

1 A bill to be entitled
 2 An act relating to legal representation for indigent
 3 persons; amending s. 27.40, F.S.; removing responsibility
 4 for appointment of attorneys for indigent persons from
 5 courts; providing for appointment of attorneys for
 6 indigent persons by public defenders; limiting
 7 expenditures; providing contract requirements; repealing
 8 s. 27.42, F.S., relating to circuit Article V indigent
 9 services committees; amending s. 27.51, F.S.; providing
 10 additional duties for public defenders related to proving
 11 attorney services in certain cases; requiring reports;
 12 amending s. 27.512, F.S.; adding a cross-reference;
 13 amending s. 27.52, F.S.; conforming references; limiting
 14 expenditures; revising provisions relating to payment for
 15 costs of representation; amending s. 27.525, F.S.;
 16 changing the name of a trust fund; limiting expenditures;
 17 amending s. 27.53, F.S.; providing that public defender
 18 investigators are authorized to act in any judicial
 19 circuit; amending s. 27.5303, F.S.; revising provisions
 20 relating to appointment of counsel by a public defender in
 21 conflict cases; deleting a requirement to file a report
 22 with the Justice Administrative Commission; amending s.
 23 27.5304, F.S.; limiting expenditures on appointed counsel;
 24 creating financial penalties chargeable against an
 25 appointed attorney found to have provided ineffective
 26 assistance of counsel; deleting forms of billing and
 27 payment by private attorneys representing indigent
 28 persons; deleting report of the Article V Indigent

29 Services Advisory Board; providing for amendment of
30 standard fee per case in the General Appropriations Act;
31 allowing for extraordinary payment; providing that a
32 public defender achieving cost savings may be entitled to
33 propose alternative use for such savings up to a specified
34 amount; amending ss. 27.561 and 27.562, F.S.; making
35 conforming changes; amending s. 27.58, F.S.; providing
36 that the public defender is the chief administrator of all
37 indigent representation services in the public defender's
38 circuit; amending s. 27.59, F.S.; providing that attorneys
39 appointed by a public defender have the same access to
40 prisoners as the public defender; amending s. 29.007,
41 F.S.; providing for attorneys appointed by the public
42 defender; deleting references to the Justice
43 Administrative Commission; amending s. 29.015, F.S.;
44 moving responsibility for a deficit in the indigent
45 services fund from the Justice Administrative Commission
46 to the state courts system; requiring establishment of a
47 peer review committee; amending s. 29.018, F.S.; making
48 conforming changes; amending s. 29.0185, F.S.; limiting
49 expenditures for due process costs; amending ss. 39.815,
50 125.69, and 215.20, F.S.; conforming provisions; amending
51 s. 744.331, F.S.; providing for appointment by the public
52 defender of an attorney for an alleged incapacitated
53 person; repealing s. 914.11, F.S.; repealing requirement
54 for payment of costs for an indigent criminal defendant;
55 amending s. 938.29, F.S.; providing for a lien against an
56 individual who has been provided attorney services as an

HB 7083

2007

57 indigent; directing payment of moneys collected from the
58 lien; creating a transitional plan for payment of expenses
59 accruing before the effective date of this act; providing
60 an effective date.

61
62 Be It Enacted by the Legislature of the State of Florida:

63
64 Section 1. Section 27.40, Florida Statutes, is amended to
65 read:

66 27.40 Appointed Court~~appointed~~ counsel system; component
67 programs ~~circuit registries~~; minimum requirements; ~~appointment~~
68 ~~by court~~.--

69 (1) Counsel shall be appointed by the public defender of
70 the circuit to represent any individual in a criminal or civil
71 proceeding entitled to appointed ~~court appointed~~ counsel under
72 the Federal or State Constitution or as authorized by general
73 law. No court may order that a particular attorney be named as
74 an appointed attorney in a case. No court may enter any court
75 order affecting, nor otherwise direct or control, the provision
76 of appointed attorney services; however, a court shall not be
77 prohibited from exercising traditional means of discipline of
78 attorneys appearing before the court. Any reference in this part
79 to the appointment of the public defender shall also refer to
80 the subsequent selection and appointment by the public defender
81 of another attorney to represent an individual in the event of a
82 conflict of interest or for representation of indigent litigants
83 in civil proceedings where necessary to meet constitutional or
84 statutory requirements ~~The court shall appoint a public defender~~

HB 7083

2007

85 ~~to represent indigent persons as authorized in s. 27.51. Private~~
86 ~~counsel shall be appointed to represent indigents in those cases~~
87 ~~in which provision is made for court-appointed counsel but the~~
88 ~~public defender is unable to provide representation due to a~~
89 ~~conflict of interest or is not authorized to provide~~
90 ~~representation.~~

91 (2) The public defender of each judicial circuit shall be
92 the administrator of all appointed attorney services authorized
93 under s. 27.51 within the circuit. The public defender shall
94 administratively create component programs as a separate unit of
95 each public defender's office and the public defender shall
96 sufficiently insulate the units from each other so as to ensure
97 that confidential client information is not exchanged. Component
98 programs under the administration of each public defender shall
99 include the following:

100 (a) A criminal and delinquency program, which shall
101 represent any person described in s. 27.51(1)(a), (b), or (c).

102 (b) A dependency and termination of parental rights
103 program, which shall represent any person described in s.
104 27.51(1)(e).

105 (c) A civil program, which shall represent any person
106 described in s. 25.51(1)(d) and (f)-(m).

107 (d) A conflict program, which shall represent any person
108 described in s. 27.51(1)(a)-(m) when the public defender
109 determines that a conflict of interest exists in accordance with
110 s. 27.5303. ~~Private counsel appointed by the court to provide~~
111 representation shall be selected from a registry of individual

HB 7083

2007

112 ~~attorneys established by the circuit Article V indigent services~~
113 ~~committee or procured through a competitive bidding process.~~

114 (3) Each public defender shall have the authority to
115 determine the most cost-effective method or methods for the
116 delivery of appointed attorney services for that public
117 defender's circuit. Authorized methods shall include, but not be
118 limited to, the use of state employees, cross-circuit conflict
119 representation, assigned attorney registries, and contractual
120 agreements with individual attorneys, law firms, or groups of
121 attorneys or law firms. Any contractual agreement may be
122 terminated by a successor public defender without penalty. No
123 contract or agreement may obligate the state to pay sums in
124 excess of the moneys appropriated to the public defender for
125 indigent services, and any contract shall be subject to annual
126 appropriations. In utilizing a registry:

127 ~~(a) Each circuit Article V indigent services committee~~
128 ~~shall compile and maintain a list of attorneys in private~~
129 ~~practice, by county and by category of cases. From October 1,~~
130 ~~2005, through September 30, 2007, the list of attorneys compiled~~
131 ~~by the Eleventh Judicial Circuit shall provide the race, gender,~~
132 ~~and national origin of assigned attorneys. To be included on a~~
133 ~~registry, attorneys shall certify that they meet any minimum~~
134 ~~requirements established in general law for court appointment,~~
135 ~~are available to represent indigent defendants in cases~~
136 ~~requiring court appointment of private counsel, and are willing~~
137 ~~to abide by the terms of the contract for services. To be~~
138 ~~included on a registry, an attorney also must enter into a~~
139 ~~contract for services with the Justice Administrative~~

HB 7083

2007

140 ~~Commission. Failure to comply with the terms of the contract for~~
141 ~~services may result in termination of the contract and removal~~
142 ~~from the registry. Each attorney on the registry shall be~~
143 ~~responsible for notifying the circuit Article V indigent~~
144 ~~services committee and the Justice Administrative Commission of~~
145 ~~any change in his or her status. Failure to comply with this~~
146 ~~requirement shall be cause for termination of the contract for~~
147 ~~services and removal from the registry until the requirement is~~
148 ~~fulfilled.~~

149 ~~(b) The court shall appoint attorneys in rotating order in~~
150 ~~the order in which names appear on the applicable registry,~~
151 ~~unless the court makes a finding of good cause on the record for~~
152 ~~appointing an attorney out of order. An attorney not appointed~~
153 ~~in the order in which his or her name appears on the list shall~~
154 ~~remain next in order.~~

155 ~~(c) If it finds the number of attorneys on the registry in~~
156 ~~a county or circuit for a particular category of cases is~~
157 ~~inadequate, the circuit Article V indigent services committee~~
158 ~~shall notify the chief judge of the particular circuit in~~
159 ~~writing. The chief judge shall submit the names of at least~~
160 ~~three private attorneys with relevant experience. The clerk of~~
161 ~~court shall send an application to each of these attorneys to~~
162 ~~register for appointment.~~

163 ~~(d) Quarterly, each circuit Article V indigent services~~
164 ~~committee shall provide a current copy of each registry to the~~
165 ~~Chief Justice of the Supreme Court, the chief judge, the state~~
166 ~~attorney and public defender in each judicial circuit, the clerk~~
167 ~~of court in each county, the Justice Administrative Commission,~~

HB 7083

2007

168 ~~and the Indigent Services Advisory Board. From October 1, 2005,~~
169 ~~through September 30, 2007, the report submitted by the Eleventh~~
170 ~~Judicial Circuit shall include the race, gender, and national~~
171 ~~origin of all attorneys listed in and appointed under the~~
172 ~~registry.~~

173 (4) To be eligible for ~~court~~ appointment, an attorney must
174 be a member in good standing of The Florida Bar, must meet in
175 ~~addition to~~ any other qualifications specified by general law,
176 and must meet any criteria established by the public defender.

