required to consider the defendant’s ability to pay when ordering investigative costs; and *D.A. v. State of Florida* 11, So.3d 423 (4th DCA 2009) holding that statutory language “convicted” and “criminal” does not apply to juveniles because they are adjudicated delinquent and are therefore they are not included within the meaning of F.S. 938.27.

Some of the issues addressed by the courts were matters of common sense. However, others were symptomatic of a larger problem; **Agencies were not making investigative cost recovery a priority.** It was, in many respects, an afterthought. Nowhere was this more evidence than in case of *Vargas v. State*, 787 So.2d 93, (2nd DCA 2001). In *Vargas*, the Arcadia Police Department sought costs from an indigent defendant in the amount of \$100. Following a hearing on the matter, the court held that the agency was entitled to \$49.58 for salary and investigative costs, but denied recovery of “unspecified overhead” such as the cost of dispatching officers to the crime scene and transporting the defendant to jail. While the case was affirmed on appeal, the appellate court issued a scathing opinion criticizing the Arcadia Police Department’s policy of seeking recovery of such a nominal amount. The court cast doubt as to whether the legislature intended agencies to invoke F.S. 938.27(1) “to pursue minimal cost of investigation for every minor arrest. The legislature probably assumed that departments would use some common sense about seeking costs only when the value of the award would more than offset the cost of producing the award.” The court in *Vargas* also suggested that, if it was their intent that agencies recover costs incurred in every arrest, the legislature should create a standard investigative cost to eliminate unnecessary and costly litigation. To date the legislature has not responded. Interestingly, the Florida Legislature did address a similar issue, when it standardized the cost of prosecution in 2008, providing that \$50.00 will be charged for misdemeanor cases and \$100.00 for felony cases upon conviction. See F.S. 938.27(8).

Since its adoption in 1987, the investigative cost recovery statute has undergone several revisions. Early versions of the statute did not contain several key components now included in its current form. For example, prior versions did not specifically provide agencies with the authority to collect costs for probation and community control violations, a component today’s statute spells out clearly. Earlier versions also required the court to take into consideration the financial needs of the defendant as well as his or her earning ability. The current statute has no such language, and in fact, specifically states that the court shall impose investigative costs regardless of the defendant’s present ability to pay.

The current version of the statute reads as follows:

938.27 Judgment for costs on conviction

(1) In all criminal and violation of probation or community control cases, convicted persons are liable for the payment of the costs of prosecution, including investigative costs incurred by law enforcement agencies, by fire departments for arson investigations, and by investigations of the Department of Financial Services or the Office of Financial regulation of the Financial Services Commission, if requested by such agencies. The court shall include these costs in every judgment rendered against the convicted person. For purposes of this section, "convicted" means a determination of guilt, or of violation of probation or community control, which is a result of a plea, trial, or violation proceeding, regardless of whether adjudication is withheld.

(2)(a) The court shall impose the costs of prosecution and investigation notwithstanding the defendant's present ability to pay. The court shall require the defendant to 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 control; or
3. Five years after the date of sentencing in any other case.

However, in no event shall the obligation to pay any unpaid amounts expire if not paid in full within the period specified in this paragraph.

(c) If not otherwise provided by the court under this section, costs shall be paid immediately.

(3) If a defendant is placed on probation or community control, payment of any costs under this section shall be a condition of such probation or community control. The court may revoke probation or community control if the defendant fails to pay these costs.

(4) Any dispute as to the proper amount or type of costs shall be resolved by the court by a preponderance of the evidence. The burden of demonstrating the amount of costs incurred is on the state attorney. The burden of demonstrating the financial resources of the defendant and the financial needs of the defendant is on the defendant. The burden of demonstrating such other matters as the court deems

appropriate is upon the party designated by the court as justice requires.

(5) Any default in payment of costs may be collected by any means authorized by law for enforcement of a judgment.

(6) The clerk of the court shall collect and dispense cost payments in any case.

(7) Investigative costs that are recovered shall be returned to the appropriate investigative agency that incurred the expense. Such costs include the actual expenses incurred in conducting the investigation and prosecution of the criminal case; however, costs may also include the salaries of permanent employees. Any investigative costs recovered on behalf of a state agency must be remitted to the Department of revenue for deposit in the agency operating trust fund, and a report of the payment must be sent to the agency, except that any investigative costs recovered on behalf of the Department of Law Enforcement shall be deposited in the department's Forfeiture and Investigative Support Trust Fund under F.S. 943.262.

(8) Costs of the State Attorney shall be set in all cases at no less than \$ 50 per case for a misdemeanor or criminal traffic offense is charged and no less than \$ 100 per case when a felony offense is charged, including a proceeding in which the underlying offense is a violation of probation or community control. The court may set a higher amount upon a showing of sufficient proof of higher costs incurred. Costs recovered on behalf of the State Attorney under this section shall be deposited into the State Attorneys Revenue Trust Fund to be used during the fiscal year in which the funds are collected, or in any subsequent fiscal year, for actual expenses incurred in investigating and prosecution criminal cases, which may include the salaries of permanent employees.

These cost shifting measures are not without their critics. In September of 2009, (Anderson, J), a reporter with the St. Petersburg Times, covered a story involving a Brooksville police officer who requested \$85.00 in investigative costs for two hours worth of work after arresting a driver operating with a suspended license. The request drew the ire of Circuit Judge Jack Springstead, who publicly questioned whether such costs could be substantiated, suggesting that the amount submitted by the officer was inflated and unnecessary for such little work. The Judge's query put Brooksville City officials on the defensive. Mayor Joe Bernardini was quoted as saying "I don't see it as a money grab" suggesting that it was simply a way of shifting costs away from law abiding tax payers to the criminals who break the law.

