

**The Florida Senate**  
**PROFESSIONAL STAFF ANALYSIS AND ECONOMIC 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: Criminal and Civil Justice Appropriations Committee

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BILL: PCS/SB 1088

INTRODUCER: For consideration by the Criminal and Civil Justice Appropriations Committee

SUBJECT: Due Process

DATE: March 19, 2007

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hendon</u>	<u>Sadberry</u>	<u>JA</u>	<u>Pre-meeting</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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**I. Summary:**

The bill revises the process whereby indigent persons and certain other eligible persons are provided criminal and civil representation at state expense. The current system uses private attorneys for criminal cases when a public defender has a conflict of interest, in dependency and termination of parental rights proceedings, as well as certain other civil proceedings as authorized by law. The bill creates five offices of criminal conflict and civil regional counsel to provide this representation. When the regional counsels have a conflict of interest, the case will be assigned to a private attorney.

This bill substantially amends 27.40, 27.512, 27.52, 27.525, 27.53, 27.5301, 27.5303, 27.5304, 27.54, 27.59, 28.24, 28.345, 29.001, 29.006, 29.007, 29.008, 29.015, 29.018, 39.815, 43.16, 57.082, 110.205, 125.69, 216.011, 744.331, and 938.29; creates 27.405, 27.425, and 27.511; and repeals 27.42, Florida Statutes.

**II. Present Situation:**

One of the costs to the state court system that is now a state responsibility under Revision 7 to Article V of the Florida Constitution is the payment of court appointed counsel. Such private counsel is appointed for indigent criminal defendants where the public defender has a conflict of interest in representing the defendant and for indigent parents involved in dependency proceedings.

To implement Revision 7 to Article V, the legislature created the Article V indigent services committee in each judicial circuit to maintain a registry of attorneys, from which private counsel may be appointed by the court to provide representation. Currently, an appointed attorney is

entitled to payment upon full performance of his or duties, approval of the payment by the court, and submission of a payment request to the Justice Administrative Commission (JAC). In the current fiscal year, \$44 million was appropriated for criminal conflict counsel; however, expenditures are estimated to be \$59 million. The legislature appropriated \$24.9 million for dependency and other civil case costs in the current year, and the expenditures are estimated to be \$31.2 million. The causes of these deficits appear to be both an increase in the number of cases and in the cost per case.

### III. Effect of Proposed Changes:

**Section 1.** Effective, October 1, 2007, section 27.40, F.S., relating to court appointed counsel appointments, is amended to clarify that the criminal conflict and civil regional counsel shall be appointed when the public defender is unable to provide representation due to a conflict of interest. Private counsel would be appointed under the bill when the regional office has a conflict of interest. The chief judge in each circuit develops the registry of private attorneys and the clerk of the court maintains the list and provides the name of the next available attorney to the court. The bill requires the private attorneys on the registry to report changes in their status to the clerk of court. The chief judge would provide a copy of the registry to various entities. If no registry attorney is available, then the judge may appoint an attorney not on the registry and that attorney would be eligible for payment pursuant to s. 27.5304, F.S. Other language relating to payment of private counsel is deleted or moved to s. 27.5304, F.S.

**Section 2.** Effective October 1, 2007, section 27.405, F.S. is created to specify reporting requirements of the Justice Administrative Commission on court appointed counsel. These requirements are currently in s. 27.42, F.S. which the bill repeals.

**Section 3.** Effective October 1, 2007, section 27.425, F.S., is created relating to due process service rates. The bill sets the rates for fiscal year 2007-08 as those that were in existence on June 30, 2007. After that, the chief judge in each circuit would recommend compensation rates for non-attorney due process services, such as court reporters, expert witnesses, etc. The bill requires the Office of State Courts Administrator to include these proposed rates in its legislative budget request and the legislature would set the rates each year in the General Appropriations Act.