177 ~~(5) The Justice Administrative Commission shall approve~~
178 ~~uniform contract forms for use in procuring the services of~~
179 ~~private court appointed counsel and uniform procedures and forms~~
180 ~~for use by a court appointed attorney in support of billing for~~
181 ~~attorney's fees, costs, and related expenses to demonstrate the~~
182 ~~attorney's completion of specified duties.~~

183 ~~(6) After court appointment, the attorney must immediately~~
184 ~~file a notice of appearance with the court indicating acceptance~~
185 ~~of the appointment to represent the defendant.~~

186 ~~(5)(7)(a)~~ A private An attorney appointed by a public
187 defender to represent a defendant or other client is entitled to
188 payment for services pursuant to s. 27.5304, only upon full
189 performance by the attorney of specified duties, adherence to
190 any billing procedures specified in the contract by the public
191 defender, submission of all documentation required by the
192 contract, approval of payment by the public defender, court,
193 ~~except for payment based on a flat fee per case as provided in~~
194 ~~s. 27.5304; and attorney submission of a payment request to the~~
195 Justice Administrative Commission within 60 days following

196 completion of the work unless otherwise specified in the
 197 contract. ~~Upon being permitted to withdraw from a case, a court-~~
 198 ~~appointed attorney shall submit a copy of the order to the~~
 199 ~~Justice Administrative Commission at the time it is issued by~~
 200 ~~the court.~~ If a private an attorney is permitted to withdraw or
 201 is otherwise removed from representation prior to full
 202 performance of the duties specified in this section for reasons
 203 other than breach of duty, the public defender ~~trial court~~ shall
 204 approve payment of attorney's fees and costs for work performed
 205 as provided in the contract in an amount not to exceed the
 206 amounts specified in s. 27.5304. Withdrawal from a case prior to
 207 full performance of the duties specified shall create a
 208 rebuttable presumption that the attorney is not entitled to the
 209 entire flat fee for those cases paid on a flat-fee-per-case
 210 basis.

211 ~~(6)(b)~~ A private ~~The~~ attorney shall maintain appropriate
 212 documentation, including a current and detailed hourly
 213 accounting of time spent representing the defendant or other
 214 client. These records and documents are subject to review by the
 215 public defender and the Justice Administrative Commission,
 216 subject to the attorney-client privilege and work product
 217 privilege. Subject to the attorney-client privilege, these
 218 records and documents shall be made available to the Governor,
 219 the Legislature, and the general public upon request.

220 ~~(7)(8)~~ Subject to the attorney-client privilege and the
 221 work-product privilege, a private an attorney who withdraws or
 222 is removed from representation shall deliver all files, notes,
 223 documents, and research to a ~~the~~ successor attorney within 15

224 days after receiving notice from the successor attorney
 225 designated by the public defender. The successor attorney shall
 226 bear the cost of transmitting all files, notes, documents, and
 227 research.

228 ~~(8)-(9) A circuit Article V indigent services committee or~~
 229 Any interested person may advise the public defender ~~court~~ of
 230 any circumstance affecting the quality of representation,
 231 including, but not limited to, false or fraudulent billing,
 232 misconduct, failure to meet continuing legal education
 233 requirements, solicitation to receive compensation from the
 234 defendant or other client a private ~~the~~ attorney is appointed to
 235 represent, or failure to file appropriate motions in a timely
 236 manner.

237 ~~(9)-(10)~~ This section does not apply to attorneys appointed
 238 to represent persons in postconviction capital collateral cases
 239 pursuant to part IV of this chapter.

240 Section 2. Section 27.42, Florida Statutes, is repealed.

241 Section 3. Subsections (1) and (2) of section 27.51,
 242 Florida Statutes, are amended, and subsection (7) is added to
 243 that section, to read:

244 27.51 Duties of public defender.--

245 (1) The public defender shall represent, or secure
 246 representation for, without additional compensation, any person
 247 determined to be indigent under s. 27.52 and:

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

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

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

- 252 2. A violation of chapter 316 punishable by imprisonment;
 253 3. Criminal contempt; or
 254 4. A violation of a special law or county or municipal
 255 ordinance ancillary to a state charge, or if not ancillary to a
 256 state charge, only if the public defender contracts with the
 257 county or municipality to provide representation pursuant to ss.
 258 27.54 and 125.69.

259
 260 The public defender shall not provide representation pursuant to
 261 this paragraph if the court, prior to trial, files in the cause
 262 an order of no imprisonment as provided in s. 27.512;

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

265 (d) Sought by petition filed in such court to be
 266 involuntarily placed as a mentally ill person under part I of
 267 chapter 394, involuntarily committed as a sexually violent
 268 predator under part V of chapter 394, or involuntarily admitted
 269 to residential services as a person with developmental
 270 disabilities under chapter 393. A public defender shall not
 271 represent any plaintiff in a civil action brought under the
 272 Florida Rules of Civil Procedure, the Federal Rules of Civil
 273 Procedure, or the federal statutes, or represent a petitioner in
 274 a rule challenge under chapter 120, unless specifically
 275 authorized by statute;

276 (e) The parent of a child involved in shelter hearings and
 277 termination of parental rights proceedings as specifically
 278 authorized under parts V and XI of chapter 39;

279 (f) Alleged to be infected with a sexually transmitted
 280 disease and for whom isolation, hospitalization, or confinement
 281 is sought pursuant to chapter 384;

282 (g) A minor who petitions the court for waiver of parental
 283 notification under s. 390.01114;

284 (h) Alleged to be infected with active tuberculosis and
 285 for whom isolation, hospitalization, or confinement is sought
 286 pursuant to chapter 392;

287 (i) Alleged to be substance-abuse impaired and for whom
 288 involuntary assessment, stabilization, or treatment is sought
 289 pursuant to chapter 397;

290 (j) Alleged to be a vulnerable adult in need of protective
 291 services pursuant to s. 415.1051;

292 (k) Alleged to be incapacitated and for whom an
 293 involuntary guardianship is sought pursuant to chapter 744;

294 (l) A person for whom involuntary commitment is sought
 295 subsequent to an acquittal by reason of insanity pursuant to s.
 296 916.15;

297 (m) A parent of a child alleged to be in need of services
 298 or as a child alleged to be in contempt under chapter 984;

299 (n)-(e) Convicted and sentenced to death, for purposes of
 300 handling an appeal to the Supreme Court; or

301 (o)-(f) Is appealing a matter in a case arising under
 302 paragraphs (a) - (n) (a)-(d).

303 ~~(2) The court may not appoint the public defender~~ may not
 304 be appointed to represent, even on a temporary basis, any person
 305 who is not indigent. The court, however, may appoint private
 306 counsel in capital cases as provided in ss. 27.40 and 27.5303.

HB 7083

2007

307 (7) Each public defender shall maintain the following
308 information for his or her circuit on an ongoing basis that
309 shall be updated at least quarterly and provided to the
310 Legislature, the Governor, the state courts system, and the
311 general public on a circuit-by-circuit basis through the website
312 of the Justice Administrative Commission:

313 (a) A complete description of the manner in which the
314 public defender provides or arranges for services for each type
315 of case described in paragraphs (1) (a) - (o), including rates of
316 payment for services provided by outside entities.

317 (b) The number of defendants or litigants found to be
318 indigent under s. 27.52 and appointed by the court to be
319 represented by the public defender or for whom the public
320 defender arranges for representation by case type as described
321 in paragraphs (1) (a) - (o).