Opponents also suggest that Florida has saddled defendants with so much debt that the entire process becomes counterproductive. In 2010, (Diller, R.) published a recent study concluding, among other things, that funding Florida's criminal justice system through "user fees" is leading to serious and often unintended consequences.

Citing Florida's addition of more than 20 new categories for financial obligations to defendants since 1996, the author likened it to "cash register justice."

This research examines the process by which Florida law enforcement agencies recover investigative costs. By analyzing the empirical data, we will study whether factors such as agency size, and population, affect cost recovery. We will look at how agencies arrive at the dollar amount sought, as well as the types of costs can be recovered under Florida Statute 938.27. By studying the recovery methods employed by the surveyed agencies, we will see which approaches succeed as well as which ones fail. We will also examine how both internal and external factors, such as communication with the State Attorney's Office and compliance by the judiciary, can impact investigative cost recovery. By analyzing the data, this research will provide agency leaders with the knowledge and tools necessary to critically examine and refine their cost recovery efforts.

Methods

During the early stages of this research, a decision was made to attempt to survey as many county and municipal agencies in Florida as possible. This decision was due part due to the relative obscurity of topic but also because of the diversity of police agencies in Florida. Therefore, a survey was developed that controlled for a number of internal and external factors. Questions 1,2,3,4,5,6,7,9,11,13,18, and 20 measured internal characteristics of the surveyed agencies, such as whether they had a cost recovery policy, and if so, how did they calculate their hourly wage. Questions 8,10,12,14,15,16, and 17 were designed to test external factors such as contact with the State Attorney's Office or members of the judiciary.

An email containing a link to the survey was sent to the regional presidents of the Florida Police Chief's Association. Each president was asked to forward the email containing the link to their member agencies in each region. A similar email containing the survey link was also sent to the 67 sheriff's offices through the Florida Sheriff's Association. Both emails contained a brief introduction of the author as well as the purpose of the research. The survey consisted of 20 multiple choice questions, with some questions allowing the respondent to fill in answers if the available choices were not applicable. When the survey was completed, the respondent electronically submitted his or her answers which were returned to this author for analysis.

The total number of responses to the survey was 53. Of the 53 responses, 28 were from county agencies, 24 were from municipal agencies, with one respondent not answering this question. The disparity in the percentage of survey responses between the county and municipal agencies cannot be explained with certainty. However, because the survey was sent to the regional presidents of the F.P.C.A. and not the agencies directly, one logical conclusion is that the survey may not have been forwarded directly to all the agencies as requested. This conclusion is to some extent supported by the 42% response rate from the 67 county agencies, who received the

survey directly as opposed to a third party. Nevertheless, due to the low return rate of the surveys, the results should be treated with some caution.

Two irregularities were noted in the survey. Questions number four and five both called for multiple choice responses. In each question, the last response variable called for “other” and purported to allow the respondent the opportunity to provide a written response to the question. However, due to the faulty construction of the survey, the respondent was only allowed to check the “other” box, but was not allowed to write in an answer, resulting in the potential loss of data for these two questions.

Survey Results

The survey results provided valuable insight as to the status of Florida police agencies cost recovery efforts. Before analyzing the results, it is important to know more about the agencies that responded. 53.8% of respondents reported working for a county agency, while 46.2% reported working for a municipal agency. The majority of responding agencies (43.3%) served a population of less than 50,000. 28.3% of respondents served a population between 50,000 and 150,000, 24.5% between 150,000 and 500,000. Finally 3.8% served a population of greater than 500,000. The majority of respondents (43.4%) were from agencies that had between 50 and 250 sworn personnel, while an equal percent (28.3%) of respondents were from agencies with less than 50 sworn and more than 250 sworn.

When asked how the agencies spent cost recovery dollars, a majority of respondents (57.9%) reported using it for equipment, 31.6% for salaries, 28.9% for overtime and 36.8% for special programs. 38.3% of respondents reported recovering less than 20% of their cost of investigation dollars. 19.1 % reported recovering between 20 and 40 percent, while 8.5% reported recovering between 40 and 60 percent. No agencies reported recovering more than 60% of cost recovery dollars requested. 34% of respondents indicated that they did not know what percent of monies were being recovered. When asked whether it was the policy of their State Attorney’s Office to seek recovery for every defendant who enters a plea, 38.5% of respondents indicated yes, 34.6% indicated no, and 26.9% indicated that they did not know. 83.7% of respondents stated that they have not communicated with the judiciary about cost recovery efforts, while 16.3% indicated that they did have such communication. A majority (70%) of respondents stated they have had no contact with their State Attorney’s Office regarding cost recovery efforts. 6.3% of agencies reported relying on investigative cost dollars when preparing their annual budget. 60.9% stated that during the last 3 years, the amount of cost recovery dollars recovered has remained static, 34.4% reported an increase, and 8.7% reported a decrease.

