

By the Committee on Criminal and Civil Justice Appropriations;
and Senator Crist

604-2228-07

1 A bill to be entitled
2 An act relating to due process; amending s.
3 27.40, F.S.; providing for offices of criminal
4 conflict and civil regional counsel to be
5 appointed to represent persons in certain cases
6 in which the public defender is unable to
7 provide representation; providing for private
8 counsel to be appointed only when the public
9 defender and the regional counsel are unable to
10 provide representation; providing for the clerk
11 of court to maintain the registry of attorneys
12 available for appointment; providing for
13 compensation of appointed counsel who are not
14 on the registry; requiring attorneys to
15 maintain records in order to claim
16 extraordinary compensation; creating s. 27.405,
17 F.S.; requiring the Justice Administrative
18 Commission to track expenditures of
19 court-appointed counsel; requiring reports
20 concerning expenditures and certain
21 characteristics of court-appointed counsel;
22 creating s. 27.425, F.S.; requiring the chief
23 circuit judge to recommend compensation rates
24 for providers of due process services;
25 providing for rates to be prescribed in the
26 General Appropriations Act; creating s. 27.511,
27 F.S.; creating an office of criminal conflict
28 and civil regional counsel within the
29 boundaries of each of the five district courts
30 of appeal; providing legislative intent;
31 directing the Justice Administrative Commission

1 to provide administrative support to the
2 offices; prescribing qualifications for and
3 providing for appointment of the regional
4 counsel; providing prohibitions related to the
5 practice of law; requiring that the criminal
6 conflict and civil regional counsel be
7 appointed when the public defender has a
8 conflict of interest in specified cases;
9 prohibiting appointment of the office in
10 certain circumstances; providing for appellate
11 representation; providing for the regional
12 counsel to provide representation in certain
13 civil proceedings; amending s. 27.512, F.S.,
14 relating to orders of no imprisonment;
15 conforming provisions to the creation of the
16 regional offices; amending s. 27.52, F.S.,
17 relating to the determination of indigent
18 status; conforming provisions to the creation
19 of the regional offices; amending s. 27.525,
20 F.S.; revising the purposes of the Indigent
21 Criminal Defense Trust Fund; amending s. 27.53,
22 F.S.; authorizing the regional counsel to
23 employ assistant regional counsel; authorizing
24 certain investigators to carry concealed
25 weapons and serve process under certain
26 conditions; requiring the regional counsel to
27 develop coordinated classification and pay
28 plans; providing for appropriations to be
29 determined by a funding formula; amending s.
30 27.5301, F.S.; providing for salaries for the
31 regional counsel and assistant counsel;

1 amending s. 27.5303, F.S., relating to
2 conflicts of interest in the representation of
3 indigent defendants; conforming provisions to
4 changes made by the act; eliminating the
5 authority for the Justice Administrative
6 Commission to contest motions to withdraw;
7 providing for the regional counsel to file a
8 motion to withdraw from a criminal or civil
9 case due to a conflict of interest; providing
10 procedures and criteria; amending s. 27.5304,
11 F.S., relating to compensation of private
12 court-appointed counsel, to conform; providing
13 that compensation is based upon a flat fee
14 prescribed in the General Appropriations Act;
15 revising and eliminating certain procedures
16 relating to billings; raising the maximum fee
17 for representation in capital cases;
18 prescribing fee limits for representation in
19 certain dependency proceedings; prescribing
20 conditions, procedures, and amounts for paying
21 compensation to counsel in excess of
22 established limits; requiring counsel to file a
23 motion and submit documentation; providing for
24 a hearing; requiring a written order and
25 findings; requiring the Office of State Courts
26 Administrator to report data on compensation
27 exceeding prescribed limits; amending s. 27.54,
28 F.S., relating to payments for public
29 defenders; conforming provisions to the
30 creation of the offices of criminal conflict
31 and civil regional counsel; amending s. 27.59,

1 F.S.; authorizing the regional counsel to have
2 access to prisoners; amending s. 28.24, F.S.;
3 requiring the clerk of court to provide certain
4 services to the criminal conflict and civil
5 regional counsel without charge; expanding the
6 authorized use of certain service-charge
7 revenues distributed to counties to include
8 technology for the regional counsel; amending
9 s. 28.345, F.S.; exempting the regional counsel
10 from certain court-related fees and charges;
11 amending s. 29.001, F.S.; providing for the
12 public defenders' offices to include the
13 criminal conflict and civil regional counsel
14 for purposes of implementing provisions of the
15 State Constitution; providing for state
16 funding; amending ss. 29.006 and 29.007, F.S.,
17 relating to indigent defense costs and
18 court-appointed counsel; conforming provisions
19 to the creation of the regional counsel;
20 amending s. 29.008, F.S.; requiring counties to
21 provide certain funding related to the offices
22 of the guardian ad litem and the criminal
23 conflict and civil regional counsel; revising
24 definitions related to county funding
25 responsibilities; revising methods for
26 determining certain local funding requirements,
27 to conform; amending s. 29.015, F.S., relating
28 to deficits in due-process funds; conforming
29 provisions to the creation of the regional
30 counsel; revising procedures for use of certain
31 contingency funds; amending s. 29.018, F.S.,

1 relating to cost sharing of due-process
2 services; conforming provisions to the creation
3 of the regional counsel; amending s. 39.815,
4 F.S.; conforming a cross-reference; amending s.
5 43.16, F.S.; authorizing the Justice
6 Administrative Commission to provide
7 administrative assistance to criminal conflict
8 and civil regional counsel; revising the
9 application of provisions to conform to changes
10 made by the act; amending s. 57.082, F.S.;
11 revising provisions governing the determination
12 of civil indigent status in order to include
13 the appointment of public attorneys in addition
14 to private attorneys; requiring the court to
15 appoint the office of criminal conflict and
16 civil regional counsel in certain civil cases;
17 amending s. 110.205, F.S.; exempting officers
18 and employees of the regional offices from the
19 state career service system; amending s.
20 125.69, F.S.; authorizing counties to contract
21 with the regional counsel to represent
22 defendants charged with violations of
23 ordinances; amending s. 216.011, F.S.;
24 providing that the regional offices are state
25 agencies for state budgeting purposes; amending
26 s. 744.331, F.S.; providing for the appointment
27 of the office of criminal conflict and civil
28 regional counsel for alleged incapacitated
29 persons; providing a temporary exception from
30 certain education requirements for regional
31 counsel; amending s. 938.29, F.S.; providing

1 that certain defendants are liable for regional
2 counsel fees and certain due-process costs;
3 creating a lien against the property of persons
4 who receive regional counsel representation and
5 other due-process services; creating a lien
6 against certain parents for fees and costs;
7 providing for enforcement by the clerk and
8 valuation of fees and costs by the court;
9 repealing s. 27.42, F.S., relating to circuit
10 Article V indigent services committees;
11 providing legislative findings and intent
12 regarding implementation of the act; providing
13 effective dates.

14
15 Be It Enacted by the Legislature of the State of Florida:

16
17 Section 1. Effective October 1, 2007, subsections (1),
18 (2), (3), (7), and (9) of section 27.40, Florida Statutes, are
19 amended to read:

20 27.40 Court-appointed counsel; circuit registries;
21 minimum requirements; appointment by court.--

22 (1) Counsel shall be appointed to represent any
23 individual in a criminal or civil proceeding entitled to
24 court-appointed counsel under the Federal or State
25 Constitution or as authorized by general law. The court shall
26 appoint a public defender to represent indigent persons as
27 authorized in s. 27.51. The office of criminal conflict and
28 civil regional counsel shall be appointed to represent persons
29 in those cases in which provision is made for court-appointed
30 counsel but the public defender is unable to provide
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1 representation due to a conflict of interest or is not
2 authorized to provide representation.

3 (2)(a) Private counsel shall be appointed to represent
4 persons indigents in those cases in which provision is made
5 for court-appointed counsel but the office of criminal
6 conflict and civil regional counsel ~~public defender~~ is unable
7 to provide representation due to a conflict of interest ~~or is~~
8 ~~not authorized to provide representation.~~

9 (b)(2) Private counsel appointed by the court to
10 provide representation shall be selected from a registry of
11 individual attorneys maintained under this section ~~established~~
12 ~~by the circuit Article V indigent services committee or~~
13 ~~procured through a competitive bidding process.~~

14 (3) In utilizing a registry:

15 (a) The chief judge of the circuit ~~Each circuit~~
16 ~~Article V indigent services committee~~ shall compile ~~and~~
17 ~~maintain~~ a list of attorneys in private practice, by county
18 and by category of cases and provide the list to the clerk of
19 court in each county. From October 1, 2005, through September
20 30, 2007, the list of attorneys compiled by the Eleventh
21 Judicial Circuit shall provide the race, gender, and national
22 origin of assigned attorneys. To be included on a registry,
23 attorneys shall certify that they meet any minimum
24 requirements established in general law for court appointment,
25 are available to represent indigent defendants in cases
26 requiring court appointment of private counsel, and are
27 willing to abide by the terms of the contract for services. To
28 be included on a registry, an attorney also must enter into a
29 contract for services with the Justice Administrative
30 Commission. Failure to comply with the terms of the contract
31 for services may result in termination of the contract and

1 removal from the registry. Each attorney on the registry shall
2 be responsible for notifying the clerk of the court ~~circuit~~
3 ~~Article V indigent services committee~~ and the Justice
4 Administrative Commission of any change in his or her status.
5 Failure to comply with this requirement shall be cause for
6 termination of the contract for services and removal from the
7 registry until the requirement is fulfilled.

8 (b) The court shall appoint attorneys in rotating
9 order in the order in which names appear on the applicable
10 registry, unless the court makes a finding of good cause on
11 the record for appointing an attorney out of order. The clerk
12 of court shall maintain the registry and provide to the court
13 the name of the attorney for appointment. An attorney not
14 appointed in the order in which his or her name appears on the
15 list shall remain next in order.

16 (c) If ~~it finds~~ the number of attorneys on the
17 registry in a county or circuit for a particular category of
18 cases is inadequate, ~~the circuit Article V indigent services~~
19 ~~committee shall notify~~ the chief judge of the particular
20 circuit ~~in writing.~~ ~~The chief judge shall~~ provide to the clerk
21 of court ~~submit~~ the names of at least three private attorneys
22 who have ~~with~~ relevant experience. The clerk of court shall
23 send an application to each of these attorneys to register for
24 appointment.

25 (d) Quarterly, each chief judge ~~circuit Article V~~
26 ~~indigent services committee~~ shall provide a current copy of
27 each registry to the Chief Justice of the Supreme Court, ~~the~~
28 ~~chief judge,~~ the state attorney and public defender in each
29 judicial circuit, the office of criminal conflict and civil
30 regional counsel, the clerk of court in each county, and the
31 Justice Administrative Commission, ~~and the Indigent Services~~

1 ~~Advisory Board.~~ From October 1, 2005, through September 30,
2 2007, the report submitted by the Eleventh Judicial Circuit
3 shall include the race, gender, and national origin of all
4 attorneys listed in and appointed under the registry.

5 (7)(a) A private ~~An~~ attorney appointed by the court
6 from the registry to represent a ~~defendant or other~~ client is
7 entitled to payment as provided in ~~pursuant to~~ s. 27.5304. An
8 attorney appointed by the court who is not on the registry
9 list may be compensated under s. 27.5304 if the court finds in
10 the order of appointment that there were no registry attorneys
11 available for representation for that case., only upon full
12 ~~performance by the attorney of specified duties, approval of~~
13 ~~payment by the court, except for payment based on a flat fee~~
14 ~~per case as provided in s. 27.5304; and attorney submission of~~
15 ~~a payment request to the Justice Administrative Commission.~~
16 ~~Upon being permitted to withdraw from a case, a~~
17 ~~court appointed attorney shall submit a copy of the order to~~
18 ~~the Justice Administrative Commission at the time it is issued~~
19 ~~by the court. If an attorney is permitted to withdraw or is~~
20 ~~otherwise removed from representation prior to full~~
21 ~~performance of the duties specified in this section for~~
22 ~~reasons other than breach of duty, the trial court shall~~
23 ~~approve payment of attorney's fees and costs for work~~
24 ~~performed in an amount not to exceed the amounts specified in~~
25 ~~s. 27.5304. Withdrawal from a case prior to full performance~~
26 ~~of the duties specified shall create a rebuttable presumption~~
27 ~~that the attorney is not entitled to the entire flat fee for~~
28 ~~those cases paid on a flat fee per case basis.~~

29 (b) The attorney shall maintain appropriate
30 documentation, including contemporaneous ~~a current~~ and
31 detailed hourly accounting of time spent representing the

1 ~~defendant or other client. If the attorney fails to maintain~~
2 ~~such contemporaneous and detailed hourly records, the attorney~~
3 ~~waives the right to seek compensation in excess of the flat~~
4 ~~fee established in s. 27.5304 and the General Appropriations~~
5 ~~Act.~~ These records and documents are subject to review by the
6 Justice Administrative Commission, subject to the
7 attorney-client privilege and work product privilege.

8 (9) ~~A circuit Article V indigent services committee or~~
9 Any interested person may advise the court of any circumstance
10 affecting the quality of representation, including, but not
11 limited to, false or fraudulent billing, misconduct, failure
12 to meet continuing legal education requirements, solicitation
13 to receive compensation from the ~~defendant or other client~~ the
14 attorney is appointed to represent, or failure to file
15 appropriate motions in a timely manner.

16 Section 2. Effective October 1, 2007, section 27.405,
17 Florida Statutes, is created to read:

18 27.405 Court-appointed counsel; Justice Administrative
19 Commission tracking and reporting.--

20 (1) The Justice Administrative Commission shall
21 separately track expenditures for private court-appointed
22 counsel for the each of the categories of criminal or civil
23 cases in which private counsel may be appointed.

24 (2) The commission shall prepare and issue on a
25 quarterly basis a statewide report comparing actual
26 year-to-date expenditures to budget amounts for each of the
27 judicial circuits. The commission shall distribute copies of
28 the quarterly reports to the Governor, the Chief Justice of
29 the Supreme Court, the President of the Senate, and the
30 Speaker of the House of Representatives.

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1 (3) From October 1, 2005, through September 30, 2007,
2 the commission shall also track and issue a report on the
3 race, gender, and national origin of private court-appointed
4 counsel for the Eleventh Judicial Circuit.

5 Section 3. Effective October 1, 2007, section 27.425,
6 Florida Statutes, is created to read:

7 27.425 Due process service rates; responsibilities of
8 chief judge.--

9 (1) The chief judge of each circuit shall recommend
10 compensation rates for state-funded due process service
11 providers in cases in which the court has appointed private
12 counsel or declared a person indigent for costs. For purposes
13 of this section, due process compensation rates do not include
14 attorney's fees for legal representation of the client.

15 (2) Annually, the chief judge shall submit proposed
16 due process compensation rates to the Office of the State
17 Courts Administrator for inclusion in the legislative budget
18 request for the state courts system.

19 (3) The maximum rates shall be specified annually in
20 the General Appropriations Act. For the 2007-2008 fiscal year,
21 the maximum rates shall be the rates in effect on June 30,
22 2007.