322 (c) The number of defendants or litigants referred to
323 outside counsel by case type as described in paragraphs (1) (a) -
324 (o), including specific identification of the number of
325 defendants or litigants referred to outside counsel as a result
326 of a conflict of interest.

327 (d) A list of all attorneys and other contracted service
328 providers that received payment during the quarter and the
329 amount paid to each.

330 (e) Any other information that the public defender or the
331 Justice Administrative Commission determines would be in the
332 public interest to maintain and disseminate on a regular basis.

333 Section 4. Subsection (1) of section 27.512, Florida
334 Statutes, is amended to read:

335 27.512 Order of no imprisonment.--

336 (1) In each case set forth in s. 27.51(1)(b), in which the
 337 court determines that it will not sentence the defendant to
 338 imprisonment if convicted, the court shall issue an order of no
 339 imprisonment and ~~the court may not appoint~~ the public defender
 340 may not be appointed to represent the defendant. If the court
 341 issues an order of no imprisonment following the appointment of
 342 the public defender, the court shall immediately terminate the
 343 public defender's services. However, if at any time the court
 344 withdraws the order of no imprisonment with respect to an
 345 indigent defendant, the court shall appoint the public defender
 346 to represent the defendant.

347 Section 5. Paragraphs (b) and (d) of subsection (1),
 348 paragraph (c) of subsection (2), subsection (3), paragraph (b)
 349 of subsection (4), subsections (5) and (6), and paragraph (a) of
 350 subsection (7) of section 27.52, Florida Statutes, are amended
 351 to read:

352 27.52 Determination of indigent status.--

353 (1) APPLICATION TO THE CLERK.--A person seeking
 354 appointment of a public defender under s. 27.51 based upon an
 355 inability to pay must apply to the clerk of the court for a
 356 determination of indigent status using an application form
 357 developed by the Florida Clerks of Court Operations Corporation
 358 with final approval by the Supreme Court.

359 (b) An applicant shall pay a \$40 application fee to the
 360 clerk for each application for appointed ~~court-appointed~~ counsel
 361 filed. The applicant shall pay the fee within 7 days after
 362 submitting the application. If the applicant does not pay the

363 fee prior to the disposition of the case, the clerk shall notify
 364 the court, and the court shall:

365 1. Assess the application fee as part of the sentence or
 366 as a condition of probation; or

367 2. Assess the application fee pursuant to s. 938.29.

368 (d) All application fees collected by the clerk under this
 369 section shall be transferred monthly by the clerk to the
 370 Department of Revenue for deposit in the Indigent Services
 371 ~~Criminal Defense~~ Trust Fund administered by the Justice
 372 Administrative Commission, to be used to as appropriated by the
 373 Legislature. The clerk may retain 2 percent of application fees
 374 collected monthly for administrative costs prior to remitting
 375 the remainder to the Department of Revenue.

376 (2) DETERMINATION BY THE CLERK.--The clerk of the court
 377 shall determine whether an applicant seeking appointment of a
 378 public defender is indigent based upon the information provided
 379 in the application and the criteria prescribed in this
 380 subsection.

381 (c)~~1~~. If the clerk determines that the applicant is
 382 indigent, the clerk shall submit the determination to the office
 383 of the public defender and immediately file the determination in
 384 the case file.

385 ~~2. If the public defender is unable to provide~~
 386 ~~representation due to a conflict pursuant to s. 27.5303, the~~
 387 ~~public defender shall move the court for withdrawal from~~
 388 ~~representation and appointment of private counsel.~~

389 (3) APPOINTMENT OF COUNSEL ON INTERIM BASIS.--If the clerk
 390 of the court has not made a determination of indigent status at

391 the time a person requests appointment of a public defender, the
 392 court shall make a preliminary determination of indigent status,
 393 pending further review by the clerk, and may, by court order,
 394 appoint the a public defender ~~or private counsel~~ on an interim
 395 basis.

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

397 (b) Based upon its review, the court shall make one of the
 398 following determinations and, if the applicant is indigent,
 399 shall appoint the a public defender ~~or, if appropriate, private~~
 400 ~~counsel~~:

- 401 1. The applicant is not indigent.
- 402 2. The applicant is indigent.

403 (5) ~~INDIGENT FOR COSTS.--~~ No funds appropriated to the
 404 public defender or the Justice Administrative Commission shall
 405 be expended for costs incurred by privately retained counsel or
 406 a pro se litigant or defendant except as specifically authorized
 407 by this chapter and the public defender. A person who is
 408 ~~eligible to be represented by a public defender under s. 27.51~~
 409 ~~but who is represented by private counsel not appointed by the~~
 410 ~~court for a reasonable fee as approved by the court, on a pro~~
 411 ~~bono basis, or who is proceeding pro se, may move the court for~~
 412 ~~a determination that he or she is indigent for costs and~~
 413 ~~eligible for the provision of due process services, as~~
 414 ~~prescribed by ss. 29.006 and 29.007, funded by the state.~~

415 ~~(a) The person must submit to the court:~~

- 416 ~~1. The completed application prescribed in subsection (1).~~

417 ~~2. In the case of a person represented by counsel, an~~
418 ~~affidavit attesting to the estimated amount of attorney's fees~~
419 ~~and the source of payment for these fees.~~

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

421 ~~1. Whether the applicant applied for a determination of~~
422 ~~indigent status under subsection (1) and the outcome of such~~
423 ~~application.~~

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

426 ~~3. The additional factors prescribed in subsection (4).~~

427 ~~4. Whether the applicant is proceeding pro se.~~

428 ~~5. When the applicant retained private counsel.~~

429 ~~6. The amount of any attorney's fees and who is paying the~~
430 ~~fees.~~

431 ~~(c) Based upon its review, the court shall make one of the~~
432 ~~following determinations:~~

433 ~~1. The applicant is not indigent for costs.~~

434 ~~2. The applicant is indigent for costs.~~

435 ~~(d) The provision of due process services based upon a~~
436 ~~determination that a person is indigent for costs under this~~
437 ~~subsection must be effectuated pursuant to a court order, a copy~~
438 ~~of which the clerk shall provide to counsel representing the~~
439 ~~person, or to the person directly if he or she is proceeding pro~~
440 ~~se, for use in requesting payment of due process expenses~~
441 ~~through the Justice Administrative Commission. Counsel~~
442 ~~representing a person declared indigent for costs shall execute~~
443 ~~the Justice Administrative Commission's contract for counsel~~
444 ~~representing persons determined to be indigent for costs.~~

445 (6) DUTIES OF PARENT OR LEGAL GUARDIAN.--A nonindigent
 446 parent or legal guardian of an applicant who is a minor or an
 447 adult tax-dependent person shall furnish the minor or adult tax-
 448 dependent person with the necessary legal services and costs
 449 incident to a delinquency proceeding or, upon transfer of such
 450 person for criminal prosecution as an adult pursuant to chapter
 451 985, a criminal prosecution in which the person has a right to
 452 legal counsel under the Constitution of the United States or the
 453 Constitution of the State of Florida. The failure of a parent or
 454 legal guardian to furnish legal services and costs under this
 455 section does not bar the appointment of legal counsel pursuant
 456 to this section, s. 27.40, or s. 27.5303. When the public
 457 defender, ~~a private court appointed conflict counsel, or a~~
 458 ~~private attorney~~ is appointed to represent a minor or an adult
 459 tax-dependent person in any proceeding in circuit court or in a
 460 criminal proceeding in any other court, the parents or the legal
 461 guardian shall be liable for payment of the fees, charges, and
 462 costs of the representation even if the person is a minor being
 463 tried as an adult. Liability for the fees, charges, and costs of
 464 the representation shall be imposed in the form of a lien
 465 against the property of the nonindigent parents or legal
 466 guardian of the minor or adult tax-dependent person. The lien is
 467 enforceable as provided in s. 27.561 or s. 938.29.

468 (7) FINANCIAL DISCREPANCIES; FRAUD; FALSE INFORMATION.--

469 (a) If the court learns of discrepancies between the
 470 application or motion and the actual financial status of the
 471 person found to be indigent or indigent for costs, the court
 472 shall determine whether the public defender ~~or private attorney~~

HB 7083

2007

473 shall continue representation or whether the authorization for
 474 any other due process services previously authorized shall be
 475 revoked. The person may be heard regarding the information
 476 learned by the court. If the court, based on the information,
 477 determines that the person is not indigent or indigent for
 478 costs, the court shall order the public defender ~~or private~~
 479 ~~attorney~~ to discontinue representation and revoke the provision
 480 of any other authorized due process services.