A slight majority (53.2%) of respondents reported collecting for consumable items, such as finger print kits, DVD’s etc., while 46.8 % indicated they did not request reimbursement for such items. 45.7% of agencies indicated that they used the average wage of the officers in their department when submitting their cost recovery request, while 30.4% used the actual wage of the officers on scene and 23% indicated they used

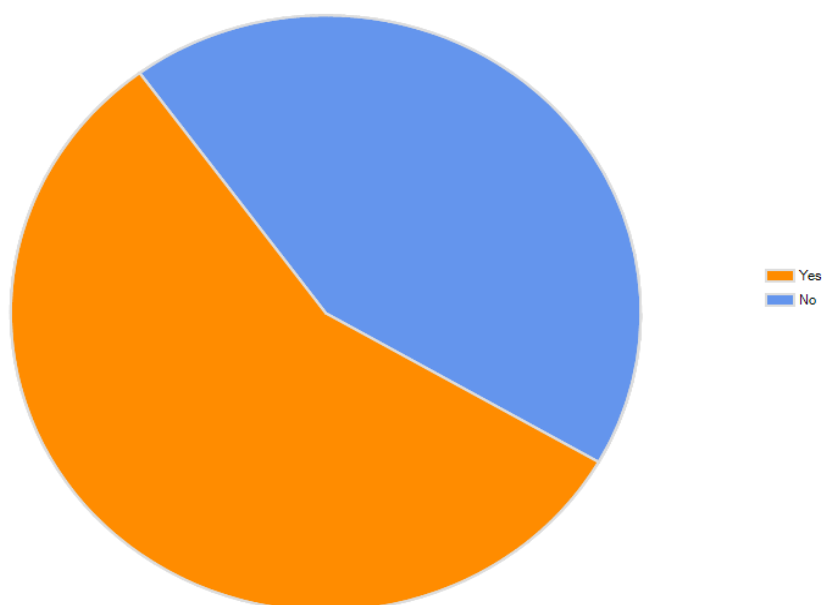
another, unknown, formula to calculate the amount requested. And finally, 20.8 % of responding agencies reported having to testify in court to justify the amount of investigative costs requested on a particular case.

Analysis

The first variable we attempted to measure was to what extent having a cost recovery policy in place at the agency affected cost recovery efforts. As such, the survey began by asking the respondent whether the agency had a policy regarding investigative cost recovery. With 100% of the respondents answering this question, the results show that 56.6% of the agencies did in fact have an investigative cost recovery policy, while 43.4% did not, as represented in Table 1 below.

Table 1

Does your agency have a policy regarding investigative cost recovery?



Cross referencing the policy variable with other measured variables revealed that agencies with a policy already in place were more likely (60%) to seek recovery for every arrest made by their department. The results also showed that 69% sought recovery for misdemeanors, 35.5% for juvenile and 35.5% for probation violations. Agencies without policies were far less likely (26.1%) to request costs for each arrest. In fact, the data revealed that only 25% of agencies without policies requested recovery for misdemeanors, 18.8% for juveniles and 25% for probation violations. 100% of responding agencies said they sought recovery for felonies, regardless of whether they

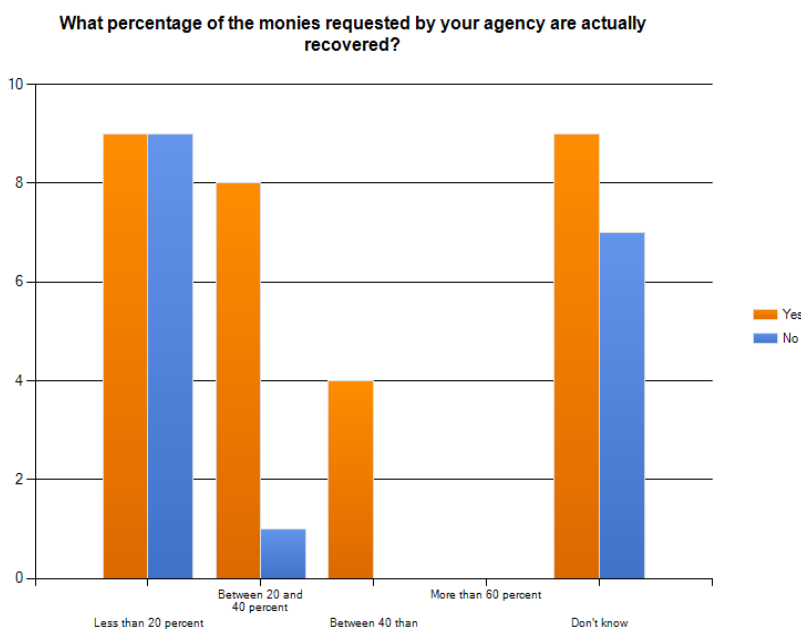
had a policy in place. Interestingly, there was no statistical difference between agencies with and without policies when we cross referenced the policy variable with the consumable items variable, both were around 47%.

The data also revealed a relationship between the policy variable and the crime scene technician variable. When we cross reference the two, we see that 63% of agencies with a policy requested reimbursement for crime scene technicians compared to the 36.7% reported by those without policies.

We also measured whether an agency with a policy was more likely to report an increase in their cost recovery dollars when compared to agencies without policies. The data revealed that 40% of agencies with cost recovery policies reported an increase in cost recovery dollars during the last three years, 6.7% reported a decrease and 53.3% remained the same. Of those without a policy, 12.5 % reported an increase, 12.5% reported a decrease and 75% remained the same.

Table 2 demonstrates that respondents with policies also reported a higher percentage of dollars recovered than their counterparts. In fact 30% of agencies with policies reported collecting less than 20% of what they requested as opposed to 52.9% of agencies without policies. Table 2 also illustrates that only 5.9% of agencies without policies recovered between 20% and 40% of their investigative costs as opposed to 26.7% with policies. Most significantly, every agency that reported recovering between 40% and 60% of their investigative costs had a cost recovery policy.

