

<b>Tab 1</b>	<b>CS/SB 596</b> by <b>JU, Baxley</b> ; (Similar to CS/H 00383) Criminal Conflict and Civil Regional Counsels
<b>Tab 2</b>	<b>CS/SB 598</b> by <b>JU, Baxley</b> ; (Identical to H 00385) Public Records/Criminal Conflict and Civil Regional Counsel Office

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

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**BILL:** CS/SB 596

**INTRODUCER:** Judiciary Committee and Senator Baxley

**SUBJECT:** Criminal Conflict and Civil Regional Councils

**DATE:** January 18, 2022      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bond</u>	<u>Cibula</u>	<u>JU</u>	<b>Fav/CS</b>
2.	<u>Dale</u>	<u>Harkness</u>	<u>ACJ</u>	<b>Pre-meeting</b>
3.	_____	_____	<u>AP</u>	_____

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Technical Changes

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**I. Summary:**

CS/SB 596 brings the Offices of Criminal Conflict and Civil Regional Council into parity with the offices of the public defenders and other governmental entities in the following areas:

- Witness coordination.
- Electronic filing of court documents.
- Security access to courthouses.
- Procedure for setting a classification and pay plan.
- Access to confidential court and state records.
- Limits of witness cost reimbursement.
- Investigator death benefits.
- Confidential motor vehicle registration.
- Criminal justice history access.

Current law requires that an existing Regional Council plus between two and five additional individuals be nominated for an open Regional Council position. The bill lowers the number of nominees in addition to the existing Regional Council that are required to be presented to the Governor for a position as Regional Council to between zero and three.

The bill also waives an 8-hour guardianship education requirement for attorneys employed by an Office of Criminal Conflict and Civil Regional Council; and clarifies that the court must appoint the Office of Criminal Conflict and Civil Regional Council if the Public Defender has a conflict

of interest in a case involving involuntary treatment of sexually violent predator or involuntary mental health treatment of a prisoner.

The bill takes effect July 1, 2022.

## II. Present Situation:

### **The Office of Criminal Conflict and Civil Regional Counsel**

The state is divided into five regions, each of which has an Office of Criminal Conflict and Civil Regional Counsel (regional counsel). The regions are defined by the boundaries of the five district courts of appeal. A regional counsel provides legal representation to some indigent persons who are entitled by law to taxpayer-funded legal representation.<sup>1</sup> These persons may be involved in criminal or civil cases. Just as a public defender's office has one public defender and numerous assistant public defenders, each regional counsel's office has a regional counsel and subordinate assistant regional counsels with appropriate staff support.<sup>2</sup> Each regional counsel is appointed by the Governor to a 4-year term, subject to Senate confirmation.<sup>3</sup>

The initial appointment of an attorney to represent a criminal defendant is by reference to the Office of the Public Defender for the judicial circuit. The court appoints the Office of the Public Defender for that judicial circuit, and the Public Defender selects one or more attorneys in the office to appear as attorney of record for the defendant. However, if the public defender's office determines that it cannot represent a defendant because of a conflict of interest, the public defender must ask the court for permission to withdraw as counsel.<sup>4</sup> If the court grants the motion, the court must appoint the Office of Criminal Conflict and Civil Regional Counsel to represent the defendant.<sup>5</sup> Similarly, the Office of Criminal Conflict and Civil Regional Counsel will select one or more staff attorneys to represent the defendant. If the office has a conflict, the court appoints a private attorney to be paid by the state.

The process is similar in many civil actions where legal representation of an indigent person is required to be furnished at state expense by the federal or state constitution or by state law. The first appointment to represent an indigent individual in most civil actions is to appoint the office of the regional counsel. Subsequent appointments where the office of the regional counsel has a conflict are to appoint a willing private attorney, chosen on a rotating basis. The appointment of a regional counsel in civil matters primarily occurs in mental health cases and dependency proceedings.<sup>6</sup>

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<sup>1</sup> Section 27.511, F.S.

<sup>2</sup> Section 27.511(4), F.S.

<sup>3</sup> Section 27.511(3)(a), F.S.

<sup>4</sup> Just like a private law firm, the public defender's representation of two or more individuals whose interests are in conflict is unethical. Primarily, this occurs where two or more defendants are charged with jointly committing a criminal act.

<sup>5</sup> Section 27.511(5), F.S.

<sup>6</sup> Section 27.511(6)(a), F.S.

### **III. Effect of Proposed Changes:**

#### **Regional Counsel Parity with Public Defenders and Other Entities**

The bill puts the Regional Councils in parity with public defenders and other public agencies and organizations in the following areas:

##### ***Witness Coordination (Section 1 amending s. 27.0065, F.S.)***

Witness coordination describes the process for coordinating court appearance by witnesses, contacting witnesses regarding on-call status, contacting witnesses when appearances are cancelled, and contacting the employer of a subpoenaed person to confirm the existence of the summons. A primary goal of witness coordination is to minimize witness time and wage losses.

Current law requires the state attorney and public defender to work together on witness coordination programs.<sup>7</sup> The bill adds that the appropriate Regional Counsel must act together with the state attorney and public defender to administer witness coordination.

##### ***Electronic Filing and Receipt (Section 2 amending s. 27.341, F.S.)***

The state attorney and public defender of each circuit are required to consult with the local clerks of court, the Florida Court Technology Commission, and the operator of the legal filing portal, regarding the electronic filing and receipt of court documents. The bill adds that the appropriate Regional Counsel must join the state attorney and public defender in consultations regarding the electronic filing and receipt of court documents.

##### ***Court Appointments (part of Section 3 amending s. 27.571, F.S.)***

A court is prohibited from appointing the public defender to represent any person who is not indigent or who is already represented by a private attorney. The bill adds that a Regional Counsel, similarly, may not be appointed to represent any person who is already represented by a private attorney.

##### ***Courthouse Security and Access (part of Section 3 amending s. 27.571, F.S.)***

County sheriffs, judges, and the county commission are jointly responsible for courthouse security. Together, they develop plans and procedures for securing the courthouse, which vary throughout the state. Some counties screen all persons entering the courthouse, others allow certain trusted persons easier access through minimal or no screening. Assistant state attorneys and assistant public defenders are commonly part of the trusted persons groups. The bill adds a requirement that a Regional Counsel and assistant regional counsels be treated the same as the Public Defender and assistant public defenders are treated regarding courthouse security requirements.

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<sup>7</sup> Section 27.0065, F.S.

***Classification and Pay Plans (Sections 3 amending s. 27.571, F.S., and section 4 amending s. 27.53, F.S.)***

The 20 state attorneys of all judicial circuits must jointly develop a coordinated classification and pay plan that must be submitted on or before January 1 of each year to the Justice Administrative Commission, the office of the President of the Senate, and the office of the Speaker of the House of Representatives.<sup>8</sup> Similarly, the 20 public defenders must jointly develop a coordinated classification and pay plan.<sup>9</sup> However, the five regional counsel offices are subject to the classification and pay plan of the Justice Administration Commission,<sup>10</sup> and may only recommend changes to the classification and pay plan.<sup>11</sup> The bill changes the classification and pay plan procedure to have the five regional counsels jointly develop a coordinated classification and pay plan for their offices, mirroring the current state attorneys and public defenders policies.