481 Section 6. Section 27.525, Florida Statutes, is amended to
 482 read:

483 27.525 Indigent Services ~~Criminal Defense~~ Trust Fund.--The
 484 Indigent Services ~~Criminal Defense~~ Trust Fund is hereby created,
 485 to be administered by the Justice Administrative Commission.
 486 Funds shall be credited to the trust fund as provided in s.
 487 27.52, to be used exclusively for indigent services in each
 488 circuit in accordance with this part ~~the purposes set forth~~
 489 ~~therein~~. The Justice Administrative Commission shall account for
 490 these funds on a circuit basis, and appropriations from the fund
 491 shall be proportional to each circuit's collections.

492 Section 7. Subsection (1) of section 27.53, Florida
 493 Statutes, is amended to read:

494 27.53 Appointment of assistants and other staff; method of
 495 payment.--

496 (1) (a) The public defender of each judicial circuit is
 497 authorized to employ and establish, in such numbers as
 498 authorized by the General Appropriations Act, assistant public
 499 defenders and other staff and personnel pursuant to s. 29.006,
 500 who shall be paid from funds appropriated for that purpose.

501 **(b)** Notwithstanding the provisions of s. 790.01, s.
 502 790.02, or s. 790.25(2)(a), an investigator employed by a public
 503 defender, while actually carrying out official duties, is
 504 authorized to carry concealed weapons if the investigator
 505 complies with s. 790.25(3)(o). However, such investigators are
 506 not eligible for membership in the Special Risk Class of the
 507 Florida Retirement System. Each investigator employed by a
 508 public defender shall have full authority to serve any witness
 509 subpoena or court order issued, by any court or judge within any
 510 judicial circuit served by the public defender, in a criminal
 511 case in which the public defender has been appointed.

512 **(c)** The public defenders of all judicial circuits shall
 513 jointly develop a coordinated classification and pay plan which
 514 shall be submitted on or before January 1 of each year to the
 515 Justice Administrative Commission, the office of the President
 516 of the Senate, and the office of the Speaker of the House of
 517 Representatives. Such plan shall be developed in accordance with
 518 policies and procedures of the Executive Office of the Governor
 519 established in s. 216.181.

520 **(d)** Each assistant public defender appointed by a public
 521 defender under this section shall serve at the pleasure of the
 522 public defender. ~~Each investigator employed by a public defender~~
 523 ~~shall have full authority to serve any witness subpoena or court~~
 524 ~~order issued, by any court or judge within the judicial circuit~~
 525 ~~served by such public defender, in a criminal case in which such~~
 526 ~~public defender has been appointed to represent the accused.~~

527 Section 8. Section 27.5303, Florida Statutes, is amended
 528 to read:

HB 7083

2007

529 27.5303 Public defenders; conflict of interest.--
530 (1)~~(a)~~ If, at any time during the representation of two or
531 more clients ~~defendants~~, a public defender determines that the
532 interests of those clients ~~accused~~ are so adverse or hostile
533 that they cannot all be counseled by members of the public
534 ~~defender or his or her staff~~ practicing within a single unit of
535 his or her office without conflict of interest, or that none can
536 be counseled by the public defender or his or her staff because
537 of a conflict of interest, then the public defender shall
538 reassign one or more of the clients to the appropriate conflict
539 unit of his or her office. ~~file a motion to withdraw and move~~
540 ~~the court to appoint other counsel. If requested by the Justice~~
541 ~~Administrative Commission, the public defender shall submit a~~
542 ~~copy of the motion to the Justice Administrative Commission at~~
543 ~~the time it is filed with the court. The Justice Administrative~~
544 ~~Commission shall have standing to appear before the court to~~
545 ~~contest any motion to withdraw due to a conflict of interest.~~
546 ~~The Justice Administrative Commission may contract with other~~
547 ~~public or private entities or individuals to appear before the~~
548 ~~court for the purpose of contesting any motion to withdraw due~~
549 ~~to a conflict of interest. The court shall review and may~~
550 ~~inquire or conduct a hearing into the adequacy of the public~~
551 ~~defender's representations regarding a conflict of interest~~
552 ~~without requiring the disclosure of any confidential~~
553 ~~communications. The court shall deny the motion to withdraw if~~
554 ~~the court finds the grounds for withdrawal are insufficient or~~
555 ~~the asserted conflict is not prejudicial to the indigent client.~~

HB 7083

2007

556 ~~If the court grants the motion to withdraw, the court shall~~
557 ~~appoint one or more attorneys to represent the accused.~~

558 (2)-(b) Upon its own motion, the court shall notify the
559 appropriate public defender ~~appoint such other counsel~~ when the
560 facts developed upon the face of the record and court files in
561 the case disclose a conflict of interest. The court shall advise
562 the appropriate public defender ~~and clerk of court~~, in writing,
563 specifically stating with a copy to the Justice Administrative
564 Commission, if so requested by the Justice Administrative
565 Commission, when making the motion and appointing one or more
566 attorneys to represent the accused. The court shall specify the
567 basis for the conflict. Upon receipt of such notice, the public
568 defender shall resolve the conflict of interest by reassigning
569 one or more of the clients to outside counsel or to the conflict
570 unit of his or her office.

571 (3)-(e) In no case shall the court approve a withdrawal by
572 the public defender based solely upon inadequacy of funding or
573 excess workload of the public defender.

574 (4)-(d) In determining whether or not there is a conflict
575 of interest, the public defender shall apply the standards
576 contained in the Uniform Standards for Use in Conflict of
577 Interest Cases found in appendix C to the Final Report of the
578 Article V Indigent Services Advisory Board dated January 6,
579 2004.

580 ~~(2) The court shall appoint conflict counsel pursuant to~~
581 ~~s. 27.40. The appointed attorney may not be affiliated with the~~
582 ~~public defender or any assistant public defender in his or her~~
583 ~~official capacity or any other private attorney appointed to~~

HB 7083

2007

584 ~~represent a codefendant. The public defender may not participate~~
585 ~~in case-related decisions, performance evaluations, or expense~~
586 ~~determinations in conflict cases.~~

587 ~~(3) Private court appointed counsel shall be compensated~~
588 ~~as provided in s. 27.5304.~~

589 ~~(4)(a) If a defendant is convicted and the death sentence~~
590 ~~is imposed, the appointed attorney shall continue representation~~
591 ~~through appeal to the Supreme Court. The attorney shall be~~
592 ~~compensated as provided in s. 27.5304. If the attorney first~~
593 ~~appointed is unable to handle the appeal, the court shall~~
594 ~~appoint another attorney and that attorney shall be compensated~~
595 ~~as provided in s. 27.5304.~~

596 ~~(5)(b)~~ The public defender or an attorney appointed
597 pursuant to this section may be appointed by the court rendering
598 the judgment imposing the death penalty to represent an indigent
599 defendant who has applied for executive clemency as relief from
600 the execution of the judgment imposing the death penalty.

601 ~~(c) When the appointed attorney in a capital case has~~
602 ~~completed the duties imposed by this section, the attorney shall~~
603 ~~file a written report in the trial court stating the duties~~
604 ~~performed by the attorney and apply for discharge.~~

605 Section 9. Section 27.5304, Florida Statutes, is amended
606 to read:

607 27.5304 Limits on appointed ~~Private court appointed~~
608 counsel; compensation.--

609 (1) ~~Private court appointed~~ counsel appointed by a public
610 defender under this part shall be compensated by the Justice
611 Administrative Commission from the budget allocated to the

612 public defender appointing the counsel in an amount not to
 613 exceed the contract between the public defender and the attorney
 614 or the fee limits established in this section, whichever is
 615 lower. The attorney may also ~~shall~~ be reimbursed for reasonable
 616 and necessary expenses in accordance with s. 29.007, subject to
 617 limits in the contract between the public defender and the
 618 attorney. In no event may payment be made to a private attorney
 619 if such payment would exceed the public defender's approved
 620 operating budget. ~~If the attorney is representing a defendant~~
 621 ~~charged with more than one offense in the same case, the~~
 622 ~~attorney shall be compensated at the rate provided for the most~~
 623 ~~serious offense for which he or she represented the defendant.~~
 624 ~~This section does not allow stacking of the fee limits~~
 625 ~~established by this section. Private court appointed counsel~~
 626 ~~providing representation under an alternative model shall enter~~
 627 ~~into a uniform contract with the Justice Administrative~~
 628 ~~Commission and shall use the Justice Administrative Commission's~~
 629 ~~uniform procedures and forms in support of billing for~~
 630 ~~attorney's fees, costs, and related expenses. Failure to comply~~
 631 ~~with the terms of the contract for services may result in~~
 632 ~~termination of the contract.~~