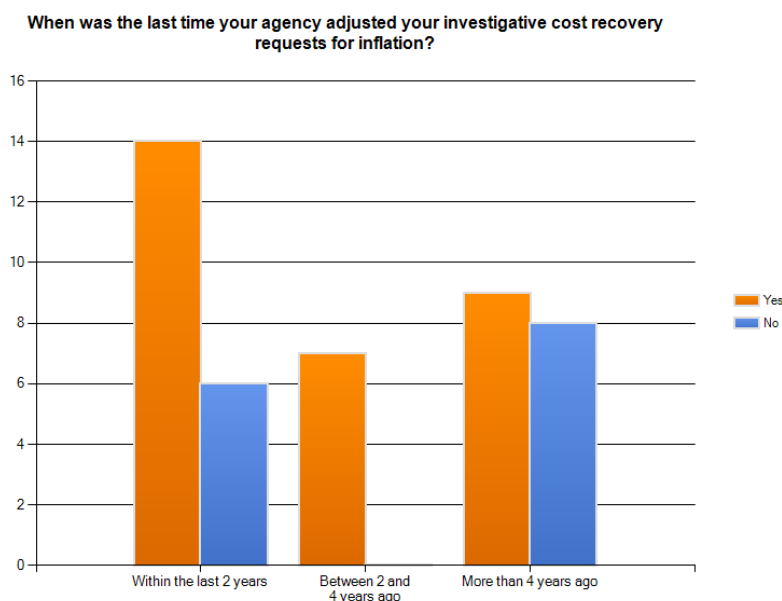
Table 2



- Note this table represents the actual number of responses and not a percentage.

We also cross referenced the policy variable with the inflation variable, revealing some interesting results. 46.7% of agencies with policies adjusted for inflation within the last two years, 23.3% adjusted between 2 and 4 years ago, and 30% adjusted more than 4 years ago. Nearly the same percentage, 42.9%, of agencies without a policy adjusted within the last two years, 0.0% adjusted between 2 and 4 years ago, and 57.1% adjusted more than 4 years ago. Represented in [Table 3](#) below. Note, the table below represents the actual number of responses and not a percentage.

Table 3

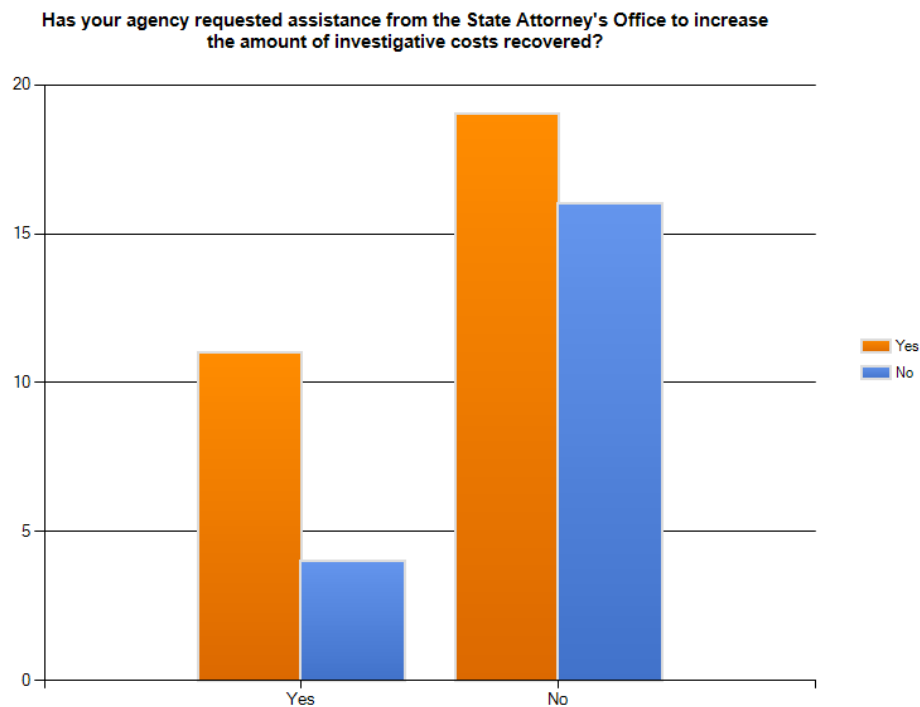


- Note this table represents the actual number of responses and not a percentage.

Question number six measured which agencies recovered costs for consumable items. Among the 47 respondents who answered this question, 46.8% indicated they do request reimbursement for consumable items, while 53.2% indicated they do not. Interestingly, when we compared the data from those that sought recovery for consumable items with those that reported having a policy concerning cost of investigation, we found no statistical difference. Approximately 47 % of agencies request reimbursement for these items, regardless of whether or not they have a policy.

As was briefly discussed earlier, only 30% of respondents reported communicating with their State Attorney's Office about improving investigative cost recovery. Of those 30%, the data showed that the agencies with policies were more likely to have requested assistance from their State Attorney's Office. In fact, 36.7% of those with policies sought the assistance of the State Attorney as opposed to only 20% of those without policies, as indicated in [Table 4](#) below.