23 (4) The total amount expended for providers of due
24 process services in eligible cases may not exceed the amount
25 budgeted in the General Appropriations Act for the particular
26 due process service.

27 Section 4. Section 27.511, Florida Statutes, is
28 created to read:

29 27.511 Offices of criminal conflict and civil regional
30 counsel; legislative intent; qualifications; appointment;
31 duties.--

1 (1) It is the intent of the Legislature to provide
2 adequate representation to persons entitled to court-appointed
3 counsel under the Federal or State Constitution or as
4 authorized by general law. It is the further intent of the
5 Legislature to provide adequate representation in a fiscally
6 sound manner, while safeguarding constitutional principles.
7 Therefore, an office of criminal conflict and civil regional
8 counsel is created within the geographic boundaries of each of
9 the five district courts of appeal. The regional counsel shall
10 be appointed as set forth in subsection (3) for each of the
11 five regional offices. The offices shall commence fulfilling
12 their constitutional and statutory purpose and duties on
13 October 1, 2007.

14 (2) Each office of criminal conflict and civil
15 regional counsel shall be assigned to the Justice
16 Administrative Commission for administrative purposes. The
17 commission shall provide administrative support and service to
18 the offices to the extent requested by each regional counsel
19 within the available resources of the commission. The regional
20 counsel and the offices are not subject to control,
21 supervision, or direction by the commission in the performance
22 of their duties, but the employees of the offices shall be
23 governed by the classification plan and the salary and
24 benefits plan approved by the commission.

25 (3) Each regional counsel must be, and must have been
26 for the preceding 5 years, a member in good standing of The
27 Florida Bar or a similar organization in another state. Each
28 regional counsel shall be appointed by the Governor and is
29 subject to confirmation by the Senate. The Supreme Court
30 Judicial Nominating Commission shall recommend to the Governor
31 three qualified candidates for appointment to each of the five

1 regional counsel positions. The Governor shall appoint the
2 regional counsel for the five regions from among the
3 recommendations, or, if it is in the best interest of the fair
4 administration of justice, the Governor may reject the
5 nominations and request that the Supreme Court Judicial
6 Nominating Commission submit three new nominees. The regional
7 counsel shall be appointed to a term of 4 years, the first
8 term beginning on July 1, 2007. Vacancies shall be filled in
9 the same manner as appointments.

10 (4) Each regional counsel shall serve on a full-time
11 basis and may not engage in the private practice of law while
12 holding office. Assistant regional counsel shall give priority
13 and preference to their duties as assistant regional counsel
14 and may not otherwise engage in the practice of criminal law
15 or in proceedings under chapter 39, chapter 415, or chapter
16 744.

17 (5) Effective October 1, 2007, when the Office of the
18 Public Defender, at any time during the representation of two
19 or more defendants, determines that the interests of those
20 accused are so adverse or hostile that they cannot all be
21 counseled by the public defender or his or her staff without a
22 conflict of interest, or that none can be counseled by the
23 public defender or his or her staff because of a conflict of
24 interest, and the court grants the public defender's motion to
25 withdraw, the office of criminal conflict and civil regional
26 counsel shall be appointed and shall provide legal services,
27 without additional compensation, to any person determined to
28 be indigent under s. 27.52, who is:

29 (a) Under arrest for, or charged with, a felony;

30 (b) Under arrest for, or charged with:

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1 1. A misdemeanor authorized for prosecution by the
2 state attorney;

3 2. A violation of chapter 316 punishable by
4 imprisonment;

5 3. Criminal contempt; or

6 4. A violation of a special law or county or municipal
7 ordinance ancillary to a state charge, or if not ancillary to
8 a state charge, only if the office of criminal conflict and
9 civil regional counsel contracts with the county or
10 municipality to provide representation pursuant to ss. 27.54
11 and 125.69.

12
13 The office of criminal conflict and civil regional counsel may
14 not provide representation pursuant to this paragraph if the
15 court, prior to trial, files in the cause an order of no
16 imprisonment as provided in s. 27.512;

17 (c) Alleged to be a delinquent child pursuant to a
18 petition filed before a circuit court;

19 (d) Sought by petition filed in such court to be
20 involuntarily placed as a mentally ill person under part I of
21 chapter 394, involuntarily committed as a sexually violent
22 predator under part V of chapter 394, or involuntarily
23 admitted to residential services as a person with
24 developmental disabilities under chapter 393;

25 (e) Convicted and sentenced to death, for purposes of
26 handling an appeal to the Supreme Court; or

27 (f) Is appealing a matter in a case arising under
28 paragraphs (a)-(d).

29 (6)(a) Effective October 1, 2007, the office of
30 criminal conflict and civil regional counsel has primary
31 responsibility for representing persons entitled to

1 court-appointed counsel under the Federal or State
2 Constitution or as authorized by general law in civil
3 proceedings, including, but not limited to, proceedings under
4 chapters 39, 390, 392, 397, 415, 743, 744, and 984.

5 (b) If constitutional principles or general law
6 provide for court-appointed counsel in civil proceedings, the
7 court shall first appoint the regional office unless general
8 law specifically provides for appointment of the public
9 defender, in which case the court shall appoint the regional
10 office if the public defender has a conflict of interest.

11 (c) The regional office may not represent any
12 plaintiff in a civil action brought under the Florida Rules of
13 Civil Procedure, the Federal Rules of Civil Procedure, or
14 federal statutes, and may not represent a petitioner in a rule
15 challenge under chapter 120, unless specifically authorized by
16 law.

17 (7) The court may not appoint the office of criminal
18 conflict and civil regional counsel to represent, even on a
19 temporary basis, any person who is not indigent, except to the
20 extent that appointment of counsel is specifically provided
21 for in chapters 390, 394, 415, 743, and 744 without regard to
22 the indigent status of the person entitled to representation.

23 (8) The office of criminal conflict and civil regional
24 counsel shall handle all circuit court appeals within the
25 state courts system and any authorized appeals to the federal
26 courts which are required in cases in which the office of
27 criminal conflict and civil regional counsel is appointed
28 under this section.

29 (9) When direct appellate proceedings prosecuted by
30 the office of criminal conflict and civil regional counsel on
31 behalf of an accused and challenging a judgment of conviction

1 and sentence of death terminate in an affirmance of such
2 conviction and sentence, whether by the Supreme Court or by
3 the United States Supreme Court or by expiration of any
4 deadline for filing such appeal in a state or federal court,
5 the office of criminal conflict and civil regional counsel
6 shall notify the accused of his or her rights pursuant to Rule
7 3.850, Florida Rules of Criminal Procedure, including any time
8 limits pertinent thereto, and shall advise such person that
9 representation in any collateral proceedings is the
10 responsibility of the capital collateral regional counsel. The
11 office of criminal conflict and civil regional counsel shall
12 forward all original files on the matter to the capital
13 collateral regional counsel, retaining such copies for his or
14 her files as may be desired or required by law. However, the
15 trial court shall retain the power to appoint the office of
16 criminal conflict and civil regional counsel or other attorney
17 not employed by the capital collateral regional counsel to
18 represent such person in proceedings for relief by executive
19 clemency pursuant to ss. 27.40 and 27.5303.

20 Section 5. Effective July 1, 2007, subsection (1) of
21 section 27.512, Florida Statutes, is amended to read:

22 27.512 Order of no imprisonment.--

23 (1) In each case in which the court determines that it
24 will not sentence the defendant to imprisonment if convicted,
25 the court shall issue an order of no imprisonment and the
26 court may not appoint the public defender or other counsel to
27 represent the defendant. If the court issues an order of no
28 imprisonment following the appointment of the public defender
29 or other counsel, the court shall immediately terminate the
30 appointed counsel's ~~public defender's~~ services. However, if at
31 any time the court withdraws the order of no imprisonment with

1 | respect to an indigent defendant, the court shall appoint the
2 | public defender to represent the defendant.

3 | Section 6. Effective October 1, 2007, subsections (2),
4 | (3), (4), (5), (6), and (7) of section 27.52, Florida
5 | Statutes, are amended to read:

6 | 27.52 Determination of indigent status.--

7 | (2) DETERMINATION BY THE CLERK.--The clerk of the
8 | court shall determine whether an applicant seeking appointment
9 | of a public defender is indigent based upon the information
10 | provided in the application and the criteria prescribed in
11 | this subsection.

12 | (a)1. An applicant, including an applicant who is a
13 | minor or an adult tax-dependent person, is indigent if the
14 | applicant's income is equal to or below 200 percent of the
15 | then-current federal poverty guidelines prescribed for the
16 | size of the household of the applicant by the United States
17 | Department of Health and Human Services or if the person is
18 | receiving Temporary Assistance for Needy Families-Cash
19 | Assistance, poverty-related veterans' benefits, or
20 | Supplemental Security Income (SSI).

21 | 2. There is a presumption that the applicant is not
22 | indigent if the applicant owns, or has equity in, any
23 | intangible or tangible personal property or real property or
24 | the expectancy of an interest in any such property having a
25 | net equity value of \$2,500 or more, excluding the value of the
26 | person's homestead and one vehicle having a net value not
27 | exceeding \$5,000.

28 | (b) Based upon its review, the clerk shall make one of
29 | the following determinations:

- 30 | 1. The applicant is not indigent.
31 | 2. The applicant is indigent.

1 (c)1. If the clerk determines that the applicant is
2 indigent, the clerk shall submit the determination to the
3 office of the public defender and immediately file the
4 determination in the case file.

5 2. If the public defender is unable to provide
6 representation due to a conflict pursuant to s. 27.5303, the
7 public defender shall move the court for withdrawal from
8 representation and appointment of the office of criminal
9 conflict and civil regional ~~private~~ counsel.

10 (d) The duty of the clerk in determining whether an
11 applicant is indigent shall be limited to receiving the
12 application and comparing the information provided in the
13 application to the criteria prescribed in this subsection. The
14 determination of indigent status is a ministerial act of the
15 clerk and not a decision based on further investigation or the
16 exercise of independent judgment by the clerk. The clerk may
17 contract with third parties to perform functions assigned to
18 the clerk under this section.

19 (e) The applicant may seek review of the clerk's
20 determination that the applicant is not indigent in the court
21 having jurisdiction over the matter at the next scheduled
22 hearing. If the applicant seeks review of the clerk's
23 determination of indigent status, the court shall make a final
24 determination as provided in subsection (4).

25 (3) APPOINTMENT OF COUNSEL ON INTERIM BASIS.--If the
26 clerk of the court has not made a determination of indigent
27 status at the time a person requests appointment of a public
28 defender, the court shall make a preliminary determination of
29 indigent status, pending further review by the clerk, and may,
30 by court order, appoint a public defender, the office of
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1 criminal conflict and civil regional counsel, or private
2 counsel on an interim basis.

3 (4) REVIEW OF CLERK'S DETERMINATION.--

4 (a) If the clerk of the court determines that the
5 applicant is not indigent, and the applicant seeks review of
6 the clerk's determination, the court shall make a final
7 determination of indigent status by reviewing the information
8 provided in the application against the criteria prescribed in
9 subsection (2) and by considering the following additional
10 factors:

11 1. Whether the applicant has been released on bail in
12 an amount of \$5,000 or more.

13 2. Whether a bond has been posted, the type of bond,
14 and who paid the bond.

15 3. Whether paying for private counsel in an amount
16 that exceeds the limitations in s. 27.5304, or other due
17 process services creates a substantial hardship for the
18 applicant or the applicant's family.

19 4. Any other relevant financial circumstances of the
20 applicant or the applicant's family.

21 (b) Based upon its review, the court shall make one of
22 the following determinations and, if the applicant is
23 indigent, shall appoint a public defender, the office of
24 criminal conflict and civil regional counsel, or, if
25 appropriate, private counsel:

26 1. The applicant is not indigent.

27 2. The applicant is indigent.

28 (5) INDIGENT FOR COSTS.--A person who is eligible to
29 be represented by a public defender under s. 27.51 but who is
30 represented by private counsel not appointed by the court for
31 a reasonable fee as approved by the court, on a pro bono

1 basis, or who is proceeding pro se, may move the court for a
2 determination that he or she is indigent for costs and
3 eligible for the provision of due process services, as
4 prescribed by ss. 29.006 and 29.007, funded by the state.

5 (a) The person must submit to the court:

6 1. The completed application prescribed in subsection
7 (1).

8 2. In the case of a person represented by counsel, an
9 affidavit attesting to the estimated amount of attorney's fees
10 and the source of payment for these fees.

11 (b) In reviewing the motion, the court shall consider:

12 1. Whether the applicant applied for a determination
13 of indigent status under subsection (1) and the outcome of
14 such application.

15 2. The extent to which the person's income equals or
16 exceeds the income criteria prescribed in subsection (2).

17 3. The additional factors prescribed in subsection
18 (4).

19 4. Whether the applicant is proceeding pro se.

20 5. When the applicant retained private counsel.

21 6. The amount of any attorney's fees and who is paying
22 the fees.

23 (c) Based upon its review, the court shall make one of
24 the following determinations:

25 1. The applicant is not indigent for costs.

26 2. The applicant is indigent for costs.

27 (d) The provision of due process services based upon a
28 determination that a person is indigent for costs under this
29 subsection must be effectuated pursuant to a court order, a
30 copy of which the clerk shall provide to counsel representing
31 the person, or to the person directly if he or she is

1 proceeding pro se, for use in requesting payment of due
2 process expenses through the Justice Administrative
3 Commission. Private counsel representing a person declared
4 indigent for costs shall execute the Justice Administrative
5 Commission's contract for counsel representing persons
6 determined to be indigent for costs.

7 (6) DUTIES OF PARENT OR LEGAL GUARDIAN.--A nonindigent
8 parent or legal guardian of an applicant who is a minor or an
9 adult tax-dependent person shall furnish the minor or adult
10 tax-dependent person with the necessary legal services and
11 costs incident to a delinquency proceeding or, upon transfer
12 of such person for criminal prosecution as an adult pursuant
13 to chapter 985, a criminal prosecution in which the person has
14 a right to legal counsel under the Constitution of the United
15 States or the Constitution of the State of Florida. The
16 failure of a parent or legal guardian to furnish legal
17 services and costs under this section does not bar the
18 appointment of legal counsel pursuant to this section, s.
19 27.40, or s. 27.5303. When the public defender, the office of
20 criminal conflict and civil regional counsel, a private
21 court-appointed conflict counsel, or a private attorney is
22 appointed to represent a minor or an adult tax-dependent
23 person in any proceeding in circuit court or in a criminal
24 proceeding in any other court, the parents or the legal
25 guardian shall be liable for payment of the fees, charges, and
26 costs of the representation even if the person is a minor
27 being tried as an adult. Liability for the fees, charges, and
28 costs of the representation shall be imposed in the form of a
29 lien against the property of the nonindigent parents or legal
30 guardian of the minor or adult tax-dependent person. The lien
31 is enforceable as provided in s. 27.561 or s. 938.29.

1 (7) FINANCIAL DISCREPANCIES; FRAUD; FALSE
2 INFORMATION.--

3 (a) If the court learns of discrepancies between the
4 application or motion and the actual financial status of the
5 person found to be indigent or indigent for costs, the court
6 shall determine whether the public defender, office of
7 criminal conflict and civil regional counsel, or private
8 attorney shall continue representation or whether the
9 authorization for any other due process services previously
10 authorized shall be revoked. The person may be heard regarding
11 the information learned by the court. If the court, based on
12 the information, determines that the person is not indigent or
13 indigent for costs, the court shall order the public defender,
14 office of criminal conflict and civil regional counsel, or
15 private attorney to discontinue representation and revoke the
16 provision of any other authorized due process services.