633 (2) The public defender ~~Justice Administrative Commission~~
 634 shall review an intended billing by private ~~court appointed~~
 635 counsel for attorney's fees or costs and shall not approve any
 636 fee or cost not authorized by the contract or that is excessive.
 637 If any appointed attorney has been found by a court to have
 638 provided ineffective assistance of counsel in any appointed
 639 case, and that judgment is final and not subject to further

HB 7083

2007

640 appeal, the appointed attorney shall not be entitled to payment
641 of costs and fees for the case, shall repay all costs and fees
642 already paid for the representation, shall reimburse the public
643 defender for the cost of replacement counsel at all subsequent
644 hearings or trials, and may be subject to a malpractice action
645 by the client pursuant to law. ~~based on a flat fee per case for~~
646 ~~completeness and compliance with contractual, statutory, and~~
647 ~~circuit Article V indigent services committee requirements. The~~
648 ~~commission may approve the intended bill for a flat fee per case~~
649 ~~for payment without approval by the court if the intended~~
650 ~~billing is correct. For all other intended billings, prior to~~
651 ~~filing a motion for an order approving payment of attorney's~~
652 ~~fees, costs, or related expenses, the private court appointed~~
653 ~~counsel shall deliver a copy of the intended billing, together~~
654 ~~with supporting affidavits and all other necessary~~
655 ~~documentation, to the Justice Administrative Commission. The~~
656 ~~Justice Administrative Commission shall review the billings,~~
657 ~~affidavit, and documentation for completeness and compliance~~
658 ~~with contractual and statutory requirements. If the Justice~~
659 ~~Administrative Commission objects to any portion of the proposed~~
660 ~~billing, the objection and reasons therefor shall be~~
661 ~~communicated to the private court appointed counsel. The private~~
662 ~~court appointed counsel may thereafter file his or her motion~~
663 ~~for order approving payment of attorney's fees, costs, or~~
664 ~~related expenses together with supporting affidavits and all~~
665 ~~other necessary documentation. The motion must specify whether~~
666 ~~the Justice Administrative Commission objects to any portion of~~
667 ~~the billing or the sufficiency of documentation and shall attach~~

HB 7083

2007

668 ~~the Justice Administrative Commission's letter stating its~~
669 ~~objection. The attorney shall have the burden to prove the~~
670 ~~entitlement to attorney's fees, costs, or related expenses. A~~
671 ~~copy of the motion and attachments shall be served on the~~
672 ~~Justice Administrative Commission at least 5 business days prior~~
673 ~~to the date of a hearing. The Justice Administrative Commission~~
674 ~~shall have standing to appear before the court to contest any~~
675 ~~motion for order approving payment of attorney's fees, costs, or~~
676 ~~related expenses and may participate in a hearing on the motion~~
677 ~~by use of telephonic or other communication equipment unless~~
678 ~~ordered otherwise. The Justice Administrative Commission may~~
679 ~~contract with other public or private entities or individuals to~~
680 ~~appear before the court for the purpose of contesting any motion~~
681 ~~for order approving payment of attorney's fees, costs, or~~
682 ~~related expenses. The fact that the Justice Administrative~~
683 ~~Commission has not objected to any portion of the billing or to~~
684 ~~the sufficiency of the documentation is not binding on the~~
685 ~~court. The court retains primary authority and responsibility~~
686 ~~for determining the reasonableness of all billings for~~
687 ~~attorney's fees, costs, and related expenses, subject to~~
688 ~~statutory limitations. Private court appointed counsel is~~
689 ~~entitled to compensation upon final disposition of a case,~~
690 ~~except as provided in subsections (7), (8), and (10). Before~~
691 ~~final disposition of a case, a private court appointed counsel~~
692 ~~may file a motion for fees, costs, and related expenses for~~
693 ~~services completed up to the date of the motion in any case or~~
694 ~~matter in which legal services have been provided by the~~
695 ~~attorney for more than 1 year. The amount approved by the court~~

HB 7083

2007

696 ~~may not exceed 80 percent of the fees earned, or costs and~~
 697 ~~related expenses incurred, to date, or an amount proportionate~~
 698 ~~to the maximum fees permitted under this section based on legal~~
 699 ~~services provided to date, whichever is less. The court may~~
 700 ~~grant the motion if counsel shows that failure to grant the~~
 701 ~~motion would work a particular hardship upon counsel.~~

702 (3) The compensation for representation in a criminal
 703 proceeding shall not exceed the following:

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

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

708 3. For life felonies represented at the trial level:
 709 \$3,000.

710 4. For capital cases represented at the trial level:
 711 \$3,500.

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

713 (b) If a death sentence is imposed and affirmed on appeal
 714 to the Supreme Court, the appointed attorney shall be allowed
 715 compensation, not to exceed \$1,000, for attorney's fees and
 716 costs incurred in representing the defendant as to an
 717 application for executive clemency, with compensation to be paid
 718 out of general revenue from funds budgeted to the Department of
 719 Corrections.

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

HB 7083

2007

723 ~~(4)(5)(a)~~ If counsel is entitled to receive compensation
724 for representation pursuant to court appointment in a
725 termination of parental rights proceeding under chapter 39, such
726 compensation shall not exceed \$1,000 at the trial level and
727 \$2,500 at the appellate level.

728 ~~(5)(b)~~ Counsel entitled to receive compensation for
729 representation pursuant to court appointment in a proceeding
730 under chapter 384 or chapter 392 shall receive reasonable
731 compensation as fixed by the public defender ~~court~~ making the
732 appointment.

733 (6) A private attorney appointed in lieu of the public
734 defender to represent an indigent defendant may not reassign or
735 subcontract the case to another attorney or allow another
736 attorney to appear at a critical stage of a case except as
737 authorized by the public defender ~~who is not on the registry~~
738 ~~developed under s. 27.40.~~

739 (7) The public defender may authorize ~~Private court-~~
740 ~~appointed counsel representing a parent in a dependency case~~
741 ~~that is open may submit a request for payment in to the Justice~~
742 ~~Administrative Commission at the following intervals in complex~~
743 ~~or lengthy cases.~~

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

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

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

748

749 ~~In no case, however, may counsel submit requests under this~~
750 ~~subsection more than once per quarter, unless the court finds~~

HB 7083

2007

751 ~~extraordinary circumstances justifying more frequent submission~~
752 ~~of payment requests.~~

753 (8) The General Appropriations Act may amend the general
754 limits per case provided for in this section. ~~Private court-~~
755 ~~appointed counsel representing an individual in an appeal to a~~
756 ~~district court of appeal or the Supreme Court may submit a~~
757 ~~request for payment to the Justice Administrative Commission at~~
758 ~~the following intervals:~~

759 ~~(a) Upon the filing of an appellate brief, including, but~~
760 ~~not limited to, a reply brief.~~

761 ~~(b) When the opinion of the appellate court is finalized.~~

762 (9) A public defender may, in extraordinary circumstances,
763 approve a fee in excess of the general limits per case provided
764 for in this section. Extraordinary circumstances will not,
765 however, authorize the public defender to expend moneys in
766 excess of the total appropriation for indigent services provided
767 in the General Appropriations Act. The public defenders of the
768 state shall jointly establish criteria for determining what are
769 extraordinary circumstances under this subsection. No court
770 shall have jurisdiction to determine what are extraordinary
771 circumstances under this subsection, nor shall any court order
772 that a public defender find that such extraordinary
773 circumstances exist. The question of whether a case or cases
774 present extraordinary circumstances under this subsection is one
775 of discretion within the limited budgetary authority of a public
776 defender. ~~Private court appointed counsel may not bill for~~
777 ~~preparation of invoices whether or not the case is paid on the~~
778 ~~basis of an hourly rate or by flat fee.~~

HB 7083

2007

779 (10) A public defender that achieves cost savings in the
780 provision of appointed counsel services may request that up to
781 50 percent of the amount of savings that would otherwise revert
782 be used instead for priorities identified by the public
783 defender. Such requests are subject to review and approval of
784 the Legislative Budget Commission. ~~The Justice Administrative~~
785 Commission shall develop a schedule to provide partial payment
786 of criminal attorney fees for cases that are not resolved within
787 6 months. The schedule must provide that the aggregate payments
788 shall not exceed limits established by law. Any partial payment
789 made pursuant to this subsection shall not exceed the actual
790 value of services provided to date. Any partial payment shall be
791 proportionate to the value of services provided based on payment
792 rates included in the contract, not to exceed any limit provided
793 by law.