**Section 4.** Section 27.511, F.S., is created to establish the criminal conflict and civil counsel regional counsels. The regions are the same geographic boundaries of the district courts of appeal. The regional counsels are assigned to the Justice Administrative Commission for administrative purposes only. The Justice Administrative Commission is to provide administrative support to the new offices. The regional counsels must have been a member of the Florida Bar in good standing for the preceding 5 years, are appointed by the Governor and are confirmed by the Senate. The Supreme Court Judicial Nominating Commission shall recommend to the Governor three candidates for each counsel. The regional counsels will serve a term of four years beginning July 1, 2007. The bill provides that effective October 1, 2007, when the public defender has a conflict the court shall assign the case to the regional counsels. The regional counsel shall provide representation on the same types of cases as the public defender.

**Section 5.** Effective July 1, 2007, section 27.512, F.S. is amended to make conforming changes to the requirements for orders of no imprisonment.

**Section 6.** Effective October 1, 2007, section 27.52, F.S. relating to determination of indigent status is amended to make conforming changes for the regional counsels.

**Section 7.** Effective July 1, 2007, section 27.525, F.S., is amended to allow the Legislature to make appropriations from the Indigent Criminal Defense Trust Fund to the regional counsels.

**Section 8.** Effective July 1, 2007, section 27.53, F.S., is amended to allow the regional counsels to hire assistants and other staff. The bill provides that employees of the regional counsel will have the same powers and restrictions of those staff of the public defender. The regional counsels shall operate under a personnel pay plan submitted to the Governor and Legislature. The appropriations to the new office shall be done based on a formula.

**Section 9.** Effective July 1, 2007, section 27.5301, F.S., is amended to require the salary of the regional counsels to be set by the Legislature and that assistant regional counsels must not be paid more than the regional counsel.

**Section 10.** Effective October 1, 2007, s. 27.5303, F.S., is amended to make conforming changes to the statutes regarding when the public defender or the regional counsels have a conflict of interest.

**Section 11.** Section 27.5304, F.S., is amended regarding compensation for private court appointed counsel. The bill clarifies that compensation rates set in statute are a flat fee and the maximum amount to be paid. All rates will be specified in the General Appropriations Act. Some statutory rates are revised. The flat fee for capital cases at the trial level is increased from \$3,500 to \$15,000. The maximum compensation rate for dependency proceedings is set at \$1,000 for the first year and \$200 for each year there after.

Interim billing at certain stages of dependency proceedings and termination of parental rights is authorized. Current provisions allowing alternative methods of compensation and corresponding documentation of such payment requests are deleted. Private counsel must submit a bill to the Justice Administrative Commission within 180 days or a penalty of 15% of the costs shall be imposed. Obsolete language requiring the Justice Administrative Commission to develop a schedule for partial payments is deleted. If private counsel for criminal or civil cases withdraws prior to the full performance of his or her duties, the court shall presume that the attorney is not entitled to the full flat fee.

The bill provides for a hearing when private counsel has an extraordinary case where the flat fee may be insufficient. The Justice Administrative Commission shall have a standing to appear before the court to contest any motion for an order for payment above the flat fee. If the court finds that the private counsel is entitled to compensation beyond the flat fee, the court can set up to 200% of the flat fee, or lower, so that the fee is not confiscatory. If 200% of the flat fee is still considered confiscatory by the court, then the court shall set the fee using hourly rates to determine compensation that would not be confiscatory. Such hourly rates shall not to exceed \$75 per hour for a noncapital case and \$100 per hour for a capital case. The Justice

Administrative Commission shall provide data to the Office of the State Courts Administrator on the number of cases and the amount approved for extraordinary case payments by circuit and by judge. The Office of the State Courts Administrator shall submit the data quarterly to the presiding officers of the Legislature, the Chief Justice, and the chief judges in each circuit.

**Section 12.** Effective July 1, 2007, section 27.54, F.S., relating to limitations on expenditures by public defenders is amended to include the regional counsels.

**Section 13.** Effective October 1, 2007, section 27.59, F.S., is amended to allow the regional counsels access to prisoners.

