

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; amending s. 27.512,  
12          F.S.; specifying cases subject to orders of no  
13          imprisonment for which the public defender may not  
14          represent the defendant; amending s. 27.52, F.S.;  
15          conforming references; limiting expenditures; revising  
16          provisions relating to payment for costs of  
17          representation; amending s. 27.525, F.S.; changing the  
18          name of a trust fund; limiting uses of funds credited to  
19          the trust fund; amending s. 27.53, F.S.; providing that  
20          public defender investigators are authorized to act in any  
21          judicial circuit; amending s. 27.5303, F.S.; revising  
22          provisions relating to appointment of counsel by a public  
23          defender in conflict cases; deleting a requirement to file  
24          a specified report; amending s. 27.5304, F.S.; limiting  
25          expenditures on appointed counsel; creating financial  
26          penalties chargeable against an appointed attorney found  
27          to have provided ineffective assistance of counsel;  
28          deleting forms of billing and payment by private attorneys

29 representing indigent persons; deleting report of the  
30 Article V Indigent Services Advisory Board; providing for  
31 amendment of the general limits per case in the General  
32 Appropriations Act; allowing for extraordinary payment;  
33 providing that a public defender achieving cost savings  
34 may be entitled to propose alternative use for such  
35 savings up to a specified amount; providing limits on the  
36 ability of an indigent services committee to authorize  
37 compensation in excess of specified fee schedules;  
38 requiring payment of excess compensation to be paid from  
39 the state courts system; amending ss. 27.561 and 27.562,  
40 F.S.; making conforming changes; amending s. 27.58, F.S.;  
41 providing that the public defender is the chief  
42 administrator of all indigent representation services in  
43 the public defender's circuit; amending s. 27.59, F.S.;  
44 providing that attorneys appointed by a public defender  
45 have the same access to prisoners as the public defender;  
46 amending s. 27.7001, F.S.; providing legislative findings  
47 relating to postconviction counsel for capital defendants;  
48 amending s. 27.7002, F.S.; deleting authority for the  
49 executive director of the Commission on Capital Cases to  
50 remove attorneys from the registry of attorneys under  
51 chapter 27, F.S.; requiring registry attorneys to decline  
52 acceptance of an appointment in certain circumstances and  
53 to notify the trial court; creating s. 27.7003, F.S.;  
54 providing for authorization to use state funds for  
55 additional compensation to registry counsel for additional  
56 work that was unforeseeable at the time the contract was

57 | signed under certain circumstances; providing requirements  
58 | and conditions with respect to such authorization;  
59 | providing a right for the state to appeal an order  
60 | granting additional compensation; providing the method of  
61 | calculating the amount of additional compensation and  
62 | specifying the maximum amount of additional compensation  
63 | authorized; providing that the Chief Financial Officer  
64 | shall represent the state in proceedings in which  
65 | additional compensation is sought; providing that no  
66 | compensation is authorized for services not specified in  
67 | s. 27.711, F.S.; amending s. 27.711, F.S.; revising  
68 | provisions relating to terms and conditions of the  
69 | appointment of registry counsel; requiring signature of  
70 | contract and notice of appearance to be filed within a  
71 | specified time period; requiring compliance with specified  
72 | provisions when registry counsel seeks additional  
73 | compensation; specifying the assertion of claims not  
74 | supported by the law or facts of the case among the list  
75 | of example circumstances that may affect the quality of  
76 | representation that may be reported to the court; amending  
77 | s. 29.007, F.S.; providing for private attorneys appointed  
78 | by the public defender; deleting references to the Justice  
79 | Administrative Commission; amending s. 29.015, F.S.;  
80 | moving responsibility for a deficit in the contingency  
81 | fund for alleviating certain deficits from the Justice  
82 | Administrative Commission to the state courts system;  
83 | requiring establishment of a peer review committee for  
84 | review and approval of expenditures from such fund;

85 | amending s. 29.018, F.S.; making conforming changes;  
 86 | amending s. 29.0185, F.S.; limiting expenditures for due  
 87 | process costs; amending ss. 39.815, 125.69, and 215.20,  
 88 | F.S.; conforming provisions; amending s. 744.331, F.S.;  
 89 | providing for appointment by the public defender of an  
 90 | attorney for an alleged incapacitated person; repealing s.  
 91 | 914.11, F.S., to repeal a requirement for payment of costs  
 92 | for an indigent criminal defendant; amending s. 938.29,  
 93 | F.S.; providing for a lien against an individual who has  
 94 | been provided attorney services as an indigent; directing  
 95 | payment of moneys collected from the lien; creating a  
 96 | transitional plan for payment of expenses accruing before  
 97 | the effective date of this act; requiring each public  
 98 | defender to present a transition plan to the Legislative  
 99 | Budget Commission for approval; providing effective dates.

100

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

102

103 | Section 1. Section 27.40, Florida Statutes, is amended to  
 104 | read:

105 | 27.40 Appointed Court-appointed counsel system; component  
 106 | programs ~~circuit registries~~; minimum requirements; ~~appointment~~  
 107 | ~~by court~~.--

108 | (1) Counsel shall be appointed by the public defender of  
 109 | the circuit to represent any individual in a criminal or civil  
 110 | proceeding entitled to appointed court-appointed counsel under  
 111 | the Federal or State Constitution or as authorized by general  
 112 | law. No court may order that a particular attorney be named as

113 an appointed attorney in a case. No court may enter any court  
114 order affecting, nor otherwise direct or control, the provision  
115 of appointed attorney services; however, a court shall not be  
116 prohibited from exercising traditional means of discipline of  
117 attorneys appearing before the court. Any reference in this part  
118 to the appointment of the public defender shall also refer to  
119 the subsequent selection and appointment by the public defender  
120 of another attorney to represent an individual in the event of a  
121 conflict of interest or for representation of indigent litigants  
122 in civil proceedings where necessary to meet constitutional or  
123 statutory requirements ~~The court shall appoint a public defender~~  
124 ~~to represent indigent persons as authorized in s. 27.51. Private~~  
125 ~~counsel shall be appointed to represent indigents in those cases~~  
126 ~~in which provision is made for court appointed counsel but the~~  
127 ~~public defender is unable to provide representation due to a~~  
128 ~~conflict of interest or is not authorized to provide~~  
129 ~~representation.~~

130 (2) The public defender of each judicial circuit shall be  
131 the administrator of all appointed attorney services authorized  
132 under s. 27.51 within the circuit. The public defender shall  
133 administratively create component programs as a separate unit of  
134 each public defender's office, and the public defender shall  
135 sufficiently insulate the units from each other so as to ensure  
136 that confidential client information is not exchanged. Component  
137 programs under the administration of each public defender shall  
138 include the following:

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

141 (b) A dependency and termination of parental rights  
142 program, which shall represent any person described in s.  
143 27.51(1)(e).

144 (c) A civil program, which shall represent any person  
145 described in s. 27.51(1)(d) and (f)-(m).

146 (d) A conflict program, which shall represent any person  
147 described in s. 27.51(1)(a)-(m) when a conflict of interest  
148 exists in accordance with s. 27.5303. ~~Private counsel appointed~~  
149 by the court to provide representation shall be selected from a  
150 registry of individual attorneys established by the circuit  
151 Article V indigent services committee or procured through a  
152 competitive bidding process.

153 (3) Each public defender shall have the authority to  
154 determine the most cost-effective method or methods for the  
155 delivery of appointed attorney services for that public  
156 defender's circuit. Authorized methods shall include, but not be  
157 limited to, the use of state employees, cross-circuit conflict  
158 representation, assigned attorney registries, and contractual  
159 agreements with individual attorneys, law firms, or groups of  
160 attorneys or law firms. Any contractual agreement may be  
161 terminated by a successor public defender without penalty. No  
162 contract or agreement may obligate the state to pay sums in  
163 excess of the moneys appropriated to the public defender for  
164 indigent services, and any contract shall be subject to annual  
165 appropriations. ~~In utilizing a registry:~~

166 ~~(a) Each circuit Article V indigent services committee~~  
167 ~~shall compile and maintain a list of attorneys in private~~  
168 ~~practice, by county and by category of cases. From October 1,~~

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169 ~~2005, through September 30, 2007, the list of attorneys compiled~~  
170 ~~by the Eleventh Judicial Circuit shall provide the race, gender,~~  
171 ~~and national origin of assigned attorneys. To be included on a~~  
172 ~~registry, attorneys shall certify that they meet any minimum~~  
173 ~~requirements established in general law for court appointment,~~  
174 ~~are available to represent indigent defendants in cases~~  
175 ~~requiring court appointment of private counsel, and are willing~~  
176 ~~to abide by the terms of the contract for services. To be~~  
177 ~~included on a registry, an attorney also must enter into a~~  
178 ~~contract for services with the Justice Administrative~~  
179 ~~Commission. Failure to comply with the terms of the contract for~~  
180 ~~services may result in termination of the contract and removal~~  
181 ~~from the registry. Each attorney on the registry shall be~~  
182 ~~responsible for notifying the circuit Article V indigent~~  
183 ~~services committee and the Justice Administrative Commission of~~  
184 ~~any change in his or her status. Failure to comply with this~~  
185 ~~requirement shall be cause for termination of the contract for~~  
186 ~~services and removal from the registry until the requirement is~~  
187 ~~fulfilled.~~

188 ~~(b) The court shall appoint attorneys in rotating order in~~  
189 ~~the order in which names appear on the applicable registry,~~  
190 ~~unless the court makes a finding of good cause on the record for~~  
191 ~~appointing an attorney out of order. An attorney not appointed~~  
192 ~~in the order in which his or her name appears on the list shall~~  
193 ~~remain next in order.~~

194 ~~(c) If it finds the number of attorneys on the registry in~~  
195 ~~a county or circuit for a particular category of cases is~~  
196 ~~inadequate, the circuit Article V indigent services committee~~

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197 ~~shall notify the chief judge of the particular circuit in~~  
198 ~~writing. The chief judge shall submit the names of at least~~  
199 ~~three private attorneys with relevant experience. The clerk of~~  
200 ~~court shall send an application to each of these attorneys to~~  
201 ~~register for appointment.~~