***Dependency Court Records (Section 5 amending s. 39.0132, F.S.)***

A regional counsel may be appointed to represent an indigent parent in a dependency proceeding. Current law generally limits access to the records of dependency court proceedings to the child, the parents of the child, an attorney representing the child or a parent, the guardian ad litem, law enforcement, representatives of the Department of Children and Families, and any other person by court order.<sup>12</sup> Not included in this list are Regional Counsels, but these Regional Counsels may be appointed to represent parents involved in the proceedings. The bill adds Regional Counsels to the list of persons who are expressly authorized to access the dependency court file.

***Witness Cost Reimbursement (Section 6 amending s. 92.153, F.S.)***

In any court proceeding, a disinterested witness is entitled to reimbursement for any reasonable costs incurred in producing, searching for, reproducing, and transporting documents produced under subpoena or pursuant to a records request. However, such costs are limited to 15 cents per page and \$10 per hour when the subpoena or records request is from a state attorney or public defender.<sup>13</sup> The bill adds that reimbursement related to a subpoena or records request from a regional counsel is also limited to 15 cents per page and \$10 per hour.

***Investigator Death Benefits (Section 7 amending s. 112.19, F.S.)***

The lawful beneficiary of a state or local law enforcement officer, correctional officer, correctional probation officer, state attorney investigator, or public defender investigator is entitled to a death benefit for a line-of-duty death ranging between \$75,000 and \$375,000, depending upon the circumstances of the death. In addition, funeral expense reimbursements, health benefits, and educational benefits for dependents are authorized.<sup>14</sup> The bill adds regional counsel investigators to the list of persons entitled to the line-of-duty death benefits.

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<sup>8</sup> Section 27.25(1), F.S.

<sup>9</sup> Section 27.53(1), F.S.

<sup>10</sup> Section 27.511(2), F.S.

<sup>11</sup> Section 27.53(4), F.S.

<sup>12</sup> Section 39.0132(3), F.S.

<sup>13</sup> Section 92.153(2), F.S.

<sup>14</sup> Section 112.19, F.S.

***Confidential Motor Vehicle and Vessel Registration (Section 8 amending s. 320.025, F.S.)***

Current law provides for confidential registration and issuance of a license plate or registration certificate of a motor vehicle or vessel owned by a local, state, or federal law enforcement agency, by the Attorney General Medicaid Fraud Unit, or by a public defender. If searched, the registration will show a fictitious name as the registered owner.<sup>15</sup> The bill adds regional counsels to the list of government entities eligible for registration of a motor vehicle or vessel under a fictitious name.

***Criminal History Fees and Access (Section 12 amending s. 943.053, F.S.)***

The Florida Department of Law Enforcement is the state's central repository of criminal justice information. The department is authorized to charge a fee for furnishing the criminal history information of an individual, which fee varies based on the entity requesting the information. Fees are waived for an office of a public defender,<sup>16</sup> and the department is required to provide public defenders the criminal history records by online access.<sup>17</sup> The bill waives the fee and requires online access for the regional counsels.

***Access to Certain Records of the Department of Corrections (Section 13 amending s. 945.10, F.S.)***

Certain records of the Department of Corrections are confidential and exempt from public records laws, and may be released only to authorized persons or entities. Among other exceptions, public defenders are authorized to access preplea, pretrial intervention, and presentence or postsentence investigative records, except for portions of those records related to the victim.<sup>18</sup> The bill adds that a regional counsel may also access preplea, pretrial intervention, and presentence or postsentence investigative records of the Department of Corrections, except for portions of those records related to the victim.

***Access to Delinquency Court Records (Section 15 amending s. 985.045, F.S.)***

Delinquency court records held by a clerk of court are confidential and exempt from public records laws, and may be released only to authorized persons or entities. Among other exceptions, public defenders are authorized to access the official records of a juvenile on whose behalf that the public defender is expected to appear in detention or other hearing before formal appointment of an attorney.<sup>19</sup> The bill adds that a regional counsel is also authorized to access the official records of a juvenile on whose behalf that the regional counsel is expected to appear in detention or other hearing before formal appointment of an attorney.

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<sup>15</sup> Section 320.025, F.S.

<sup>16</sup> Section 943.053(3)(e), F.S.

<sup>17</sup> Section 943.053(7), F.S.

<sup>18</sup> Section 945.10(2)(d), F.S.

<sup>19</sup> Section 985.045(2), F.S.

## **Other Provisions regarding Regional Councils**

### ***Appointment Process for the Regional Counsel (part of Section 3 amending s. 27.511, F.S.)***

Each regional council is appointed by the Governor to a 4-year term, subject to Senate confirmation.<sup>20</sup> The terms of office of the current five Regional Council are from October 1, 2019, to September 30, 2023. The Governor must make an appointment from the nominees given to him or her by the Supreme Court Judicial Nominating Commission.<sup>21</sup> For each position, the Supreme Court Judicial Nominating Commission must nominate the current regional council for reappointment, and must also recommend to the Governor not fewer than two or more than five additional qualified candidates for appointment to the position. If it is in the best interest of the fair administration of justice, the Governor may reject the nominations and request that the Supreme Court Judicial Nominating Commission submit three new nominees.

If for any reason a regional council is unable to complete a full term in office, the Governor may immediately appoint an interim regional council. This appointee must meet the qualifications to be a regional council and will be appointed to serve as regional council until a new regional council is appointed by the same process to serve the remainder of the term of office.

The bill changes the appointment process to require nomination of the current regional council only if he or she seeks reappointment. The bill also reduces the number of persons nominated (in addition to the current regional council) to between zero and three. This change applies to the current five positions should one of them become vacant in this current term.

### ***Guardian Advocacy Education Requirement (Section 9 amending s. 393.12, F.S.)***

Guardian advocacy is a process for a family member, caregiver, or friend of an individual having a developmental disability<sup>22</sup> to obtain the legal authority to act on their behalf if the individual lacks the decision-making ability to do some, but not all, of the decision-making tasks necessary to care for his or her person or property. Guardian advocacy does not require a finding of incapacity and it is less intrusive and simpler than formal guardianship. An individual who is found to have a developmental disability loses certain legal rights but is also entitled to certain services, levels of which are based on the individual's disability.<sup>23</sup>

A petition to determine whether an individual has a developmental disability starts a contested proceeding at which the alleged disabled person has a right to have an attorney appointed. If the person is deemed to be indigent, the attorney will be provided at no cost from a regional council office or, in the case of a conflict, from a registry of qualified attorneys. If the person is not

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<sup>20</sup> Section 27.511(3)(a), F.S.