17 (b) If the court has reason to believe that any
18 applicant, through fraud or misrepresentation, was improperly
19 determined to be indigent or indigent for costs, the matter
20 shall be referred to the state attorney. Twenty-five percent
21 of any amount recovered by the state attorney as reasonable
22 value of the services rendered, including fees, charges, and
23 costs paid by the state on the person's behalf, shall be
24 remitted to the Department of Revenue for deposit into the
25 Grants and Donations Trust Fund within the Justice
26 Administrative Commission. Seventy-five percent of any amount
27 recovered shall be remitted to the Department of Revenue for
28 deposit into the General Revenue Fund.

29 (c) A person who knowingly provides false information
30 to the clerk or the court in seeking a determination of
31 indigent status under this section commits a misdemeanor of

1 the first degree, punishable as provided in s. 775.082 or s.
2 775.083.

3 Section 7. Effective July 1, 2007, section 27.525,
4 Florida Statutes, is amended to read:

5 27.525 Indigent Criminal Defense Trust Fund.--The
6 Indigent Criminal Defense Trust Fund is ~~hereby~~ created, to be
7 administered by the Justice Administrative Commission. Funds
8 shall be credited to the trust fund as provided in s. 27.52,
9 to be used for the purposes of indigent criminal defense as
10 appropriated by the Legislature to the public defender or the
11 office of criminal conflict and civil regional counsel ~~set~~
12 ~~forth therein~~. The Justice Administrative Commission shall
13 account for these funds on a circuit basis, and appropriations
14 from the fund shall be proportional to each circuit's
15 collections.

16 Section 8. Effective July 1, 2007, subsections (4) and
17 (5) are added to section 27.53, Florida Statutes, to read:

18 27.53 Appointment of assistants and other staff;
19 method of payment.--

20 (4) The five criminal conflict and civil regional
21 counsel may employ and establish, in the numbers authorized by
22 the General Appropriations Act, assistant regional counsel and
23 other staff and personnel in each judicial district pursuant
24 to s. 29.006, who shall be paid from funds appropriated for
25 that purpose. Notwithstanding s. 790.01, s. 790.02, or s.
26 790.25(2)(a), an investigator employed by an office of
27 criminal conflict and civil regional counsel, while actually
28 carrying out official duties, is authorized to carry concealed
29 weapons if the investigator complies with s. 790.25(3)(o).
30 However, such investigators are not eligible for membership in
31 the Special Risk Class of the Florida Retirement System. The

1 five regional counsel shall jointly develop a coordinated
2 classification and pay plan that shall be submitted on or
3 before January 1 of each year to the Justice Administrative
4 Commission, the office of the President of the Senate, and the
5 office of the Speaker of the House of Representatives. Such
6 plan shall be developed in accordance with policies and
7 procedures of the Executive Office of the Governor established
8 in s. 216.181. Each assistant regional counsel appointed by
9 the regional counsel under this section shall serve at the
10 pleasure of the regional counsel. Each investigator employed
11 by the regional counsel shall have full authority to serve any
12 witness subpoena or court order issued by any court or judge
13 in a criminal case in which the regional counsel has been
14 appointed to represent the accused.

15 (5) The appropriations for the offices of criminal
16 conflict and civil regional counsel shall be determined by a
17 funding formula and other factors that are considered
18 appropriate in a manner to be determined by this section and
19 the General Appropriations Act.

20 Section 9. Effective July 1, 2007, section 27.5301,
21 Florida Statutes, is amended to read:

22 27.5301 Salaries of public defenders, ~~and~~ assistant
23 public defenders, criminal conflict and civil regional
24 counsel, and assistant regional counsel.--

25 (1) The salaries of public defenders shall be as
26 provided in the General Appropriations Act and shall be paid
27 in equal monthly installments.

28 (2) The salary for each assistant public defender
29 shall be set by the public defender of the same judicial
30 circuit in an amount not to exceed 100 percent of that public
31 defender's salary and shall be paid from funds appropriated

1 for that purpose. Assistant public defenders who serve in less
2 than a full-time capacity shall be compensated for services
3 performed in an amount to be in proportion to the salary
4 allowed for full-time services.

5 (3) The salary of the criminal conflict and civil
6 regional counsel shall be as provided in the General
7 Appropriations Act and shall be paid in equal monthly
8 installments.

9 (4) The salary for each assistant regional counsel
10 shall be set by the regional counsel in an amount not to
11 exceed 100 percent of the regional counsel's salary and shall
12 be paid from funds appropriated for that purpose. Assistant
13 regional counsel who serve in less than a full-time capacity
14 shall be compensated for services performed in an amount that
15 is in proportion to the salary allowed for full-time services.

16 Section 10. Effective October 1, 2007, section
17 27.5303, Florida Statutes, is amended to read:

18 27.5303 Public defenders; criminal conflict and civil
19 regional counsel; conflict of interest.--

20 (1)(a) If, at any time during the representation of
21 two or more defendants, a public defender determines that the
22 interests of those accused are so adverse or hostile that they
23 cannot all be counseled by the public defender or his or her
24 staff without conflict of interest, or that none can be
25 counseled by the public defender or his or her staff because
26 of a conflict of interest, then the public defender shall file
27 a motion to withdraw and move the court to appoint other
28 counsel. If requested by the Justice Administrative
29 Commission, the public defender shall submit a copy of the
30 motion to the Justice Administrative Commission at the time it
31 is filed with the court. ~~The Justice Administrative Commission~~

1 ~~shall have standing to appear before the court to contest any~~
2 ~~motion to withdraw due to a conflict of interest. The Justice~~
3 ~~Administrative Commission may contract with other public or~~
4 ~~private entities or individuals to appear before the court for~~
5 ~~the purpose of contesting any motion to withdraw due to a~~
6 ~~conflict of interest.~~ The court shall review and may inquire
7 or conduct a hearing into the adequacy of the public
8 defender's representations regarding a conflict of interest
9 without requiring the disclosure of any confidential
10 communications. The court shall deny the motion to withdraw if
11 the court finds the grounds for withdrawal are insufficient or
12 the asserted conflict is not prejudicial to the indigent
13 client. If the court grants the motion to withdraw, the court
14 shall appoint one or more attorneys to represent the accused,
15 as provided in s. 27.40.

16 (b) If, at any time during the representation of two
17 or more persons in a criminal or civil proceeding, a criminal
18 conflict and civil regional counsel determines that the
19 interests of those clients are so adverse or hostile that they
20 cannot all be counseled by the regional counsel or his or her
21 staff without conflict of interest, or that none can be
22 counseled by the regional counsel or his or her staff because
23 of a conflict of interest, the regional counsel shall file a
24 motion to withdraw and move the court to appoint other
25 counsel. If requested by the Justice Administrative
26 Commission, the regional counsel shall submit a copy of the
27 motion to the Justice Administrative Commission at the time it
28 is filed with the court. The court shall review and may
29 inquire or conduct a hearing into the adequacy of the regional
30 counsel's representations regarding a conflict of interest
31 without requiring the disclosure of any confidential

1 communications. The court shall deny the motion to withdraw if
2 the court finds the grounds for withdrawal are insufficient or
3 the asserted conflict is not prejudicial to the client. If the
4 court grants the motion to withdraw, the court shall appoint
5 one or more private attorneys to represent the person as
6 provided in s. 27.40. The clerk of court shall inform the
7 regional office and the commission when the court appoints
8 private counsel.

9 ~~(c)(b)~~ Upon its own motion, the court shall appoint
10 such other counsel when the facts developed upon the face of
11 the record and court files in the case disclose a conflict of
12 interest. The ~~clerk court~~ shall advise the appropriate public
13 defender or criminal conflict and civil regional counsel ~~and~~
14 ~~clerk of court~~, in writing, with an electronic ~~a~~ copy to the
15 Justice Administrative Commission, ~~if so requested by the~~
16 ~~Justice Administrative Commission~~, when the court makes ~~making~~
17 the motion and appoints ~~appointing~~ one or more attorneys ~~to~~
18 ~~represent the accused~~. The court shall specify the basis for
19 the conflict.

20 ~~(d)(e)~~ In no case shall the court approve a withdrawal
21 by the public defender or criminal conflict and civil regional
22 counsel based solely upon inadequacy of funding or excess
23 workload of the public defender or regional counsel.

24 ~~(e)(d)~~ In determining whether or not there is a
25 conflict of interest, the public defender or regional counsel
26 shall apply the standards contained in the Uniform Standards
27 for Use in Conflict of Interest Cases found in appendix C to
28 the Final Report of the Article V Indigent Services Advisory
29 Board dated January 6, 2004. Before a motion to withdraw is
30 filed under this section, the public defender or regional
31 counsel serving the circuit, or his or her designee, must:

1 1. Determine if there is a viable alternative to
2 withdrawal from representation which would remedy the conflict
3 of interest and, if its exists, implement that alternative;
4 and

5 2. Approve in writing the filing of the motion to
6 withdraw.

7 (2) The court shall appoint conflict counsel pursuant
8 to s. 27.40, first appointing the office of criminal conflict
9 and civil regional counsel and, if the office is found to have
10 a conflict, appointing private counsel. The appointed private
11 attorney may not be affiliated with the public defender, ~~or~~
12 any assistant public defender, the regional counsel, or any
13 assistant regional counsel in his or her official capacity or
14 any other private attorney appointed to represent a
15 codefendant. The public defender or regional counsel may not
16 participate in case-related decisions, performance
17 evaluations, or expense determinations in conflict cases.

18 (3) Private court-appointed counsel shall be
19 compensated as provided in s. 27.5304.

20 (4)(a) If a defendant is convicted and the death
21 sentence is imposed, the appointed attorney shall continue
22 representation through appeal to the Supreme Court. The
23 attorney shall be compensated as provided in s. 27.5304. If
24 the attorney first appointed is unable to handle the appeal,
25 the court shall appoint another attorney and that attorney
26 shall be compensated as provided in s. 27.5304.

27 (b) The public defender or an attorney appointed
28 pursuant to this section may be appointed by the court
29 rendering the judgment imposing the death penalty to represent
30 an indigent defendant who has applied for executive clemency
31

1 as relief from the execution of the judgment imposing the
2 death penalty.

3 (c) When the appointed attorney in a capital case has
4 completed the duties imposed by this section, the attorney
5 shall file a written report in the trial court stating the
6 duties performed by the attorney and apply for discharge.

7 Section 11. Section 27.5304, Florida Statutes, is
8 amended to read:

9 27.5304 Private court-appointed counsel;
10 compensation.--

11 (1) Private court-appointed counsel shall be
12 compensated by the Justice Administrative Commission as
13 provided in an amount not to exceed the fee limits established
14 in this section and the General Appropriations Act. The flat
15 fees prescribed in this section are limitations on
16 compensation. The specific flat fee amounts for compensation
17 shall be established annually in the General Appropriations
18 Act. The attorney also shall be reimbursed for reasonable and
19 necessary expenses in accordance with s. 29.007. If the
20 attorney is representing a defendant charged with more than
21 one offense in the same case, the attorney shall be
22 compensated at the rate provided for the most serious offense
23 for which he or she represented the defendant. This section
24 does not allow stacking of the fee limits established by this
25 section. ~~Private court appointed counsel providing~~
26 ~~representation under an alternative model shall enter into a~~
27 ~~uniform contract with the Justice Administrative Commission~~
28 ~~and shall use the Justice Administrative Commission's uniform~~
29 ~~procedures and forms in support of billing for attorney's~~
30 ~~fees, costs, and related expenses. Failure to comply with the~~

1 ~~terms of the contract for services may result in termination~~
2 ~~of the contract.~~

3 (2) The Justice Administrative Commission shall review
4 an intended billing by private court-appointed counsel for
5 attorney's fees based on a flat fee per case for completeness
6 and compliance with contractual and, ~~statutory, and circuit~~
7 ~~Article V indigent services committee~~ requirements. The
8 commission may approve the intended bill for a flat fee per
9 case for payment without approval by the court if the intended
10 billing is correct. An intended billing that seeks
11 compensation for any amount exceeding the flat fee established
12 for a particular type of representation, as prescribed in the
13 General Appropriations Act, shall comply with subsections (11)
14 and (12). ~~For all other intended billings, prior to filing a~~
15 ~~motion for an order approving payment of attorney's fees,~~
16 ~~costs, or related expenses, the private court appointed~~
17 ~~counsel shall deliver a copy of the intended billing, together~~
18 ~~with supporting affidavits and all other necessary~~
19 ~~documentation, to the Justice Administrative Commission. The~~
20 ~~Justice Administrative Commission shall review the billings,~~
21 ~~affidavit, and documentation for completeness and compliance~~
22 ~~with contractual and statutory requirements. If the Justice~~
23 ~~Administrative Commission objects to any portion of the~~
24 ~~proposed billing, the objection and reasons therefor shall be~~
25 ~~communicated to the private court appointed counsel. The~~
26 ~~private court appointed counsel may thereafter file his or her~~
27 ~~motion for order approving payment of attorney's fees, costs,~~
28 ~~or related expenses together with supporting affidavits and~~
29 ~~all other necessary documentation. The motion must specify~~
30 ~~whether the Justice Administrative Commission objects to any~~
31 ~~portion of the billing or the sufficiency of documentation and~~

1 ~~shall attach the Justice Administrative Commission's letter~~
2 ~~stating its objection. The attorney shall have the burden to~~
3 ~~prove the entitlement to attorney's fees, costs, or related~~
4 ~~expenses. A copy of the motion and attachments shall be served~~
5 ~~on the Justice Administrative Commission at least 5 business~~
6 ~~days prior to the date of a hearing. The Justice~~
7 ~~Administrative Commission shall have standing to appear before~~
8 ~~the court to contest any motion for order approving payment of~~
9 ~~attorney's fees, costs, or related expenses and may~~
10 ~~participate in a hearing on the motion by use of telephonic or~~
11 ~~other communication equipment unless ordered otherwise. The~~
12 ~~Justice Administrative Commission may contract with other~~
13 ~~public or private entities or individuals to appear before the~~
14 ~~court for the purpose of contesting any motion for order~~
15 ~~approving payment of attorney's fees, costs, or related~~
16 ~~expenses. The fact that the Justice Administrative Commission~~
17 ~~has not objected to any portion of the billing or to the~~
18 ~~sufficiency of the documentation is not binding on the court.~~

19 (3) The court retains primary authority and
20 responsibility for determining the reasonableness of all
21 billings for attorney's fees, costs, and related expenses,
22 subject to statutory limitations. Private court-appointed
23 counsel is entitled to compensation upon final disposition of
24 a case, ~~except as provided in subsections (7), (8), and (10).~~

25 (4) The attorney shall submit a bill for attorney's
26 fees, costs, and related expenses within 180 days after the
27 disposition of the case at the lower court level,
28 notwithstanding any appeals. The Justice Administrative
29 Commission shall provide by contract with the attorney for
30 imposition of a penalty of 15 percent of the allowable
31 attorney's fees, costs, and related expenses for a bill that

1 is submitted more than 180 days after the disposition of the
2 case at the lower court level, notwithstanding any appeals.
3 ~~Before final disposition of a case, a private court appointed~~
4 ~~counsel may file a motion for fees, costs, and related~~
5 ~~expenses for services completed up to the date of the motion~~
6 ~~in any case or matter in which legal services have been~~
7 ~~provided by the attorney for more than 1 year. The amount~~
8 ~~approved by the court may not exceed 80 percent of the fees~~
9 ~~earned, or costs and related expenses incurred, to date, or an~~
10 ~~amount proportionate to the maximum fees permitted under this~~
11 ~~section based on legal services provided to date, whichever is~~
12 ~~less. The court may grant the motion if counsel shows that~~
13 ~~failure to grant the motion would work a particular hardship~~
14 ~~upon counsel.~~

15 (5)(3) The compensation for representation in a
16 criminal proceeding shall not exceed the following:

17 (a)1. For misdemeanors and juveniles represented at
18 the trial level: \$1,000.