794 Section 10. Section 27.561, Florida Statutes, is amended
795 to read:

796 27.561 Effect of nonpayment.--

797 (1) Whenever a recipient ~~defendant-recipient~~ or parent of
798 a recipient is ordered to pay attorney's fees or costs, default
799 in the payment thereof shall be cause for finding the recipient
800 ~~defendant-recipient~~ or parent of a recipient in contempt of
801 court, and the court may issue a show cause citation or a
802 warrant of arrest ~~for the defendant-recipient's or parent's~~
803 appearance.

804 (2) Unless the recipient ~~defendant-recipient~~ or parent of
805 a recipient shows that default was not attributable to an
806 intentional refusal to obey the order of the court or to a

HB 7083

2007

807 failure on his or her part to make a good faith effort to make
 808 the payment, the court may find that the default constitutes
 809 contempt and order him or her committed until the attorney's
 810 fees or costs, or a specified part thereof, are paid or may take
 811 any other action appropriate under the circumstances, including
 812 revocation of probation.

813 (3) If it appears to the satisfaction of the court that
 814 the default in the payment of the attorney's fees or costs is
 815 not contempt, the court may enter an order allowing the
 816 recipient defendant~~recipient~~ or parent of a recipient
 817 additional time for, ~~or reducing the amount of,~~ payment ~~or~~
 818 ~~revoking the assessed attorney's fees or costs, or the unpaid~~
 819 ~~portion thereof, in whole or in part.~~

820 Section 11. Section 27.562, Florida Statutes, is amended
 821 to read:

822 27.562 Disposition of funds.--The first \$40 of all funds
 823 collected pursuant to s. 938.29 shall be deposited into the
 824 Indigent Services ~~Criminal Defense~~ Trust Fund pursuant to s.
 825 27.525. The remaining funds collected pursuant to s. 938.29
 826 shall be distributed as follows:

827 (1) Twenty-five percent shall be remitted to the
 828 Department of Revenue for deposit into the Justice
 829 Administrative Commission's Indigent Services ~~Criminal Defense~~
 830 Trust Fund.

831 (2) Seventy-five percent shall be remitted to the
 832 Department of Revenue for deposit into the General Revenue Fund.
 833

HB 7083

2007

834 The Justice Administrative Commission shall account for funds
 835 deposited into the Indigent Services ~~Criminal Defense~~ Trust Fund
 836 by circuit. Appropriations from the fund shall be proportional
 837 to each circuit's collections. All judgments entered pursuant to
 838 this part shall be in the name of the state.

839 Section 12. Section 27.58, Florida Statutes, is amended to
 840 read:

841 27.58 Administration of public defender services.--The
 842 public defender of each judicial circuit of the state shall be
 843 the chief administrator of all public defender services
 844 authorized under s. 27.51 within the circuit. The public
 845 defender of each judicial circuit shall also be the chief
 846 administrator of all indigent representation services within the
 847 circuit.

848 Section 13. Section 27.59, Florida Statutes, is amended to
 849 read:

850 27.59 Access to prisoners.--The public defender, ~~defenders~~
 851 ~~and assistant public defenders,~~ and attorneys appointed to
 852 provide indigent services by a public defender pursuant to this
 853 part shall be empowered to inquire of all persons who are
 854 incarcerated in lieu of bond or detained and to tender them
 855 advice and counsel at any time., ~~but~~ The provisions of this
 856 section shall not apply with respect to persons who have engaged
 857 private counsel.

858 Section 14. Section 29.007, Florida Statutes, is amended
 859 to read:

860 29.007 Court-appointed counsel.--For purposes of
 861 implementing s. 14, Art. V of the State Constitution, the

HB 7083

2007

862 elements of court-appointed counsel to be provided from state
863 revenues appropriated by general law are as follows:

864 (1) Private attorneys appointed by the public defender
865 ~~court~~ to handle cases where the defendant is indigent and cannot
866 be represented by the public defender under s. ss. 27.42 and
867 27.53.

868 (2) Private attorneys appointed by the public defender
869 ~~court~~ to represent indigents or other classes of litigants in
870 civil proceedings requiring appointed ~~court-appointed~~ counsel in
871 accordance with state and federal constitutional guarantees and
872 federal and state statutes.

873 (3) Reasonable court reporting and transcription services
874 necessary to meet constitutional or statutory requirements,
875 including the cost of transcribing and copying depositions of
876 witnesses and the cost of foreign language and sign-language
877 interpreters and translators.

878 (4) Witnesses, including expert witnesses, summoned to
879 appear for an investigation, preliminary hearing, or trial in a
880 case when the witnesses are summoned on behalf of an indigent,
881 and any other expert witnesses approved by the court.

882 (5) Mental health professionals appointed pursuant to s.
883 394.473 and required in a court hearing involving an indigent,
884 mental health professionals appointed pursuant to s. 916.115(2)
885 and required in a court hearing involving an indigent, and any
886 other mental health professionals required by law for the full
887 adjudication of any civil case involving an indigent person.

888 (6) Reasonable pretrial consultation fees and costs.

889 (7) Travel expenses reimbursable under s. 112.061
 890 reasonably necessary in the performance of constitutional and
 891 statutory responsibilities.

892
 893 Subsections (3), (4), (5), (6), and (7) apply when court-
 894 appointed counsel is appointed; when the court determines that
 895 the litigant is indigent for costs; or when the litigant is
 896 acting pro se and the court determines that the litigant is
 897 indigent for costs at the trial or appellate level. This section
 898 applies in any situation in which the court appoints counsel to
 899 protect a litigant's due process rights. ~~The Justice~~
 900 ~~Administrative Commission shall approve uniform contract forms~~
 901 ~~for use in processing payments for due process services under~~
 902 ~~this section. In each case in which a private attorney~~
 903 ~~represents a person determined by the court to be indigent for~~
 904 ~~costs, the attorney shall execute the commission's contract for~~
 905 ~~private attorneys representing persons determined to be indigent~~
 906 ~~for costs.~~

907 Section 15. Section 29.015, Florida Statutes, is amended
 908 to read:

909 29.015 Contingency fund; limitation of authority to
 910 transfer funds in contracted due process services appropriation
 911 categories.--

912 (1) (a) An appropriation may be provided in the General
 913 Appropriations Act in the state courts system ~~Justice~~
 914 ~~Administrative Commission~~ to be used solely ~~serve~~ as a
 915 contingency fund for the purpose of alleviating deficits in
 916 contracted due process services appropriation categories,

HB 7083

2007

917 including private appointed ~~court appointed~~ counsel
918 appropriation categories when the trial court determines, that
919 ~~may occur from time to time due to~~ extraordinary events or
920 circumstances of a case have led ~~that lead~~ to unexpected
921 expenditures and that the public defender does not have the
922 ability to accommodate the unexpected expenditure from within
923 his or her operating budget.

924 (b) A peer review committee of at least three judges or
925 their designees, each from a different circuit, appointed by the
926 chief judge of the circuit in which the case was tried, must
927 review and approve each expenditure from the contingency fund
928 established under paragraph (a). The judge who presided over the
929 trial and the chief judge of the affected circuit may not be on
930 the peer review committee. The public defender of the circuit in
931 which the case was tried must provide to the peer review
932 committee all documentation provided to the trial court that
933 made the determination pursuant to paragraph (a) and any other
934 information requested by the peer review committee.

935 (2) In the event that a state attorney or public defender
936 incurs a deficit in a contracted due process services
937 appropriation category, the following steps shall be taken in
938 order:

939 (a) The state attorney or public defender shall first
940 attempt to identify surplus funds from other appropriation
941 categories within his or her office and submit a budget
942 amendment pursuant to chapter 216 to transfer funds from within
943 the office.

