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LEGISLATIVE ACTION

Senate

House

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The Conference Committee on SB 2116 recommended the following:

1 **Senate Conference Committee Amendment (with title**
2 **amendment)**

3
4 Delete everything after the enacting clause
5 and insert:

6 Section 1. Subsection (10) is added to section 27.511,
7 Florida Statutes, to read:

8 27.511 Offices of criminal conflict and civil regional
9 counsel; legislative intent; qualifications; appointment;
10 duties.—

11 (10) Each office of criminal conflict and civil regional
12 counsel may create a direct-support organization.

13 (a) The direct-support organization must be registered in



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14 this state as a nonprofit corporation under chapter 617. The
15 direct-support organization shall be exempt from the filing fees
16 under s. 617.0122.

17 (b) The direct-support organization shall be organized and
18 operated to conduct programs and activities; raise funds;
19 request and receive grants, gifts, and bequests of moneys;
20 acquire, receive, hold, invest, and administer, in its own name,
21 securities, funds, objects of value, or other property, real or
22 personal; and make expenditures to or for the direct or indirect
23 benefit of the office of criminal conflict and civil regional
24 counsel.

25 (c) The direct-support organization shall operate under a
26 written contract with the regional counsel. The written contract
27 must, at a minimum, provide for:

28 1. Approval of the articles of incorporation and bylaws of
29 the organization by the regional counsel.

30 2. Submission of an annual budget for the approval by the
31 regional counsel.

32 3. The reversion without penalty to the office of criminal
33 conflict and civil regional counsel, or to the state if the
34 office ceases to exist, of all moneys and property held in trust
35 by the organization for the office if the organization ceases to
36 exist or if the contract is terminated.

37 4. The fiscal year of the organization, which must begin
38 July 1 of each year and end June 30 of the following year.

39 5. The disclosure of material provisions of the contract
40 and the distinction between the regional counsel and the
41 organization to donors of gifts, contributions, or bequests, as
42 well as on all promotional and fundraising publications.



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43 (d) If the regional counsel determines that the direct-
44 support organization is operating in a manner that is
45 inconsistent with the goals and purposes of the office of
46 criminal conflict and civil regional counsel or is not acting in
47 the best interest of the state, the regional counsel may
48 terminate the contract, and thereafter the organization may not
49 use the name of the office.

50 (e) The regional counsel shall appoint a board of directors
51 for the direct-support organization. The regional counsel may
52 designate employees of the office of criminal conflict and civil
53 regional counsel to serve on the board of directors. Members of
54 the board shall serve at the pleasure of the regional counsel.

55 (f) The regional counsel:

56 1. May authorize the use of facilities and property other
57 than money which are owned by the office of criminal conflict
58 and civil regional counsel to be used by the direct-support
59 organization.

60 2. May authorize the use of personnel services provided by
61 employees of the office.

62 3. May prescribe the conditions by which the direct-support
63 organization may use property, facilities, or personnel services
64 of the office.

65 4. May not authorize the use of property, facilities, or
66 personnel services of the direct-support organization if the
67 organization does not provide equal employment opportunities to
68 all persons, regardless of race, color, religion, sex, age, or
69 national origin.

70
71 For the purposes of this paragraph, the term "personnel



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72 services" includes full-time personnel and part-time personnel
73 as well as payroll processing.

74 (g) Moneys of the direct-support organization may be held
75 in a depository account in the name of the organization which is
76 separate from the accounts of the office, but which is subject
77 to the provisions of the contract with the regional counsel.

78 (h) The direct-support organization shall provide for an
79 annual financial audit in accordance with s. 215.981.

80 (i) The direct-support organization may not exercise any
81 power under s. 617.0302(12) or (16). A state employee may not
82 receive compensation from the organization for service on the
83 board of directors or for services rendered to the organization.

84 Section 2. Paragraph (a) of subsection (2) of section
85 27.52, Florida Statutes, is amended to read:

86 27.52 Determination of indigent status.—

87 (2) DETERMINATION BY THE CLERK.—The clerk of the court
88 shall determine whether an applicant seeking appointment of a
89 public defender is indigent based upon the information provided
90 in the application and the criteria prescribed in this
91 subsection.

92 (a)~~1~~. An applicant, including an applicant who is a minor
93 or an adult tax-dependent person, is indigent if the applicant's
94 income is equal to or below 200 percent of the then-current
95 federal poverty guidelines prescribed for the size of the
96 household of the applicant by the United States Department of
97 Health and Human Services or if the person is receiving
98 Temporary Assistance for Needy Families-Cash Assistance,
99 poverty-related veterans' benefits, or Supplemental Security
100 Income (SSI).



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101 ~~1.2.a.~~ There is a presumption that the applicant is not
102 indigent if the applicant owns, or has equity in, any intangible
103 or tangible personal property or real property or the expectancy
104 of an interest in any such property having a net equity value of
105 \$2,500 or more, excluding the value of the person's homestead
106 and one vehicle having a net value not exceeding \$5,000.