19 2. For noncapital, nonlife felonies represented at the
20 trial level: \$2,500.

21 3. For life felonies represented at the trial level:
22 \$3,000.

23 4. For capital cases represented at the trial level:
24 ~~\$15,000~~\$3,500.

25 5. For representation on appeal: \$2,000.

26 (b) If a death sentence is imposed and affirmed on
27 appeal to the Supreme Court, the appointed attorney shall be
28 allowed compensation, not to exceed \$1,000, for attorney's
29 fees and costs incurred in representing the defendant as to an
30 application for executive clemency, with compensation to be
31

1 | paid out of general revenue from funds budgeted to the
2 | Department of Corrections.

3 | ~~(4) By January 1 of each year, the Article V Indigent~~
4 | ~~Services Advisory Board shall recommend to the Legislature any~~
5 | ~~adjustments to the compensation provisions of this section.~~

6 | (6)(5) For compensation for representation pursuant to
7 | a court appointment in a proceeding under chapter 39:

8 | (a) At the trial level, compensation for
9 | representation for dependency proceedings shall not exceed
10 | \$1,000 for the first year following the date of appointment
11 | and shall not exceed \$200 each year thereafter. Compensation
12 | shall be paid based upon representation of a parent
13 | irrespective of the number of case numbers that may be
14 | assigned or the number of children involved, including any
15 | children born during the pendency of the proceeding. Any
16 | appeal, except for an appeal from an adjudication of
17 | dependency, shall be completed by the trial attorney and is
18 | considered compensated by the flat fee for dependency
19 | proceedings.

20 | 1. Counsel may bill the flat fee not exceeding \$1,000
21 | following disposition or upon dismissal of the petition.

22 | 2. Counsel may bill the annual flat fee not exceeding
23 | \$200 following the first judicial review in the second year
24 | following the date of appointment and each year thereafter as
25 | long as the case remains under protective supervision.

26 | 3. If the court grants a motion to reactivate
27 | protective supervision, the attorney shall receive the annual
28 | flat fee not exceeding \$200 following the first judicial
29 | review and up to an additional \$200 each year thereafter.

30 | 4. If, during the course of dependency proceedings, a
31 | proceeding to terminate parental rights is initiated,

1 compensation shall be as set forth in paragraph (b). If
2 counsel handling the dependency proceeding is not authorized
3 to handle proceedings to terminate parental rights, the
4 counsel must withdraw and new counsel must be appointed.

5 (b) At the trial level, compensation for
6 representation in termination of parental rights proceedings
7 shall not exceed \$1,000 for the first year following the date
8 of appointment and shall not exceed \$200 each year thereafter.
9 Compensation shall be paid based upon representation of a
10 parent irrespective of the number of case numbers that may be
11 assigned or the number of children involved, including any
12 children born during the pendency of the proceeding. Any
13 appeal, except for an appeal from an order granting or denying
14 termination of parental rights, shall be completed by trial
15 counsel and is considered compensated by the flat fee for
16 termination of parental rights proceedings. If the individual
17 has dependency proceedings ongoing as to other children, those
18 proceedings are considered part of the termination of parental
19 rights proceedings as long as that termination of parental
20 rights proceeding is ongoing.

21 1. Counsel may bill the flat fee not exceeding \$1,000
22 30 days after rendition of the final order. Each request for
23 payment submitted to the Justice Administrative Commission
24 must include the trial counsel's certification that:

25 a. Counsel discussed grounds for appeal with the
26 parent or that counsel attempted and was unable to contact the
27 parent; and

28 b. No appeal will be filed or that a notice of appeal
29 and a motion for appointment of appellate counsel, containing
30 the signature of the parent, have been filed.

31

1 2. Counsel may bill the annual flat fee not exceeding
2 \$200 following the first judicial review in the second year
3 after the date of appointment and each year thereafter as long
4 as the termination of parental rights proceedings are still
5 ongoing.

6 (c) For appeals from an adjudication of dependency,
7 compensation may not exceed \$1,000.

8 1. Counsel may bill a flat fee not exceeding \$750 upon
9 filing the initial brief or the granting of a motion to
10 withdraw.

11 2. If a brief is filed, counsel may bill an additional
12 flat fee not exceeding \$250 upon rendition of the mandate.

13 (d) For an appeal from an adjudication of termination
14 of parental rights, compensation may not exceed \$2,000.

15 1. Counsel may bill a flat fee not exceeding \$1,000
16 upon filing the initial brief or the granting of a motion to
17 withdraw.

18 2. If a brief is filed, counsel may bill an additional
19 flat fee not exceeding \$1,000 upon rendition of the mandate.

20 ~~If counsel is entitled to receive compensation for~~
21 ~~representation pursuant to court appointment in a termination~~
22 ~~of parental rights proceeding under chapter 39, such~~
23 ~~compensation shall not exceed \$1,000 at the trial level and~~
24 ~~\$2,500 at the appellate level.~~

25 (7)(b) Counsel entitled to receive compensation for
26 representation pursuant to court appointment in a proceeding
27 under chapter 384 or chapter 392 shall receive reasonable
28 compensation as fixed by the court making the appointment.

29 (8)(6) A private attorney appointed in lieu of the
30 public defender or the criminal conflict and civil regional
31 counsel to represent an indigent defendant may not reassign or

1 subcontract the case to another attorney or allow another
2 attorney to appear at a critical stage of a case who is not on
3 the registry developed under s. 27.40.

4 ~~(7) Private court appointed counsel representing a~~
5 ~~parent in a dependency case that is open may submit a request~~
6 ~~for payment to the Justice Administrative Commission at the~~
7 ~~following intervals:~~

8 ~~(a) Upon entry of an order of disposition as to the~~
9 ~~parent being represented.~~

10 ~~(b) Upon conclusion of a 12 month permanency review.~~

11 ~~(c) Following a judicial review hearing.~~

12

13 ~~In no case, however, may counsel submit requests under this~~
14 ~~subsection more than once per quarter, unless the court finds~~
15 ~~extraordinary circumstances justifying more frequent~~
16 ~~submission of payment requests.~~

17 (9)~~(8)~~ Private court-appointed counsel representing an
18 individual in an appeal to a district court of appeal or the
19 Supreme Court may submit a request for payment to the Justice
20 Administrative Commission at the following intervals:

21 (a) Upon the filing of an appellate brief, including,
22 but not limited to, a reply brief.

23 (b) When the opinion of the appellate court is
24 finalized.

25 (10)~~(9)~~ Private court-appointed counsel may not bill
26 for preparation of invoices ~~whether or not the case is paid on~~
27 ~~the basis of an hourly rate or by flat fee.~~

28 ~~(10) The Justice Administrative Commission shall~~
29 ~~develop a schedule to provide partial payment of criminal~~
30 ~~attorney fees for cases that are not resolved within 6 months.~~

31 ~~The schedule must provide that the aggregate payments shall~~

1 ~~not exceed limits established by law. Any partial payment made~~
2 ~~pursuant to this subsection shall not exceed the actual value~~
3 ~~of services provided to date. Any partial payment shall be~~
4 ~~proportionate to the value of services provided based on~~
5 ~~payment rates included in the contract, not to exceed any~~
6 ~~limit provided by law.~~

7 (11) It is the intent of the Legislature that the flat
8 fees prescribed under this section and the General
9 Appropriations Act comprise the full and complete compensation
10 for private court-appointed counsel. It is further the intent
11 of the Legislature that the fees in this section are
12 prescribed for the purpose of providing counsel with notice of
13 the limit on the amount of compensation for representation in
14 particular proceedings.

15 (a) If court-appointed counsel moves to withdraw prior
16 to the full performance of his or her duties through the
17 completion of the case, the court shall presume that the
18 attorney is not entitled to the payment of the full flat fee
19 established under this section and the General Appropriations
20 Act.

21 (b) If court-appointed counsel is allowed to withdraw
22 from representation prior to the full performance of his or
23 her duties through the completion of the case and the court
24 appoints a subsequent attorney, the total compensation for the
25 initial and any and all subsequent attorneys may not exceed
26 the flat fee established under this section and the General
27 Appropriations Act, except as provided in subsection (12).

28
29 This subsection constitutes notice to any subsequently
30 appointed attorney that he or she will not be compensated the
31 full flat fee.

1 (12) The Legislature recognizes that on rare occasions
2 an attorney may receive a case that requires extraordinary and
3 unusual effort.

4 (a) If counsel seeks compensation that exceeds the
5 limits prescribed under this section and the General
6 Appropriations Act, he or she must file a motion with the
7 court for an order approving payment of attorney's fees in
8 excess of these limits.

9 1. Prior to filing the motion, the counsel shall
10 deliver a copy of the intended billing, together with
11 supporting affidavits and all other necessary documentation,
12 to the Justice Administrative Commission.

13 2. The Justice Administrative Commission shall review
14 the billings, affidavit, and documentation for completeness
15 and compliance with contractual and statutory requirements. If
16 the Justice Administrative Commission objects to any portion
17 of the proposed billing, the objection and reasons therefor
18 shall be communicated in writing to the private
19 court-appointed counsel. The counsel may thereafter file his
20 or her motion, which must specify whether the commission
21 objects to any portion of the billing or the sufficiency of
22 documentation, and shall attach the commission's letter
23 stating its objection.

24 (b) Following receipt of the motion to exceed the fee
25 limits, the court shall hold an evidentiary hearing.

26 1. At the hearing, the attorney seeking compensation
27 must prove by competent and substantial evidence that the case
28 required extraordinary and unusual efforts. The judge shall
29 consider criteria such as the number of witnesses, the
30 complexity of the factual and legal issues, and the length of
31 trial. The fact that a trial was conducted in a case does not,

1 by itself, constitute competent substantial evidence of an
2 extraordinary and unusual effort. In a criminal case, relief
3 under this section may not be granted if the number of work
4 hours does not exceed 75 or the number of the state's
5 witnesses deposed does not exceed 20.

6 2. The judge shall enter a written order detailing his
7 or her findings and identifying the extraordinary nature of
8 the time and efforts of the attorney in the case which warrant
9 exceeding the flat fee established by this section and the
10 General Appropriations Act.

11 (c) A copy of the motion and attachments shall be
12 served on the Justice Administrative Commission at least 5
13 business days prior to the date of a hearing. The Justice
14 Administrative Commission shall have standing to appear before
15 the court, including at the hearing under paragraph (b), to
16 contest any motion for an order approving payment of
17 attorney's fees, costs, or related expenses and may
18 participate in a hearing on the motion by use of telephonic or
19 other communication equipment unless ordered otherwise. The
20 Justice Administrative Commission may contract with other
21 public or private entities or individuals to appear before the
22 court for the purpose of contesting any motion for an order
23 approving payment of attorney's fees, costs, or related
24 expenses. The fact that the Justice Administrative Commission
25 has not objected to any portion of the billing or to the
26 sufficiency of the documentation is not binding on the court.

27 (d) If the court finds that counsel has proved by
28 competent and substantial evidence that the case required
29 extraordinary and unusual efforts, the court shall fix the
30 compensation to be paid to the attorney at a percentage above
31 the flat fee rate, depending on the extent of the unusual and

1 extraordinary effort required. The percentage shall be only
2 the rate necessary to ensure that the fees paid are not
3 confiscatory under common law. The percentage may not exceed
4 200 percent of the established flat fee, absent a specific
5 finding that 200 percent of the flat fee in the case would be
6 confiscatory. If the court determines that 200 percent of the
7 flat fee would be confiscatory, it shall fix the amount of
8 compensation using an hourly rate not to exceed \$75 per hour
9 for a noncapital case and \$100 per hour for a capital case.
10 However, the compensation calculated by using the hourly rate
11 shall be only that amount necessary to ensure that the total
12 fees paid are not confiscatory.

13 (e) Any order granting relief under this subsection
14 must be attached to the final request for a payment submitted
15 to the Justice Administrative Commission.

16 (f) The Justice Administrative Commission shall
17 provide to the Office of the State Courts Administrator data
18 concerning the number of cases approved for compensation in
19 excess of the limitation and the amount of these awards by
20 circuit and by judge. The Office of the State Courts
21 Administrator shall report the data quarterly to the President
22 of the Senate, the Speaker of the House of Representatives,
23 the Chief Justice of the Supreme Court, and the chief judge of
24 each circuit.

25 Section 12. Effective July 1, 2007, section 27.54,
26 Florida Statutes, is amended to read:

27 27.54 Limitation on payment of expenditures ~~for public~~
28 ~~defender's office~~ other than by the state.--

29 (1) All payments for the salary of the public defender
30 and the criminal conflict and civil regional counsel and for
31 the necessary expenses of office, including salaries of

1 assistants and staff, shall be considered as being for a valid
2 public purpose. Travel expenses shall be paid in accordance
3 with the provisions of s. 112.061.

4 (2) A county or municipality may contract with, or
5 appropriate or contribute funds to, the operation of the
6 offices of the various public defenders and regional counsel
7 as provided in this subsection. A public defender or regional
8 counsel defending violations of special laws or county or
9 municipal ordinances punishable by incarceration and not
10 ancillary to a state charge shall contract with counties and
11 municipalities to recover the full cost of services rendered
12 on an hourly basis or reimburse the state for the full cost of
13 assigning one or more full-time equivalent attorney positions
14 to work on behalf of the county or municipality.

15 Notwithstanding any other provision of law, in the case of a
16 county with a population of less than 75,000, the public
17 defender or regional counsel shall contract for full
18 reimbursement, or for reimbursement as the parties otherwise
19 agree. In local ordinance violation cases, the county or
20 municipality shall pay for due process services that are
21 approved by the court, including deposition costs, deposition
22 transcript costs, investigative costs, witness fees, expert
23 witness costs, and interpreter costs. The person charged with
24 the violation shall be assessed a fee for the services of a
25 public defender or regional counsel and other costs and fees
26 paid by the county or municipality, which assessed fee may be
27 reduced to a lien, in all instances in which the person enters
28 a plea of guilty or no contest or is found to be in violation
29 or guilty of any count or lesser included offense of the
30 charge or companion case charges, regardless of adjudication.
31 The court shall determine the amount of the obligation. The

1 county or municipality may recover assessed fees through
2 collections court or as otherwise permitted by law, and any
3 fees recovered pursuant to this section shall be forwarded to
4 the applicable county or municipality as reimbursement.