HB 7083

2007

944 (b) In the event that the state attorney or public
945 defender is unable to identify surplus funds from within his or
946 her office, he or she shall certify this to the Justice
947 Administrative Commission along with a complete explanation of
948 the circumstances which led to the deficit and steps the office
949 has taken to reduce or alleviate the deficit. The Justice
950 Administrative Commission shall inquire as to whether any other
951 office has surplus funds in its contracted due process services
952 appropriation categories which can be transferred to the office
953 that is experiencing the deficit. If other offices indicate that
954 surplus funds are available within the same appropriation
955 category, the Justice Administrative Commission shall transfer
956 the amount needed to fund the deficit and notify the Governor
957 and the chair and vice chair of the Legislative Budget
958 Commission 14 days prior to a transfer pursuant to the notice,
959 review, and objection provisions of s. 216.177. If funds
960 appropriated for this purpose are available in a different
961 budget entity, the Justice Administrative Commission shall
962 request a budget amendment pursuant to chapter 216.

963 (c) If no office indicates that surplus funds are
964 available to alleviate the deficit, the Justice Administrative
965 Commission may request a budget amendment to transfer funds from
966 the contingency fund. Such transfers shall be in accordance with
967 all applicable provisions of chapter 216 and shall be subject to
968 review and approval by the Legislative Budget Commission. The
969 Justice Administrative Commission shall submit the documentation
970 provided by the office explaining the circumstances that led to
971 the deficit and the steps taken by the office and the Justice

HB 7083

2007

972 Administrative Commission to identify surplus funds to the
973 Legislative Budget Commission.

974 ~~(3) In the event that there is a deficit in a statewide~~
975 ~~contracted due process services appropriation category provided~~
976 ~~for private court-appointed counsel necessary due to withdrawal~~
977 ~~of the public defender due to an ethical conflict, the following~~
978 ~~steps shall be taken in order:~~

979 ~~(a) The Justice Administrative Commission shall first~~
980 ~~attempt to identify surplus funds from other contracted due~~
981 ~~process services appropriation categories within the Justice~~
982 ~~Administrative Commission and submit a budget amendment pursuant~~
983 ~~to chapter 216 to transfer funds from within the commission.~~

984 ~~(b) In the event that the Justice Administrative~~
985 ~~Commission is unable to identify surplus funds from within the~~
986 ~~commission, the commission shall inquire of each of the public~~
987 ~~defenders as to whether any office has surplus funds in its~~
988 ~~contracted due process services appropriations categories which~~
989 ~~can be transferred. If any public defender office or offices~~
990 ~~indicate that surplus funds are available, the Justice~~
991 ~~Administrative Commission shall request a budget amendment to~~
992 ~~transfer funds from the office or offices to alleviate the~~
993 ~~deficit upon agreement of the contributing office or offices.~~

994 ~~(c) If no public defender office has surplus funds~~
995 ~~available to alleviate the deficit, the Justice Administrative~~
996 ~~Commission may request a budget amendment to transfer funds from~~
997 ~~the contingency fund. Such transfers shall be in accordance with~~
998 ~~all applicable provisions of chapter 216 and shall be subject to~~
999 ~~review and approval by the Legislative Budget Commission. The~~

1000 ~~Justice Administrative Commission shall submit the documentation~~
 1001 ~~provided by the office explaining the circumstances that led to~~
 1002 ~~the deficit and the steps taken by the Justice Administrative~~
 1003 ~~Commission to identify surplus funds to the Legislative Budget~~
 1004 ~~Commission.~~

1005 ~~(4) In the event that there is a deficit in a statewide~~
 1006 ~~appropriation category provided for private court appointed~~
 1007 ~~counsel other than for conflict counsel as described in~~
 1008 ~~subsection (3), the following steps shall be taken in order:~~

1009 ~~(a) The Justice Administrative Commission shall first~~
 1010 ~~attempt to identify surplus funds from other contracted due~~
 1011 ~~process services appropriation categories within the Justice~~
 1012 ~~Administrative Commission and submit a budget amendment pursuant~~
 1013 ~~to chapter 216 to transfer funds from within the commission.~~

1014 ~~(b) In the event that the Justice Administrative~~
 1015 ~~Commission is unable to identify surplus funds from within the~~
 1016 ~~commission, the commission may submit a budget amendment to~~
 1017 ~~transfer funds from the contingency fund. Such transfers shall~~
 1018 ~~be in accordance with all applicable provisions of chapter 216~~
 1019 ~~and shall be subject to review and approval by the Legislative~~
 1020 ~~Budget Commission. The Justice Administrative Commission shall~~
 1021 ~~submit documentation explaining the circumstances that led to~~
 1022 ~~the deficit and the steps taken to identify surplus funds to the~~
 1023 ~~Legislative Budget Commission.~~

1024 (3)~~(5)~~ Notwithstanding any provisions in chapter 216 to
 1025 the contrary, no office shall transfer funds from a contracted
 1026 due process services appropriation category or from a
 1027 contingency fund category authorized in this section except as

HB 7083

2007

1028 specifically authorized in this section. In addition, funds
 1029 shall not be transferred from a state attorney office to
 1030 alleviate a deficit in a public defender office and funds shall
 1031 not be transferred from a public defender office to alleviate a
 1032 deficit in a state attorney office.

1033 Section 16. Section 29.018, Florida Statutes, is amended
 1034 to read:

1035 29.018 Cost sharing of due-process services; legislative
 1036 intent.--It is the intent of the Legislature to provide state-
 1037 funded due-process services to the state courts system, state
 1038 attorneys, public defenders, and appointed ~~court-appointed~~
 1039 counsel in the most cost-effective and efficient manner. The
 1040 state courts system, state attorneys, and public defenders,~~and~~
 1041 ~~the Justice Administrative Commission on behalf of court-~~
 1042 ~~appointed counsel~~ may enter into contractual agreements to
 1043 share, on a pro rata basis, the costs associated with court
 1044 reporting services, court interpreter and translation services,
 1045 court experts, and all other due-process services funded by the
 1046 state pursuant to this chapter. These costs shall be budgeted
 1047 within the funds appropriated to each of the affected users of
 1048 services.

1049 Section 17. Section 29.0185, Florida Statutes, is amended
 1050 to read:

1051 29.0185 Provision of state-funded due process services to
 1052 individuals; limitations on certain payments.--Due process
 1053 services may not be provided with state revenues to an
 1054 individual unless the individual on whose behalf the due process
 1055 services are being provided is eligible for appointed ~~court-~~

HB 7083

2007

1056 ~~appointed~~ counsel under s. 27.40, based upon a determination of
 1057 indigency under s. 27.52. The Justice Administrative Commission
 1058 shall only make payment for appointed counsel and other due
 1059 process services authorized by a state attorney or public
 1060 defender. The state courts system shall be responsible for the
 1061 portion of any payment ordered that is not authorized by a
 1062 public defender or state attorney, is in excess of payment rates
 1063 established by the contract, is in excess of limits provided for
 1064 by law, or is not specifically authorized by law, regardless of
 1065 ~~whether such counsel is appointed or the individual on whose~~
 1066 ~~behalf the due process services are being provided is eligible~~
 1067 ~~for court appointed counsel under s. 27.40 and has been~~
 1068 ~~determined indigent for costs pursuant to s. 27.52.~~

1069 Section 18. Subsection (1) of section 39.815, Florida
 1070 Statutes, is amended to read:

1071 39.815 Appeal.--

1072 (1) Any child, any parent or guardian ad litem of any
 1073 child, any other party to the proceeding who is affected by an
 1074 order of the court, or the department may appeal to the
 1075 appropriate district court of appeal within the time and in the
 1076 manner prescribed by the Florida Rules of Appellate Procedure.
 1077 The district court of appeal shall give an appeal from an order
 1078 terminating parental rights priority in docketing and shall
 1079 render a decision on the appeal as expeditiously as possible.
 1080 Appointed counsel shall be compensated as provided in s.
 1081 27.5304 (4) ~~(5)~~.

1082 Section 19. Subsection (2) of section 125.69, Florida
 1083 Statutes, is amended to read:

HB 7083

2007

1084 125.69 Penalties; enforcement by code inspectors.--
 1085 (2) Each county is authorized and required to pay any
 1086 attorney appointed by the court to represent a defendant charged
 1087 with a criminal violation of a special law or county ordinance
 1088 not ancillary to a state charge if the defendant is indigent and
 1089 otherwise entitled to court-appointed counsel under the
 1090 Constitution of the United States or the Constitution of the
 1091 State of Florida. In these cases, the public defender ~~court~~
 1092 shall appoint counsel to represent the defendant in accordance
 1093 with s. 27.40~~7~~, and ~~shall order~~ the county shall ~~to~~ pay the
 1094 reasonable attorney's fees, costs, and related expenses of the
 1095 defense. The county may contract with the public defender of the
 1096 judicial circuit in which the county is located to serve as
 1097 appointed ~~court-appointed~~ counsel pursuant to s. 27.54.