Table 4

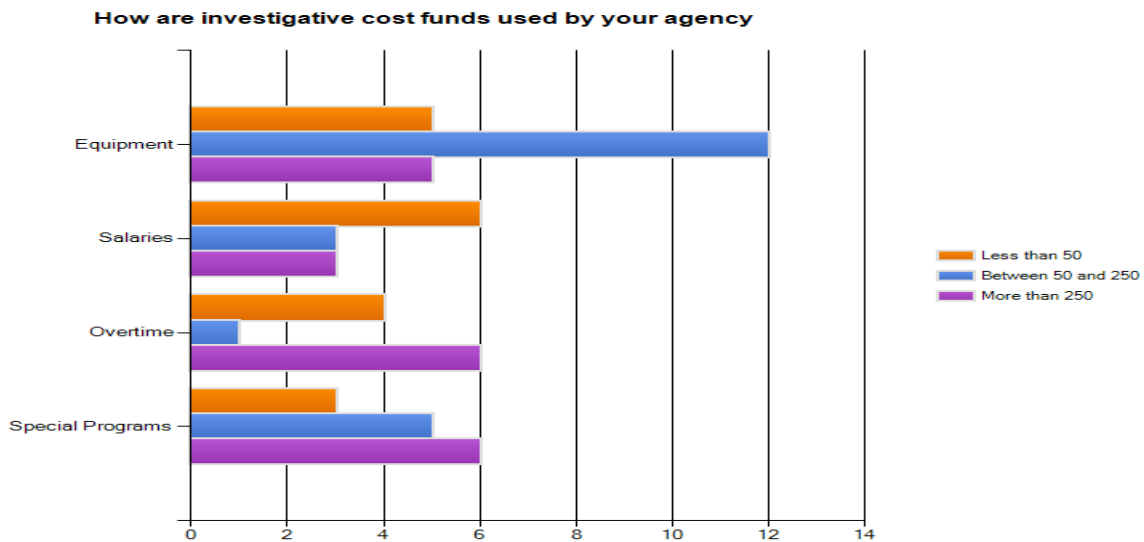


- Note this table represents the actual number of responses and not a percentage.

Another variable we attempted to measure was how the size of the agency impacted its cost recovery efforts. When cross referencing the data regarding the size of the agency with the data regarding contact with the judiciary about improving recovery, we learned that agencies with greater than 250 sworn reported the most judicial contact. In fact, 28.6% of agencies with more than 250 sworn officer reported contact with the judiciary, 9.1% of agencies that have between 50 and 250 sworn reported judicial contact, and of those agencies with less than 50 sworn, 15.4% reported judicial contact. In contrast, 71.4% of agencies with more than 250 sworn stated they have had no contact with the judiciary, 90% of agencies between 50 and 250 sworn had judicial contact and finally, 84.6% of agencies with less than 50 had judicial contact.

There was also a strong relationship between the size of the agency, and the variable that measures how the investigative costs are used by the agency. Cross referencing the two revealed that 60% of agencies with less than 50 sworn reported using cost recovery dollars for salaries, unlike their larger counterparts, whose numbers were significantly lower. In fact, only 18.8% of agencies that had between 50 and 250 sworn officers reported using cost recovery money for salaries and the number was only slightly higher, 25% for agencies with greater than 250 sworn officers. See [Table 5](#) below.

Table 5



- Note this table represents the actual number of responses and not a percentage.

We also compared the size of the agency with the variable that measured how recently an agency adjusted their cost requests for inflation. The data revealed that the smaller the agency, the more likely it was to have adjusted its policy for inflation. In fact, 58.3% of agencies with less than 50 sworn adjusted their policy for inflation within the last two years as compared to 50.0% of agencies with 50 to 250 sworn and 28.6% of agencies with more than 250 sworn.

When we compared the size of the agency variable with the variable measuring whether the agency relied on investigative cost revenue to prepare its annual budget, we learned that agency size had no impact. In fact, less than 8% of all responding agencies consider investigative cost revenue when preparing their budget.

We also measured to what extent working for a county versus a municipality affected the responses. In many respects, the results were surprisingly similar. 57.1% of county agencies reported having a cost recovery policy as compared 54.2% of municipalities. 57.1% of county respondents indicated they seek recovery for every arrest made as opposed to 54.2% of municipalities. 46.2% of counties request reimbursement for consumable items and a slightly higher 50% of municipalities seek recovery for consumable items. There appeared to be no statistical difference between county and municipal agencies when we cross-referenced the annual budget variable. 96.2% of county agencies and 95.2% of municipalities reported they did not rely on investigative cost recovery when they prepared their annual budget. There was also no significant difference between county and municipal agencies when we measured how frequently they had contact with their State Attorney's Office. In fact, only 29.6% of county agencies and 31.8% of municipalities reported any contact with their State Attorney.

There were, however, some notable differences. County agencies were more likely to use the average wage of the officer on the scene. In fact 50% of county agencies used the average wage of the officer on scene, as opposed to only 38.8% of municipalities who answered the same question. Counties were more also more likely to request reimbursement for crime scene technicians. In fact, 73.1% of respondents from county agencies stated they do request recovery for the time spent by their crime scene technicians, as opposed to only 38.1% of municipalites.