5 (a) A contract for reimbursement on an hourly basis
6 shall require a county or municipality to reimburse the public
7 defender or regional counsel for services rendered at a rate
8 of \$50 per hour. If an hourly rate is specified in the General
9 Appropriations Act, that rate shall control.

10 (b) A contract for assigning one or more full-time
11 equivalent attorney positions to perform work on behalf of the
12 county or municipality shall assign one or more full-time
13 equivalent positions based on estimates by the public defender
14 or regional counsel of the number of hours required to handle
15 the projected workload. The full cost of each full-time
16 equivalent attorney position on an annual basis shall be \$50,
17 or the amount specified in the General Appropriations Act,
18 multiplied by the legislative budget request standard for
19 available work hours for one full-time equivalent attorney
20 position, or, in the absence of that standard, 1,854 hours.
21 The contract may provide for funding full-time equivalent
22 positions in one-quarter increments.

23 (c) Any payments received pursuant to this subsection
24 shall be deposited into the Grants and Donations Trust Fund
25 within the Justice Administrative Commission for appropriation
26 by the Legislature.

27 (3) No public defender, ~~or~~ assistant public defender,
28 regional counsel, or assistant regional counsel shall receive
29 from any county or municipality any supplemental salary,
30 except as provided in this section.

31

1 (4) Unless expressly authorized by law or in the
2 General Appropriations Act, public defenders and regional
3 counsel are prohibited from spending state-appropriated funds
4 on county funding obligations under s. 14, Art. V of the State
5 Constitution beginning January 1, 2005. This includes
6 expenditures on communications services and facilities as
7 defined in s. 29.008. This does not prohibit a public defender
8 from spending funds for these purposes in exceptional
9 circumstances when necessary to maintain operational
10 continuity in the form of a short-term advance pending
11 reimbursement from the county. If a public defender or
12 regional counsel provides short-term advance funding for a
13 county responsibility as authorized by this subsection, the
14 public defender or regional counsel shall request full
15 reimbursement from the board of county commissioners prior to
16 making the expenditure or at the next meeting of the board of
17 county commissioners after the expenditure is made. The total
18 of all short-term advances authorized by this subsection shall
19 not exceed 2 percent of the public defender's or regional
20 counsel's approved operating budget in any given year. No
21 short-term advances authorized by this subsection shall be
22 permitted until all reimbursements arising from advance
23 funding in the prior state fiscal year have been received by
24 the public defender or regional counsel. All reimbursement
25 payments received by the public defender or regional counsel
26 shall be deposited into the General Revenue Fund.
27 Notwithstanding the provisions of this subsection, the public
28 defender or regional counsel may expend funds for the purchase
29 of computer systems, including associated hardware and
30 software, and for personnel related to this function.

31

1 Section 13. Effective October 1, 2007, section 27.59,
2 Florida Statutes, is amended to read:

3 27.59 Access to prisoners.--The public defenders, ~~and~~
4 assistant public defenders, criminal conflict and civil
5 regional counsel, and assistant regional counsel shall be
6 empowered to inquire of all persons who are incarcerated in
7 lieu of bond and to tender them advice and counsel at any
8 time, but the provisions of this section shall not apply with
9 respect to persons who have engaged private counsel.

10 Section 14. Effective October 1, 2007, section 28.24,
11 Florida Statutes, is amended to read:

12 28.24 Service charges by clerk of the circuit
13 court.--The clerk of the circuit court shall charge for
14 services rendered by the clerk's office in recording documents
15 and instruments and in performing the duties enumerated in
16 amounts not to exceed those specified in this section.
17 Notwithstanding any other provision of this section, the clerk
18 of the circuit court shall provide without charge to the state
19 attorney, public defender, guardian ad litem, public guardian,
20 attorney ad litem, criminal conflict and civil regional
21 counsel, and private court-appointed counsel paid by the
22 state, and to the authorized staff acting on behalf of each,
23 access to and a copy of any public record, if the requesting
24 party is entitled by law to view the exempt or confidential
25 record, as maintained by and in the custody of the clerk of
26 the circuit court as provided in general law and the Florida
27 Rules of Judicial Administration. The clerk of the circuit
28 court may provide the requested public record in an electronic
29 format in lieu of a paper format when capable of being
30 accessed by the requesting entity.

31

| | Charges |
|----|--|
| 1 | |
| 2 | |
| 3 | (1) For examining, comparing, correcting, verifying, |
| 4 | and certifying transcripts of record in appellate proceedings, |
| 5 | prepared by attorney for appellant or someone else other than |
| 6 | clerk per page.....4.50 |
| 7 | (2) For preparing, numbering, and indexing an original |
| 8 | record of appellate proceedings, per instrument.....3.00 |
| 9 | (3) For certifying copies of any instrument in the |
| 10 | public records.....1.50 |
| 11 | (4) For verifying any instrument presented for |
| 12 | certification prepared by someone other than clerk, per page |
| 13 |3.00 |
| 14 | (5)(a) For making copies by photographic process of |
| 15 | any instrument in the public records consisting of pages of |
| 16 | not more than 14 inches by 8 1/2 inches, per page.....1.00 |
| 17 | (b) For making copies by photographic process of any |
| 18 | instrument in the public records of more than 14 inches by 8 |
| 19 | 1/2 inches, per page.....5.00 |
| 20 | (6) For making microfilm copies of any public records: |
| 21 | (a) 16 mm 100' microfilm roll.....37.50 |
| 22 | (b) 35 mm 100' microfilm roll.....52.50 |
| 23 | (c) Microfiche, per fiche.....3.00 |
| 24 | (7) For copying any instrument in the public records |
| 25 | by other than photographic process, per page.....6.00 |
| 26 | (8) For writing any paper other than herein |
| 27 | specifically mentioned, same as for copying, including signing |
| 28 | and sealing.....6.00 |
| 29 | (9) For indexing each entry not recorded.....1.00 |
| 30 | (10) For receiving money into the registry of court: |
| 31 | (a)1. First \$500, percent.....3 |

1 2. Each subsequent \$100, percent.....1.5
2 (b) Eminent domain actions, per deposit.....\$150.00
3 (11) For examining, certifying, and recording plats
4 and for recording condominium exhibits larger than 14 inches
5 by 8 1/2 inches:
6 (a) First page.....30.00
7 (b) Each additional page.....15.00
8 (12) For recording, indexing, and filing any
9 instrument not more than 14 inches by 8 1/2 inches, including
10 required notice to property appraiser where applicable:
11 (a) First page or fraction thereof.....5.00
12 (b) Each additional page or fraction thereof.....4.00
13 (c) For indexing instruments recorded in the official
14 records which contain more than four names, per additional
15 name.....1.00
16 (d) An additional service charge shall be paid to the
17 clerk of the circuit court to be deposited in the Public
18 Records Modernization Trust Fund for each instrument listed in
19 s. 28.222, except judgments received from the courts and
20 notices of lis pendens, recorded in the official records:
21 1. First page.....1.00
22 2. Each additional page.....0.50
23
24 Said fund shall be held in trust by the clerk and used
25 exclusively for equipment and maintenance of equipment,
26 personnel training, and technical assistance in modernizing
27 the public records system of the office. In a county where the
28 duty of maintaining official records exists in an office other
29 than the office of the clerk of the circuit court, the clerk
30 of the circuit court is entitled to 25 percent of the moneys
31 deposited into the trust fund for equipment, maintenance of

1 equipment, training, and technical assistance in modernizing
2 the system for storing records in the office of the clerk of
3 the circuit court. The fund may not be used for the payment of
4 travel expenses, membership dues, bank charges,
5 staff-recruitment costs, salaries or benefits of employees,
6 construction costs, general operating expenses, or other costs
7 not directly related to obtaining and maintaining equipment
8 for public records systems or for the purchase of furniture or
9 office supplies and equipment not related to the storage of
10 records. On or before December 1, 1995, and on or before
11 December 1 of each year immediately preceding each year during
12 which the trust fund is scheduled for legislative review under
13 s. 19(f)(2), Art. III of the State Constitution, each clerk of
14 the circuit court shall file a report on the Public Records
15 Modernization Trust Fund with the President of the Senate and
16 the Speaker of the House of Representatives. The report must
17 itemize each expenditure made from the trust fund since the
18 last report was filed; each obligation payable from the trust
19 fund on that date; and the percentage of funds expended for
20 each of the following: equipment, maintenance of equipment,
21 personnel training, and technical assistance. The report must
22 indicate the nature of the system each clerk uses to store,
23 maintain, and retrieve public records and the degree to which
24 the system has been upgraded since the creation of the trust
25 fund.

26 (e) An additional service charge of \$4 per page shall
27 be paid to the clerk of the circuit court for each instrument
28 listed in s. 28.222, except judgments received from the courts
29 and notices of lis pendens, recorded in the official records.
30 From the additional \$4 service charge collected:
31

1 1. If the counties maintain legal responsibility for
2 the costs of the court-related technology needs as defined in
3 s. 29.008(1)(f)2. and (h), 10 cents shall be distributed to
4 the Florida Association of Court Clerks and Comptroller, Inc.,
5 for the cost of development, implementation, operation, and
6 maintenance of the clerks' Comprehensive Case Information
7 System, in which system all clerks shall participate on or
8 before January 1, 2006; \$1.90 shall be retained by the clerk
9 to be deposited in the Public Records Modernization Trust Fund
10 and used exclusively for funding court-related technology
11 needs of the clerk as defined in s. 29.008(1)(f)2. and (h);
12 and \$2 shall be distributed to the board of county
13 commissioners to be used exclusively to fund court-related
14 technology, and court technology needs as defined in s.
15 29.008(1)(f)2. and (h) for the state trial courts, state
16 attorney, ~~and public defender, and criminal conflict and civil~~
17 regional counsel in that county. If the counties maintain
18 legal responsibility for the costs of the court-related
19 technology needs as defined in s. 29.008(1)(f)2. and (h),
20 notwithstanding any other provision of law, the county is not
21 required to provide additional funding beyond that provided
22 herein for the court-related technology needs of the clerk as
23 defined in s. 29.008(1)(f)2. and (h). All court records and
24 official records are the property of the State of Florida,
25 including any records generated as part of the Comprehensive
26 Case Information System funded pursuant to this paragraph and
27 the clerk of court is designated as the custodian of such
28 records, except in a county where the duty of maintaining
29 official records exists in a county office other than the
30 clerk of court or comptroller, such county office is
31 designated the custodian of all official records, and the

1 clerk of court is designated the custodian of all court
2 records. The clerk of court or any entity acting on behalf of
3 the clerk of court, including an association, shall not charge
4 a fee to any agency as defined in s. 119.011, the Legislature,
5 or the State Court System for copies of records generated by
6 the Comprehensive Case Information System or held by the clerk
7 of court or any entity acting on behalf of the clerk of court,
8 including an association.

9 2. If the state becomes legally responsible for the
10 costs of court-related technology needs as defined in s.
11 29.008(1)(f)2. and (h), whether by operation of general law or
12 by court order, \$4 shall be remitted to the Department of
13 Revenue for deposit into the General Revenue Fund.

14 (13) Oath, administering, attesting, and sealing, not
15 otherwise provided for herein.....3.00

16 (14) For validating certificates, any authorized
17 bonds, each.....3.00

18 (15) For preparing affidavit of domicile.....5.00

19 (16) For exemplified certificates, including signing
20 and sealing.....6.00

21 (17) For authenticated certificates, including signing
22 and sealing.....6.00

23 (18)(a) For issuing and filing a subpoena for a
24 witness, not otherwise provided for herein (includes writing,
25 preparing, signing, and sealing).....6.00

26 (b) For signing and sealing only.....1.50

27 (19) For approving bond.....7.50

28 (20) For searching of records, for each year's search
291.50

30 (21) For processing an application for a tax deed sale
31 (includes application, sale, issuance, and preparation of tax

1 deed, and disbursement of proceeds of sale), other than excess
2 proceeds.....60.00
3 (22) For disbursement of excess proceeds of tax deed
4 sale, first \$100 or fraction thereof.....10.00
5 (23) Upon receipt of an application for a marriage
6 license, for preparing and administering of oath; issuing,
7 sealing, and recording of the marriage license; and providing
8 a certified copy.....30.00
9 (24) For solemnizing matrimony.....30.00
10 (25) For sealing any court file or expungement of any
11 record.....37.50
12 (26)(a) For receiving and disbursing all restitution
13 payments, per payment.....3.00
14 (b) For receiving and disbursing all partial payments,
15 other than restitution payments, for which an administrative
16 processing service charge is not imposed pursuant to s.
17 28.246, per month.....5.00
18 (c) For setting up a payment plan, a one-time
19 administrative processing charge in lieu of a per month charge
20 under paragraph (b).....25.00
21 (27) Postal charges incurred by the clerk of the
22 circuit court in any mailing by certified or registered mail
23 shall be paid by the party at whose instance the mailing is
24 made.
25 (28) For furnishing an electronic copy of information
26 contained in a computer database: a fee as provided for in
27 chapter 119.
28 Section 15. Effective October 1, 2007, section 28.345,
29 Florida Statutes, is amended to read:
30 28.345 Exemption from court-related fees and
31 charges.--Notwithstanding any other provision of this chapter

1 or law to the contrary, judges and those court staff acting on
2 behalf of judges, state attorneys, guardians ad litem, public
3 guardians, attorneys ad litem, court-appointed private
4 counsel, criminal conflict and civil regional counsel, and
5 public defenders, acting in their official capacity, and state
6 agencies, are exempt from all court-related fees and charges
7 assessed by the clerks of the circuit courts.

8 Section 16. Effective July 1, 2007, section 29.001,
9 Florida Statutes, is amended to read:

10 29.001 State courts system elements and definitions.--

11 (1) For the purpose of implementing s. 14, Art. V of
12 the State Constitution, the state courts system is defined to
13 include the enumerated elements of the Supreme Court, district
14 courts of appeal, circuit courts, county courts, and certain
15 supports thereto. The offices of public defenders and state
16 attorneys are defined to include the enumerated elements of
17 the 20 state attorneys' offices and the enumerated elements of
18 the 20 public defenders' offices and five offices of criminal
19 conflict and civil regional counsel. Court-appointed counsel
20 are defined to include the enumerated elements for counsel
21 appointed to ensure due process in criminal and civil
22 proceedings in accordance with state and federal
23 constitutional guarantees. Funding for the state courts
24 system, the state attorneys' offices, the public defenders'
25 offices, the offices of criminal conflict and civil regional
26 counsel, and other court-appointed counsel shall be provided
27 from state revenues appropriated by general law.

28 (2) Although a program or function currently may be
29 funded by the state or prescribed or established in general
30 law, this does not designate the program or function as an
31 element of the state courts system, state attorneys' offices,

1 public defenders' offices, or the offices of the circuit and
2 county court clerks performing court-related functions as
3 described in s. 14, Art. V of the State Constitution.