<sup>21</sup> The Supreme Court Judicial Nominating Commission is required by FLA. CONST art. V, s. 11(d), and its membership is specified by s. 43.291, F.S. The Supreme Court JNC consists of four members of The Florida Bar, selected by the Governor from a list of nominees recommended by The Florida Bar, and five individuals selected by the Governor. Members of the commission must be residents of the state, and all of the Bar nominees and two of the five Governor nominees must be actively practicing law. Members serve staggered 4-year terms.

<sup>22</sup> "Developmental disability" means a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermid syndrome, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely. Section 393.063(12), F.S.

<sup>23</sup> See generally, ch. 393, F.S.

deemed to be indigent, a private attorney will be appointed from a rotating list of qualified attorneys. Before appointment, the attorney must have completed a minimum of 8 hours of education in guardianship, except that the court may waive the educational requirement for an attorney experienced in guardian advocate proceedings or who has 3 years or more experience as an attorney for guardian advocates.<sup>24</sup> The bill adds that the requirement for the education in guardianship does not apply to an attorney employed by a regional counsel office.

***Appointment in Cases Involving Sexually Violent Predators (Section 10 amending s. 394.916, F.S.)***

There is a civil commitment procedure for the involuntary long-term care and treatment of sexually violent predators.<sup>25</sup> An individual subject to involuntary care and treatment is entitled to legal representation. If the individual is indigent, the public defender is appointed to represent the individual. If the public defender has a conflict, the statute requires appointment of “other counsel.”<sup>26</sup> The statute on regional counsels provides that the regional counsel is to be appointed if a public defender has a conflict,<sup>27</sup> this bill amends the law on sexually violent predators to reaffirm that a regional counsel may be appointed if the public defender has a conflict.

***Guardianship Education Requirement (Section 11 amending s. 744.331, F.S.)***

Guardianship is a process for an interested person to petition for appointment of a guardian to represent an individual lacking capacity. An individual who is found to be legally incapacitated loses certain legal rights based on the individual’s incapacity.<sup>28</sup> An individual subject to guardianship proceedings who is indigent is entitled to appointment of an attorney. Before appointment of any attorney, the attorney must have completed a minimum of 8 hours of education in guardianship, except that the court may waive the educational requirement for an attorney who has 3 years or more experience as an attorney in guardianship proceedings.<sup>29</sup> The bill adds that the requirement for the education in guardianship does not apply to an attorney employed by a regional counsel office.

***Appointment in Cases Involving Mental Health Treatment of a Prisoner (Section 14 amending s. 945.48, F.S.)***

There is a court procedure for the involuntary mental health treatment of state prisoners.<sup>30</sup> A prisoner subject to involuntary treatment is entitled to legal representation. If the prisoner is indigent, the public defender is appointed to represent the prisoner. If the public defender has a conflict, the statute requires appointment of “private counsel.”<sup>31</sup> The statute on regional counsels provides that the regional counsel is to be appointed if a public defender has a conflict.<sup>32</sup> This bill amends the law on prisoners subject to involuntary mental health treatment to reaffirm that a regional counsel may be appointed if the public defender has a conflict.

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<sup>24</sup> Section 393.12(5)(a), F.S.

<sup>25</sup> See generally, part V of ch. 394, F.S.

<sup>26</sup> Section 394.916(3), F.S.

<sup>27</sup> Section 27.40, F.S.

<sup>28</sup> See generally, ch. 744, F.S.

<sup>29</sup> Section 744.331(2)(d), F.S.

<sup>30</sup> See generally, s. 945.48, F.S.

<sup>31</sup> Section 945.28(3), F.S.

<sup>32</sup> Section 27.40, F.S.



**Effective Date**

The bill takes effect July 1, 2022.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

The bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None identified.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

CS/SB 596 may have a minimal fiscal impact on state government. For example, section 12 of the bill waives the fee charged by FDLE to furnish criminal history information to the regional counsels. This may result in an insignificant cost savings to the regional counsels and a corresponding insignificant revenue loss to FDLE.. This bill does not appear to have a fiscal impact on local governments.

**VI. Technical Deficiencies:**

Section 8 of the bill should be contingent on passage of CS/SB 598, a companion public records bill.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 27.0065, 27.341, 27.511, 27.53, 39.0132, 92.153, 112.19, 320.025, 393.12, 394.916, 744.331, 943.053, 945.10, 945.48, and 985.045.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Judiciary on January 10, 2022:**

The committee substitute rewords several provisions without making substantive changes, makes technical changes, and corrects a date related to the terms of a Criminal Conflict and Civil Regional Counsel.

**B. Amendments:**

None.

By the Committee on Judiciary; and Senator Baxley

590-01914-22

2022596c1

1 A bill to be entitled  
 2 An act relating to criminal conflict and civil  
 3 regional counsels; amending s. 27.0065, F.S.;  
 4 specifying the responsibilities of regional counsels  
 5 regarding witness coordination; amending s. 27.341,  
 6 F.S.; revising legislative intent regarding electronic  
 7 filing and receipt of court documents; amending s.  
 8 27.511, F.S.; removing the requirement that regional  
 9 counsel employees be governed by Justice  
 10 Administrative Commission classification and salary  
 11 and benefits plans; modifying procedures for the  
 12 Supreme Court Judicial Nominating Commission to  
 13 nominate candidates to the Governor for regional  
 14 counsel positions; specifying that the nomination and  
 15 appointment process applies retroactively; prohibiting  
 16 the court from appointing a regional counsel to  
 17 represent a defendant who has retained private  
 18 counsel; specifying requirements for the manner of  
 19 access to court facilities for regional counsels;  
 20 amending s. 27.53, F.S.; revising requirements for the  
 21 classification and pay plan jointly developed by the  
 22 regional counsels; amending s. 39.0132, F.S.;  
 23 authorizing regional counsels to access certain  
 24 confidential information relating to proceedings  
 25 involving children under specified circumstances;  
 26 authorizing the release to regional counsels of  
 27 certain confidential information relating to  
 28 proceedings involving children under specified  
 29 circumstances; amending s. 92.153, F.S.; providing a

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**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

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30 limit on costs for documents produced in response to a  
 31 subpoena or records request by a regional counsel;  
 32 amending s. 112.19, F.S.; revising the definition of  
 33 the term "law enforcement, correctional, or  
 34 correctional probation officer" to include regional  
 35 counsel investigators for purposes of eligibility for  
 36 certain death benefits; amending s. 320.025, F.S.;  
 37 authorizing regional counsel offices to obtain  
 38 fictitious names for motor vehicle and vessel plates  
 39 or decals; amending s. 393.12, F.S.; waiving an  
 40 education requirement for the appointment of attorneys  
 41 from regional counsel offices to represent a person  
 42 with a developmental disability; amending s. 394.916,  
 43 F.S.; requiring a court to appoint a regional counsel  
 44 or other counsel to represent an alleged sexually  
 45 violent predator in the event of a conflict; amending  
 46 s. 744.331, F.S.; waiving a certain training  
 47 requirement for the appointment of attorneys from  
 48 regional counsel offices to represent an alleged  
 49 incapacitated person; amending s. 943.053, F.S.;  
 50 specifying that a regional counsel office may not be  
 51 charged a fee for accessing certain criminal justice  
 52 information; requiring the Department of Law  
 53 Enforcement to provide regional counsel offices online  
 54 access to certain information; amending s. 945.10,  
 55 F.S.; authorizing the release of certain records and  
 56 information to regional counsels; amending s. 945.48,  
 57 F.S.; authorizing the appointment of a regional  
 58 counsel to represent an inmate subject to involuntary

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59 mental health treatment if certain conditions exist;  
60 amending s. 985.045, F.S.; requiring that regional  
61 counsel offices have access to official records of  
62 juveniles whom they represent; providing an effective  
63 date.