Discussion

A minority of the surveyed agencies (45.3%) requested reimbursement for each arrest made, as opposed to 54.7% of agencies who were more selective. And, while 100% of agencies that were surveyed reported seeking recovery for felony arrests, the results for other types of crimes varied significantly. In fact, 53.3% of agencies requested reimbursement for misdemeanors, 28.9% for juvenile offenses and 31.1% for probation violations. The fact that every agency responding requests reimbursement for felony arrests indicates that a diverse group of agencies can agree that recovery of investigative cost dollars at the felony level is important. The fact that only 53% of agencies reported recovering dollars for misdemeanor arrests, however, has a number of other potential implications. It could be that agencies are not aware that they can recover investigative cost dollars for misdemeanors. It also could indicate that they have made a choice to be more selective in their requests, perhaps due to a negative experience in court with a particular judge or on a particular case. Nevertheless, the results indicate that there is a disparity among the agencies about how to handle misdemeanor offenses, and for those agencies wishing to maximize recovery, there is room for improvement.

The number of agencies requesting reimbursement for probation violations is also surprisingly low. With only 31.1% of agencies seeking cost recovery for probation violation arrests, it appears that many agencies are missing out on the opportunity to recover investigative cost revenue. The most obvious explanation for this is the fact that the early version of the statute did not provide for cost recovery for probation violations. If an agency has not reviewed and updated its policy recently, then it is unlikely that they would be aware of the statutory change, an issue that can be easily remedied.

However one of the most significant findings was that 28.9% of agencies reported collecting investigative cost revenue for juvenile offenses. Due to the plain language of the statute, courts have consistently held that F.S. 938.27 does not apply to juvenile offenses, for the simple fact that juveniles are not “convicted” but are in fact found to be “delinquent.” Considering that these costs are not recoverable under the statute, yet are being requested by agencies and ordered by courts, indicates a lack of understanding and should be addressed by policy mandate.

The strongest indicator of how successful an agency is with regard to recovering lost revenue is whether or not they have an investigative cost recovery policy. Agencies with policies do better in almost every respect when compared to their counterparts.

The percentage of agencies operating without a policy (43%) is significant, and has adverse economic implications. Agencies with policies sought recovery more often and were in fact more successful. They reviewed their policies more frequently, and were more likely to have adjusted their costs for inflation, presumably increasing their bottom line. They were also more likely to have had open communication with their State Attorney about ways to improve their efforts. Agencies without policies lagged behind in almost every respect.

Other significant findings are the surprisingly low percentage of agencies (30%) that have communicated with their State Attorney about cost recovery. Agencies who wish to improve recovery must openly communicate with their State Attorney's Office about the importance of cost recovery dollars. Prosecutors need to be reminded to include the agencies request as part of the plea bargain process. This accomplishes two important goals. First, by including the amount in the plea negotiation, the parties have eliminated the need for a hearing on amount due. Second, repayment of the money can be a condition of probation as opposed to a lien of record which, for practical purposes, is meaningless. Communication with the judiciary is equally important. With 83.7% of agencies reported having no contact with their judges about cost recovery, there is a missed opportunity to educate them about the importance of cost recovery dollars.

Conclusion

As expected, the survey results supported the hypothesis that there is not much consistency among agencies when it comes to cost recovery efforts. This is not surprising, however, when you consider the uniqueness of the agencies and the communities they serve. While every agency's primary function is public safety, how they go about achieving public safety differs greatly. Every agency, every community and even every court system has its own culture. How effectively these cultures communicate with each other greatly affects how effective they are at what they do. To that end, whether an agency wants, or even needs to have a cost recovery policy is a question that can only be answered by its leaders. What works for some, may not work for others. The results, however, indicate that there are some simple steps an agency can take to improve cost recovery efforts, should it choose to do so. For those agencies who wish to improve cost recovery, the following are some simple steps they can take:

- Implement a comprehensive written policy regarding investigative cost recovery.
- If your agency already has a policy, conduct periodic reviews to ensure that it is current.
- Educate your agency about the purpose and importance of the policy.
- Speak with your State Attorney's Office about how and when they request reimbursement for investigative costs for your agency.
- If possible, speak with criminal court judges about the importance of ordering cost of investigation when cases are resolved.

- Regularly monitor investigative cost revenue reports from your Clerk of Court to determine trends.
- Make sure your policy prohibits recovering investigative costs for juvenile cases, which are not subject to F.S. 938.27.
- Include recovery for probation violation investigations/arrests. Because previous versions of the statute did not provide for this type of recovery, there may be an opportunity to recover more money.

Economic conditions are such that the public expects law enforcement agencies to be more efficient than ever before. County and municipal governments are increasingly facing criticism from tax payers. With law enforcement agencies accounting for a large percentage of local government expenditures, it will become increasingly important for local leaders to demonstrate their commitment to fiscal responsibility. To that end, having policies in place that shift costs away from law abiding tax payers to the convicted criminals will prove to be valuable talking points for local leaders who are questioned about what they are doing to cut costs. For an example of a cost recovery policy, see Exhibit "B" (Volusia County) and exhibit "C" (Orange County).

Division Chief Bill Gladson is an Assistant State Attorney in the 5th Judicial Circuit. He is currently the supervisor of the Marion County Office. Prior to his arrival in Marion County, he supervised Lake, Hernando and Sumter Counties. He graduated from the police academy in Gainesville in May of 1991 and began working as a reserve officer with the University of Florida Police Department, while he attended college. Since graduation, he has held reserve and part time positions at the Gainesville Police Department, the Indian Creek Village Public Safety Department, Marion County Sheriff's Office, the Florida Fish and Wildlife Department, and is currently a reserve with the Eustis Police Department. He began working as a prosecutor a year after graduating from law school in 1997.

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Exhibit "A"

The chart below represents investigative cost revenue provided by the Lake County Clerk of Court for the law enforcement agencies in Lake County, Florida. The figures reflect investigative cost orders, from circuit and county court, from 10/1/2010 to 7/15/2011.