4 Section 17. Effective July 1, 2007, section 29.006,
5 Florida Statutes, is amended to read:

6 29.006 ~~Public defenders and~~ Indigent defense
7 costs.--For purposes of implementing s. 14, Art. V of the
8 State Constitution, the elements of the public defenders'
9 offices and criminal conflict and civil regional counsel
10 offices to be provided from state revenues appropriated by
11 general law are as follows:

12 (1) The public defender of each judicial circuit and
13 assistant public defenders and other staff as determined by
14 general law. The regional counsel of each judicial district,
15 the assistant regional counsel, and other staff as determined
16 by general law.

17 (2) Reasonable court reporting and transcription
18 services necessary to meet constitutional or statutory
19 requirements, including the cost of transcribing and copying
20 depositions of witnesses and the cost of foreign language and
21 sign-language interpreters and translators.

22 (3) Witnesses, including expert witnesses, summoned to
23 appear for an investigation, preliminary hearing, or trial in
24 a case when the witnesses are summoned on behalf of an
25 indigent defendant, and any other expert witnesses required in
26 a court hearing by law or whomever the public defender or
27 regional counsel deems necessary for the performance of his or
28 her duties.

29 (4) Mental health professionals appointed pursuant to
30 s. 394.473 and required in a court hearing involving an
31 indigent, and mental health professionals appointed pursuant

1 to s. 916.115(2) and required in a court hearing involving an
2 indigent.

3 (5) Reasonable transportation services in the
4 performance of constitutional and statutory responsibilities.
5 Motor vehicles owned by counties and provided exclusively to
6 public defenders as of July 1, 2003, and any additional
7 vehicles owned by the counties and provided exclusively to
8 public defenders during fiscal year 2003-2004 shall be
9 transferred by title to the state effective July 1, 2004.

10 (6) Travel expenses reimbursable under s. 112.061
11 reasonably necessary in the performance of constitutional and
12 statutory responsibilities.

13 (7) Reasonable library and electronic legal research
14 services, other than a public law library.

15 (8) Reasonable pretrial consultation fees and costs.

16 Section 18. Effective October 1, 2007, section 29.007,
17 Florida Statutes, is amended to read:

18 29.007 Court-appointed counsel.--For purposes of
19 implementing s. 14, Art. V of the State Constitution, the
20 elements of court-appointed counsel to be provided from state
21 revenues appropriated by general law are as follows:

22 (1) Private attorneys appointed by the court to handle
23 cases where the defendant is indigent and cannot be
24 represented by the public defender or the office of criminal
25 conflict and civil regional counsel ~~under ss. 27.42 and 27.53.~~

26 (2) When the office of criminal conflict and civil
27 regional counsel has a conflict of interest, private attorneys
28 appointed by the court to represent indigents or other classes
29 of litigants in civil proceedings requiring court-appointed
30 counsel in accordance with state and federal constitutional
31 guarantees and federal and state statutes.

1 (3) Reasonable court reporting and transcription
2 services necessary to meet constitutional or statutory
3 requirements, including the cost of transcribing and copying
4 depositions of witnesses and the cost of foreign language and
5 sign-language interpreters and translators.

6 (4) Witnesses, including expert witnesses, summoned to
7 appear for an investigation, preliminary hearing, or trial in
8 a case when the witnesses are summoned on behalf of an
9 indigent, and any other expert witnesses approved by the
10 court.

11 (5) Mental health professionals appointed pursuant to
12 s. 394.473 and required in a court hearing involving an
13 indigent, mental health professionals appointed pursuant to s.
14 916.115(2) and required in a court hearing involving an
15 indigent, and any other mental health professionals required
16 by law for the full adjudication of any civil case involving
17 an indigent person.

18 (6) Reasonable pretrial consultation fees and costs.

19 (7) Travel expenses reimbursable under s. 112.061
20 reasonably necessary in the performance of constitutional and
21 statutory responsibilities.

22
23 Subsections (3), (4), (5), (6), and (7) apply when
24 court-appointed counsel is appointed; when the court
25 determines that the litigant is indigent for costs; or when
26 the litigant is acting pro se and the court determines that
27 the litigant is indigent for costs at the trial or appellate
28 level. This section applies in any situation in which the
29 court appoints counsel to protect a litigant's due process
30 rights. The Justice Administrative Commission shall approve
31 uniform contract forms for use in processing payments for due

1 process services under this section. In each case in which a
2 private attorney represents a person determined by the court
3 to be indigent for costs, the attorney shall execute the
4 commission's contract for private attorneys representing
5 persons determined to be indigent for costs.

6 Section 19. Effective July 1, 2007, subsections (1)
7 and (2) of section 29.008, Florida Statutes, are amended to
8 read:

9 29.008 County funding of court-related functions.--

10 (1) Counties are required by s. 14, Art. V of the
11 State Constitution to fund the cost of communications
12 services, existing radio systems, existing multiagency
13 criminal justice information systems, and the cost of
14 construction or lease, maintenance, utilities, and security of
15 facilities for the circuit and county courts, public
16 defenders' offices, state attorneys' offices, guardian ad
17 litem offices, and the offices of the clerks of the circuit
18 and county courts performing court-related functions. For
19 purposes of this section, the term "circuit and county courts"
20 includes ~~shall include~~ the offices and staffing of the
21 guardian ad litem programs, and the term "public defenders'
22 offices" includes the offices of criminal conflict and civil
23 regional counsel. The county designated under s. 35.05(1) as
24 the headquarters for each appellate district shall fund these
25 costs for the appellate division of the public defender's
26 office in that county. For purposes of implementing these
27 requirements, the term:

28 (a) "Facility" means reasonable and necessary
29 buildings and office space and appurtenant equipment and
30 furnishings, structures, real estate, easements, and related
31 interests in real estate, including, but not limited to, those

1 | for the purpose of housing legal materials for use by the
2 | general public and personnel, equipment, or functions of the
3 | circuit or county courts, public defenders' offices, state
4 | attorneys' offices, and court-related functions of the office
5 | of the clerks of the circuit and county courts and all
6 | storage. The term "facility" includes all wiring necessary for
7 | court reporting services. The term also includes access to
8 | parking for such facilities in connection with such
9 | court-related functions that may be available free or from a
10 | private provider or a local government for a fee. The office
11 | space provided by a county may not be less than the standards
12 | for space allotment adopted by the Department of Management
13 | Services, except this requirement applies only to facilities
14 | that are leased, or on which construction commences, after
15 | June 30, 2003. County funding must include physical
16 | modifications and improvements to all facilities as are
17 | required for compliance with the Americans with Disabilities
18 | Act. Upon mutual agreement of a county and the affected entity
19 | in this paragraph, the office space provided by the county may
20 | vary from the standards for space allotment adopted by the
21 | Department of Management Services.

22 | 1. As of July 1, 2005, equipment and furnishings shall
23 | be limited to that appropriate and customary for courtrooms,
24 | hearing rooms, jury facilities, and other public areas in
25 | courthouses and any other facility occupied by the courts,
26 | state attorneys, ~~and~~ public defenders, guardians ad litem, and
27 | criminal conflict and civil regional counsel. Court reporting
28 | equipment in these areas or facilities is not a responsibility
29 | of the county.

30 | 2. Equipment and furnishings under this paragraph in
31 | existence and owned by counties on July 1, 2005, except for

1 | that in the possession of the clerks, for areas other than
2 | courtrooms, hearing rooms, jury facilities, and other public
3 | areas in courthouses and any other facility occupied by the
4 | courts, state attorneys, and public defenders, shall be
5 | transferred to the state at no charge. This provision does not
6 | apply to any communication services as defined in paragraph
7 | (f).

8 | (b) "Construction or lease" includes, but is not
9 | limited to, all reasonable and necessary costs of the
10 | acquisition or lease of facilities for all judicial officers,
11 | staff, jurors, volunteers of a tenant agency, and the public
12 | for the circuit and county courts, the public defenders'
13 | offices, state attorneys' offices, and for performing the
14 | court-related functions of the offices of the clerks of the
15 | circuit and county courts. This includes expenses related to
16 | financing such facilities and the existing and future cost and
17 | bonded indebtedness associated with placing the facilities in
18 | use.

19 | (c) "Maintenance" includes, but is not limited to, all
20 | reasonable and necessary costs of custodial and groundskeeping
21 | services and renovation and reconstruction as needed to
22 | accommodate functions for the circuit and county courts, the
23 | public defenders' offices, and state attorneys' offices and
24 | for performing the court-related functions of the offices of
25 | the clerks of the circuit and county court and for maintaining
26 | the facilities in a condition appropriate and safe for the use
27 | intended.

28 | (d) "Utilities" means all electricity services for
29 | light, heat, and power; natural or manufactured gas services
30 | for light, heat, and power; water and wastewater services and
31 | systems, stormwater or runoff services and systems, sewer

1 services and systems, all costs or fees associated with these
2 services and systems, and any costs or fees associated with
3 the mitigation of environmental impacts directly related to
4 the facility.

5 (e) "Security" includes but is not limited to, all
6 reasonable and necessary costs of services of law enforcement
7 officers or licensed security guards and all electronic,
8 cellular, or digital monitoring and screening devices
9 necessary to ensure the safety and security of all persons
10 visiting or working in a facility; to provide for security of
11 the facility, including protection of property owned by the
12 county or the state; and for security of prisoners brought to
13 any facility. This includes bailiffs while providing courtroom
14 and other security for each judge and other quasi-judicial
15 officers.

16 (f) "Communications services" are defined as any
17 reasonable and necessary transmission, emission, and reception
18 of signs, signals, writings, images, and sounds of
19 intelligence of any nature by wire, radio, optical, audio
20 equipment, or other electromagnetic systems and includes all
21 facilities and equipment owned, leased, or used by judges,
22 clerks, public defenders, state attorneys, guardians ad litem,
23 criminal conflict and civil regional counsel, and all staff of
24 the state courts system, state attorneys' offices, public
25 defenders' offices, and clerks of the circuit and county
26 courts performing court-related functions. Such system or
27 services shall include, but not be limited to:

28 1. Telephone system infrastructure, including computer
29 lines, telephone switching equipment, and maintenance, and
30 facsimile equipment, wireless communications, cellular
31 telephones, pagers, and video teleconferencing equipment and

1 | line charges. Each county shall continue to provide access to
2 | a local carrier for local and long distance service and shall
3 | pay toll charges for local and long distance service.

4 | 2. All computer networks, systems and equipment,
5 | including computer hardware and software, modems, printers,
6 | wiring, network connections, maintenance, support staff or
7 | services including any county-funded support staff located in
8 | the offices of the circuit court, county courts, state
9 | attorneys, ~~and~~ public defenders, guardians ad litem, and
10 | criminal conflict and civil regional counsel; training,
11 | supplies, and line charges necessary for an integrated
12 | computer system to support the operations and management of
13 | the state courts system, the offices of the public defenders,
14 | the offices of the state attorneys, the guardian ad litem
15 | offices, the offices of criminal conflict and civil regional
16 | counsel, and the offices of the clerks of the circuit and
17 | county courts; and the capability to connect those entities
18 | and reporting data to the state as required for the
19 | transmission of revenue, performance accountability, case
20 | management, data collection, budgeting, and auditing purposes.
21 | The integrated computer system shall be operational by July 1,
22 | 2006, and, at a minimum, permit the exchange of financial,
23 | performance accountability, case management, case disposition,
24 | and other data across multiple state and county information
25 | systems involving multiple users at both the state level and
26 | within each judicial circuit and be able to electronically
27 | exchange judicial case background data, sentencing
28 | scoresheets, and video evidence information stored in
29 | integrated case management systems over secure networks. Once
30 | the integrated system becomes operational, counties may reject
31 | requests to purchase communication services included in this

1 | subparagraph not in compliance with standards, protocols, or
2 | processes adopted by the board established pursuant to s.
3 | 29.0086.

4 | 3. Courier messenger and subpoena services.

5 | 4. Auxiliary aids and services for qualified
6 | individuals with a disability which are necessary to ensure
7 | access to the courts. Such auxiliary aids and services
8 | include, but are not limited to, sign language interpretation
9 | services required under the federal Americans with
10 | Disabilities Act other than services required to satisfy
11 | due-process requirements and identified as a state funding
12 | responsibility pursuant to ss. 29.004, 29.005, 29.006, and
13 | 29.007, real-time transcription services for individuals who
14 | are hearing impaired, and assistive listening devices and the
15 | equipment necessary to implement such accommodations.

16 | (g) "Existing radio systems" includes, but is not
17 | limited to, law enforcement radio systems that are used by the
18 | circuit and county courts, the offices of the public
19 | defenders, the offices of the state attorneys, and for
20 | court-related functions of the offices of the clerks of the
21 | circuit and county courts. This includes radio systems that
22 | were operational or under contract at the time Revision No. 7,
23 | 1998, to Art. V of the State Constitution was adopted and any
24 | enhancements made thereafter, the maintenance of those
25 | systems, and the personnel and supplies necessary for
26 | operation.

27 | (h) "Existing multiagency criminal justice information
28 | systems" includes, but is not limited to, those components of
29 | the multiagency criminal justice information system as defined
30 | in s. 943.045, supporting the offices of the circuit or county
31 | courts, the public defenders' offices, the state attorneys'

1 | offices, or those portions of the offices of the clerks of the
2 | circuit and county courts performing court-related functions
3 | that are used to carry out the court-related activities of
4 | those entities. This includes upgrades and maintenance of the
5 | current equipment, maintenance and upgrades of supporting
6 | technology infrastructure and associated staff, and services
7 | and expenses to assure continued information sharing and
8 | reporting of information to the state. The counties shall also
9 | provide additional information technology services, hardware,
10 | and software as needed for new judges and staff of the state
11 | courts system, state attorneys' offices, public defenders'
12 | offices, guardian ad litem offices, and the offices of the
13 | clerks of the circuit and county courts performing
14 | court-related functions.

15 | (2) Counties shall pay reasonable and necessary
16 | salaries, costs, and expenses of the state courts system,
17 | including associated staff and expenses, to meet local
18 | requirements.

19 | (a) Local requirements are those specialized programs,
20 | nonjudicial staff, and other expenses associated with
21 | specialized court programs, specialized prosecution needs,
22 | specialized defense needs, or resources required of a local
23 | jurisdiction as a result of special factors or circumstances.
24 | Local requirements exist:

25 | 1. When imposed pursuant to an express statutory
26 | directive, based on such factors as provided in paragraph (b);
27 | or

28 | 2. When:

29 | a. The county has enacted an ordinance, adopted a
30 | local program, or funded activities with a financial or
31 |

1 operational impact on the circuit or a county within the
2 circuit; or

3 b. Circumstances in a given circuit or county result
4 in or necessitate implementation of specialized programs, the
5 provision of nonjudicial staff and expenses to specialized
6 court programs, special prosecution needs, specialized defense
7 needs, or the commitment of resources to the court's
8 jurisdiction.

9 (b) Factors and circumstances resulting in the
10 establishment of a local requirement include, but are not
11 limited to:

- 12 1. Geographic factors;
- 13 2. Demographic factors;
- 14 3. Labor market forces;
- 15 4. The number and location of court facilities; or
- 16 5. The volume, severity, complexity, or mix of court
17 cases.