64  
65 Be It Enacted by the Legislature of the State of Florida:

66  
67 Section 1. Section 27.0065, Florida Statutes, is amended to  
68 read:

69 27.0065 Witness coordination.—Each state attorney, ~~and~~  
70 public defender, and criminal conflict and civil regional  
71 counsel is shall be responsible for:

72 (1) Coordinating court appearances, including pretrial  
73 conferences and depositions, for all witnesses who are  
74 subpoenaed in criminal cases, including law enforcement  
75 personnel.

76 (2) Contacting witnesses and securing information necessary  
77 to place a witness on an on-call status with regard to his or  
78 her court appearance.

79 (3) Contacting witnesses to advise them not to report to  
80 court in the event the case for which they have been subpoenaed  
81 has been continued or has had a plea entered, or in the event  
82 there is any other reason why their attendance is not required  
83 on the dates they have been ordered to report.

84 (4) Contacting the employer of a witness, when necessary,  
85 to confirm that the employee has been subpoenaed to appear in  
86 court as a witness.

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88 In addition, the state attorney, ~~or~~ public defender, or criminal  
89 conflict and civil regional counsel may provide additional  
90 services to reduce time and wage losses to a minimum for all  
91 witnesses.

92 Section 2. Subsection (2) of section 27.341, Florida  
93 Statutes, is amended to read:

94 27.341 Electronic filing and receipt of court documents.—

95 (2) It is further the expectation of the Legislature that  
96 each office of the state attorney consult with the office of the  
97 public defender for the same circuit served by the office of the  
98 state attorney, the office of criminal conflict and civil  
99 regional counsel assigned to that circuit, the clerks of court  
100 for the circuit, the Florida Court Technology Commission, and  
101 any authority that governs the operation of a statewide portal  
102 for the electronic filing and receipt of court documents.

103 Section 3. Subsections (2), (3), and (7) of section 27.511,  
104 Florida Statutes, are amended, and subsection (10) is added to  
105 that section, to read:

106 27.511 Offices of criminal conflict and civil regional  
107 counsel; legislative intent; qualifications; appointment;  
108 duties.—

109 (2) Each office of criminal conflict and civil regional  
110 counsel shall be assigned to the Justice Administrative  
111 Commission for administrative purposes. The commission shall  
112 provide administrative support and service to the offices to the  
113 extent requested by each regional counsel within the available  
114 resources of the commission. The regional counsel and the  
115 offices are not subject to control, supervision, or direction by  
116 the commission in the performance of their duties, ~~but the~~

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117 ~~employees of the offices shall be governed by the classification~~  
 118 ~~plan and the salary and benefits plan for the commission.~~

119 (3) (a) Each regional counsel must be, and must have been  
 120 for the preceding 5 years, a member in good standing of The  
 121 Florida Bar. Each regional counsel shall be appointed by the  
 122 Governor and is subject to confirmation by the Senate. The  
 123 Supreme Court Judicial Nominating Commission, ~~in addition to the~~  
 124 ~~current regional counsel,~~ shall nominate ~~recommend~~ to the  
 125 Governor the currently serving regional counsel, if he or she  
 126 seeks reappointment, and may also nominate up to three ~~not fewer~~  
 127 ~~than two or more than five~~ additional qualified candidates for  
 128 appointment to each of the five regional counsel positions for  
 129 consideration by the Governor. The Governor shall appoint the  
 130 regional counsel for the five regions from among the  
 131 commission's nominations ~~recommendations,~~ or, if it is in the  
 132 best interest of the fair administration of justice, the  
 133 Governor may reject the nominations and request that the Supreme  
 134 Court Judicial Nominating Commission submit three new nominees.  
 135 The regional counsel shall be appointed to a term of 4 years,  
 136 the term beginning on October 1, 2015, with each successive term  
 137 beginning on October 1 every 4 years thereafter. The nomination  
 138 and appointment process under this paragraph shall apply  
 139 retroactively to the term beginning on October 1, 2019.

140 Vacancies shall be filled in the manner provided in paragraph  
 141 (b).

142 (b) If for any reason a regional counsel is unable to  
 143 complete a full term in office, the Governor may immediately  
 144 appoint an interim regional counsel who meets the qualifications  
 145 to be a regional counsel to serve as regional counsel for that

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146 ~~region district~~ until a new regional counsel is appointed in the  
 147 manner provided in paragraph (a). The ~~Florida~~ Supreme Court  
 148 Judicial Nominating Commission shall provide the Governor with a  
 149 list of nominees for appointment within 6 months after the date  
 150 of the vacancy. A temporary vacancy in office does not affect  
 151 the validity of any matters or activities of the office of  
 152 regional counsel.

153 (7) The court may not appoint the office of criminal  
 154 conflict and civil regional counsel to represent, even on a  
 155 temporary basis, any person who is not indigent, except to the  
 156 extent that appointment of counsel is specifically provided for  
 157 in chapters 390, 394, 415, 743, and 744 without regard to the  
 158 indigent status of the person entitled to representation. If a  
 159 defendant has retained private counsel, the court may not  
 160 appoint the office of criminal conflict and civil regional  
 161 counsel to represent that defendant simultaneously on the same  
 162 case.

163 (10) Each court shall allow for the ingress and egress to  
 164 its facilities for regional counsels and assistant regional  
 165 counsels in the same manner as is provided to public defenders  
 166 and assistant public defenders, subject to the security  
 167 requirements of each courthouse.