202 ~~(d) Quarterly, each circuit Article V indigent services~~  
203 ~~committee shall provide a current copy of each registry to the~~  
204 ~~Chief Justice of the Supreme Court, the chief judge, the state~~  
205 ~~attorney and public defender in each judicial circuit, the clerk~~  
206 ~~of court in each county, the Justice Administrative Commission,~~  
207 ~~and the Indigent Services Advisory Board. From October 1, 2005,~~  
208 ~~through September 30, 2007, the report submitted by the Eleventh~~  
209 ~~Judicial Circuit shall include the race, gender, and national~~  
210 ~~origin of all attorneys listed in and appointed under the~~  
211 ~~registry.~~

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

216 ~~(5) The Justice Administrative Commission shall approve~~  
217 ~~uniform contract forms for use in procuring the services of~~  
218 ~~private court appointed counsel and uniform procedures and forms~~  
219 ~~for use by a court appointed attorney in support of billing for~~  
220 ~~attorney's fees, costs, and related expenses to demonstrate the~~  
221 ~~attorney's completion of specified duties.~~

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



225           ~~(5)-(7)-(a)~~ A private ~~An~~ attorney appointed by a public  
 226 defender to represent a defendant or other client is entitled to  
 227 payment for services pursuant to s. 27.5304, only upon full  
 228 performance by the attorney of specified duties, adherence to  
 229 any billing procedures specified in the contract by the public  
 230 defender, submission of all documentation required by the  
 231 contract, approval of payment by the public defender, court,  
 232 ~~except for payment based on a flat fee per case as provided in~~  
 233 ~~s. 27.5304~~; and attorney submission of a payment request to the  
 234 Justice Administrative Commission within 60 days following  
 235 completion of the work unless otherwise specified in the  
 236 contract. ~~Upon being permitted to withdraw from a case, a court-~~  
 237 ~~appointed attorney shall submit a copy of the order to the~~  
 238 ~~Justice Administrative Commission at the time it is issued by~~  
 239 ~~the court~~. If a private ~~an~~ attorney is permitted to withdraw or  
 240 is otherwise removed from representation prior to full  
 241 performance of the duties specified in this section for reasons  
 242 other than breach of duty, the public defender ~~trial court~~ shall  
 243 approve payment of attorney's fees and costs for work performed  
 244 as provided in the contract in an amount not to exceed the  
 245 amounts specified in s. 27.5304. Withdrawal from a case prior to  
 246 full performance of the duties specified shall create a  
 247 rebuttable presumption that the attorney is not entitled to the  
 248 entire flat fee for those cases paid on a flat-fee-per-case  
 249 basis.

250           ~~(6)-(b)~~ A private ~~The~~ attorney shall maintain appropriate  
 251 documentation, including a current and detailed hourly  
 252 accounting of time spent representing the defendant or other

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253 client. These records and documents are subject to review by the  
254 public defender and the Justice Administrative Commission,  
255 subject to the attorney-client privilege and work product  
256 privilege. Subject to the attorney-client privilege, these  
257 records and documents shall be made available to the Governor,  
258 the Legislature, and the general public upon request.

259 (7)(8) Subject to the attorney-client privilege and the  
260 work-product privilege, a private ~~an~~ attorney who withdraws or  
261 is removed from representation shall deliver all files, notes,  
262 documents, and research to a ~~the~~ successor attorney within 15  
263 days after receiving notice from the successor attorney  
264 designated by the public defender. The successor attorney shall  
265 bear the cost of transmitting all files, notes, documents, and  
266 research.

267 (8)(9) ~~A circuit Article V indigent services committee or~~  
268 Any interested person may advise the public defender ~~court~~ of  
269 any circumstance affecting the quality of representation,  
270 including, but not limited to, false or fraudulent billing,  
271 misconduct, failure to meet continuing legal education  
272 requirements, solicitation to receive compensation from the  
273 defendant or other client a private ~~the~~ attorney is appointed to  
274 represent, or failure to file appropriate motions in a timely  
275 manner.

276 (9)(10) This section does not apply to attorneys appointed  
277 to represent persons in postconviction capital collateral cases  
278 pursuant to part IV of this chapter.

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

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

283 27.51 Duties of public defender.--

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

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

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

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

291 2. A violation of chapter 316 punishable by imprisonment;

292 3. Criminal contempt; or

293 4. A violation of a special law or county or municipal  
 294 ordinance ancillary to a state charge, or if not ancillary to a  
 295 state charge, only if the public defender contracts with the  
 296 county or municipality to provide representation pursuant to ss.  
 297 27.54 and 125.69.

298

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

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

304 (d) Sought by petition filed in such court to be  
 305 involuntarily placed as a mentally ill person under part I of  
 306 chapter 394, involuntarily committed as a sexually violent  
 307 predator under part V of chapter 394, or involuntarily admitted

308 to residential services as a person with developmental  
309 disabilities under chapter 393. A public defender shall not  
310 represent any plaintiff in a civil action brought under the  
311 Florida Rules of Civil Procedure, the Federal Rules of Civil  
312 Procedure, or the federal statutes, or represent a petitioner in  
313 a rule challenge under chapter 120, unless specifically  
314 authorized by statute;

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

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

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

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

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

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

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

333 (l) A person for whom involuntary commitment is sought  
334 subsequent to an acquittal by reason of insanity pursuant to s.  
335 916.15;

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

338           ~~(n)(e)~~ Convicted and sentenced to death, for purposes of  
 339 handling an appeal to the Supreme Court; or

340           ~~(o)(f)~~ Is appealing a matter in a case arising under  
 341 paragraphs (a) - (n) ~~(a) - (d)~~.

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

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

348           27.512 Order of no imprisonment.--

349           (1) In each case set forth in s. 27.51(1)(b), in which the  
 350 court determines that it will not sentence the defendant to  
 351 imprisonment if convicted, the court shall issue an order of no  
 352 imprisonment and ~~the court may not appoint the public defender~~  
 353 may not be appointed to represent the defendant. If the court  
 354 issues an order of no imprisonment following the appointment of  
 355 the public defender, the court shall immediately terminate the  
 356 public defender's services. However, if at any time the court  
 357 withdraws the order of no imprisonment with respect to an  
 358 indigent defendant, the court shall appoint the public defender  
 359 to represent the defendant.

360           Section 5. Paragraphs (b) and (d) of subsection (1),  
 361 paragraph (c) of subsection (2), subsection (3), paragraph (b)  
 362 of subsection (4), subsections (5) and (6), and paragraph (a) of

363 subsection (7) of section 27.52, Florida Statutes, are amended  
 364 to read:

365 27.52 Determination of indigent status.--

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

372 (b) An applicant shall pay a \$40 application fee to the  
 373 clerk for each application for appointed ~~court-appointed~~ counsel  
 374 filed. The applicant shall pay the fee within 7 days after  
 375 submitting the application. If the applicant does not pay the  
 376 fee prior to the disposition of the case, the clerk shall notify  
 377 the court, and the court shall:

378 1. Assess the application fee as part of the sentence or  
 379 as a condition of probation; or

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

381 (d) All application fees collected by the clerk under this  
 382 section shall be transferred monthly by the clerk to the  
 383 Department of Revenue for deposit in the Indigent Services  
 384 ~~Criminal Defense~~ Trust Fund administered by the Justice  
 385 Administrative Commission, to be used to as appropriated by the  
 386 Legislature. The clerk may retain 2 percent of application fees  
 387 collected monthly for administrative costs prior to remitting  
 388 the remainder to the Department of Revenue.

389 (2) DETERMINATION BY THE CLERK.--The clerk of the court  
 390 shall determine whether an applicant seeking appointment of a

391 public defender is indigent based upon the information provided  
 392 in the application and the criteria prescribed in this  
 393 subsection.

394 (c)~~1~~. If the clerk determines that the applicant is  
 395 indigent, the clerk shall submit the determination to the office  
 396 of the public defender and immediately file the determination in  
 397 the case file.

398 ~~2. If the public defender is unable to provide~~  
 399 ~~representation due to a conflict pursuant to s. 27.5303, the~~  
 400 ~~public defender shall move the court for withdrawal from~~  
 401 ~~representation and appointment of private counsel.~~

402 (3) APPOINTMENT OF COUNSEL ON INTERIM BASIS.--If the clerk  
 403 of the court has not made a determination of indigent status at  
 404 the time a person requests appointment of a public defender, the  
 405 court shall make a preliminary determination of indigent status,  
 406 pending further review by the clerk, and may, by court order,  
 407 appoint the a public defender ~~or private counsel~~ on an interim  
 408 basis.

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

410 (b) Based upon its review, the court shall make one of the  
 411 following determinations and, if the applicant is indigent,  
 412 shall appoint the a public defender ~~or, if appropriate, private~~  
 413 ~~counsel~~:

- 414 1. The applicant is not indigent.
- 415 2. The applicant is indigent.

