

By Senator Williams

4-866-98

1                                   A bill to be entitled  
2           An act relating to the representation of  
3           indigent persons charged with capital crimes;  
4           creating s. 925.0352, F.S.; providing for the  
5           Governor to assign a public defender from  
6           another circuit to represent an indigent  
7           defendant charged with a capital crime if a  
8           conflict of interest exists for the public  
9           defender in the circuit where the crime  
10          occurred; providing for the assignment to  
11          expire after a specified period; providing for  
12          an assistant public defender to perform the  
13          assignment; providing for the expenses of such  
14          representation to be paid by an appropriation  
15          to the circuit courts; amending s. 27.51, F.S.,  
16          relating to the duties of the public defender;  
17          conforming provisions to changes made by the  
18          act; amending s. 915.035, F.S.; deleting a  
19          requirement that a public defender move the  
20          court to assign an attorney in private practice  
21          to defend an indigent defendant charged with a  
22          capital crime; amending ss. 925.036, 925.037,  
23          F.S., relating to appointed counsel and the  
24          payment of fees; conforming provisions to  
25          changes made by the act; providing an effective  
26          date.

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28           WHEREAS, the costs incurred for criminal defense by a  
29   public defender in a capital case are properly classified as  
30   expenses under Article V of the State Constitution, and  
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1           WHEREAS, the public defenders of this state are  
2 constitutional officers rather than county officers, and

3           WHEREAS, the costs to a county for the public defense  
4 of indigent defendants charged with capital crimes bear no  
5 relationship to the functions of counties to provide certain  
6 facilities to public defenders or the rights of the accused to  
7 representation, and

8           WHEREAS, county payment of appointed defense counsel in  
9 capital cases is inconsistent with the payment of salaries and  
10 expenses for public defenders by legislative appropriation,  
11 and

12           WHEREAS, rural counties have extremely scarce resources  
13 with which to finance appointed defense counsel, and certain  
14 less-populated counties could be bankrupted by a single  
15 complex capital case if private counsel must be appointed,  
16 which burden on county budgets endangers the constitutional  
17 right to representation in capital cases, NOW, THEREFORE,

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

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21           Section 1. Section 925.0352, Florida Statutes, is  
22 created to read:

23           925.0352 Assigning public defenders to other circuits  
24 in capital cases; public defenders to assist in other circuits  
25 in capital cases.--

26           (1)(a) If the court determines that the defendant in a  
27 capital case is insolvent and desires counsel, it shall  
28 appoint a public defender to represent the defendant. If the  
29 public defender appointed to represent two or more defendants  
30 found to be insolvent determines that his office is unable to  
31 provide counsel to all of the defendants without a conflict of

1 interest, or, if for any other good and sufficient reason the  
2 Governor determines that justice would be best served, the  
3 Governor may, by executive order filed with the Secretary of  
4 State, order an exchange of circuits or of courts between the  
5 public defender and any other public defender in the state or  
6 order an assignment of any public defender in the state to  
7 discharge the duties of the public defender with respect to  
8 one or more representations of an insolvent defendant charged  
9 with a capital crime as specified in the executive order of  
10 the Governor.

11 (b) Any exchange or assignment of any public defender  
12 under this section to a particular circuit expires 6 months  
13 after the date of the exchange or assignment unless an  
14 extension is approved by order of the Supreme Court upon  
15 application of the Governor showing good and sufficient cause  
16 to extend such exchange or assignment.

17 (c) When a public defender is exchanged or assigned,  
18 he or she may designate one or more assistant public defenders  
19 to perform the duties assigned under the executive order.

20 (2) The Governor may for good and sufficient cause  
21 require any public defender in the state to proceed to any  
22 place in the state and assist the public defender in that  
23 circuit in representing an indigent defendant in a capital  
24 case. Any public defender in this state who is directed by the  
25 Governor to assist any other public defender in representing  
26 an indigent defendant in a capital case shall immediately  
27 proceed to the place designated and assist the public defender  
28 of the circuit in which such place is located.

29 (3) When any public defender is required to go beyond  
30 the limits of the circuit in which he or she holds office to  
31 comply with this section, the expenses incurred shall be borne

1 by the state and shall be paid from the appropriation provided  
2 by the state for circuit courts. The fees and costs of an  
3 exchanged or assigned public defender may not be borne by the  
4 county in which the trial is held or originated.