107 ~~2.b.~~ Notwithstanding the information that the applicant
108 provides, the clerk may ~~shall~~ conduct a review of the property
109 records for the county in which the applicant resides and the
110 motor vehicle title records of the state to identify any
111 property interests of the applicant under this paragraph
112 ~~subparagraph~~. The clerk may ~~shall~~ evaluate and consider the
113 results of the review in making a determination under this
114 subsection. If the review is conducted, the clerk shall maintain
115 the results of the review in a file with the application and
116 provide the file to the court if the applicant seeks review
117 under subsection (4) of the clerk's determination of indigent
118 status.

119 Section 3. Subsection (12) of section 27.5304, Florida
120 Statutes, is amended to read:

121 27.5304 Private court-appointed counsel; compensation.—

122 (12) The Legislature recognizes that on rare occasions an
123 attorney may receive a case that requires extraordinary and
124 unusual effort.

125 (a) If counsel seeks compensation that exceeds the limits
126 prescribed by law ~~under this section and the General~~
127 ~~Appropriations Act,~~ he or she must file a motion with the chief
128 judge for an order approving payment of attorney's fees in
129 excess of these limits.



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130 1. Before ~~Prior~~ to filing the motion, the counsel shall
131 deliver a copy of the intended billing, together with supporting
132 affidavits and all other necessary documentation, to the Justice
133 Administrative Commission.

134 2. The Justice Administrative Commission shall review the
135 billings, affidavit, and documentation for completeness and
136 compliance with contractual and statutory requirements. If the
137 Justice Administrative Commission objects to any portion of the
138 proposed billing, the objection and reasons therefor shall be
139 communicated in writing to the private court-appointed counsel.
140 The counsel may thereafter file his or her motion, which must
141 specify whether the commission objects to any portion of the
142 billing or the sufficiency of documentation, and ~~shall~~ attach
143 the commission's letter stating its objection.

144 (b) Following receipt of the motion to exceed the fee
145 limits, the chief judge or a single designee for all such cases,
146 shall hold an evidentiary hearing.

147 1. At the hearing, the attorney seeking compensation must
148 prove by competent and substantial evidence that the case
149 required extraordinary and unusual efforts. The chief judge or
150 designee shall consider criteria such as the number of
151 witnesses, the complexity of the factual and legal issues, and
152 the length of trial. The fact that a trial was conducted in a
153 case does not, by itself, constitute competent substantial
154 evidence of an extraordinary and unusual effort. In a criminal
155 case, relief under this section may not be granted if the number
156 of work hours does not exceed 75 or the number of the state's
157 witnesses deposed does not exceed 20.

158 2. The chief judge or designee shall enter a written order



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159 detailing his or her findings and identifying the extraordinary
160 nature of the time and efforts of the attorney in the case which
161 warrant exceeding the flat fee established by this section and
162 the General Appropriations Act.

163 (c) A copy of the motion and attachments shall be served on
164 the Justice Administrative Commission at least 5 business days
165 before ~~prior to~~ the date of a hearing. The Justice
166 Administrative Commission shall have standing to appear before
167 the court, including at the hearing under paragraph (b), to
168 contest any motion for an order approving payment of attorney's
169 fees, costs, or related expenses and may participate in a
170 hearing on the motion by use of telephonic or other
171 communication equipment ~~unless ordered otherwise~~. The Justice
172 Administrative Commission may contract with other public or
173 private entities or individuals to appear before the court for
174 the purpose of contesting any motion for an order approving
175 payment of attorney's fees, costs, or related expenses. The fact
176 that the Justice Administrative Commission has not objected to
177 any portion of the billing or to the sufficiency of the
178 documentation is not binding on the court.

179 (d) If the chief judge or a single designee finds that
180 counsel has proved by competent and substantial evidence that
181 the case required extraordinary and unusual efforts, the chief
182 judge or designee shall order the compensation to be paid to the
183 attorney at a percentage above the flat fee rate, depending on
184 the extent of the unusual and extraordinary effort required. The
185 percentage must ~~shall~~ be only the rate necessary to ensure that
186 the fees paid are not confiscatory under common law. The
187 percentage may not exceed 200 percent of the established flat



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188 fee, absent a specific finding that 200 percent of the flat fee
189 in the case would be confiscatory. If the chief judge or
190 designee determines that 200 percent of the flat fee would be
191 confiscatory, he or she shall order the amount of compensation
192 using an hourly rate not to exceed \$75 per hour for a noncapital
193 case and \$100 per hour for a capital case. However, the
194 compensation calculated by using the hourly rate shall be only
195 that amount necessary to ensure that the total fees paid are not
196 confiscatory.

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

200 (f) For criminal cases only, the payment of fees when the
201 court orders payment in excess of the flat fee established by
202 law, shall be paid as follows:

203 1. The flat fee shall be paid from funds appropriated to
204 the Justice Administrative Commission in the General
205 Appropriations Act.

206 2. The amount ordered by the court in excess of the flat
207 fee shall be paid by the Justice Administrative Commission in a
208 special category designated for that purpose in the General
209 Appropriations Act.