1098 Section 20. Paragraph (w) of subsection (4) of section
 1099 215.20, Florida Statutes, is amended to read:

1100 215.20 Certain income and certain trust funds to
 1101 contribute to the General Revenue Fund.--

1102 (4) The income of a revenue nature deposited in the
 1103 following described trust funds, by whatever name designated, is
 1104 that from which the appropriations authorized by subsection (3)
 1105 shall be made:

1106 (w) Within the Justice Administrative Commission, the
 1107 Indigent Services ~~Criminal Defense~~ Trust Fund.

1108
 1109 The enumeration of the foregoing moneys or trust funds shall not
 1110 prohibit the applicability thereto of s. 215.24 should the
 1111 Governor determine that for the reasons mentioned in s. 215.24

HB 7083

2007

1112 the money or trust funds should be exempt herefrom, as it is the
 1113 purpose of this law to exempt income from its force and effect
 1114 when, by the operation of this law, federal matching funds or
 1115 contributions or private grants to any trust fund would be lost
 1116 to the state.

1117 Section 21. Subsection (2) of section 744.331, Florida
 1118 Statutes, is amended to read:

1119 744.331 Procedures to determine incapacity.--

1120 (2) ATTORNEY FOR ~~THE~~ ALLEGED INCAPACITATED PERSON.--

1121 ~~(a) When a court appoints an attorney for an alleged~~
 1122 ~~incapacitated person, the court must appoint an attorney who is~~
 1123 ~~included in the attorney registry compiled pursuant to ss. 27.40~~
 1124 ~~and 27.42 by the circuit's Article V indigent services~~
 1125 ~~committee. Appointments must be made on a rotating basis, taking~~
 1126 ~~into consideration conflicts arising under this chapter.~~

1127 (a) ~~(b)~~ The court shall appoint an attorney for each person
 1128 alleged to be incapacitated in all cases involving a petition
 1129 for adjudication of incapacity. The alleged incapacitated person
 1130 may substitute her or his own attorney for the attorney
 1131 appointed by the court. Only if the alleged incapacitated person
 1132 is found to be indigent pursuant to s. 27.52 may the public
 1133 defender be appointed to represent the person or arrange for
 1134 representation of the person; otherwise, any attorney appointed
 1135 on behalf of the person must be paid from the assets of the
 1136 alleged incapacitated person.

1137 (b) ~~(e)~~ Any attorney representing an alleged incapacitated
 1138 person may not serve as guardian of the alleged incapacitated

1139 person or as counsel for the guardian of the alleged
 1140 incapacitated person or the petitioner.

1141 ~~(c)(d) Effective January 1, 2007,~~ An attorney seeking to
 1142 be appointed by a court for incapacity and guardianship
 1143 proceedings must have completed a minimum of 8 hours of
 1144 education in guardianship. A court may waive the initial
 1145 training requirement for an attorney who has served as a court-
 1146 appointed attorney in incapacity proceedings or as an attorney
 1147 of record for guardians for not less than 3 years.

1148 Section 22. Section 914.11, Florida Statutes, is repealed.

1149 Section 23. Subsections (1) and (2) of section 938.29,
 1150 Florida Statutes, are amended to read:

1151 938.29 Legal assistance; lien for payment of attorney's
 1152 fees or costs.--

1153 (1)(a) A defendant determined to be guilty of a criminal
 1154 act by a court or jury or through a plea of guilty or nolo
 1155 contendere and who has received the assistance of the public
 1156 defender's office, whether such assistance was provided by an
 1157 attorney of the public defender or through a private attorney
 1158 appointed by the public defender, a special assistant public
 1159 defender, or a conflict attorney shall be liable for payment of
 1160 attorney's fees and costs. The court shall determine the amount
 1161 of the obligation. Such costs shall include, but not be limited
 1162 to, the cost of depositions; cost of transcripts of depositions,
 1163 including the cost of defendant's copy, which transcripts are
 1164 certified by the defendant's attorney as having served a useful
 1165 purpose in the disposition of the case; investigative costs;
 1166 witness fees; the cost of psychiatric examinations; or other

HB 7083

2007

1167 reasonable costs specially incurred by the state and the clerk
1168 of court for the defense of the defendant in criminal
1169 prosecutions. Costs shall not include expenses inherent in
1170 providing a constitutionally guaranteed jury trial or
1171 expenditures in connection with the maintenance and operation of
1172 government agencies that must be made by the public irrespective
1173 of specific violations of law. Any costs assessed pursuant to
1174 this paragraph shall be reduced by any amount assessed against a
1175 defendant pursuant to s. 938.05.

1176 (b) Upon entering a judgment of conviction, the defendant
1177 shall be liable to pay the costs in full after the judgment of
1178 conviction becomes final.

1179 (c) The defendant shall pay the application fee under s.
1180 27.52(1)(b) and attorney's fees and costs in full or in
1181 installments, at the time or times specified. The court may
1182 order payment of the assessed application fee and attorney's
1183 fees and costs as a condition of probation, of suspension of
1184 sentence, or of withholding the imposition of sentence. The
1185 first \$40 from attorney's fees and costs collected under this
1186 section shall be transferred monthly by the clerk to the
1187 Department of Revenue for deposit into the Indigent Services
1188 Trust Fund. All remaining attorney's fees and costs collected
1189 under this section shall be deposited into the General Revenue
1190 Fund.

1191 (2)(a) There is created in the name of the state a lien,
1192 enforceable as hereinafter provided, upon all the property, both
1193 real and personal, of any person who:

1194 1. Has received any assistance from any public defender of
 1195 the state, from any special assistant public defender, or from
 1196 any appointed ~~conflict~~ attorney; or

1197 2. Is a parent of an accused minor or an accused adult
 1198 tax-dependent person who is being, or has been, represented by
 1199 any public defender of the state, by any special assistant
 1200 public defender, or by an appointed ~~a conflict~~ attorney.

1201
 1202 Such lien constitutes a claim against the defendant-recipient or
 1203 parent and his or her estate, enforceable according to law.

1204 (b) A judgment showing the name and residence of the
 1205 defendant-recipient or parent shall be recorded in the public
 1206 record, without cost, by the clerk of the circuit court in the
 1207 county where the defendant-recipient or parent resides and in
 1208 each county in which such defendant-recipient or parent then
 1209 owns or later acquires any property. Such judgments shall be
 1210 enforced on behalf of the state by the clerk of the circuit
 1211 court of the county in which assistance was rendered.

1212 Section 24. (1) As to any contract for legal services
 1213 pursuant to the provisions of part III of chapter 27, Florida
 1214 Statutes, which contract was in existence on or before June 30,
 1215 2007, the following shall apply:

1216 (a) Attorneys appointed under such contracts shall
 1217 complete the representation of clients assigned to them as of
 1218 June 30, 2007, through completion of the case; however, no such
 1219 appointment shall extend beyond June 30, 2008. As of July 1,
 1220 2008, representation of any person pursuant to part III of
 1221 chapter 27, Florida Statutes, shall only be through a contract

1222 with the appropriate public defender.

1223 (b) The Justice Administrative Commission shall pay fees
 1224 earned by attorneys under contracts for appointments that
 1225 commenced prior to June 30, 2007, subject to a specific
 1226 appropriation in the fiscal year 2007-2008 General
 1227 Appropriations Act for payment of such representation.

1228 (c) All provisions of part III of chapter 27, Florida
 1229 Statutes, as they exist on June 30, 2007, shall control such
 1230 contracts, notwithstanding the amendment or repeal of any
 1231 applicable provision by this act.

1232 (d) The public defender shall not be liable for fees and
 1233 costs for any attorney appointed prior to July 1, 2007.

1234 (2) If funds appropriated to the Justice Administrative
 1235 Commission for payment of cases pursuant to subsection (1) are
 1236 exhausted, any remaining required payments shall be made from
 1237 funds appropriated to the public defender of the circuit in
 1238 which the case was appointed except for the portion of payment
 1239 in excess of payment rates established by the contract, in
 1240 excess of limits provided for by law, or for goods or services
 1241 not specifically authorized by law which shall be paid from
 1242 funds appropriated to the state courts system. The state courts
 1243 system and the public defender may reduce nonessential travel,
 1244 other nonessential expenses and nonessential personnel costs in
 1245 order to eliminate a deficit that would otherwise result from
 1246 payments required by this subsection.

1247 Section 25. This act shall take effect July 1, 2007.