5 Section 2. Subsection (2) of section 27.51, Florida  
6 Statutes, is amended to read:

7 27.51 Duties of public defender.--

8 (2) The court may not appoint the public defender to  
9 represent, even on a temporary basis, any person who is not  
10 indigent. The court, however, may appoint private counsel in  
11 capital cases as provided in s. 925.035 or s. 925.0352.

12 Section 3. Subsections (1) and (6) of section 925.035,  
13 Florida Statutes, are amended to read:

14 925.035 Appointment and compensation of an attorney in  
15 capital cases; appeals from judgments imposing the death  
16 penalty.--

17 (1) If the court determines that the defendant in a  
18 capital case is insolvent and desires counsel, it shall  
19 appoint a public defender to represent the defendant. If the  
20 public defender appointed to represent two or more defendants  
21 found to be insolvent determines that neither the public  
22 defender nor her or his staff can counsel all of the accused  
23 without conflict of interest, the Governor shall assign a  
24 public defender from another circuit as provided in s.  
25 925.0352 ~~it shall be the public defender's duty to move the~~  
26 ~~court to appoint one or more members of The Florida Bar, who~~  
27 ~~are in no way affiliated with the public defender in her or~~  
28 ~~his capacity as such or in her or his private practice, to~~  
29 ~~represent those accused.~~ The attorney shall be allowed  
30 compensation, as provided for in s. 925.036 for representing a  
31 defendant.

1           (6) All compensation and costs provided for in this  
2 section, except as provided in subsection (4) or s.  
3 925.0352(3), shall be paid by the county in which the trial is  
4 held ~~unless the trial was moved to that county on the ground~~  
5 ~~that a fair and impartial trial could not be held in another~~  
6 ~~county, in which event the compensation and costs shall be~~  
7 ~~paid by the original county from which the cause was removed.~~

8           Section 4. Subsection (1) of section 925.036, Florida  
9 Statutes, is amended to read:

10           925.036 Appointed counsel; compensation; reassignment  
11 of case prohibited.--

12           (1) An attorney appointed pursuant to s. 925.035, s.  
13 925.0352, or s. 27.53 shall, at the conclusion of the  
14 representation, be compensated at an hourly rate fixed by the  
15 chief judge or senior judge of the circuit in an amount not to  
16 exceed the prevailing hourly rate for similar representation  
17 rendered in the circuit; however, such compensation shall not  
18 exceed the maximum fee limits established by this section. In  
19 addition, such attorney shall be reimbursed for expenses  
20 reasonably incurred, including the costs of transcripts  
21 authorized by the court. If the attorney is representing a  
22 defendant charged with more than one offense in the same case,  
23 the attorney shall be compensated at the rate provided for the  
24 most serious offense for which she or he represented the  
25 defendant. This section does not allow stacking of the fee  
26 limits established by this section.

27           Section 5. Subsection (1) of section 925.037, Florida  
28 Statutes, is amended to read:

29           925.037 Reimbursement of counties for fees paid to  
30 appointed counsel; circuit conflict committees.--

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1           (1) Funds shall be appropriated each fiscal year to  
2 reimburse counties for fees paid to certain court-appointed  
3 attorneys. In order for a fee paid by a county to be  
4 reimbursable from such funds, the attorney must have been  
5 appointed pursuant to s. 27.53(3), or s. 925.035, or s.  
6 925.0352; must have been approved for such appointment by the  
7 circuit conflict committee prior to appointment; ~~and must~~  
8 have been compensated within the maximum fee limits provided  
9 by s. 925.036, except that a fee is also reimbursable from  
10 such funds if paid by a county pursuant to a finding by a  
11 circuit court that the criminal case involved extraordinary  
12 circumstances such that the fee limits were inapplicable as a  
13 matter of law.

14           Section 6. This act shall take effect July 1, 1998.

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SENATE SUMMARY

Authorizes the Governor, by executive order, to assign a public defender from an outside circuit to represent an indigent defendant charged with a capital crime if a conflict exists for the public defender within the circuit where the crime occurred. Provides for the assignment to expire after 6 months, unless an extension is approved by the Governor. Provides for the costs of such representation to be paid by an appropriation to the circuit courts.