	Assessment	Dismissed	Collected	Amount Due
Eustis	\$11,672.50	\$5.00	\$1,760.92	\$9,766.58
Fruitland Park	\$7,216.00	\$0.00	\$795.90	\$6,420
Groveland P.D.	\$9,504.24	\$0.00	\$1,248.53	\$8,255.71
Howie-In-The-Hills	\$494.00	\$0.00	\$135.00	\$359
Lady Lake	\$1,715.00	\$0.00	\$805.00	\$910.00
Lake County	\$30,815.75	\$175.00	\$2,748.52	\$27,892.23
Leesburg	44,428.58	\$350.00	\$4,177.00	\$39,507.83
Mascotte	\$2,683.75	\$0.00	\$210.00	\$42,473.75
Mount Dora	\$8,232.50	\$0.00	\$849.75	\$7,382.75
Tavares	\$2,151.00	\$0.00	\$440.00	\$1,711.00
Umatilla	\$140.00	\$0.00	\$140.00	\$0.00

Exhibit "B"

VOLUSIA COUNTY SHERIFF'S OFFICE

POST-ARREST INVESTIGATIONS

42.1.1 The Supervisor charged with screening cases shall determine the extent of post-arrest activity required for successful prosecution and or determining companion cases. The case shall be assigned as circumstances dictate.

42.1.2 In cases such as theft, burglary, or robbery, the apprehended individual may have been involved in other "like" crimes and may admit to additional crimes during interrogation.

42.1.3 State law allows law enforcement agencies to recover the costs of prosecution, including investigative costs, of criminal cases if documented by the agency.

42.1.4 On a case by case basis, after review and approval by a supervisor, the investigators shall complete an Investigative Cost Affidavit upon the completion of a criminal case that leads to prosecution.

42.1.5 District Investigators shall submit the completed form to their Investigative Sergeant. Special Investigators shall submit them to the Commander of the Investigative Services Section.

Exhibit "C"

ORANGE COUNTY SHERIFF'S OFFICE

GENERAL ORDER



Effective Date: June 25, 2010	<input checked="" type="checkbox"/> Rescinds - G.O. 16.1.11 (June 4, 2008) <input type="checkbox"/> Amends	Number: 16.1.11
SUBJECT: RECOVERY OF INVESTIGATIVE COSTS		Print Date:
Distribution: ALL PERSONNEL	CALEA Standards: CFA Standards:	

This order consists of the following:

1. Purpose
2. Policy
3. Definitions
4. Procedures

1. **Purpose**

The purpose of this policy is to provide to the citizens of Orange County reimbursement of investigative costs incurred by the Sheriff and his deputies in the performance of their constitutional duties.

2. **Policy**

It is the policy of the Sheriff's Office to seek reimbursement from defendants of investigative costs. The reimbursement is sought for the purpose of easing the financial burden to the citizens of Orange County from the arrest and prosecution of defendants for violation of statutes designated by the Sheriff. Cost recovery shall be sought for the following cases:

- A. Selected narcotic cases investigated by the Crime Suppression Division.
- B. All driving under the influence cases.
- C. Selected felony cases investigated by the Criminal Investigations Division and the Crime Suppression Division which require an extended outlay of investigative resources. These cases will be designated at the discretion of the Section Commander.
- D. Other cases so designated by the Sheriff.

3. **Definitions**

- A. Florida State Statute 938.27 - In all criminal cases the costs of prosecution, including investigative cost incurred by law enforcement agencies, if requested and documented by such agencies, shall be included and entered in the judgment rendered against the convicted person.
- B. Florida State Statute 938.27 - Provides that the investigative costs recovered under this section shall be returned to the appropriate investigative agency which incurred the expense.
- C. Orange County Sheriff's Office Hourly Scale - The hourly pay rate of a deputy sheriff and criminal data processor's time. These rates will be calculated by the Orange County Sheriff's Office Comptroller at the beginning of each fiscal year.

4. **Procedures**

- A. Criminal Investigation Division and the Crime Suppression Division
The "cost of investigation" record system consists of two (2) documents: Investigative Costs Expense Report, and Order for Recovery of Investigative Funds.
 - 1. Investigative Costs Expense Report
 - a. The Investigative Costs Expense Report is designed to account for the investigator's hours worked and miscellaneous expenses. The form is prepared by each detective and criminal data processor who works on an investigation.
 - b. While one detective is normally designated to be the "case agent" for an investigation, many detectives will play some role in bringing the case to conclusion. One of these forms should be prepared by each detective who participates in an investigation and submitted to the "case agent".
 - c. The "case agent" is responsible for ensuring that other participating detectives and criminal data processors submit their forms.
 - 1. The heading of the Investigative Costs Expense Report provides space for the submitting detective's/criminal data processor's name and the case number of the investigation. The remainder of the form is divided into three sections in which the detective and criminal data processor accounts for his/her hours, keeps track of miscellaneous expenses, and calculates the total costs of his/her involvement in the case.
 - a. Hours Worked Section - In the first section, HOURS WORKED, the detective/criminal data processor enters the date, the investigative activity he/she performed, and the length of time, he/she took performing that activity to the nearest tenth of an hour.