**Section 14.** Effective October 1, 2007, section 28.24, F.S., is amended to prohibit the clerk of court from charging for documents provided to the regional counsels. The bill allows the \$2 recording fee provided to the counties for court system technology to be used to support on the regional counsels.

**Section 15.** Effective October 1, 2007, section 28.345, F.S., is amended to exempt the regional counsels from certain court-related fees and charges.

**Section 16.** Effective July 1, 2007, section 29.001, F.S., is amended to define the regional counsels as an element of the state court system.

**Section 17.** Effective July 1, 2007, section 29.006, F.S., is amended to include the regional counsels as elements of indigent defense for the purposes of allowable state expenses.

**Section 18.** Effective October 1, 2007, section 29.007, F.S., defining private court-appointed counsel as a state element for the purposes of allowable state expenses, is amended to make conforming changes for the regional counsels.

**Section 19.** Effective July 1, 2007, section 29.008, F.S., is amended to include the regional counsels in the term public defenders as it relates to county funding responsibilities for facilities, communications, and security. References to the guardians ad litem are improved.

**Section 20.** Effective July 1, 2007, section 29.015, F.S., relating to the contingency fund for due process is amended to make conforming changes for the regional counsels.

**Section 21.** Effective October 1, 2007, section 29.018, F.S., is amended to allow state cost sharing arrangements to include the regional counsels.

**Section 22.** Section 39.815, F.S., regarding appeals relating to termination of parental rights to the district court of appeals is amended to correct a cross-reference.

**Section 23.** Section 43.16, F.S., is amended to add providing administrative support to the regional counsels to the duties of the Justice Administrative Commission.

**Section 24.** Effective October 1, 2007, section 57.082, F.S., relating to the determination of civil indigent status is amended to delete obsolete language and make conforming changes for the regional counsel.

**Section 25.** Section 110.205, F.S., is amended to include the regional counsel staff as exempt from the career service system as is the case for the other entities under the Justice Administrative Commission.

**Section 26.** Effective October 1, 2007, section 125.69, F.S., is amended to allow counties to contract with the regional counsel for defense of local ordinance violations.

**Section 27.** Section 216.011, F.S., is amended to include the regional counsels in the definition of a state agency for budgeting purposes.

**Section 28.** Effective October 1, 2007, section 744.331, F.S., is amended to direct the court to first appoint the regional counsel for proceedings to determine whether a person is incapacitated. If the regional counsel has a conflict of interest, the court shall appoint private counsel.

**Section 29.** Effective October 1, 2007, section 938.29, F.S., is amended to allow the court to assess a lien on someone who has received assistance from the regional counsel in order to recover costs or who was determined indigent for costs.

**Section 30.** Effective October 1, 2007, section 27.42, F.S., is repealed and the article V indigent services committees are eliminated. Other provisions are moved to section 27.405, F.S.

**Section 31.** This section provides that other than expressly provided, the bill shall take effect upon becoming law.

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

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

It is estimated that 80% of the cases currently being served by private counsel for criminal conflicts and child dependency will be assigned to the regional counsel. This will result in a loss of cases and compensation to private attorneys.

**C. Government Sector Impact:****State Government**

The Senate's General Appropriations Act appropriates from the General Revenue Fund \$29.9 million for private counsel and \$29.4 million for the new regional counsels to provide services in fiscal year 2007-08. It is estimated that the changes provided in the bill will reduce state's costs for these services by \$9.7 million for fiscal year 2007-08 and \$18.8 million in fiscal year 2008-09 as compared to the current recurring appropriation of \$68.9 million from the current year. The actual amount expected to be spent in the current year is \$90.2 million.

**Local Government**

Counties will be required to provide facilities, communications, and security to the new regional counsels. The amount of this cost is not known. The Senate's General Appropriations Act appropriates \$1.1 million for equipment and computers for the regional counsels and \$1.1 million for rent for the 2007-08 fiscal year. The county obligation in the 2007-08 fiscal year will be mitigated by these appropriations.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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## **VIII. Summary of Amendments:**

None.

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This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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