18 (c) Local requirements under subparagraph (a)2. must
19 be determined by the following method:

20 1. The chief judge of the circuit, in conjunction with
21 the state attorney, ~~and~~ the public defender, and the criminal
22 conflict and civil regional counsel only on matters that
23 impact their offices, shall identify all local requirements
24 within the circuit or within each county in the circuit and
25 shall identify the reasonable and necessary salaries, costs,
26 and expenses to meet these local requirements.

27 2. On or before June 1 of each year, the chief judge
28 shall submit to the board of county commissioners a tentative
29 budget request for local requirements for the ensuing fiscal
30 year. The tentative budget must certify a listing of all local
31 requirements and the reasonable and necessary salaries, costs,

1 and expenses for each local requirement. The board of county
2 commissioners may, by resolution, require the certification to
3 be submitted earlier.

4 3. The board of county commissioners shall thereafter
5 treat the certification in accordance with the county's
6 budgetary procedures. A board of county commissioners may:

7 a. Determine whether to provide funding, and to what
8 extent it will provide funding, for salaries, costs, and
9 expenses under this section;

10 b. Require a county finance officer to conduct a
11 preaudit review of any county funds provided under this
12 section prior to disbursement;

13 c. Require review or audit of funds expended under
14 this section by the appropriate county office; and

15 d. Provide additional financial support for the courts
16 system, state attorneys, ~~or~~ public defenders, or criminal
17 conflict and civil regional counsel.

18 (d) Counties may satisfy these requirements by
19 entering into interlocal agreements for the collective funding
20 of these reasonable and necessary salaries, costs, and
21 expenses.

22 Section 20. Effective July 1, 2007, subsections (1),
23 (2), (3), and (5) of section 29.015, Florida Statutes, are
24 amended to read:

25 29.015 Contingency fund; limitation of authority to
26 transfer funds in contracted due process services
27 appropriation categories.--

28 (1) An appropriation may be provided in the General
29 Appropriations Act in the Justice Administrative Commission to
30 serve as a contingency fund for the purpose of alleviating
31 deficits in contracted due process services appropriation

1 categories, including private court-appointed counsel
2 appropriation categories, that may occur from time to time due
3 to extraordinary cases ~~events~~ that lead to unexpected
4 expenditures.

5 (2) In the event that a state attorney, ~~or~~ public
6 defender, or criminal conflict and civil regional counsel
7 incurs a deficit in a contracted due process services
8 appropriation category or conflict counsel category, the
9 following steps shall be taken in order:

10 (a) The state attorney, ~~or~~ public defender, or
11 regional counsel shall first attempt to identify surplus funds
12 from other appropriation categories within his or her office
13 and submit a budget amendment pursuant to chapter 216 to
14 transfer funds from within the office.

15 (b) In the event that the state attorney, ~~or~~ public
16 defender, or regional counsel is unable to identify surplus
17 funds from within his or her office, he or she shall certify
18 this to the Justice Administrative Commission along with a
19 complete explanation of the circumstances which led to the
20 deficit and steps the office has taken to reduce or alleviate
21 the deficit. The Justice Administrative Commission shall
22 inquire as to whether any other office has surplus funds in
23 its contracted due process services appropriation categories
24 which can be transferred to the office that is experiencing
25 the deficit. If other offices indicate that surplus funds are
26 available within the same budget entity ~~appropriation~~
27 ~~category~~, the Justice Administrative Commission shall transfer
28 the amount needed to fund the deficit and notify the Governor
29 and the chair and vice chair of the Legislative Budget
30 Commission 14 days prior to a transfer pursuant to the notice,
31 review, and objection provisions of s. 216.177. If funds

1 appropriated for this purpose are available in a different
2 budget entity, the Justice Administrative Commission shall
3 request a budget amendment pursuant to chapter 216.

4 (c) If no office indicates that surplus funds are
5 available to alleviate the deficit, the Justice Administrative
6 Commission may request a budget amendment to transfer funds
7 from the contingency fund. Such transfers shall be in
8 accordance with all applicable provisions of chapter 216 and
9 shall be subject to review and approval by the Legislative
10 Budget Commission. The Justice Administrative Commission shall
11 submit the documentation provided by the office explaining the
12 circumstances that led to the deficit and the steps taken by
13 the office and the Justice Administrative Commission to
14 identify surplus funds to the Legislative Budget Commission.

15 (3) In the event that there is a deficit in a
16 statewide contracted due process services appropriation
17 category provided for private court-appointed counsel
18 necessary due to withdrawal of the public defender and
19 criminal conflict and civil regional counsel due to an ethical
20 conflict, the following steps shall be taken in order:

21 (a) The Justice Administrative Commission shall first
22 attempt to identify surplus funds from other contracted due
23 process services appropriation categories within the Justice
24 Administrative Commission and submit a budget amendment
25 pursuant to chapter 216 to transfer funds from within the
26 commission.

27 (b) In the event that the Justice Administrative
28 Commission is unable to identify surplus funds from within the
29 commission, the commission shall inquire of each of the public
30 defenders and regional counsel as to whether any office has
31 surplus funds in its contracted due process services

1 appropriations categories which can be transferred. If any
2 public defender or regional counsel office or offices indicate
3 that surplus funds are available, the Justice Administrative
4 Commission shall request a budget amendment to transfer funds
5 from the office or offices to alleviate the deficit upon
6 agreement of the contributing office or offices.

7 (c) If no public defender or regional counsel office
8 has surplus funds available to alleviate the deficit, the
9 Justice Administrative Commission may request a budget
10 amendment to transfer funds from the contingency fund. Such
11 transfers shall be in accordance with all applicable
12 provisions of chapter 216 and shall be subject to review and
13 approval by the Legislative Budget Commission. The Justice
14 Administrative Commission shall submit the documentation
15 provided by the office explaining the circumstances that led
16 to the deficit and the steps taken by the Justice
17 Administrative Commission to identify surplus funds to the
18 Legislative Budget Commission.

19 (5) Notwithstanding any provisions in chapter 216 to
20 the contrary, no office shall transfer funds from a contracted
21 due process services appropriation category or from a
22 contingency fund category authorized in this section except as
23 specifically authorized in this section. In addition, funds
24 shall not be transferred from a state attorney office to
25 alleviate a deficit in a public defender office or an office
26 of criminal conflict and civil regional counsel, and funds
27 shall not be transferred from a public defender office or
28 regional counsel office to alleviate a deficit in a state
29 attorney office.

30 Section 21. Effective October 1, 2007, section 29.018,
31 Florida Statutes, is amended to read:

1 29.018 Cost sharing of due-process services;
2 legislative intent.--It is the intent of the Legislature to
3 provide state-funded due-process services to the state courts
4 system, state attorneys, public defenders, criminal conflict
5 and civil regional counsel, and private court-appointed
6 counsel in the most cost-effective and efficient manner. The
7 state courts system, state attorneys, public defenders,
8 criminal conflict and civil regional counsel, and the Justice
9 Administrative Commission on behalf of private court-appointed
10 counsel may enter into contractual agreements to share, on a
11 pro rata basis, the costs associated with court reporting
12 services, court interpreter and translation services, court
13 experts, and all other due-process services funded by the
14 state pursuant to this chapter. These costs shall be budgeted
15 within the funds appropriated to each of the affected users of
16 services.

17 Section 22. Subsection (1) of section 39.815, Florida
18 Statutes, is amended to read:

19 39.815 Appeal.--

20 (1) Any child, any parent or guardian ad litem of any
21 child, any other party to the proceeding who is affected by an
22 order of the court, or the department may appeal to the
23 appropriate district court of appeal within the time and in
24 the manner prescribed by the Florida Rules of Appellate
25 Procedure. The district court of appeal shall give an appeal
26 from an order terminating parental rights priority in
27 docketing and shall render a decision on the appeal as
28 expeditiously as possible. Appointed counsel shall be
29 compensated as provided in s. 27.5304(6) ~~s. 27.5304(5)~~.

30 Section 23. Subsections (5) and (6) of section 43.16,
31 Florida Statutes, are amended to read:

1 43.16 Justice Administrative Commission; membership,
2 powers and duties.--

3 (5) The duties of the commission shall include, but
4 not be limited to, the following:

5 (a) The maintenance of a central state office for
6 administrative services and assistance when possible to and on
7 behalf of the state attorneys and public defenders of Florida,
8 the capital collateral regional counsel of Florida, the
9 criminal conflict and civil regional counsel, and the Guardian
10 Ad Litem Program.

11 (b) Each state attorney, ~~and~~ public defender, and
12 criminal conflict and civil regional counsel and the Guardian
13 Ad Litem Program shall continue to prepare necessary budgets,
14 vouchers ~~that~~ ~~which~~ represent valid claims for reimbursement
15 by the state for authorized expenses, and other things
16 incidental to the proper administrative operation of the
17 office, such as revenue transmittals to the Chief Financial
18 Officer and automated systems plans, but will forward same to
19 the commission for recording and submission to the proper
20 state officer. However, when requested by a state attorney, ~~or~~
21 a public defender, a criminal conflict and civil regional
22 counsel, or the Guardian Ad Litem Program, the commission will
23 either assist in the preparation of budget requests, voucher
24 schedules, and other forms and reports or accomplish the
25 entire project involved.

26 (6) The provisions contained in this section shall be
27 supplemental to those of chapter 27, relating to state
28 attorneys, ~~and~~ public defenders, criminal conflict and civil
29 regional counsel, and capital collateral regional counsel; to
30 those of chapter 39, relating to the Guardian Ad Litem
31 Program; or to other laws pertaining hereto.

1 Section 24. Effective October 1, 2007, section 57.082,
2 Florida Statutes, is amended to read:

3 57.082 Determination of civil indigent status.--

4 (1) APPLICATION TO THE CLERK.--A person seeking
5 appointment of an ~~a private~~ attorney in a civil case eligible
6 for court-appointed counsel, or seeking relief from prepayment
7 of fees and costs under s. 57.081, based upon an inability to
8 pay must apply to the clerk of the court for a determination
9 of civil indigent status using an application form developed
10 by the Florida Clerks of Court Operations Corporation with
11 final approval by the Supreme Court.

12 (a) The application must include, at a minimum, the
13 following financial information:

14 1. Net income, consisting of total salary and wages,
15 minus deductions required by law, including court-ordered
16 support payments.

17 2. Other income, including, but not limited to, social
18 security benefits, union funds, veterans' benefits, workers'
19 compensation, other regular support from absent family
20 members, public or private employee pensions, unemployment
21 compensation, dividends, interest, rent, trusts, and gifts.

22 3. Assets, including, but not limited to, cash,
23 savings accounts, bank accounts, stocks, bonds, certificates
24 of deposit, equity in real estate, and equity in a boat or a
25 motor vehicle or in other tangible property.

26 4. All liabilities and debts.

27
28 The application must include a signature by the applicant
29 which attests to the truthfulness of the information provided.
30 The application form developed by the corporation must include
31 notice that the applicant may seek court review of a clerk's

1 determination that the applicant is not indigent, as provided
2 in this section.

3 (b) The clerk shall assist a person who appears before
4 the clerk and requests assistance in completing the
5 application, and the clerk shall notify the court if a person
6 is unable to complete the application after the clerk has
7 provided assistance.

8 (c) The clerk shall accept an application that is
9 signed by the applicant and submitted on his or her behalf by
10 a private attorney who is representing the applicant in the
11 applicable matter.

12 (2) DETERMINATION BY THE CLERK.--The clerk of the
13 court shall determine whether an applicant seeking such
14 designation is indigent based upon the information provided in
15 the application and the criteria prescribed in this
16 subsection.

17 (a)1. An applicant, including an applicant who is a
18 minor or an adult tax-dependent person, is indigent if the
19 applicant's income is equal to or below 200 percent of the
20 then-current federal poverty guidelines prescribed for the
21 size of the household of the applicant by the United States
22 Department of Health and Human Services.

23 2. There is a presumption that the applicant is not
24 indigent if the applicant owns, or has equity in, any
25 intangible or tangible personal property or real property or
26 the expectancy of an interest in any such property having a
27 net equity value of \$2,500 or more, excluding the value of the
28 person's homestead and one vehicle having a net value not
29 exceeding \$5,000.

30 (b) Based upon its review, the clerk shall make one of
31 the following determinations:

1 1. The applicant is not indigent.

2 2. The applicant is indigent.

3 (c) If the clerk determines that the applicant is
4 indigent, the clerk shall immediately file the determination
5 in the case record.

6 (d) The duty of the clerk in determining whether an
7 applicant is indigent is limited to receiving the application
8 and comparing the information provided in the application to
9 the criteria prescribed in this subsection. The determination
10 of indigent status is a ministerial act of the clerk and may
11 not be based on further investigation or the exercise of
12 independent judgment by the clerk. The clerk may contract with
13 third parties to perform functions assigned to the clerk under
14 this section.

15 (e) The applicant may seek review of the clerk's
16 determination that the applicant is not indigent in the court
17 having jurisdiction over the matter by filing a petition to
18 review the clerk's determination of nonindigent status, for
19 which a filing fee may not be charged. If the applicant seeks
20 review of the clerk's determination of indigent status, the
21 court shall make a final determination as provided in
22 subsection (4).

23 (3) APPOINTMENT OF COUNSEL ON AN INTERIM BASIS.--If
24 the clerk of the court has not made a determination of
25 indigent status at the time a person requests appointment of
26 an ~~a private~~ attorney in a civil case eligible for
27 court-appointed counsel, the court shall make a preliminary
28 determination of indigent status, pending further review by
29 the clerk, and may, by court order, appoint ~~private~~ counsel on
30 an interim basis.

31 (4) REVIEW OF THE CLERK'S DETERMINATION.--

1 (a) If the clerk of the court determines that the
2 applicant is not indigent and the applicant seeks review of
3 the clerk's determination, the court shall make a final
4 determination of indigent status by reviewing the information
5 provided in the application against the criteria prescribed in
6 subsection (2) and by considering the following additional
7 factors:

8 1. Whether paying for private counsel or other fees
9 and costs creates a substantial hardship for the applicant or
10 the applicant's family.

11 2. Whether the applicant is proceeding pro se or is
12 represented by a private attorney for a fee or on a pro bono
13 basis.

14 3. When the applicant retained private counsel.

15 4. The amount of any attorney's fees and who is paying
16 the fees.

17 5. Any other relevant financial circumstances of the
18 applicant or the applicant's family.

19 (b) Based upon its review, the court shall make one of
20 the following determinations and shall, if appropriate,
21 appoint ~~private~~ counsel:

22 1. The applicant is not indigent.

23 2. The applicant is indigent.

24 (5) APPOINTMENT OF COUNSEL.--In appointing counsel
25 after a determination that a person is indigent under this
26 section, the court shall first appoint the office of criminal
27 conflict and civil regional counsel, as provided in s. 27.511,
28 unless specific provision is made in law for the appointment
29 of the public defender in the particular civil proceeding.

30 (6)(5) PROCESSING CHARGE; PAYMENT PLANS.--A person who
31 the clerk or the court determines is indigent for civil

1 | proceedings under this section shall be enrolled in a payment
2 | plan under s. 28.246 and shall be charged a one-time
3 | administrative processing charge under s. 28.24(26)(c). A
4 | monthly payment amount, calculated based upon all fees and all
5 | anticipated costs, is presumed to correspond to the person's
6 | ability to pay if it does not exceed 2 percent of the person's
7 | annual net income, as defined in subsection (1), divided by
8 | 12. The person may seek review of the clerk's decisions
9 | regarding a payment plan established under s. 28.246 in the
10 | court having jurisdiction over the matter. A case may not be
11 | impeded in any way, delayed in filing, or delayed in its
12 | progress, including the final hearing and order, due to
13 | nonpayment of any fees by an indigent person.