168 Section 4. Subsection (4) of section 27.53, Florida  
 169 Statutes, is amended to read:

170 27.53 Appointment of assistants and other staff; method of  
 171 payment.—

172 (4) The five criminal conflict and civil regional counsels  
 173 ~~counsel~~ may employ and establish, in the numbers authorized by  
 174 the General Appropriations Act, assistant regional counsels

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175 ~~counsel~~ and other staff and personnel in each judicial district  
 176 pursuant to s. 29.006, who shall be paid from funds appropriated  
 177 for that purpose. Notwithstanding s. 790.01, s. 790.02, or s.  
 178 790.25(2) (a), an investigator employed by an office of criminal  
 179 conflict and civil regional counsel, while actually carrying out  
 180 official duties, is authorized to carry concealed weapons if the  
 181 investigator complies with s. 790.25(3) (o). However, such  
 182 investigators are not eligible for membership in the Special  
 183 Risk Class of the Florida Retirement System. The five regional  
 184 counsels ~~counsel~~ shall jointly develop a coordinated ~~recommended~~  
 185 ~~modifications to the classification and pay plan for submission~~  
 186 ~~to and the salary and benefits plan for~~ the Justice  
 187 Administrative Commission, the President of the Senate, and the  
 188 Speaker of the House of Representatives by January 1 of each  
 189 year. The plan must ~~recommendations shall be submitted to the~~  
 190 ~~commission, the office of the President of the Senate, and the~~  
 191 ~~office of the Speaker of the House of Representatives before~~  
 192 ~~January 1 of each year. Such recommendations shall be developed~~  
 193 in accordance with policies and procedures of the Executive  
 194 Office of the Governor established in s. 216.181. Each assistant  
 195 regional counsel appointed by the regional counsel under this  
 196 section shall serve at the pleasure of the regional counsel.  
 197 Each investigator employed by the regional counsel shall have  
 198 full authority to serve any witness subpoena or court order  
 199 issued by any court or judge in a criminal case in which the  
 200 regional counsel has been appointed to represent the accused.

201 Section 5. Subsection (3) and paragraph (a) of subsection  
 202 (4) of section 39.0132, Florida Statutes, are amended to read:  
 203 39.0132 Oaths, records, and confidential information.—

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204 (3) The clerk shall keep all court records required by this  
 205 chapter separate from other records of the circuit court. All  
 206 court records required by this chapter shall not be open to  
 207 inspection by the public. All records shall be inspected only  
 208 upon order of the court by persons deemed by the court to have a  
 209 proper interest therein, except that, subject to the provisions  
 210 of s. 63.162, a child and the parents of the child and their  
 211 attorneys, the guardian ad litem, criminal conflict and civil  
 212 regional counsels, law enforcement agencies, and the department  
 213 and its designees shall always have the right to inspect and  
 214 copy any official record pertaining to the child. The Justice  
 215 Administrative Commission may inspect court dockets required by  
 216 this chapter as necessary to audit compensation of court-  
 217 appointed attorneys. If the docket is insufficient for purposes  
 218 of the audit, the commission may petition the court for  
 219 additional documentation as necessary and appropriate. The court  
 220 may permit authorized representatives of recognized  
 221 organizations compiling statistics for proper purposes to  
 222 inspect and make abstracts from official records, under whatever  
 223 conditions upon their use and disposition the court may deem  
 224 proper, and may punish by contempt proceedings any violation of  
 225 those conditions.

226 (4)(a)1. All information obtained pursuant to this part in  
 227 the discharge of official duty by any judge, employee of the  
 228 court, authorized agent of the department, correctional  
 229 probation officer, or law enforcement agent is confidential and  
 230 exempt from s. 119.07(1) and may not be disclosed to anyone  
 231 other than the authorized personnel of the court, the department  
 232 and its designees, correctional probation officers, law

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233 enforcement agents, the guardian ad litem, criminal conflict and  
 234 civil regional counsels, and others entitled under this chapter  
 235 to receive that information, except upon order of the court.

236 2.a. The following information held by a guardian ad litem  
 237 is confidential and exempt from s. 119.07(1) and s. 24(a), Art.  
 238 I of the State Constitution:

239 (I) Medical, mental health, substance abuse, child care,  
 240 education, law enforcement, court, social services, and  
 241 financial records.

242 (II) Any other information maintained by a guardian ad  
 243 litem which is identified as confidential information under this  
 244 chapter.

245 b. Such confidential and exempt information may not be  
 246 disclosed to anyone other than the authorized personnel of the  
 247 court, the department and its designees, correctional probation  
 248 officers, law enforcement agents, guardians ad litem, and others  
 249 entitled under this chapter to receive that information, except  
 250 upon order of the court.

251 Section 6. Paragraph (a) of subsection (2) of section  
 252 92.153, Florida Statutes, is amended to read:

253 92.153 Production of documents by witnesses; reimbursement  
 254 of costs.—

255 (2) REIMBURSEMENT OF A DISINTERESTED WITNESS.—

256 (a) In any proceeding, a disinterested witness shall be  
 257 paid for any costs the witness reasonably incurs either directly  
 258 or indirectly in producing, searching for, reproducing, or  
 259 transporting documents pursuant to a summons; however, the cost  
 260 of documents produced pursuant to a subpoena or records request  
 261 by a state attorney, a ~~or~~ public defender, or a criminal

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262 conflict and civil regional counsel may not exceed 15 cents per  
 263 page and \$10 per hour for research or retrieval.

264 Section 7. Paragraph (b) of subsection (1) of section  
 265 112.19, Florida Statutes, is amended to read:

266 112.19 Law enforcement, correctional, and correctional  
 267 probation officers; death benefits.—

268 (1) As used in this section, the term:

269 (b) "Law enforcement, correctional, or correctional  
 270 probation officer" means any officer as defined in s. 943.10(14)  
 271 or employee of the state or any political subdivision of the  
 272 state, including any law enforcement officer, correctional  
 273 officer, correctional probation officer, state attorney  
 274 investigator, ~~or~~ public defender investigator, or criminal  
 275 conflict and civil regional counsel investigator, whose duties  
 276 require such officer or employee to investigate, pursue,  
 277 apprehend, arrest, transport, or maintain custody of persons who  
 278 are charged with, suspected of committing, or convicted of a  
 279 crime; and the term includes any member of a bomb disposal unit  
 280 whose primary responsibility is the location, handling, and  
 281 disposal of explosive devices. The term also includes any full-  
 282 time officer or employee of the state or any political  
 283 subdivision of the state, certified pursuant to chapter 943,  
 284 whose duties require such officer to serve process or to attend  
 285 a session of a circuit or county court as bailiff.

286 Section 8. Subsection (1) of section 320.025, Florida  
 287 Statutes, is amended to read:

288 320.025 Registration certificate and license plate or decal  
 289 issued under fictitious name; application.—

290 (1) A confidential registration certificate and

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291 registration license plate or decal shall be issued under a  
 292 fictitious name only for a motor vehicle or vessel owned or  
 293 operated by a law enforcement agency of state, county,  
 294 municipal, or federal government; ~~the~~ the Attorney General's  
 295 Medicaid Fraud Control Unit; ~~or~~ any state public defender's  
 296 office; or any criminal conflict and civil regional counsel  
 297 office. The requesting agency shall file a written application  
 298 with the department, on forms furnished by the department,  
 299 including which includes a statement that the license plate or  
 300 decal will be used for certain activities by the Attorney  
 301 General's Medicaid Fraud Control Unit; any ~~or~~ law enforcement or  
 302 ~~any~~ state public defender's office; or a criminal conflict and  
 303 civil regional counsel office which requires the activities  
 304 ~~requiring~~ concealment of publicly leased or owned motor vehicles  
 305 or vessels and a statement of the position classifications of  
 306 the individuals who are authorized to use the license plate or  
 307 decal. The department may modify its records to reflect the  
 308 fictitious identity of the owner or lessee until such time as  
 309 the license plate or decal and registration certificate are  
 310 surrendered to it.