210 3. If, during the fiscal year, all funds designated for
211 payment of the amount ordered by the court in excess of the flat
212 fee are spent, the amount of payments in excess of the flat fee
213 shall be made from the due process funds, or other funds as
214 necessary, appropriated to the state court system in the General
215 Appropriations Act. Funds from the state court system must be
216 used in a manner approved by the Chief Justice and administered



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217 by the Trial Court Budget Commission.

218 (g) ~~(f)~~ The Justice Administrative Commission shall provide
219 to the Office of the State Courts Administrator data concerning
220 the number of cases approved for compensation in excess of the
221 limitation and the amount of these awards by circuit and by
222 judge. The office ~~of the State Courts Administrator~~ shall report
223 the data quarterly in an electronic format to the chairs
224 ~~President~~ of the Senate and, ~~the Speaker of the House of~~
225 Representatives appropriations committees, the Chief Justice of
226 the Supreme Court, and the chief judge of each circuit.

227 Section 4. Section 39.8297, Florida Statutes, is created to
228 read:

229 39.8297 County funding for guardian ad litem personnel.-

230 (1) A county and the executive director of the Statewide
231 Guardian Ad Litem Office may enter into an agreement under which
232 the county agrees to fund personnel positions to assist in the
233 operation of the guardian ad litem program.

234 (2) The agreement, at a minimum, must provide that:

235 (a) Funding for the positions is provided on at least a
236 fiscal-year basis.

237 (b) The personnel whose employment is funded under the
238 agreement are hired, supervised, managed, and fired by personnel
239 of the Statewide Guardian Ad Litem Office. The office shall
240 supervise the personnel whose employment is funded under the
241 agreement; be responsible for compliance with all requirements
242 of federal and state employment laws, including, but not limited
243 to, Title VII of the Civil Rights Act of 1964, Title I of the
244 Americans with Disabilities Act, 42 U.S.C. s. 1983, the Family
245 Medical Leave Act, the Fair Labor Standards Act, chapters 447



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246 and 760, and ss. 112.3187, 440.105, and 440.205; and fully
247 indemnify the county from any liability under such laws, as
248 authorized by s. 768.28(19), to the extent such liability is the
249 result of the acts or omissions of the guardian ad litem program
250 or its agents or employees.

251 (c) The county is the employer for the purposes of s.
252 440.10 and chapter 443.

253 (d) Employees funded by the county under this section and
254 other county employees may be aggregated for purposes of a
255 flexible benefits plan pursuant to s. 125 of the Internal
256 Revenue Code of 1986.

257 (e) The positions terminate upon the expiration of, or
258 substantial breach of, the agreement or upon the expiration of
259 county funding for the positions.

260 (3) Positions funded under this section do not count
261 against any formula or similar process used by the Statewide
262 Guardian Ad Litem Office to determine personnel needs or levels
263 of a judicial circuit's Guardian ad Litem program.

264 (4) This section does not obligate the state to fund any
265 personnel positions.

266 Section 5. Paragraph (b) of subsection (13) of section
267 318.18, Florida Statutes, is amended to read:

268 318.18 Amount of penalties.—The penalties required for a
269 noncriminal disposition pursuant to s. 318.14 or a criminal
270 offense listed in s. 318.17 are as follows:

271 (13)

272 (b) A county may impose a surcharge under subparagraph
273 (a)1., subparagraph(a)2., or subparagraph(a)3., but may not
274 impose more than one surcharge under this subsection. A county



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275 may elect to impose a different authorized surcharge but may not
276 impose more than one surcharge at a time. The clerk of court
277 shall report, no later than 30 days after the end of the
278 quarter, the amount of funds collected under this subsection
279 during each quarter of the fiscal year. The clerk shall submit
280 the report, in an electronic ~~a~~ format developed by the Florida
281 Clerks of Court Operations Corporation ~~Office of State Courts~~
282 ~~Administrator~~, to the chief judge of the circuit and the Florida
283 Clerks of Court Operations Corporation. The corporation shall
284 submit the report in an electronic format to the Governor, the
285 President of the Senate, the Speaker of the House of
286 Representatives, and the board of county commissioners.

287 Section 6. This act shall take effect July 1, 2011.

288
289 ===== T I T L E A M E N D M E N T =====

290 And the title is amended as follows:

291 Delete everything before the enacting clause
292 and insert:

293 A bill to be entitled

294 An act relating to the state judicial system; amending
295 s. 27.511, F.S.; authorizing each office of criminal
296 conflict and civil regional counsel to create a
297 direct-support organization; prescribing requirements
298 related to the creation and operation of the direct-
299 support organization; amending s. 27.52, F.S.;
300 providing the clerk with the discretion to conduct a
301 review of the county's property records to confirm
302 indigency; amending s. 27.5304, F.S.; providing for
303 the payment of attorney's fees that exceed the limits



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304 prescribed by law; creating s. 39.8297, F.S.;

305 providing for county funding of additional guardian ad

306 litem personnel; requiring an agreement between the

307 county and the Statewide Guardian Ad Litem Office;

308 specifying responsibility for such positions; amending

309 s. 318.18, F.S.; requiring the clerk of court and the

310 Florida Clerks of Court Operations Corporation to

311 submit reports on local traffic assessments in an

312 electronic format; providing an effective date.