416 (5) ~~INDIGENT FOR COSTS~~.--No funds appropriated to the  
 417 public defender or the Justice Administrative Commission shall  
 418 be expended for costs incurred by privately retained counsel or

419 a pro se litigant or defendant except as specifically authorized  
 420 by this chapter and the public defender. A person who is  
 421 ~~eligible to be represented by a public defender under s. 27.51~~  
 422 ~~but who is represented by private counsel not appointed by the~~  
 423 ~~court for a reasonable fee as approved by the court, on a pro~~  
 424 ~~bono basis, or who is proceeding pro se, may move the court for~~  
 425 ~~a determination that he or she is indigent for costs and~~  
 426 ~~eligible for the provision of due process services, as~~  
 427 ~~prescribed by ss. 29.006 and 29.007, funded by the state.~~

428 ~~(a) The person must submit to the court:~~  
 429 ~~1. The completed application prescribed in subsection (1).~~  
 430 ~~2. In the case of a person represented by counsel, an~~  
 431 ~~affidavit attesting to the estimated amount of attorney's fees~~  
 432 ~~and the source of payment for these fees.~~

433 ~~(b) In reviewing the motion, the court shall consider:~~  
 434 ~~1. Whether the applicant applied for a determination of~~  
 435 ~~indigent status under subsection (1) and the outcome of such~~  
 436 ~~application.~~  
 437 ~~2. The extent to which the person's income equals or~~  
 438 ~~exceeds the income criteria prescribed in subsection (2).~~  
 439 ~~3. The additional factors prescribed in subsection (4).~~  
 440 ~~4. Whether the applicant is proceeding pro se.~~  
 441 ~~5. When the applicant retained private counsel.~~  
 442 ~~6. The amount of any attorney's fees and who is paying the~~  
 443 ~~fees.~~

444 ~~(c) Based upon its review, the court shall make one of the~~  
 445 ~~following determinations:~~  
 446 ~~1. The applicant is not indigent for costs.~~



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

448 ~~(d) The provision of due process services based upon a~~  
449 ~~determination that a person is indigent for costs under this~~  
450 ~~subsection must be effectuated pursuant to a court order, a copy~~  
451 ~~of which the clerk shall provide to counsel representing the~~  
452 ~~person, or to the person directly if he or she is proceeding pro~~  
453 ~~se, for use in requesting payment of due process expenses~~  
454 ~~through the Justice Administrative Commission. Counsel~~  
455 ~~representing a person declared indigent for costs shall execute~~  
456 ~~the Justice Administrative Commission's contract for counsel~~  
457 ~~representing persons determined to be indigent for costs.~~

458 (6) DUTIES OF PARENT OR LEGAL GUARDIAN.--A nonindigent  
459 parent or legal guardian of an applicant who is a minor or an  
460 adult tax-dependent person shall furnish the minor or adult tax-  
461 dependent person with the necessary legal services and costs  
462 incident to a delinquency proceeding or, upon transfer of such  
463 person for criminal prosecution as an adult pursuant to chapter  
464 985, a criminal prosecution in which the person has a right to  
465 legal counsel under the Constitution of the United States or the  
466 Constitution of the State of Florida. The failure of a parent or  
467 legal guardian to furnish legal services and costs under this  
468 section does not bar the appointment of legal counsel pursuant  
469 to this section, s. 27.40, or s. 27.5303. When the public  
470 defender, ~~a private court appointed conflict counsel, or a~~  
471 ~~private attorney~~ is appointed to represent a minor or an adult  
472 tax-dependent person in any proceeding in circuit court or in a  
473 criminal proceeding in any other court, the parents or the legal  
474 guardian shall be liable for payment of the fees, charges, and

475 costs of the representation even if the person is a minor being  
 476 tried as an adult. Liability for the fees, charges, and costs of  
 477 the representation shall be imposed in the form of a lien  
 478 against the property of the nonindigent parents or legal  
 479 guardian of the minor or adult tax-dependent person. The lien is  
 480 enforceable as provided in s. 27.561 or s. 938.29.

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

482 (a) If the court learns of discrepancies between the  
 483 application or motion and the actual financial status of the  
 484 person found to be indigent or indigent for costs, the court  
 485 shall determine whether the public defender ~~or private attorney~~  
 486 shall continue representation or whether the authorization for  
 487 any other due process services previously authorized shall be  
 488 revoked. The person may be heard regarding the information  
 489 learned by the court. If the court, based on the information,  
 490 determines that the person is not indigent or indigent for  
 491 costs, the court shall order the public defender ~~or private~~  
 492 ~~attorney~~ to discontinue representation and revoke the provision  
 493 of any other authorized due process services.

494 Section 6. Section 27.525, Florida Statutes, is amended to  
 495 read:

496 27.525 Indigent Services ~~Criminal Defense~~ Trust Fund.--The  
 497 Indigent Services ~~Criminal Defense~~ Trust Fund is hereby created,  
 498 to be administered by the Justice Administrative Commission.  
 499 Funds shall be credited to the trust fund as provided in s.  
 500 27.52, to be used exclusively for indigent services in each  
 501 circuit in accordance with this part ~~the purposes set forth~~  
 502 ~~therein~~. The Justice Administrative Commission shall account for

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503 these funds on a circuit basis, and appropriations from the fund  
504 shall be proportional to each circuit's collections.

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

507 27.53 Appointment of assistants and other staff; method of  
508 payment.--

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

514 (b) Notwithstanding the provisions of s. 790.01, s.  
515 790.02, or s. 790.25(2)(a), an investigator employed by a public  
516 defender, while actually carrying out official duties, is  
517 authorized to carry concealed weapons if the investigator  
518 complies with s. 790.25(3)(o). However, such investigators are  
519 not eligible for membership in the Special Risk Class of the  
520 Florida Retirement System. Each investigator employed by a  
521 public defender shall have full authority to serve any witness  
522 subpoena or court order issued, by any court or judge within any  
523 judicial circuit served by the public defender, in a criminal  
524 case in which the public defender has been appointed.

525 (c) The public defenders of all judicial circuits shall  
526 jointly develop a coordinated classification and pay plan which  
527 shall be submitted on or before January 1 of each year to the  
528 Justice Administrative Commission, the office of the President  
529 of the Senate, and the office of the Speaker of the House of  
530 Representatives. Such plan shall be developed in accordance with

531 policies and procedures of the Executive Office of the Governor  
 532 established in s. 216.181.

533 (d) Each assistant public defender appointed by a public  
 534 defender under this section shall serve at the pleasure of the  
 535 public defender. ~~Each investigator employed by a public defender~~  
 536 ~~shall have full authority to serve any witness subpoena or court~~  
 537 ~~order issued, by any court or judge within the judicial circuit~~  
 538 ~~served by such public defender, in a criminal case in which such~~  
 539 ~~public defender has been appointed to represent the accused.~~

540 Section 8. Section 27.5303, Florida Statutes, is amended  
 541 to read:

542 27.5303 Public defenders; conflict of interest.--

543 (1) (a) If, at any time during the representation of two or  
 544 more clients ~~defendants~~, a public defender determines that the  
 545 interests of those clients ~~accused~~ are so adverse or hostile  
 546 that they cannot all be counseled by members of the public  
 547 ~~defender or his or her staff practicing within a single unit of~~  
 548 his or her office without conflict of interest, or that none can  
 549 be counseled by the public defender or his or her staff because  
 550 of a conflict of interest, then the public defender shall file a  
 551 notice of conflict and intent to reassign to the conflict unit  
 552 of his or her office ~~file a motion to withdraw and move the~~  
 553 ~~court to appoint other counsel. If requested by the Justice~~  
 554 ~~Administrative Commission, the public defender shall submit a~~  
 555 ~~copy of the motion to the Justice Administrative Commission at~~  
 556 ~~the time it is filed with the court. The Justice Administrative~~  
 557 ~~Commission shall have standing to appear before the court to~~  
 558 ~~contest any motion to withdraw due to a conflict of interest.~~

559 ~~The Justice Administrative Commission may contract with other~~  
560 ~~public or private entities or individuals to appear before the~~  
561 ~~court for the purpose of contesting any motion to withdraw due~~  
562 ~~to a conflict of interest. The court may shall review the notice~~  
563 ~~and may inquire or conduct a hearing into the adequacy of the~~  
564 ~~public defender's representations regarding a conflict of~~  
565 ~~interest without requiring the disclosure of any confidential~~  
566 ~~communications. The court shall enter an order denying~~  
567 ~~reassignment by the public defender deny the motion to withdraw~~  
568 ~~if the court finds the grounds for withdrawal are insufficient~~  
569 ~~or the asserted conflict is not prejudicial to a the indigent~~  
570 ~~client of the public defender. Five days following the hearing~~  
571 ~~if a hearing is held, or, if no hearing is held, 5 days~~  
572 ~~following the filing of the notice, if no order of denial has~~  
573 ~~been entered by the court, the public defender shall reassign~~  
574 ~~one or more of the clients to the conflict unit of his or her~~  
575 ~~office. If the court grants the motion to withdraw, the court~~  
576 ~~shall appoint one or more attorneys to represent the accused.~~

577 (b) Upon its own motion, the court shall notify the  
578 appropriate public defender ~~appoint such other counsel~~ when the  
579 facts developed upon the face of the record and court files in  
580 the case disclose a conflict of interest. The court shall advise  
581 the ~~appropriate~~ public defender and clerk of court, in writing,  
582 specifically stating with a copy to the Justice Administrative  
583 Commission, if so requested by the Justice Administrative  
584 Commission, when making the motion and appointing one or more  
585 attorneys to represent the accused. The court shall specify the  
586 basis for the conflict. Upon receipt of such notice, the public

587 defender shall determine if a conflict of interest exists and,  
588 if necessary, reassign one or more of the clients to the  
589 conflict unit of his or her office.

590 ~~(e) In no case shall the court approve a withdrawal by the~~  
591 ~~public defender based solely upon inadequacy of funding or~~  
592 ~~excess workload of the public defender.~~

593 (c)~~(d)~~ In determining whether or not there is a conflict  
594 of interest, the public defender shall apply the standards  
595 contained in the Uniform Standards for Use in Conflict of  
596 Interest Cases found in appendix C to the Final Report of the  
597 Article V Indigent Services Advisory Board dated January 6,  
598 2004.

599 ~~(2) The court shall appoint conflict counsel pursuant to~~  
600 ~~s. 27.40. The appointed attorney may not be affiliated with the~~  
601 ~~public defender or any assistant public defender in his or her~~  
602 ~~official capacity or any other private attorney appointed to~~  
603 ~~represent a codefendant. The public defender may not participate~~  
604 ~~in case related decisions, performance evaluations, or expense~~  
605 ~~determinations in conflict cases.~~

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

608 ~~(4)(a) If a defendant is convicted and the death sentence~~  
609 ~~is imposed, the appointed attorney shall continue representation~~  
610 ~~through appeal to the Supreme Court. The attorney shall be~~  
611 ~~compensated as provided in s. 27.5304. If the attorney first~~  
612 ~~appointed is unable to handle the appeal, the court shall~~  
613 ~~appoint another attorney and that attorney shall be compensated~~  
614 ~~as provided in s. 27.5304.~~

615           ~~(2)(b)~~ The public defender ~~or an attorney appointed~~  
 616 ~~pursuant to this section~~ may be appointed by the court rendering  
 617 the judgment imposing the death penalty to represent an indigent  
 618 defendant who has applied for executive clemency as relief from  
 619 the execution of the judgment imposing the death penalty.

