

CRIMINAL COSTS: The reasonable expenses of "commitment" or  
INSANE PERSONS: "confinement" of an accused for observation  
CRIMINAL INSANE: in a State mental hospital pursuant to exam-  
MENTAL ILLNESS: ination under Section 552.020, RSMo. Supp. 1965,  
or under Section 552.030, RSMo. Supp. 1965, re-  
lating respectively to fitness to proceed and  
mental disease or defect excluding responsibility  
in criminal proceedings, may be taxed as costs  
of prosecution under the provisions of Section  
552.080, RSMo. Supp. 1965, Subsection 1(1).

Opinion No. 15 (1966)  
Opinion No. 205 (1965)

January 27, 1966

Dr. George A. Ulett, Director  
Division of Mental Diseases  
722 Jefferson Street  
Jefferson City, Missouri



Dear Dr. Ulett:

This is in response to your inquiry, which is as follows:

"I am advised that Attorney General's Opinion No. 13 (1965) relating to Chapter 552, R.S.Mo. Cum. Supp. 1963, entitled 'Mentally Ill Persons in Criminal Cases', is in some instances being interpreted as a conclusion that expense for commitments for observation and examination of indigent defendants may not be taxed as costs against the state or county and that the county of residence is liable for such expense only in the amount fixed by the Division of Mental Diseases for county patients.

"It would appear that the opinion does not so state and that the expense for observation and examination properly falls within Sections 552.020 and 552.030 R.S.Mo. Cum. Supp. 1963, as pursuant to and a necessary part of the order authorizing the examination and therefore may be taxed as costs and paid as other costs of prosecution."

Your question relates solely to the taxation of costs of commitment of accused persons in State hospitals pursuant to their examination to determine whether or not they have a mental disease or defect

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excluding fitness to proceed under Section 552.020, RSMo. Supp. 1965 and to the confinement in a hospital or other suitable facility to determine whether or not the person has a mental disease or defect excluding responsibility as provided in Section 552.030, RSMo. Supp. 1965.

The pertinent portion of Section 552.020, Subsection 2, states:

"Whenever there is reasonable cause to believe that the accused has a mental disease or defect excluding fitness to proceed the court, upon motion filed by the state or by or on behalf of the accused or upon its own motion, shall appoint one or more physicians to examine the accused and report upon the matter. The order shall specify the time, place, and conditions under which the examination shall be conducted, and may include provisions for the interview of witnesses or other physicians and for a commitment of the accused to a hospital or other suitable facility for such time and under such conditions as the court deems necessary for the purpose. \* \* \*"

Likewise, the related portion of Section 552.030, Subsection 4, states:

"Whenever the defendant has pleaded mental disease or defect excluding responsibility or has given the written notice provided in subsection 2, and such defense has not been accepted as therein provided, the court shall, after notice and upon motion of either the state or the defendant, appoint one or more physicians to examine and report upon the mental condition of the defendant. No physician shall be appointed unless he has consented to act. Examinations ordered hereunder shall be made at such time and place and under such conditions, including confinement to a hospital or other suitable facility and the interview of witnesses or other physicians, as the court deems proper. \* \* \*"

Section 552.080, RSMo. Supp. 1965, is entitled "Costs of procedures relating to persons in custody and having or suspected of having a mental disease, defect or illness." This section states:

"1. Upon application the court in which proceedings are pending against an accused or in which a defendant was tried may at any time tax as costs in the case the following expenses, which in each case must be reasonable and so found by the court in an order taxing them:

(1) A fee for the examination and testimony of any physician appointed under Section 552.020 or 552.030 at the request either of the state or the accused or on the court's own motion;

(2) The expense of the care and treatment in a state mental institution of any accused or defendant transferred there under section 552.040 or 552.050.

"2. The costs taxed under subsection 1, of this section may be levied and collected under execution and the officer collecting the same shall pay to the physician or physicians mentioned above their fees so taxed and shall pay to the treasurer of the hospital mentioned above its expenses so taxed.

"3. The expense of conveying any accused or defendant from a correctional institution to a state mental hospital and the expense of returning him to a correctional institution shall be paid out of funds appropriated for the payment of criminal costs.

"4. The method of collecting the costs and expenses herein provided or otherwise incurred in connection with the custody, examination, trial, transportation or treatment of any person accused or convicted of any offense shall not be exclusive, and the expenses may be collected in any other manner provided by law."