311 Section 9. Paragraph (a) of subsection (5) of section  
 312 393.12, Florida Statutes, is amended to read:

313 393.12 Capacity; appointment of guardian advocate.—

314 (5) COUNSEL.—Within 3 days after a petition has been filed,  
 315 the court shall appoint an attorney to represent a person with a  
 316 developmental disability who is the subject of a petition to  
 317 appoint a guardian advocate. The person with a developmental  
 318 disability may substitute his or her own attorney for the  
 319 attorney appointed by the court.

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320 (a) The court shall initially appoint a private attorney  
 321 who shall be selected from the attorney registry compiled  
 322 pursuant to s. 27.40. Such attorney must have completed a  
 323 minimum of 8 hours of education in guardianship. The court may  
 324 waive this requirement for an attorney who has served as a  
 325 court-appointed attorney in guardian advocate proceedings or as  
 326 an attorney of record for guardian advocates for at least 3  
 327 years. This education requirement does not apply to a court-  
 328 appointed attorney who is employed by an office of criminal  
 329 conflict and civil regional counsel.

330 Section 10. Subsection (3) of section 394.916, Florida  
 331 Statutes, is amended to read:

332 394.916 Trial; counsel and experts; indigent persons;  
 333 jury.—

334 (3) At all adversarial proceedings under this act, the  
 335 person subject to this act is entitled to the assistance of  
 336 counsel, and, if the person is indigent, the court must ~~shall~~  
 337 appoint the public defender or, if a conflict exists, the court  
 338 must appoint a criminal conflict and civil regional counsel or  
 339 other counsel to assist the person.

340 Section 11. Paragraph (d) of subsection (2) of section  
 341 744.331, Florida Statutes, is amended to read:

342 744.331 Procedures to determine incapacity.—

343 (2) ATTORNEY FOR THE ALLEGED INCAPACITATED PERSON.—

344 (d) An attorney seeking to be appointed by a court for  
 345 incapacity and guardianship proceedings must have completed a  
 346 minimum of 8 hours of education in guardianship. A court may  
 347 waive the initial training requirement for an attorney who has  
 348 served as a court-appointed attorney in incapacity proceedings

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349 or as an attorney of record for guardians for not less than 3  
 350 years. This training requirement does not apply to a court-  
 351 appointed attorney employed by an office of criminal conflict  
 352 and civil regional counsel.

353 Section 12. Paragraph (e) of subsection (3) and subsection  
 354 (7) of section 943.053, Florida Statutes, are amended to read:

355 943.053 Dissemination of criminal justice information;  
 356 fees.—

357 (3)

358 (e) The fee per record for criminal history information  
 359 provided pursuant to this subsection and s. 943.0542 is \$24 per  
 360 name submitted, except that the fee for the guardian ad litem  
 361 program and vendors of the Department of Children and Families,  
 362 the Department of Juvenile Justice, the Agency for Persons with  
 363 Disabilities, and the Department of Elderly Affairs is shall be  
 364 \$8 for each name submitted; the fee for a state criminal history  
 365 provided for application processing as required by law to be  
 366 performed by the Department of Agriculture and Consumer Services  
 367 is shall be \$15 for each name submitted; and the fee for  
 368 requests under s. 943.0542, which implements the National Child  
 369 Protection Act, is shall be \$18 for each volunteer name  
 370 submitted. An office ~~The state offices~~ of the public defender or  
 371 an office of criminal conflict and civil regional counsel may  
 372 ~~shall~~ not be assessed a fee for Florida criminal history  
 373 information or wanted person information.

374 (7) Notwithstanding any other provision of law, the  
 375 department shall provide to each office of the public defender  
 376 and each office of criminal conflict and civil regional counsel  
 377 online access to criminal records of this state which are not

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378 exempt from disclosure under chapter 119 or confidential under  
 379 law. Such access shall be used solely in support of the duties  
 380 of a public defender as provided in s. 27.51, a criminal  
 381 conflict and civil regional counsel as provided in s. 27.511, or  
 382 ~~of~~ any attorney specially assigned as authorized in s. 27.53 in  
 383 the representation of any person who is determined indigent as  
 384 provided in s. 27.52. The costs of establishing and maintaining  
 385 such online access must shall be borne by the office to which  
 386 the access has been provided.

387 Section 13. Paragraph (d) of subsection (2) of section  
 388 945.10, Florida Statutes, is amended to read:

389 945.10 Confidential information.—

390 (2) The records and information specified in paragraphs  
 391 (1)(a)-(i) may be released as follows unless expressly  
 392 prohibited by federal law:

393 (d) Information specified in paragraph (1)(b) to a public  
 394 defender or a criminal conflict and civil regional counsel  
 395 representing a defendant, except those portions of the records  
 396 containing a victim's statement or address, or the statement or  
 397 address of a relative of the victim. A request for records or  
 398 information pursuant to this paragraph need not be in writing.

399  
 400 Records and information released under this subsection remain  
 401 confidential and exempt from the provisions of s. 119.07(1) and  
 402 s. 24(a), Art. I of the State Constitution when held by the  
 403 receiving person or entity.

404 Section 14. Subsection (3) of section 945.48, Florida  
 405 Statutes, is amended to read:

406 945.48 Rights of inmates provided mental health treatment;

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407 procedure for involuntary treatment.-

408 (3) PROCEDURE FOR INVOLUNTARY TREATMENT OF INMATES.-

409 Involuntary mental health treatment of an inmate who refuses  
410 treatment that is deemed to be necessary for the appropriate  
411 care of the inmate and the safety of the inmate or others may be  
412 provided at a mental health treatment facility. The warden of  
413 the institution containing the mental health treatment facility  
414 shall petition the circuit court serving the county in which the  
415 mental health treatment facility is located for an order  
416 authorizing the treatment of the inmate. The inmate shall be  
417 provided with a copy of the petition along with the proposed  
418 treatment; the basis for the proposed treatment; the names of  
419 the examining experts; and the date, time, and location of the  
420 hearing. The inmate may have an attorney represent him or her at  
421 the hearing, and, if the inmate is indigent, the court must  
422 ~~shall~~ appoint the office of the public defender to represent the  
423 inmate at the hearing. If the office of the public defender  
424 withdraws from the appointment due to a conflict, the court must  
425 appoint a criminal conflict and civil regional counsel or  
426 private counsel pursuant to s. 27.40(1) to represent the inmate  
427 at the hearing. An attorney representing the inmate shall have  
428 access to the inmate and any records, including medical or  
429 mental health records, which are relevant to the representation  
430 of the inmate.