1 to 6 minutes = 0.10 hours
 7 to 12 minutes = 0.20 hours
 13 to 18 minutes = 0.30 hours
 19 to 24 minutes = 0.40 hours
 25 to 30 minutes = 0.50 hours
 31 to 36 minutes = 0.60 hours
 37 to 42 minutes = 0.70 hours
 43 to 48 minutes = 0.80 hours
 49 to 54 minutes = 0.90 hours
 55 to 60 minutes = 1.00 hours

- b. Miscellaneous Expenses Section - The second section, MISCELLANEOUS EXPENSES, provides space for the investigator to enter his/her expenditure of Orange County Sheriff's Office investigative funds necessary to carry out his/her assignments in the investigation. These expenses might include, but are not limited to, fees associated with the use of an informant. (Criminal data processors will normally indicate "N/A" in this section.)
- c. Summary Section - In the last section, SUMMARY, the investigator/criminal data processor multiplies his/her total hours times the established Orange County Sheriff's Office hourly scale to calculate the cost of investigative time. He/she then adds the total expenses from the second section of the form to the cost of his/her investigative time. This final calculation provides the total cost of the detective's/criminal data processor's contribution to the investigation.

- 2. Order for Recovery of Investigative Costs
 The "case agent" will prepare the "Order for Recovery of Investigative Costs". This document will also accompany the Reimbursement Memorandum forwarded by the Criminal Investigation Division Commander/Crime Suppression Division Commander or designee. This document will be signed by the judge at the time defendant is sentenced. Signed orders shall be sent to the Fiscal Management Division when they are completed by the courts.

B. DUI Arrests

- 1. All sworn personnel making a DUI arrest shall prepare the necessary forms described in 3(A) in order to recover investigative costs.
- 2. The arresting deputy shall be considered the "case agent" and shall be the sole source of investigative time calculated in 3(A).

3. The Reimbursement Memorandum, Cost Affidavit, and Order for Recovery of Investigative Costs shall be prepared by the arresting deputy or DUI Technician. The breath testing technician shall collect and submit all cost recovery documents to the Testing Center supervisor or designee, who shall transmit them to the State Attorney assigned to the Orange County Traffic Court.
 4. The Order for Reimbursement of Investigative Costs will be signed by the judge at the time the defendant is sentenced. Signed orders shall be sent to Fiscal Management when they are completed by the courts.
- C. Fiscal Management Division
- The Fiscal Management Division shall be responsible for the handling of all costs recovered as a result of a judge's order. An annual report shall be prepared and sent to the Sheriff through the Chief Deputy indicating the total amount of cost ordered payable to the Sheriff's Office and amount of actual dollars received by the Fiscal Management Division as a result of the Sheriff's recovery of investigative costs program.



SHERIFF JERRY L. DEMINGS

1.

1. Does your agency have a policy regarding investigative cost recovery?

☐ Yes

☐ No

2. Does your agency request reimbursement for investigative costs following each arrest?

☐ Yes

☐ No

3. For which types of crimes does your agency request reimbursement? Check all that apply.

☐ Misdemeanor

☐ Felony

☐ Juvenile

☐ Probation Violations

4. How is your request for reimbursement submitted?

☐ A separate cost recovery form

☐ Contained within the arrest paperwork

☐ Other _____

5. How does your agency calculate the hourly wage used when requesting reimbursement?

☐ Average wage of all officers in department

☐ Actual wage of each officer on scene

☐ Other _____

6. Does your agency request reimbursement for consumable items used in an investigation? i.e. DVD's, fingerprint kits, etc.

☐ Yes

☐ No

7. Does your agency request reimbursement for crime scene technicians used during an investigation?

☐ Yes

☐ No

8. During the past three years, would you say that the amount of investigative costs recovered by your agency have

- ☐ Increased
- ☐ Decreased
- ☐ Remained the same

9. When was the last time your agency adjusted your investigative cost recovery requests for inflation?

- ☐ Within the last 2 years
- ☐ Between 2 and 4 years ago
- ☐ More than 4 years ago

10. Has your agency had to testify in court to justify the amount investigative costs requested on particular case?

- ☐ Yes
- ☐ No

11. Does your agency rely on monies recovered from investigative costs when preparing its annual budget?

- ☐ Yes
- ☐ No

12. Has your agency requested assistance from the State Attorney's Office to increase the amount of investigative costs recovered?

- ☐ Yes
- ☐ No

13. How many sworn personnel are employed by your agency?

- ☐ Less than 50
- ☐ Between 50 and 250
- ☐ More than 250

14. Has your agency had any contact with members of the judiciary about improving your cost recovery efforts?

- ☐ Yes
- ☐ No

15. Is it the policy of your State Attorney's Office to request investigative costs be awarded to your agency for each defendant who enters a plea or is found guilty?

- ☐ Yes
- ☐ No
- ☐ I don't know

16. How would you describe the economic makeup of your community?

- ☐ Lower Income
- ☐ Middle Income
- ☐ Affluent
- ☐ A Mixture

17. What percentage of the monies requested by your agency are actually recovered?

- ☐ Less than 20 percent
- ☐ Between 20 and 40 percent
- ☐ Between 40 than 60 percent
- ☐ More than 60 percent
- ☐ Don't know

18. How are investigative cost funds used by your agency

- ☐ Equipment
- ☐ Salaries
- ☐ Overtime
- ☐ Special Programs

19. What is the size of the population that your agency serves?

- ☐ Less than 50,000
- ☐ Between 50,000 and 150,000
- ☐ Between 150,000 and 500,000
- ☐ Over 500,000

20. Do you work for a county or municipal agency?

- ☐ County
- ☐ Municipal