Subsection 1(1), authorizes a fee for the examination and testimony of any physician appointed under Sections 552.020 or 552.030. The word "examination" is broad enough to include observation. Blackstone's New Gould Medical Dictionary, 2nd

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Edition (1956), at page 427, defines the word "examination" as "Investigation for the purpose of diagnosis." The same dictionary does not define "observation." This would infer, and logic would lead one to conclude, in a psychiatric sense that observation is a necessary part of examination.

Gould's Medical Dictionary, 2nd Edition (1928), page 491, defines "examination" as "Investigation, as for the purpose of diagnosis;" and at page 966, defines "observation" as "The examination of a thing; a systematic study of phenomena."

Webster's Third New International Dictionary (1963), at page 1558, defines "observation" as "the condition of one that is seen, examined or noticed."

Likewise, A Dictionary of English Synonyms and Synonymous or Parallel Expressions, Soule (1898), at page 152, under the term "examination" states, "1. Inspection, observation."

Hence there is reasonable ground to conclude that the observation of the accused is fundamentally part of the examination.

In our opinion dated January 29, 1965, to the Honorable Don E. Burrell we concluded that the "liability for costs includes the reasonable expenses of mental examinations ordered by the magistrate court and the circuit court and taxed as costs, but does not include the expenses, subsequent to such acquittal, incurred for the care and treatment of the accused in a state mental hospital, and[that] such hospital expenses may not be taxed against either the state or the county;". In that opinion the question of the expenses of hospitalization for observation, prior to a final determination of the case was neither raised nor considered.

It was no doubt intended that the reasonable expenses of hospitalization for observation under Section 552.020 or Section 552.030, be taxed as part of the "examination" when such "commitment" or "confinement" to a hospital is made by the order of the court under said sections and whether initially "at the request either of the state or the accused or on the court's own motion." Section 552.080, Subsection 1(1).

We recognize that the burden of payment of such costs may ultimately rest upon the State, the county or the accused, determined accordingly pursuant to the provisions of Chapter 550, relative to costs in criminal cases. In this respect we see no conflict with the conclusions of the Burrell opinion. The costs that we here consider are necessarily incurred prior to or in conjunction with the final determination of the case and may be deemed costs of prosecution.

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The prior laws relative to mental fitness or responsibility did not provide for confinement for examination. Section 202.863, RSMo., does provide the standard of liability for the care and treatment of the mentally ill on what might be considered a long-term basis but cannot be interpreted as creating a predetermined liability in an area involving the psychiatric evaluation of an accused. The extant liability for costs must be resolved in light of the language of Section 552.080, Subsection 1(1), and a determination of the legislative intent as evidenced by the provisions of Chapter 552.

It is noteworthy that the commitments or confinements under the sections in question need not be in a State hospital and that the Act merely envisions the utilization of some "suitable facility." This indicates that the broad scope of suitable facilities should be considered in interpreting these cost provisions. Likewise, the fact that such expenses may be incurred by and payable to a State institution does not permit us to distinguish or limit the taxation of expenses so incurred on the sole premise that the State itself, or the county, may be required to pay them.

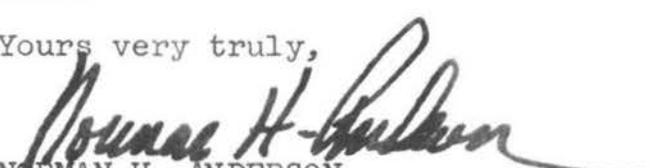
In passing, we note that the laws relative to the liability for expenses of persons confined in State mental institutions are inadequate, conflicting, and in some respects archaic. By comparison with other mental hygiene cost statutes Section 552.080 is new. Nevertheless, the provisions of that section are neither clear nor comprehensive and clarifying and additional legislation is desirable.

#### CONCLUSION

It is the opinion of this office that the reasonable expenses of "commitment" or "confinement" of an accused for observation in a State mental hospital pursuant to examination under Section 552.020, RSMo. Supp. 1965, or under Section 552.030, RSMo. Supp. 1965, relating respectively to fitness to proceed and mental disease or defect excluding responsibility in criminal proceedings, may be taxed as costs of prosecution under the provisions of Section 552.080, RSMo. Supp. 1965, Subsection 1(1).

The foregoing opinion, which I hereby approve, was prepared by my assistant, John C. Klaffenbach.

Yours very truly,

  
NORMAN H. ANDERSON  
Attorney General