431 Section 15. Subsection (2) of section 985.045, Florida  
432 Statutes, is amended to read:

433 985.045 Court records.-

434 (2) The clerk shall keep all official records required by  
435 this section separate from other records of the circuit court,

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436 except those records pertaining to motor vehicle violations,  
437 which shall be forwarded to the Department of Highway Safety and  
438 Motor Vehicles. Except as provided in ss. 943.053 and  
439 985.04(6)(b) and (7), official records required by this chapter  
440 are not open to inspection by the public, but may be inspected  
441 only upon order of the court by persons deemed by the court to  
442 have a proper interest therein, except that a child and the  
443 parents, guardians, or legal custodians of the child and their  
444 attorneys, law enforcement agencies, the Department of Juvenile  
445 Justice and its designees, the Florida Commission on Offender  
446 Review, the Department of Corrections, and the Justice  
447 Administrative Commission shall always have the right to inspect  
448 and copy any official record pertaining to the child. Offices of  
449 the public defender and criminal conflict and civil regional  
450 counsel ~~offices~~ shall have access to official records of  
451 juveniles on whose behalf they are expected to appear in  
452 detention or other hearings before an appointment of  
453 representation. The court may permit authorized representatives  
454 of recognized organizations compiling statistics for proper  
455 purposes to inspect, and make abstracts from, official records  
456 under whatever conditions upon the use and disposition of such  
457 records the court may deem proper and may punish by contempt  
458 proceedings any violation of those conditions.

459 Section 16. This act shall take effect July 1, 2022.

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# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

## COMMITTEES:

Ethics and Elections, *Chair*  
*Appropriations*  
Appropriations Subcommittee on Criminal and Civil Justice  
Community Affairs  
Criminal Justice  
Health Policy  
Judiciary  
Rules

## SENATOR DENNIS BAXLEY

12th District

## JOINT COMMITTEE:

Joint Legislative Auditing Committee, *Alternating Chair*

January 11, 2022

The Honorable Senator Keith Perry  
406 Senate Office Building  
400 South Monroe Street  
Tallahassee, FL 32399

Dear Chairman Perry,

I would like to request that CS/SB 596 Criminal Conflict & Civil Regional Counsels and CS/SB 598 Public Records Exemption/Criminal Conflict & Civil Regional Counsels be heard in the next Judiciary Committee meeting.

In 2007, the Regional Counsels were created to contain rapidly increasing costs of the state's obligation for defense counsel. They serve in a closely similar role as the Public Defender and these bills bring the statutes up to date.

This legislation aims to clarify the Regional Counsels role in parts the Florida justice system and to provide much needed clarification on many operational facets of the Regional Counsels. And, CS/SB 598 allows for Regional Counsel state owned vehicles used by investigators to have a confidential license plate just as the investigators of similar offices.

I appreciate your favorable consideration.

Onward & Upward,



Senator Dennis Baxley  
Senate District 12

cc: Marti Harkness, Staff Director

DKB/dd

## REPLY TO:

- 206 South Hwy 27/441, Lady Lake, Florida 32159 (352) 750-3133
- 315 SE 25th Avenue, Ocala, Florida 34471 (352) 789-6720
- 412 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5012

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**Wilton Simpson**  
President of the Senate

**Aaron Bean**  
President Pro Tempore

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

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**BILL:** CS/SB 598

**INTRODUCER:** Judiciary Committee and Senator Baxley

**SUBJECT:** Public Records/Criminal Conflict and Civil Regional Counsel Office

**DATE:** January 18, 2022      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bond</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
2.	<u>Dale</u>	<u>Harkness</u>	<u>ACJ</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>AP</u>	_____

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Technical Changes

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**I. Summary:**

CS/SB 598 is the public records exemption linked to CS/SB 596. The bill exempts the records necessary to conceal that the owner or operator of a motor vehicle or vessel is an Office of Criminal Conflict and Civil Regional Counsel.

This bill is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2027, unless reviewed and saved from the repeal through reenactment by the Legislature.

Because this bill creates a public records exemption, it will require a two-thirds vote of each house in order to pass.

This bill takes effect on the same date that CS/SB 596 or similar legislation takes effect, which is July 1, 2022.

**II. Present Situation:**

The five Offices of Criminal Conflict and Civil Regional Counsel represent defendants in criminal cases where the office of a public defender has a conflict of interest. In the process of defending their clients, an Office of Criminal Conflict and Civil Regional Counsel, just like a public defender, may use the services of an investigator. Investigators are safer and more effective when their identity is confidential. One means that investigators have to maintain

confidentiality is through the use of false motor vehicle registrations. Currently, the records of the Department of Highway Safety and Motor Vehicles showing that the owner of a motor vehicle is a law enforcement agency, a state public defender, or the Attorney General's Medicaid Fraud Control Unit are exempt from public records law.<sup>1</sup>

### **Access to Public Records - Generally**

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.<sup>2</sup> The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.<sup>3</sup>

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the Legislature.<sup>4</sup> Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.<sup>5</sup> Lastly, chapter 119, F.S., known as the Public Records Act, provides requirements for public records held by executive agencies.

### **Executive Agency Records – The Public Records Act**

The Public Records Act provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.<sup>6</sup>

Section 119.011(12), F.S., defines “public records” to include:

All documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connections with the transaction of official business by any agency.

---

<sup>1</sup> Section 320.025(3), F.S.

<sup>2</sup> FLA. CONST. art. I, s. 24(a).

<sup>3</sup> *Id.*

<sup>4</sup> See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020)

<sup>5</sup> *State v. Wooten*, 260 So. 3d 1060 (Fla. 4<sup>th</sup> DCA 2018).

<sup>6</sup> Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business that are used to “perpetuate, communicate, or formalize knowledge of some type.”<sup>7</sup>

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.<sup>8</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>9</sup>

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.<sup>10</sup> The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.<sup>11</sup>

General exemptions from the public records requirements are contained in the Public Records Act.<sup>12</sup> Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.<sup>13</sup>

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act *and confidential*.<sup>14</sup> Records designated as “confidential and exempt” are not subject to inspection by the public and may only be released under the circumstances defined by statute.<sup>15</sup> Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.<sup>16</sup>

---

<sup>7</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

<sup>8</sup> Section 119.07(1)(a), F.S.

<sup>9</sup> Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

<sup>10</sup> FLA. CONST. art. I, s. 24(c).

<sup>11</sup> *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

<sup>12</sup> *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

<sup>13</sup> *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

<sup>14</sup> *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5<sup>th</sup> DCA 2004).

<sup>15</sup> *Id.*

<sup>16</sup> *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5<sup>th</sup> DCA 1991).

## Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act<sup>17</sup> (the Act), prescribe a legislative review process for newly created or substantially amended<sup>18</sup> public records or open meetings exemptions, with specified exceptions.<sup>19</sup> The Act requires the repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>20</sup>

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.<sup>21</sup> An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;<sup>22</sup>
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however; only personal identifying information is exempt;<sup>23</sup> or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.<sup>24</sup>

The Act also requires specified questions to be considered during the review process.<sup>25</sup> In examining an exemption, the Act directs the Legislature to question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.<sup>26</sup> If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote

---

<sup>17</sup> Section 119.15, F.S.

<sup>18</sup> An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

<sup>19</sup> Section 119.15(2)(a) and (b), F.S., provides that exemptions required by federal law or applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

<sup>20</sup> Section 119.15(3), F.S.

<sup>21</sup> Section 119.15(6)(b), F.S.

<sup>22</sup> Section 119.15(6)(b)1., F.S.

<sup>23</sup> Section 119.15(6)(b)2., F.S.

<sup>24</sup> Section 119.15(6)(b)3., F.S.

<sup>25</sup> Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

<sup>26</sup> See *generally* s. 119.15, F.S.

for passage are *not* required. If the Legislature allows an exemption to expire, the previously exempt records will remain exempt unless otherwise provided by law.<sup>27</sup>

### **III. Effect of Proposed Changes:**

This bill adds Criminal Conflict and Civil Regional Counsels to the list of entities that may be issued confidential motor vehicle or vessel registration certificates and license plates or decals under a fictitious name.

The bill provides a public necessity statement as required by Article I, s. 24(c) of the State Constitution. The public necessity statement provides that:

The Legislature finds that it is a public necessity that all records relating to the application for a confidential registration certificate and registration license plate or decal submitted by an office of criminal conflict and civil regional counsel, and any other records necessary to carry out the intended purpose of s. 320.025, Florida Statutes, be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Investigations by an office of criminal conflict and civil regional counsel may be jeopardized by the registration of motor vehicles under the office's name or under the names of the office's investigators in that persons under investigation may acquire such registration information in order to seek retaliation against the office or its investigators. Authorizing offices of criminal conflict and civil regional counsel to obtain confidential registration certificates and registration license plates or decals in the same manner as other law enforcement agencies would better ensure the safety of the regional counsel offices' investigators in performing their official duties.

The bill is subject to the Open Government Sunset Review Act and is repealed on October 2, 2027, unless reviewed and saved from repeal through reenactment by the Legislature

The bill takes effect on the same date as CS/SB 596 or similar legislation takes effect. CS/SB 596 is effective on July 1, 2022.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

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<sup>27</sup> Section 119.15(7), F.S.



**B. Public Records/Open Meetings Issues:****Vote Requirement**

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill enacts a new exemption for certain motor vehicle and vessel registration records, thus, the bill requires a two-thirds vote to be enacted.

**Public Necessity Statement**

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. Section 2. of the bill contains a statement of public necessity for the exemption.

**Breadth of Exemption**

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect investigators who work for an office of criminal conflict and civil regional counsel. This bill exempts only certain motor vehicle and vessel registration records from the public records requirements. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None identified.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

C. Government Sector Impact:

CS/SB 598 does not appear to have a fiscal impact on state or local governments.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 320.025 of the Florida Statutes.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Judiciary on January 10, 2022:**

The committee substitute references CS/SB 596, a linked substantive bill.

B. Amendments:

None.

By the Committee on Judiciary; and Senator Baxley

590-01915-22

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A bill to be entitled

An act relating to public records; amending s.

320.025, F.S.; expanding a public records exemption to include all records pertaining to a registration application submitted by any criminal conflict and civil regional counsel office for a registration certificate and registration license plate or decal issued under a fictitious name; providing for future legislative review and repeal; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Subsection (3) of section 320.025, Florida Statutes, is amended, and subsection (4) is added to that section, to read:

320.025 Registration certificate and license plate or decal issued under fictitious name; application.—

(3) This section constitutes an exception to other statutes relating to falsification of public records, false swearing, and similar matters. All records relating to the registration application of the Attorney General's Medicaid Fraud Control Unit, a law enforcement agency, ~~or~~ any state public defender's office, or any office of criminal conflict and civil regional counsel, and records necessary to carry out the intended purpose of this section, are exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State Constitution as long as the information is retained by the department. This section does not

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**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

590-01915-22

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prohibit other personations, fabrications, or creations of false identifications by the Attorney General's Medicaid Fraud Control Unit, ~~or~~ law enforcement or public defender's officers, or a regional counsel office in the official performance of covert operations.

(4) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2027, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that all records relating to the application for a confidential registration certificate and registration license plate or decal submitted by an office of criminal conflict and civil regional counsel, and any other records necessary to carry out the intended purpose of s. 320.025, Florida Statutes, be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Investigations by an office of criminal conflict and civil regional counsel may be jeopardized by the registration of motor vehicles under the office's name or under the names of the office's investigators in that persons under investigation may acquire such registration information in order to seek retaliation against the office or its investigators. Authorizing offices of criminal conflict and civil regional counsel to obtain confidential registration certificates and registration license plates or decals in the same manner as other law enforcement agencies would better ensure the safety of the regional counsel offices' investigators in performing their official duties.

Section 3. This act shall take effect on the same date that

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**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

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59 SB 596 or similar legislation takes effect, if such legislation  
60 is adopted in the same legislative session or an extension  
61 thereof and becomes a law.

# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

## COMMITTEES:

Ethics and Elections, *Chair*  
*Appropriations*  
Appropriations Subcommittee on Criminal and Civil Justice  
Community Affairs  
Criminal Justice  
Health Policy  
Judiciary  
Rules

## SENATOR DENNIS BAXLEY

12th District

## JOINT COMMITTEE:

Joint Legislative Auditing Committee, *Alternating Chair*

January 11, 2022

The Honorable Senator Keith Perry  
406 Senate Office Building  
400 South Monroe Street  
Tallahassee, FL 32399

Dear Chairman Perry,

I would like to request that CS/SB 596 Criminal Conflict & Civil Regional Counsels and CS/SB 598 Public Records Exemption/Criminal Conflict & Civil Regional Counsels be heard in the next Judiciary Committee meeting.

In 2007, the Regional Counsels were created to contain rapidly increasing costs of the state's obligation for defense counsel. They serve in a closely similar role as the Public Defender and these bills bring the statutes up to date.

This legislation aims to clarify the Regional Counsels role in parts the Florida justice system and to provide much needed clarification on many operational facets of the Regional Counsels. And, CS/SB 598 allows for Regional Counsel state owned vehicles used by investigators to have a confidential license plate just as the investigators of similar offices.

I appreciate your favorable consideration.

Onward & Upward,



Senator Dennis Baxley  
Senate District 12

cc: Marti Harkness, Staff Director

DKB/dd

## REPLY TO:

- 206 South Hwy 27/441, Lady Lake, Florida 32159 (352) 750-3133
- 315 SE 25th Avenue, Ocala, Florida 34471 (352) 789-6720
- 412 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5012

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**Wilton Simpson**  
President of the Senate

**Aaron Bean**  
President Pro Tempore