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

624           Section 9. Effective upon this act becoming a law,  
 625 subsection (11) is added to section 27.5304, Florida Statutes,  
 626 and, effective August 1, 2007, subsections (1) through (10) of  
 627 that section are amended, to read:

628           27.5304 Limits on appointed ~~Private court appointed~~  
 629 counsel; compensation.--

630           (1) ~~Private court appointed~~ counsel appointed by a public  
 631 defender under this part shall be compensated by the Justice  
 632 Administrative Commission from the budget allocated to the  
 633 public defender appointing the counsel in an amount not to  
 634 exceed the contract between the public defender and the attorney  
 635 or the fee limits established in this section, whichever is  
 636 lower. The attorney may also ~~shall~~ be reimbursed for reasonable  
 637 and necessary expenses in accordance with s. 29.007, subject to  
 638 limits in the contract between the public defender and the  
 639 attorney. In no event may payment be made to a private attorney  
 640 if such payment would exceed the public defender's approved  
 641 operating budget. ~~If the attorney is representing a defendant~~  
 642 ~~charged with more than one offense in the same case, the~~

643 ~~attorney shall be compensated at the rate provided for the most~~  
644 ~~serious offense for which he or she represented the defendant.~~  
645 ~~This section does not allow stacking of the fee limits~~  
646 ~~established by this section. Private court appointed counsel~~  
647 ~~providing representation under an alternative model shall enter~~  
648 ~~into a uniform contract with the Justice Administrative~~  
649 ~~Commission and shall use the Justice Administrative Commission's~~  
650 ~~uniform procedures and forms in support of billing for~~  
651 ~~attorney's fees, costs, and related expenses. Failure to comply~~  
652 ~~with the terms of the contract for services may result in~~  
653 ~~termination of the contract.~~

654 (2) ~~The public defender Justice Administrative Commission~~  
655 ~~shall review an intended billing by private court appointed~~  
656 ~~counsel for attorney's fees or costs and shall not approve any~~  
657 ~~fee or cost not authorized by the contract or that is excessive.~~  
658 ~~If any appointed attorney has been found by a court to have~~  
659 ~~provided ineffective assistance of counsel in any appointed~~  
660 ~~case, and that judgment is final and not subject to further~~  
661 ~~appeal, the appointed attorney shall not be entitled to payment~~  
662 ~~of costs and fees for the case, shall repay all costs and fees~~  
663 ~~already paid for the representation, shall reimburse the public~~  
664 ~~defender for the cost of replacement counsel at all subsequent~~  
665 ~~hearings or trials, and may be subject to a malpractice action~~  
666 ~~by the client pursuant to law. based on a flat fee per case for~~  
667 ~~completeness and compliance with contractual, statutory, and~~  
668 ~~circuit Article V indigent services committee requirements. The~~  
669 ~~commission may approve the intended bill for a flat fee per case~~  
670 ~~for payment without approval by the court if the intended~~



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671 ~~billing is correct. For all other intended billings, prior to~~  
672 ~~filing a motion for an order approving payment of attorney's~~  
673 ~~fees, costs, or related expenses, the private court appointed~~  
674 ~~counsel shall deliver a copy of the intended billing, together~~  
675 ~~with supporting affidavits and all other necessary~~  
676 ~~documentation, to the Justice Administrative Commission. The~~  
677 ~~Justice Administrative Commission shall review the billings,~~  
678 ~~affidavit, and documentation for completeness and compliance~~  
679 ~~with contractual and statutory requirements. If the Justice~~  
680 ~~Administrative Commission objects to any portion of the proposed~~  
681 ~~billing, the objection and reasons therefor shall be~~  
682 ~~communicated to the private court appointed counsel. The private~~  
683 ~~court appointed counsel may thereafter file his or her motion~~  
684 ~~for order approving payment of attorney's fees, costs, or~~  
685 ~~related expenses together with supporting affidavits and all~~  
686 ~~other necessary documentation. The motion must specify whether~~  
687 ~~the Justice Administrative Commission objects to any portion of~~  
688 ~~the billing or the sufficiency of documentation and shall attach~~  
689 ~~the Justice Administrative Commission's letter stating its~~  
690 ~~objection. The attorney shall have the burden to prove the~~  
691 ~~entitlement to attorney's fees, costs, or related expenses. A~~  
692 ~~copy of the motion and attachments shall be served on the~~  
693 ~~Justice Administrative Commission at least 5 business days prior~~  
694 ~~to the date of a hearing. The Justice Administrative Commission~~  
695 ~~shall have standing to appear before the court to contest any~~  
696 ~~motion for order approving payment of attorney's fees, costs, or~~  
697 ~~related expenses and may participate in a hearing on the motion~~  
698 ~~by use of telephonic or other communication equipment unless~~

699 ~~ordered otherwise. The Justice Administrative Commission may~~  
 700 ~~contract with other public or private entities or individuals to~~  
 701 ~~appear before the court for the purpose of contesting any motion~~  
 702 ~~for order approving payment of attorney's fees, costs, or~~  
 703 ~~related expenses. The fact that the Justice Administrative~~  
 704 ~~Commission has not objected to any portion of the billing or to~~  
 705 ~~the sufficiency of the documentation is not binding on the~~  
 706 ~~court. The court retains primary authority and responsibility~~  
 707 ~~for determining the reasonableness of all billings for~~  
 708 ~~attorney's fees, costs, and related expenses, subject to~~  
 709 ~~statutory limitations. Private court appointed counsel is~~  
 710 ~~entitled to compensation upon final disposition of a case,~~  
 711 ~~except as provided in subsections (7), (8), and (10). Before~~  
 712 ~~final disposition of a case, a private court appointed counsel~~  
 713 ~~may file a motion for fees, costs, and related expenses for~~  
 714 ~~services completed up to the date of the motion in any case or~~  
 715 ~~matter in which legal services have been provided by the~~  
 716 ~~attorney for more than 1 year. The amount approved by the court~~  
 717 ~~may not exceed 80 percent of the fees earned, or costs and~~  
 718 ~~related expenses incurred, to date, or an amount proportionate~~  
 719 ~~to the maximum fees permitted under this section based on legal~~  
 720 ~~services provided to date, whichever is less. The court may~~  
 721 ~~grant the motion if counsel shows that failure to grant the~~  
 722 ~~motion would work a particular hardship upon counsel.~~

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

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

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

729           3. For life felonies represented at the trial level:  
730 \$3,000.

731           4. For capital cases represented at the trial level:  
732 \$3,500.

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

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

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

744           (4)(5)(a) If counsel is entitled to receive compensation  
745 for representation pursuant to court appointment in a  
746 termination of parental rights proceeding under chapter 39, such  
747 compensation shall not exceed \$1,000 at the trial level and  
748 \$2,500 at the appellate level.

749           (5)(b) Counsel entitled to receive compensation for  
750 representation pursuant to court appointment in a proceeding  
751 under chapter 384 or chapter 392 shall receive reasonable  
752 compensation as fixed by the public defender court making the  
753 appointment.

754           (6) A private attorney appointed in lieu of the public  
755 defender to represent an indigent defendant may not reassign or  
756 subcontract the case to another attorney or allow another  
757 attorney to appear at a critical stage of a case except as  
758 authorized by the public defender ~~who is not on the registry~~  
759 ~~developed under s. 27.40.~~

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

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

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

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

769  
770 ~~In no case, however, may counsel submit requests under this~~  
771 ~~subsection more than once per quarter, unless the court finds~~  
772 ~~extraordinary circumstances justifying more frequent submission~~  
773 ~~of payment requests.~~

774           (8) The General Appropriations Act may amend the general  
775 limits per case provided for in this section. ~~Private court-~~  
776 ~~appointed counsel representing an individual in an appeal to a~~  
777 ~~district court of appeal or the Supreme Court may submit a~~  
778 ~~request for payment to the Justice Administrative Commission at~~  
779 ~~the following intervals:~~

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

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

783 (9) A public defender may, in extraordinary circumstances,  
784 approve a fee in excess of the general limits per case provided  
785 for in this section. Extraordinary circumstances will not,  
786 however, authorize the public defender to expend moneys in  
787 excess of the total appropriation for indigent services provided  
788 in the General Appropriations Act. The public defenders of the  
789 state shall jointly establish criteria for determining what are  
790 extraordinary circumstances under this subsection. No court  
791 shall have jurisdiction to determine what are extraordinary  
792 circumstances under this subsection, nor shall any court order  
793 that a public defender find that such extraordinary  
794 circumstances exist. The question of whether a case or cases  
795 present extraordinary circumstances under this subsection is one  
796 of discretion within the limited budgetary authority of a public  
797 defender. Private court appointed counsel may not bill for  
798 preparation of invoices whether or not the case is paid on the  
799 basis of an hourly rate or by flat fee.

800 (10) A public defender who achieves cost savings in the  
801 provision of appointed counsel services may request that up to  
802 50 percent of the amount of savings that would otherwise revert  
803 be used instead for priorities identified by the public  
804 defender. Such requests are subject to review and approval of  
805 the Legislative Budget Commission. The Justice Administrative  
806 Commission shall develop a schedule to provide partial payment  
807 of criminal attorney fees for cases that are not resolved within  
808 6 months. The schedule must provide that the aggregate payments  
809 shall not exceed limits established by law. Any partial payment

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810 ~~made pursuant to this subsection shall not exceed the actual~~  
811 ~~value of services provided to date. Any partial payment shall be~~  
812 ~~proportionate to the value of services provided based on payment~~  
813 ~~rates included in the contract, not to exceed any limit provided~~  
814 ~~by law.~~

815 (11) No indigent services committee shall authorize the  
816 payment of any compensation to a court-appointed counsel that is  
817 in excess of the fee schedules in subsections (3)-(5) or in  
818 excess of the local fee schedule adopted by such committee,  
819 whichever is lower. The Justice Administrative Commission shall  
820 not pay any invoice for compensation to a court-appointed  
821 counsel that is in excess of the fee schedules in subsections  
822 (3)-(5) or in excess of the local fee schedule adopted by the  
823 indigent services committee, whichever is lower. If any court  
824 orders payment of compensation to a private court-appointed  
825 counsel that is in excess of the fee schedules in subsections  
826 (3)-(5) or in excess of the local fee schedule adopted by the  
827 indigent services committee, whichever is lower, the amount of  
828 the compensation that is in excess of the lower fee cap shall be  
829 paid from funds appropriated to the state courts system.