14 | ~~(7)(6)~~ FINANCIAL DISCREPANCIES; FRAUD; FALSE
15 | INFORMATION.--

16 | (a) If the court learns of discrepancies between the
17 | application and the actual financial status of the person
18 | found to be indigent, the court shall determine whether the
19 | status and any relief provided as a result of that status
20 | shall be revoked. The person may be heard regarding the
21 | information learned by the court. If the court, based on the
22 | information, determines that the person is not indigent, the
23 | court shall revoke the provision of any relief under this
24 | section.

25 | (b) If the court has reason to believe that any
26 | applicant, through fraud or misrepresentation, was improperly
27 | determined to be indigent, the matter shall be referred to the
28 | state attorney. Twenty-five percent of any amount recovered by
29 | the state attorney as reasonable value of the services
30 | rendered, including fees, charges, and costs paid by the state
31 | on the person's behalf, shall be remitted to the Department of

1 Revenue for deposit into the Grants and Donations Trust Fund
2 within the Justice Administrative Commission. Seventy-five
3 percent of any amount recovered shall be remitted to the
4 Department of Revenue for deposit into the General Revenue
5 Fund.

6 (c) A person who knowingly provides false information
7 to the clerk or the court in seeking a determination of
8 indigent status under this section commits a misdemeanor of
9 the first degree, punishable as provided in s. 775.082 or s.
10 775.083.

11 Section 25. Paragraph (y) of subsection (2) of section
12 110.205, Florida Statutes, is amended to read:

13 110.205 Career service; exemptions.--

14 (2) EXEMPT POSITIONS.--The exempt positions that are
15 not covered by this part include the following:

16 (y) All officers and employees of the Justice
17 Administrative Commission, Office of the State Attorney,
18 Office of the Public Defender, regional offices of capital
19 collateral counsel, offices of criminal conflict and civil
20 regional counsel, and Statewide Guardian Ad Litem Office,
21 including the circuit guardian ad litem programs.

22 Section 26. Effective October 1, 2007, subsection (2)
23 of section 125.69, Florida Statutes, is amended to read:

24 125.69 Penalties; enforcement by code inspectors.--

25 (2) Each county is authorized and required to pay any
26 attorney appointed by the court to represent a defendant
27 charged with a criminal violation of a special law or county
28 ordinance not ancillary to a state charge if the defendant is
29 indigent and otherwise entitled to court-appointed counsel
30 under the Constitution of the United States or the
31 Constitution of the State of Florida. In these cases, the

1 court shall appoint counsel to represent the defendant in
2 accordance with s. 27.40, and shall order the county to pay
3 the reasonable attorney's fees, costs, and related expenses of
4 the defense. The county may contract with the public defender
5 or the office of criminal conflict and civil regional counsel
6 for ~~of~~ the judicial circuit in which the county is located to
7 serve as court-appointed counsel pursuant to s. 27.54.

8 Section 27. Paragraph (qq) of subsection (1) of
9 section 216.011, Florida Statutes, is amended to read:

10 216.011 Definitions.--

11 (1) For the purpose of fiscal affairs of the state,
12 appropriations acts, legislative budgets, and approved
13 budgets, each of the following terms has the meaning
14 indicated:

15 (qq) "State agency" or "agency" means any official,
16 officer, commission, board, authority, council, committee, or
17 department of the executive branch of state government. For
18 purposes of this chapter and chapter 215, "state agency" or
19 "agency" includes, but is not limited to, state attorneys,
20 public defenders, criminal conflict and civil regional
21 counsel, capital collateral regional counsel, the Justice
22 Administrative Commission, the Florida Housing Finance
23 Corporation, and the Florida Public Service Commission. Solely
24 for the purposes of implementing s. 19(h), Art. III of the
25 State Constitution, the terms "state agency" or "agency"
26 include the judicial branch.

27 Section 28. Effective October 1, 2007, subsection (2)
28 of section 744.331, Florida Statutes, is amended to read:

29 744.331 Procedures to determine incapacity.--

30 (2) ATTORNEY FOR THE ALLEGED INCAPACITATED PERSON.--

31

1 (a) When a court appoints an attorney for an alleged
2 incapacitated person, the court must first appoint the office
3 of criminal conflict and civil regional counsel. If the
4 regional office has a conflict of interest, the court shall
5 appoint a private ~~an~~ attorney who is included in the attorney
6 registry compiled pursuant to s. 27.40 ~~ss. 27.40 and 27.42~~ ~~by~~
7 ~~the circuit's Article V indigent services committee.~~

8 Appointments of private attorneys must be made on a rotating
9 basis, taking into consideration conflicts arising under this
10 chapter.

11 (b) The court shall appoint an attorney for each
12 person alleged to be incapacitated in all cases involving a
13 petition for adjudication of incapacity. The alleged
14 incapacitated person may substitute her or his own attorney
15 for the attorney appointed by the court.

16 (c) Any attorney representing an alleged incapacitated
17 person may not serve as guardian of the alleged incapacitated
18 person or as counsel for the guardian of the alleged
19 incapacitated person or the petitioner.

20 (d) Effective January 1, 2007, an attorney seeking to
21 be appointed by a court for incapacity and guardianship
22 proceedings must have completed a minimum of 8 hours of
23 education in guardianship. A court may waive the initial
24 training requirement for an attorney who has served as a
25 court-appointed attorney in incapacity proceedings or as an
26 attorney of record for guardians for not less than 3 years.
27 The education requirement of this paragraph does not apply to
28 the office of criminal conflict and civil regional counsel
29 until July 1, 2008.

30 Section 29. Effective October 1, 2007, section 938.29,
31 Florida Statutes, is amended to read:

1 938.29 Legal assistance; lien for payment of
2 attorney's fees or costs.--

3 (1)(a) A defendant determined to be guilty of a
4 criminal act by a court or jury or through a plea of guilty or
5 nolo contendere and who has received the assistance of the
6 public defender's office, a special assistant public defender,
7 the office of criminal conflict and civil regional counsel, or
8 a private conflict attorney, or who has received due process
9 services after being found indigent for costs under s. 27.52,
10 shall be liable for payment of attorney's fees and costs. The
11 court shall determine the amount of the obligation. Such costs
12 shall include, but not be limited to, the cost of depositions;
13 cost of transcripts of depositions, including the cost of
14 defendant's copy, which transcripts are certified by the
15 defendant's attorney as having served a useful purpose in the
16 disposition of the case; investigative costs; witness fees;
17 the cost of psychiatric examinations; or other reasonable
18 costs specially incurred by the state and the clerk of court
19 for the defense of the defendant in criminal prosecutions.
20 Costs shall not include expenses inherent in providing a
21 constitutionally guaranteed jury trial or expenditures in
22 connection with the maintenance and operation of government
23 agencies that must be made by the public irrespective of
24 specific violations of law. Any costs assessed pursuant to
25 this paragraph shall be reduced by any amount assessed against
26 a defendant pursuant to s. 938.05.

27 (b) Upon entering a judgment of conviction, the
28 defendant shall be liable to pay the costs in full after the
29 judgment of conviction becomes final.

30 (c) The defendant shall pay the application fee under
31 s. 27.52(1)(b) and attorney's fees and costs in full or in

1 | installments, at the time or times specified. The court may
2 | order payment of the assessed application fee and attorney's
3 | fees and costs as a condition of probation, of suspension of
4 | sentence, or of withholding the imposition of sentence.
5 | Attorney's fees and costs collected under this section shall
6 | be deposited into the General Revenue Fund.

7 | (2)(a) There is created in the name of the state a
8 | lien, enforceable as hereinafter provided, upon all the
9 | property, both real and personal, of any person who:

10 | 1. Has received any assistance from any public
11 | defender of the state, from any special assistant public
12 | defender, from any office of criminal conflict and civil
13 | regional counsel, or from any private conflict attorney, or
14 | who has received due process services after being found
15 | indigent for costs; or

16 | 2. Is a parent of an accused minor or an accused adult
17 | tax-dependent person who is being, or has been, represented by
18 | any public defender of the state, by any special assistant
19 | public defender, by any office of criminal conflict and civil
20 | regional counsel, or by a private conflict attorney, or who is
21 | receiving or has received due process services after being
22 | found indigent for costs.

23 |
24 | Such lien constitutes a claim against the defendant-recipient
25 | or parent and his or her estate, enforceable according to law.

26 | (b) A judgment showing the name and residence of the
27 | defendant-recipient or parent shall be recorded in the public
28 | record, without cost, by the clerk of the circuit court in the
29 | county where the defendant-recipient or parent resides and in
30 | each county in which such defendant-recipient or parent then
31 | owns or later acquires any property. Such judgments shall be

1 enforced on behalf of the state by the clerk of the circuit
2 court of the county in which assistance was rendered.

3 (3) The clerk of the circuit court within the county
4 wherein the defendant-recipient was tried or received the
5 services of a public defender, special assistant public
6 defender, office of criminal conflict and civil regional
7 counsel, or appointed private legal counsel, or received due
8 process services after being found indigent for costs, shall
9 enforce, satisfy, compromise, settle, subordinate, release, or
10 otherwise dispose of any debt or lien imposed under this
11 section. A defendant-recipient or parent, liable to pay
12 attorney's fees or costs and who is not in willful default in
13 the payment thereof, may, at any time, petition the court
14 which entered the order for deferral of the payment of
15 attorney's fees or costs or of any unpaid portion thereof.

16 (4) No lien thus created shall be foreclosed upon the
17 homestead of such defendant-recipient or parent, nor shall any
18 defendant-recipient or parent liable for payment of attorney's
19 fees or costs be denied any of the protections afforded any
20 other civil judgment debtor.

21 (5) The court having jurisdiction of the
22 defendant-recipient shall, at such stage of the proceedings as
23 the court may deem appropriate, determine the value of the
24 services of the public defender, special assistant public
25 defender, office of criminal conflict and civil regional
26 counsel, or appointed private legal counsel and costs, at
27 which time the defendant-recipient or parent, after adequate
28 notice thereof, shall have opportunity to be heard and offer
29 objection to the determination, and to be represented by
30 counsel, with due opportunity to exercise and be accorded the
31

1 | procedures and rights provided in the laws and court rules
2 | pertaining to civil cases at law.

3 | Section 30. Effective October 1, 2007, section 27.42,
4 | Florida Statutes, is repealed.

5 | Section 31. (1) The Legislature finds that the
6 | creation of offices of criminal conflict and civil regional
7 | counsel and the other provisions of this act are necessary and
8 | best steps toward enhancing the publicly funded provision of
9 | legal representation and other due process services under
10 | constitutional and statutory principles in a fiscally
11 | responsible and effective manner.

12 | (2) It is the intent of the Legislature to facilitate
13 | the orderly transition to the creation and operation of the
14 | offices of criminal conflict and civil regional counsel, as
15 | provided in this act, in order to enhance and fiscally support
16 | the system of court-appointed representation for eligible
17 | individuals in criminal and civil proceedings. To that end,
18 | the Legislature intends that the five criminal conflict and
19 | civil regional counsel be appointed as soon as practicable
20 | after this act becomes law, to assume a term beginning on July
21 | 1, 2007. Once appointed, the regional counsel shall use the
22 | period between July 1, 2007, and October 1, 2007, to complete
23 | the administrative and organizational activities related to
24 | establishment of their offices, including, but not limited to,
25 | hiring authorized assistant regional counsel and other staff.
26 | It is the further intent of the Legislature that the regional
27 | offices begin assuming representation of eligible individuals,
28 | as provided in this act, on October 1, 2007. If a court finds
29 | that a regional office is not sufficiently operational by that
30 | date to assume representation in a particular case, it is the
31 | intent of the Legislature that the court appoint private

1 counsel for that case. However, it is also the intent of the
2 Legislature that each regional office be fully operational no
3 later than January 1, 2008. The Justice Administrative
4 Commission shall assist the regional counsel as necessary in
5 establishing their offices. In addition, it is the intent of
6 the Legislature that the various agencies and organizations
7 that comprise the state judicial system also assist with the
8 transition from current law to the creation and operation of
9 the regional offices.

10 (3) In furtherance of its findings and intent, the
11 Legislature intends to monitor and review the implementation
12 of this act over a period of 3 years, identify any impediments
13 to successful implementation, and evaluate if the delivery of
14 legal representation and due process services as prescribed in
15 this act should be revised.

16 Section 32. Except as otherwise expressly provided in
17 this act, this act shall take effect upon becoming a law.
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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 1088

4 Section 27.40, F.S., is amended to provide that five criminal
5 conflict and civil regional counsels take criminal cases when
6 the public defender has a conflict of interest. When the
7 regional counsel has a conflict of interest, the court will
8 appoint private counsel.

9 The bill repeals section 27.42, F.S., to eliminate the local
10 article V indigent services committees. The bill amends
11 section 27.40, F.S., to require the chief judge in each
12 circuit to create a registry of qualified attorneys and the
13 clerk of court will maintain the registry and provide the
14 court with the private counsel name. The bill creates section
15 27.425, F.S., to require the chief judge to recommend rates
16 for non-attorney due process services to the Legislature each
17 year. The Legislature will adopt rates in General
18 Appropriations Act.

19 The bill creates section 27.511, F.S., to create five criminal
20 conflict and civil regional counsels with powers and duties.
21 The regional counsels begin fulfilling their duties October 1,
22 2007. The regional counsel shall represent indigent defendants
23 in criminal cases where the public defender has a conflict of
24 interest, indigent parents in dependency proceedings,
25 termination of parental rights, and other persons in certain
26 civil proceedings as authorized by law. If the regional
27 counsel has a conflict of interest, then the court will
28 appoint private counsel.

29 The Supreme Court Judicial Nominating Commission will provide
30 three candidates for each of the regional counsels to the
31 Governor for appointment. Appointments are to be made by July
1, 2007.

Section 27.5304, F.S., is amended to clarify that certain
rates for private counsel are set in statute as maximum
amounts and all rates will be set each year in the General
Appropriations Act. The rate for capital cases is raised from
\$3,500 to \$15,000. Rates for dependency are set at \$1,000 for
the first year and \$200 for each year after. Other rates are
continued from existing law. Private counsel is given 180 days
to submit billings to the JAC. The bill provides for a
judicial hearing on the need for fees in excess of those set
by the legislature. The court is to report to the legislature
quarterly by circuit by judge the number and amount of
extraordinary cases.

Sections 29.001, 29.006, 29.007, and 29.008, F.S., are amended
to define the regional counsel offices as an element of the
state court system and to require the counties to provide
facilities, technology, and other support as required for the
other entities of the state court system.

Section 43.16, F.S., is amended to administratively house the
regional counsels in the Justice Administrative Commission
(JAC).

1 The bill has various effective dates. Provisions relating to
2 rates paid to private counsel become effective upon becoming
3 law while the regional counsels are appointed July 1, 2007 and
4 assume his or her duties October 1, 2007.
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