830 Section 10. Section 27.561, Florida Statutes, is amended  
831 to read:

832 27.561 Effect of nonpayment.--

833 (1) Whenever a recipient ~~defendant-recipient~~ or parent of  
834 a recipient is ordered to pay attorney's fees or costs, default  
835 in the payment thereof shall be cause for finding the recipient  
836 ~~defendant-recipient~~ or parent of a recipient in contempt of  
837 court, and the court may issue a show cause citation or a

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838 warrant of arrest ~~for the defendant recipient's or parent's~~  
839 ~~appearance.~~

840 (2) Unless the recipient ~~defendant-recipient~~ or parent of  
841 a recipient shows that default was not attributable to an  
842 intentional refusal to obey the order of the court or to a  
843 failure on his or her part to make a good faith effort to make  
844 the payment, the court may find that the default constitutes  
845 contempt and order him or her committed until the attorney's  
846 fees or costs, or a specified part thereof, are paid or may take  
847 any other action appropriate under the circumstances, including  
848 revocation of probation.

849 (3) If it appears to the satisfaction of the court that  
850 the default in the payment of the attorney's fees or costs is  
851 not contempt, the court may enter an order allowing the  
852 recipient ~~defendant-recipient~~ or parent of a recipient  
853 additional time for, ~~or reducing the amount of,~~ payment ~~or~~  
854 ~~revoking the assessed attorney's fees or costs, or the unpaid~~  
855 ~~portion thereof, in whole or in part.~~

856 Section 11. Section 27.562, Florida Statutes, is amended  
857 to read:

858 27.562 Disposition of funds.--The first \$40 of all funds  
859 collected pursuant to s. 938.29 shall be deposited into the  
860 Indigent Services ~~Criminal Defense~~ Trust Fund pursuant to s.  
861 27.525. The remaining funds collected pursuant to s. 938.29  
862 shall be distributed as follows:

863 (1) Twenty-five percent shall be remitted to the  
864 Department of Revenue for deposit into the Justice

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865 Administrative Commission's Indigent Services ~~Criminal Defense~~  
 866 Trust Fund.

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

869  
 870 The Justice Administrative Commission shall account for funds  
 871 deposited into the Indigent Services ~~Criminal Defense~~ Trust Fund  
 872 by circuit. Appropriations from the fund shall be proportional  
 873 to each circuit's collections. All judgments entered pursuant to  
 874 this part shall be in the name of the state.

875 Section 12. Section 27.58, Florida Statutes, is amended to  
 876 read:

877 27.58 Administration of public defender services.--The  
 878 public defender of each judicial circuit of the state shall be  
 879 the chief administrator of all public defender services  
 880 authorized under s. 27.51 within the circuit. The public  
 881 defender of each judicial circuit shall also be the chief  
 882 administrator of all indigent representation services within the  
 883 circuit.

884 Section 13. Section 27.59, Florida Statutes, is amended to  
 885 read:

886 27.59 Access to prisoners.--The public defender, ~~defenders~~  
 887 ~~and assistant public defenders,~~ and attorneys appointed to  
 888 provide indigent services by a public defender pursuant to this  
 889 part shall be empowered to inquire of all persons who are  
 890 incarcerated in lieu of bond or detained and to tender them  
 891 advice and counsel at any time., ~~but~~ The provisions of this



892 section shall not apply with respect to persons who have engaged  
 893 private counsel.

894 Section 14. Section 27.7001, Florida Statutes, is amended  
 895 to read:

896 27.7001 Legislative intent and findings.--

897 (1) (a) It is the intent of the Legislature to create part  
 898 IV of this chapter, consisting of ss. 27.7001-27.711, inclusive,  
 899 to provide for the collateral representation of any person  
 900 convicted and sentenced to death in this state, so that  
 901 collateral legal proceedings to challenge any Florida capital  
 902 conviction and sentence may be commenced in a timely manner and  
 903 so as to assure the people of this state that the judgments of  
 904 its courts may be regarded with the finality to which they are  
 905 entitled in the interests of justice.

906 (b) It is the further intent of the Legislature that  
 907 collateral representation shall not include representation  
 908 during retrials, resentencings, proceedings commenced under  
 909 chapter 940, or civil litigation.

910 (2) The Legislature finds that:

911 (a) Under Florida and federal law, a defendant has no  
 912 constitutional right to counsel in postconviction proceedings.  
 913 Notwithstanding this lack of a constitutional right, the  
 914 Legislature has created by statute a qualified right for capital  
 915 defendants to postconviction counsel at specified rates for  
 916 certain services.

917 (b) Attorneys who participate in the attorney registry to  
 918 offer their services are not required to accept an appointment  
 919 and are free to decline an appointment if they find the

920 statutory fee schedule insufficient.

921 (c) The Florida Supreme Court in Olive v. Maas, 811 So.2d  
 922 644 (Fla. 2002) has allowed registry attorneys to seek, and  
 923 authorized trial courts to grant, compensation in excess of the  
 924 statutory fee schedule notwithstanding the terms of each  
 925 attorney's contract, notwithstanding statutory requirements, and  
 926 notwithstanding that the Legislature contemplated the nature of  
 927 postconviction representation in all capital cases in the  
 928 development of the statutory fee schedule.

929 Section 15. Subsections (5), (6), and (7) of section  
 930 27.7002, Florida Statutes, are amended to read:

931 27.7002 Limitation on collateral representation; lawyer  
 932 disqualification; use of state funds for excess fees not  
 933 authorized.--

934 (5) The use of state funds for compensation of counsel  
 935 appointed pursuant to s. 27.710 above the amounts set forth in  
 936 s. 27.711 is not authorized unless ordered by the court pursuant  
 937 to s. 27.7003.

938 ~~(6) The executive director of the Commission on Capital~~  
 939 ~~Cases is authorized to permanently remove from the registry of~~  
 940 ~~attorneys provided in ss. 27.710 and 27.711 any attorney who~~  
 941 ~~seeks compensation for services above the amounts provided in s.~~  
 942 ~~27.711.~~

943 ~~(6)(7)~~ Any attorney who ~~notifies any court, judge, state~~  
 944 ~~attorney, the Attorney General, or the executive director of the~~  
 945 ~~Commission on Capital Cases, prior to signing the contract~~  
 946 required under s. 27.710, determines that he or she cannot  
 947 provide adequate or proper representation under the terms and

948 conditions set forth in s. 27.711 must immediately notify the  
949 appropriate trial court and decline the appointment for which  
950 the contract was offered shall be permanently disqualified from  
951 any attorney registry created under this chapter unless good  
952 cause arises after a change in circumstances.

953 Section 16. Section 27.7003, Florida Statutes, is created  
954 to read:

955 27.7003 Authorization for fees and costs for attorneys  
956 exceeding those provided in s. 27.711.--

957 (1) This section governs the determination of whether the  
958 use of state funds for compensation of counsel requesting fees  
959 or reimbursement of expenses in excess of the amounts set forth  
960 in s. 27.711 is authorized.

961 (2) The use of state funds for compensation of counsel in  
962 amounts greater than the amounts provided in s. 27.711(4)(b) -  
963 (h), (5), and (6) is authorized as provided in subsection (4)  
964 only when the attorney requesting additional compensation proves  
965 in an evidentiary hearing by clear and convincing evidence that  
966 the services for which additional compensation is sought were  
967 due to additional work that was unforeseeable by a reasonable  
968 attorney exercising due diligence at the time the contract was  
969 signed. Additional work is unforeseeable only when all of the  
970 following conditions are met:

971 (a) The additional work was necessary due to an  
972 unanticipated change in circumstances that occurred after the  
973 signing of the contract.

974 (b) The change in circumstances was extraordinary and  
975 unusual when compared to other capital cases in the

976 postconviction stage of proceedings.

977 (c) The additional work was for the purpose of raising a  
978 meritorious claim in a timely manner that could not have been  
979 raised but for the unanticipated change in circumstances  
980 described in paragraph (a) and not for the purpose of raising  
981 any claim that was procedurally barred, that was not supported  
982 by the law or facts of the case, or that was otherwise frivolous  
983 or successive.

984 (d) The additional work claimed is not due to counsel's  
985 failure to adequately review the case record in advance of  
986 signing the contract or due to counsel's failure to remain  
987 apprised of current developments in the law.

988 (3) (a) Any motion for additional compensation that fails  
989 to state specific facts describing how the additional work was  
990 necessary due to an unanticipated change in circumstances  
991 occurring after the signing of the contract shall be summarily  
992 dismissed without prejudice.

993 (b) In determining whether the required showing in  
994 subsection (2) has been made, the court may, to the extent  
995 possible, compare the case in which the registry counsel seeks  
996 additional compensation to other similar capital cases in the  
997 postconviction stage of proceedings. If the court grants the  
998 motion for additional compensation, it shall issue a written  
999 order setting forth its findings and reasons along with an  
1000 explanation of how the amount of additional compensation was  
1001 calculated. An order granting additional compensation may be  
1002 appealed by the state.

1003 (4) The use of state funds for compensation above the

1004 amounts provided in s. 27.711(4)(b)-(h), (5), and (6) is  
1005 authorized upon the filing of the court order granting  
1006 additional compensation with the clerk of the court. The amount  
1007 of additional compensation authorized in this section shall be  
1008 calculated using the statutory maximum amounts as the starting  
1009 point with additional compensation determined using the rate per  
1010 hour provided in s. 27.711 for the applicable service. The  
1011 amount of additional compensation ordered shall be no more than  
1012 the court determines is necessary to avoid confiscation of the  
1013 registry counsel's time, energy and talent for his or her  
1014 unforeseeable additional work but in no event shall the amount  
1015 of additional compensation exceed 30 percent of the statutory  
1016 maximum amount authorized under s. 27.711 for the specific  
1017 service for which additional compensation was granted. In the  
1018 same way as the statutory maximum amounts provided in s. 27.711  
1019 restrict the number of hours for which compensation is  
1020 authorized for each service at the specified rate, it is not  
1021 necessary that additional compensation be ordered for every hour  
1022 of unforeseeable additional work claimed. In determining an  
1023 amount of additional compensation needed to avoid confiscation  
1024 of a registry counsel's time, energy, and talent, the court may  
1025 consider whether the additional work resulted in registry  
1026 counsel pursuing a meritorious claim that could not have  
1027 otherwise been raised and how the quantity and quality of the  
1028 additional work proportionally compares with the quantity and  
1029 quality of work that is within the scope of expected performance  
1030 under the registry contract and the terms of s. 27.711.  
1031 (5) The Chief Financial Officer shall represent the state

1032 in proceedings for additional compensation provided in this  
 1033 section.

1034 (6) This section shall not be construed to authorize  
 1035 compensation for services or expenses not specified in s.  
 1036 27.711(4), (5), or (6).

1037 Section 17. Subsections (2), (3), (4), and (12) of section  
 1038 27.711, Florida Statutes, are amended to read:

1039 27.711 Terms and conditions of appointment of attorneys as  
 1040 counsel in postconviction capital collateral proceedings.--

1041 (2) After appointment by the trial court under s. 27.710,  
 1042 the attorney must, within 30 days, sign the contract required  
 1043 under s. 27.710 and immediately file a notice of appearance with  
 1044 the trial court indicating acceptance of the appointment to  
 1045 represent the capital defendant throughout all postconviction  
 1046 capital collateral proceedings, including federal habeas corpus  
 1047 proceedings, in accordance with this section or until released  
 1048 by order of the trial court.

1049 (3) An attorney appointed to represent a capital defendant  
 1050 is entitled to payment of the fees set forth in this section or  
 1051 s. 27.7003 only upon full performance by the attorney of the  
 1052 duties specified in this section and approval of payment by the  
 1053 trial court, and the submission of a payment request by the  
 1054 attorney, subject to the availability of sufficient funding  
 1055 specifically appropriated for this purpose. An attorney may not  
 1056 be compensated under this section for work performed by the  
 1057 attorney before July 1, 2003, while employed by the northern  
 1058 regional office of the capital collateral counsel. The Chief  
 1059 Financial Officer shall notify the executive director and the

1060 court if it appears that sufficient funding has not been  
1061 specifically appropriated for this purpose to pay any fees which  
1062 may be incurred. The attorney shall maintain appropriate  
1063 documentation, including a current and detailed hourly  
1064 accounting of time spent representing the capital defendant. The  
1065 fee and payment schedule in this section is the exclusive means  
1066 of compensating a court-appointed attorney who represents a  
1067 capital defendant. An attorney seeking additional compensation  
1068 for fees or reimbursement for expenses in excess of the amounts  
1069 provided in paragraphs (4) (b) - (h), subsection (5), or subsection  
1070 (6) must satisfy the requirements of s. 27.7003. When  
1071 appropriate, a court-appointed attorney must seek further  
1072 compensation from the Federal Government, as provided in 18  
1073 U.S.C. s. 3006A or other federal law, in habeas corpus  
1074 litigation in the federal courts.

1075 (4) Upon approval by the trial court, an attorney  
1076 appointed to represent a capital defendant under s. 27.710 is  
1077 entitled to payment of the following fees by the Chief Financial  
1078 Officer:

1079 (a) Regardless of the stage of postconviction capital  
1080 collateral proceedings, the attorney is entitled to \$100 per  
1081 hour, up to a maximum of \$2,500, after signing the contract  
1082 required under s. 27.710, accepting the appointment, and filing  
1083 a notice of appearance.

1084 (b) The attorney is entitled to \$100 per hour, up to a  
1085 maximum of \$20,000, after timely filing in the trial court the  
1086 capital defendant's complete original motion for postconviction  
1087 relief under the Florida Rules of Criminal Procedure. The motion

1088 must raise all issues to be addressed by the trial court.  
1089 However, an attorney is entitled to fees under this paragraph if  
1090 the court schedules a hearing on a matter that makes the filing  
1091 of the original motion for postconviction relief unnecessary or  
1092 if the court otherwise disposes of the case.

1093 (c) The attorney is entitled to \$100 per hour, up to a  
1094 maximum of \$20,000, after the trial court issues a final order  
1095 granting or denying the capital defendant's motion for  
1096 postconviction relief.

1097 (d) The attorney is entitled to \$100 per hour, up to a  
1098 maximum of \$20,000, after timely filing in the Supreme Court the  
1099 capital defendant's brief or briefs that address the trial  
1100 court's final order granting or denying the capital defendant's  
1101 motion for postconviction relief and the state petition for writ  
1102 of habeas corpus.

1103 (e) The attorney is entitled to \$100 per hour, up to a  
1104 maximum of \$10,000, after the trial court issues an order,  
1105 pursuant to a remand from the Supreme Court, which directs the  
1106 trial court to hold further proceedings on the capital  
1107 defendant's motion for postconviction relief.

1108 (f) The attorney is entitled to \$100 per hour, up to a  
1109 maximum of \$4,000, after the appeal of the trial court's denial  
1110 of the capital defendant's motion for postconviction relief and  
1111 the capital defendant's state petition for writ of habeas corpus  
1112 become final in the Supreme Court.

1113 (g) At the conclusion of the capital defendant's  
1114 postconviction capital collateral proceedings in state court,  
1115 the attorney is entitled to \$100 per hour, up to a maximum of



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1116 \$2,500, after filing a petition for writ of certiorari in the  
 1117 Supreme Court of the United States.

1118 (h) If, at any time, a death warrant is issued, the  
 1119 attorney is entitled to \$100 per hour, up to a maximum of  
 1120 \$5,000. This payment shall be full compensation for attorney's  
 1121 fees and costs for representing the capital defendant throughout  
 1122 the proceedings before the state courts of Florida.

1123  
 1124 The hours billed by a contracting attorney under this subsection  
 1125 may include time devoted to representation of the defendant by  
 1126 another attorney who is qualified under s. 27.710 and who has  
 1127 been designated by the contracting attorney to assist him or  
 1128 her.

1129 (12) The court shall monitor the performance of assigned  
 1130 counsel to ensure that the capital defendant is receiving  
 1131 quality representation. The court shall also receive and  
 1132 evaluate allegations that are made regarding the performance of  
 1133 assigned counsel. The Chief Financial Officer, the Department of  
 1134 Legal Affairs, the executive director, or any interested person  
 1135 may advise the court of any circumstance that could affect the  
 1136 quality of representation, including, but not limited to, false  
 1137 or fraudulent billing, misconduct, failure to meet continuing  
 1138 legal education requirements, solicitation to receive  
 1139 compensation from the capital defendant, ~~or~~ failure to file  
 1140 appropriate motions in a timely manner, or assertion of claims  
 1141 that are not supported by the law or the facts of the case.

1142 Section 18. Section 29.007, Florida Statutes, is amended  
 1143 to read:

1144           29.007 Court-appointed counsel.--For purposes of  
 1145 implementing s. 14, Art. V of the State Constitution, the  
 1146 elements of court-appointed counsel to be provided from state  
 1147 revenues appropriated by general law are as follows:

1148           (1) Private attorneys appointed by the public defender  
 1149 ~~court~~ to handle cases where the defendant is indigent and cannot  
 1150 be represented by the public defender under s. ~~ss. 27.42 and~~  
 1151 27.53.

1152           (2) Private attorneys appointed by the public defender  
 1153 ~~court~~ to represent indigents or other classes of litigants in  
 1154 civil proceedings requiring appointed ~~court-appointed~~ counsel in  
 1155 accordance with state and federal constitutional guarantees and  
 1156 federal and state statutes.

1157           (3) Reasonable court reporting and transcription services  
 1158 necessary to meet constitutional or statutory requirements,  
 1159 including the cost of transcribing and copying depositions of  
 1160 witnesses and the cost of foreign language and sign-language  
 1161 interpreters and translators.

1162           (4) Witnesses, including expert witnesses, summoned to  
 1163 appear for an investigation, preliminary hearing, or trial in a  
 1164 case when the witnesses are summoned on behalf of an indigent,  
 1165 and any other expert witnesses approved by the court.

1166           (5) Mental health professionals appointed pursuant to s.  
 1167 394.473 and required in a court hearing involving an indigent,  
 1168 mental health professionals appointed pursuant to s. 916.115(2)  
 1169 and required in a court hearing involving an indigent, and any  
 1170 other mental health professionals required by law for the full  
 1171 adjudication of any civil case involving an indigent person.

1172 (6) Reasonable pretrial consultation fees and costs.

1173 (7) Travel expenses reimbursable under s. 112.061  
 1174 reasonably necessary in the performance of constitutional and  
 1175 statutory responsibilities.

1176  
 1177 Subsections (3), (4), (5), (6), and (7) apply when ~~court-~~  
 1178 ~~appointed~~ counsel is appointed; ~~when the court determines that~~  
 1179 ~~the litigant is indigent for costs; or when the litigant is~~  
 1180 ~~acting pro se and the court determines that the litigant is~~  
 1181 ~~indigent for costs at the trial or appellate level. This section~~  
 1182 applies in any situation in which the court appoints counsel to  
 1183 protect a litigant's due process rights. ~~The Justice~~  
 1184 ~~Administrative Commission shall approve uniform contract forms~~  
 1185 ~~for use in processing payments for due process services under~~  
 1186 ~~this section. In each case in which a private attorney~~  
 1187 ~~represents a person determined by the court to be indigent for~~  
 1188 ~~costs, the attorney shall execute the commission's contract for~~  
 1189 ~~private attorneys representing persons determined to be indigent~~  
 1190 ~~for costs.~~

1191 Section 19. Section 29.015, Florida Statutes, is amended  
 1192 to read:

1193 29.015 Contingency fund; limitation of authority to  
 1194 transfer funds in contracted due process services appropriation  
 1195 categories.--

1196 (1) (a) An appropriation may be provided in the General  
 1197 Appropriations Act in the state courts system ~~Justice~~  
 1198 ~~Administrative Commission~~ to be used solely ~~serve~~ as a  
 1199 contingency fund for the purpose of alleviating deficits in

1200 contracted due process services appropriation categories,  
1201 including private appointed ~~court-appointed~~ counsel  
1202 appropriation categories, when the trial court determines, that  
1203 ~~may occur from time to time due to~~ extraordinary events or  
1204 circumstances of a case have led ~~that lead~~ to unexpected  
1205 expenditures and that the public defender does not have the  
1206 ability to accommodate the unexpected expenditure from within  
1207 his or her operating budget.

1208 (b) A peer review committee of at least three judges or  
1209 their designees, each from a different circuit, appointed by the  
1210 chief judge of the circuit in which the case was tried, must  
1211 review and approve each expenditure from the contingency fund  
1212 established under paragraph (a). The judge who presided over the  
1213 trial and the chief judge of the affected circuit may not be on  
1214 the peer review committee. The public defender of the circuit in  
1215 which the case was tried must provide to the peer review  
1216 committee all documentation provided to the trial court that  
1217 made the determination pursuant to paragraph (a) and any other  
1218 information requested by the peer review committee.

1219 (2) In the event that a state attorney or public defender  
1220 incurs a deficit in a contracted due process services  
1221 appropriation category, the following steps shall be taken in  
1222 order:

1223 (a) The state attorney or public defender shall first  
1224 attempt to identify surplus funds from other appropriation  
1225 categories within his or her office and submit a budget  
1226 amendment pursuant to chapter 216 to transfer funds from within  
1227 the office.

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1228 (b) In the event that the state attorney or public  
1229 defender is unable to identify surplus funds from within his or  
1230 her office, he or she shall certify this to the Justice  
1231 Administrative Commission along with a complete explanation of  
1232 the circumstances which led to the deficit and steps the office  
1233 has taken to reduce or alleviate the deficit. The Justice  
1234 Administrative Commission shall inquire as to whether any other  
1235 office has surplus funds in its contracted due process services  
1236 appropriation categories which can be transferred to the office  
1237 that is experiencing the deficit. If other offices indicate that  
1238 surplus funds are available within the same appropriation  
1239 category, the Justice Administrative Commission shall transfer  
1240 the amount needed to fund the deficit and notify the Governor  
1241 and the chair and vice chair of the Legislative Budget  
1242 Commission 14 days prior to a transfer pursuant to the notice,  
1243 review, and objection provisions of s. 216.177. If funds  
1244 appropriated for this purpose are available in a different  
1245 budget entity, the Justice Administrative Commission shall  
1246 request a budget amendment pursuant to chapter 216.

1247 (c) If no office indicates that surplus funds are  
1248 available to alleviate the deficit, the Justice Administrative  
1249 Commission may request a budget amendment to transfer funds from  
1250 the contingency fund. Such transfers shall be in accordance with  
1251 all applicable provisions of chapter 216 and shall be subject to  
1252 review and approval by the Legislative Budget Commission. The  
1253 Justice Administrative Commission shall submit the documentation  
1254 provided by the office explaining the circumstances that led to  
1255 the deficit and the steps taken by the office and the Justice

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1256 Administrative Commission to identify surplus funds to the  
1257 Legislative Budget Commission.

1258 ~~(3) In the event that there is a deficit in a statewide~~  
1259 ~~contracted due process services appropriation category provided~~  
1260 ~~for private court-appointed counsel necessary due to withdrawal~~  
1261 ~~of the public defender due to an ethical conflict, the following~~  
1262 ~~steps shall be taken in order:~~

1263 ~~(a) The Justice Administrative Commission shall first~~  
1264 ~~attempt to identify surplus funds from other contracted due~~  
1265 ~~process services appropriation categories within the Justice~~  
1266 ~~Administrative Commission and submit a budget amendment pursuant~~  
1267 ~~to chapter 216 to transfer funds from within the commission.~~

1268 ~~(b) In the event that the Justice Administrative~~  
1269 ~~Commission is unable to identify surplus funds from within the~~  
1270 ~~commission, the commission shall inquire of each of the public~~  
1271 ~~defenders as to whether any office has surplus funds in its~~  
1272 ~~contracted due process services appropriations categories which~~  
1273 ~~can be transferred. If any public defender office or offices~~  
1274 ~~indicate that surplus funds are available, the Justice~~  
1275 ~~Administrative Commission shall request a budget amendment to~~  
1276 ~~transfer funds from the office or offices to alleviate the~~  
1277 ~~deficit upon agreement of the contributing office or offices.~~

1278 ~~(c) If no public defender office has surplus funds~~  
1279 ~~available to alleviate the deficit, the Justice Administrative~~  
1280 ~~Commission may request a budget amendment to transfer funds from~~  
1281 ~~the contingency fund. Such transfers shall be in accordance with~~  
1282 ~~all applicable provisions of chapter 216 and shall be subject to~~  
1283 ~~review and approval by the Legislative Budget Commission. The~~

1284 ~~Justice Administrative Commission shall submit the documentation~~  
 1285 ~~provided by the office explaining the circumstances that led to~~  
 1286 ~~the deficit and the steps taken by the Justice Administrative~~  
 1287 ~~Commission to identify surplus funds to the Legislative Budget~~  
 1288 ~~Commission.~~

1289 ~~(4) In the event that there is a deficit in a statewide~~  
 1290 ~~appropriation category provided for private court appointed~~  
 1291 ~~counsel other than for conflict counsel as described in~~  
 1292 ~~subsection (3), the following steps shall be taken in order:~~

1293 ~~(a) The Justice Administrative Commission shall first~~  
 1294 ~~attempt to identify surplus funds from other contracted due~~  
 1295 ~~process services appropriation categories within the Justice~~  
 1296 ~~Administrative Commission and submit a budget amendment pursuant~~  
 1297 ~~to chapter 216 to transfer funds from within the commission.~~

1298 ~~(b) In the event that the Justice Administrative~~  
 1299 ~~Commission is unable to identify surplus funds from within the~~  
 1300 ~~commission, the commission may submit a budget amendment to~~  
 1301 ~~transfer funds from the contingency fund. Such transfers shall~~  
 1302 ~~be in accordance with all applicable provisions of chapter 216~~  
 1303 ~~and shall be subject to review and approval by the Legislative~~  
 1304 ~~Budget Commission. The Justice Administrative Commission shall~~  
 1305 ~~submit documentation explaining the circumstances that led to~~  
 1306 ~~the deficit and the steps taken to identify surplus funds to the~~  
 1307 ~~Legislative Budget Commission.~~

1308 ~~(3)~~(5) Notwithstanding any provisions in chapter 216 to  
 1309 the contrary, no office shall transfer funds from a contracted  
 1310 due process services appropriation category or from a  
 1311 contingency fund category authorized in this section except as

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1312 specifically authorized in this section. In addition, funds  
 1313 shall not be transferred from a state attorney office to  
 1314 alleviate a deficit in a public defender office and funds shall  
 1315 not be transferred from a public defender office to alleviate a  
 1316 deficit in a state attorney office.

1317 Section 20. Section 29.018, Florida Statutes, is amended  
 1318 to read:

1319 29.018 Cost sharing of due-process services; legislative  
 1320 intent.--It is the intent of the Legislature to provide state-  
 1321 funded due-process services to the state courts system, state  
 1322 attorneys, public defenders, and appointed ~~court-appointed~~  
 1323 counsel in the most cost-effective and efficient manner. The  
 1324 state courts system, state attorneys, and public defenders, ~~and~~  
 1325 ~~the Justice Administrative Commission on behalf of court-~~  
 1326 ~~appointed counsel~~ may enter into contractual agreements to  
 1327 share, on a pro rata basis, the costs associated with court  
 1328 reporting services, court interpreter and translation services,  
 1329 court experts, and all other due-process services funded by the  
 1330 state pursuant to this chapter. These costs shall be budgeted  
 1331 within the funds appropriated to each of the affected users of  
 1332 services.

1333 Section 21. Section 29.0185, Florida Statutes, is amended  
 1334 to read:

1335 29.0185 Provision of state-funded due process services to  
 1336 individuals; limitations on certain payments.--Due process  
 1337 services may not be provided with state revenues to an  
 1338 individual unless the individual on whose behalf the due process  
 1339 services are being provided is eligible for appointed ~~court-~~



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1340 ~~appointed~~ counsel under s. 27.40, based upon a determination of  
 1341 indigency under s. 27.52. The Justice Administrative Commission  
 1342 shall only make payment for appointed counsel and other due  
 1343 process services authorized by a state attorney or public  
 1344 defender. The state courts system shall be responsible for the  
 1345 portion of any payment ordered that is not authorized by a  
 1346 public defender or state attorney, is in excess of payment rates  
 1347 established by the contract, is in excess of limits provided for  
 1348 by law, or is not specifically authorized by law, regardless of  
 1349 ~~whether such counsel is appointed or the individual on whose~~  
 1350 ~~behalf the due process services are being provided is eligible~~  
 1351 ~~for court appointed counsel under s. 27.40 and has been~~  
 1352 ~~determined indigent for costs pursuant to s. 27.52.~~

1353 Section 22. Subsection (1) of section 39.815, Florida  
 1354 Statutes, is amended to read:

1355 39.815 Appeal.--

1356 (1) Any child, any parent or guardian ad litem of any  
 1357 child, any other party to the proceeding who is affected by an  
 1358 order of the court, or the department may appeal to the  
 1359 appropriate district court of appeal within the time and in the  
 1360 manner prescribed by the Florida Rules of Appellate Procedure.  
 1361 The district court of appeal shall give an appeal from an order  
 1362 terminating parental rights priority in docketing and shall  
 1363 render a decision on the appeal as expeditiously as possible.  
 1364 Appointed counsel shall be compensated as provided in s.  
 1365 27.5304 (4) ~~(5)~~.

1366 Section 23. Subsection (2) of section 125.69, Florida  
 1367 Statutes, is amended to read:

1368 125.69 Penalties; enforcement by code inspectors.--  
 1369 (2) Each county is authorized and required to pay any  
 1370 attorney appointed by the court to represent a defendant charged  
 1371 with a criminal violation of a special law or county ordinance  
 1372 not ancillary to a state charge if the defendant is indigent and  
 1373 otherwise entitled to court-appointed counsel under the  
 1374 Constitution of the United States or the Constitution of the  
 1375 State of Florida. In these cases, the public defender ~~court~~  
 1376 shall appoint counsel to represent the defendant in accordance  
 1377 with s. 27.40~~7~~, and ~~shall order~~ the county shall ~~to~~ pay the  
 1378 reasonable attorney's fees, costs, and related expenses of the  
 1379 defense. The county may contract with the public defender of the  
 1380 judicial circuit in which the county is located to serve as  
 1381 appointed ~~court-appointed~~ counsel pursuant to s. 27.54.

1382 Section 24. Paragraph (w) of subsection (4) of section  
 1383 215.20, Florida Statutes, is amended to read:

1384 215.20 Certain income and certain trust funds to  
 1385 contribute to the General Revenue Fund.--

1386 (4) The income of a revenue nature deposited in the  
 1387 following described trust funds, by whatever name designated, is  
 1388 that from which the appropriations authorized by subsection (3)  
 1389 shall be made:

1390 (w) Within the Justice Administrative Commission, the  
 1391 Indigent Services ~~Criminal Defense~~ Trust Fund.

1392  
 1393 The enumeration of the foregoing moneys or trust funds shall not  
 1394 prohibit the applicability thereto of s. 215.24 should the  
 1395 Governor determine that for the reasons mentioned in s. 215.24

1396 the money or trust funds should be exempt herefrom, as it is the  
 1397 purpose of this law to exempt income from its force and effect  
 1398 when, by the operation of this law, federal matching funds or  
 1399 contributions or private grants to any trust fund would be lost  
 1400 to the state.

1401 Section 25. Subsection (2) of section 744.331, Florida  
 1402 Statutes, is amended to read:

1403 744.331 Procedures to determine incapacity.--

1404 (2) ATTORNEY FOR ~~THE~~ ALLEGED INCAPACITATED PERSON.--

1405 ~~(a) When a court appoints an attorney for an alleged~~  
 1406 ~~incapacitated person, the court must appoint an attorney who is~~  
 1407 ~~included in the attorney registry compiled pursuant to ss. 27.40~~  
 1408 ~~and 27.42 by the circuit's Article V indigent services~~  
 1409 ~~committee. Appointments must be made on a rotating basis, taking~~  
 1410 ~~into consideration conflicts arising under this chapter.~~

1411 (a) (b) The court shall appoint an attorney for each person  
 1412 alleged to be incapacitated in all cases involving a petition  
 1413 for adjudication of incapacity. The alleged incapacitated person  
 1414 may substitute her or his own attorney for the attorney  
 1415 appointed by the court. Only if the alleged incapacitated person  
 1416 is found to be indigent pursuant to s. 27.52 may the public  
 1417 defender be appointed to represent the person or arrange for  
 1418 representation of the person; otherwise, any attorney appointed  
 1419 on behalf of the person must be paid from the assets of the  
 1420 alleged incapacitated person.

1421 (b) (e) Any attorney representing an alleged incapacitated  
 1422 person may not serve as guardian of the alleged incapacitated

1423 person or as counsel for the guardian of the alleged  
 1424 incapacitated person or the petitioner.

1425 ~~(c)(d) Effective January 1, 2007,~~ An attorney seeking to  
 1426 be appointed by a court for incapacity and guardianship  
 1427 proceedings must have completed a minimum of 8 hours of  
 1428 education in guardianship. A court may waive the initial  
 1429 training requirement for an attorney who has served as a court-  
 1430 appointed attorney in incapacity proceedings or as an attorney  
 1431 of record for guardians for not less than 3 years.

1432 Section 26. Section 914.11, Florida Statutes, is repealed.

1433 Section 27. Subsections (1) and (2) of section 938.29,  
 1434 Florida Statutes, are amended to read:

1435 938.29 Legal assistance; lien for payment of attorney's  
 1436 fees or costs.--

1437 (1) (a) A defendant determined to be guilty of a criminal  
 1438 act by a court or jury or through a plea of guilty or nolo  
 1439 contendere and who has received the assistance of the public  
 1440 defender's office, whether such assistance was provided by an  
 1441 attorney of the public defender or through a private attorney  
 1442 appointed by the public defender, a special assistant public  
 1443 defender, or a conflict attorney shall be liable for payment of  
 1444 attorney's fees and costs. The court shall determine the amount  
 1445 of the obligation. Such costs shall include, but not be limited  
 1446 to, the cost of depositions; cost of transcripts of depositions,  
 1447 including the cost of defendant's copy, which transcripts are  
 1448 certified by the defendant's attorney as having served a useful  
 1449 purpose in the disposition of the case; investigative costs;  
 1450 witness fees; the cost of psychiatric examinations; or other

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1451 reasonable costs specially incurred by the state and the clerk  
1452 of court for the defense of the defendant in criminal  
1453 prosecutions. Costs shall not include expenses inherent in  
1454 providing a constitutionally guaranteed jury trial or  
1455 expenditures in connection with the maintenance and operation of  
1456 government agencies that must be made by the public irrespective  
1457 of specific violations of law. Any costs assessed pursuant to  
1458 this paragraph shall be reduced by any amount assessed against a  
1459 defendant pursuant to s. 938.05.

1460 (b) Upon entering a judgment of conviction, the defendant  
1461 shall be liable to pay the costs in full after the judgment of  
1462 conviction becomes final.

1463 (c) The defendant shall pay the application fee under s.  
1464 27.52(1)(b) and attorney's fees and costs in full or in  
1465 installments, at the time or times specified. The court may  
1466 order payment of the assessed application fee and attorney's  
1467 fees and costs as a condition of probation, of suspension of  
1468 sentence, or of withholding the imposition of sentence. The  
1469 first \$40 from attorney's fees and costs collected under this  
1470 section shall be transferred monthly by the clerk to the  
1471 Department of Revenue for deposit into the Indigent Services  
1472 Trust Fund. All remaining attorney's fees and costs collected  
1473 under this section shall be deposited into the General Revenue  
1474 Fund.

1475 (2)(a) There is created in the name of the state a lien,  
1476 enforceable as hereinafter provided, upon all the property, both  
1477 real and personal, of any person who:

1478 1. Has received any assistance from any public defender of  
 1479 the state, from any special assistant public defender, or from  
 1480 any appointed ~~conflict~~ attorney; or

1481 2. Is a parent of an accused minor or an accused adult  
 1482 tax-dependent person who is being, or has been, represented by  
 1483 any public defender of the state, by any special assistant  
 1484 public defender, or by an appointed ~~a conflict~~ attorney.

1485  
 1486 Such lien constitutes a claim against the defendant-recipient or  
 1487 parent and his or her estate, enforceable according to law.

1488 (b) A judgment showing the name and residence of the  
 1489 defendant-recipient or parent shall be recorded in the public  
 1490 record, without cost, by the clerk of the circuit court in the  
 1491 county where the defendant-recipient or parent resides and in  
 1492 each county in which such defendant-recipient or parent then  
 1493 owns or later acquires any property. Such judgments shall be  
 1494 enforced on behalf of the state by the clerk of the circuit  
 1495 court of the county in which assistance was rendered.

1496 Section 28. (1) As to any contract for legal services  
 1497 pursuant to the provisions of part III of chapter 27, Florida  
 1498 Statutes, which contract was in existence on or before August 1,  
 1499 2007, the following shall apply:

1500 (a) Attorneys appointed under such contracts shall  
 1501 complete the representation of clients assigned to them as of  
 1502 August 1, 2007, through completion of the case; however, no such  
 1503 appointment shall extend beyond June 30, 2008. As of July 1,  
 1504 2008, representation of any person pursuant to part III of  
 1505 chapter 27, Florida Statutes, shall only be through a contract

1506 with the appropriate public defender.

1507 (b) The Justice Administrative Commission shall pay fees  
1508 earned by attorneys under contracts for appointments that  
1509 commenced prior to August 1, 2007, subject to a specific  
1510 appropriation in the fiscal year 2007-2008 General  
1511 Appropriations Act for payment of such representation.

1512 (c) All provisions of part III of chapter 27, Florida  
1513 Statutes, as they exist prior to August 1, 2007, shall control  
1514 such contracts, notwithstanding the amendment or repeal of any  
1515 applicable provision by this act.

1516 (d) The public defender shall not be liable for fees and  
1517 costs for any attorney appointed prior to August 1, 2007, except  
1518 as provided in subsection (2).

1519 (2) If funds appropriated to the Justice Administrative  
1520 Commission for payment of cases pursuant to subsection (1) are  
1521 exhausted, any remaining required payments shall be made from  
1522 funds appropriated to the public defender of the circuit in  
1523 which the case was appointed, except that the portion of any  
1524 payment in excess of payment rates established by the contract  
1525 or in excess of limits provided for by law or for goods or  
1526 services not specifically authorized by law shall be paid from  
1527 funds appropriated to the state courts system. The state courts  
1528 system and the public defender may reduce nonessential travel,  
1529 other nonessential expenses, and nonessential personnel costs in  
1530 order to eliminate a deficit that would otherwise result from  
1531 payments required by this subsection.

1532 (3) This section shall take effect upon this act becoming  
1533 a law.

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1534           Section 29. On or before June 1, 2007, each public  
1535 defender shall prepare a plan for his or her circuit for  
1536 delivering the expanded indigent legal representation services  
1537 required by this act for review and approval by the Legislative  
1538 Budget Commission. The plan shall describe how services will be  
1539 delivered; proposed contract terms and rates; the number of  
1540 proposed state full-time equivalent positions by class,  
1541 including the proposed salary for each position; and the  
1542 proposed phase-in schedule. The plan shall also include a  
1543 request to establish any proposed state full-time equivalent  
1544 positions that may be established upon approval of the  
1545 Legislative Budget Commission pursuant to the provisions of s.  
1546 216.262(1)(a), Florida Statutes. This section shall take effect  
1547 upon this act becoming a law.

1548           Section 30. Except as otherwise expressly provided in this  
1549 act, this act shall take effect August 1, 2007.