

FOR CONSIDERATION By the Committee on Budget

576-02921A-12

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1                   A bill to be entitled  
2           An act relating to the state judicial system; amending  
3           s. 27.511, F.S.; revising the procedures by which a  
4           regional conflict counsel is appointed by the  
5           Governor; requiring each regional counsel to designate  
6           a chief assistant to serve if the regional counsel is  
7           unable to fulfill his or her responsibilities or until  
8           a replacement is appointed; amending s. 27.52, F.S.;  
9           authorizing the clerk to conduct a review of the  
10          county's property records to confirm that an applicant  
11          seeking appointment of a public defender is indigent;  
12          amending s. 27.5304, F.S.; revising procedures for  
13          court-appointed counsel who apply for compensation for  
14          casework when the attorney fees exceed the limits of  
15          compensation prescribed by law; providing procedures  
16          to be applied in criminal cases if the court orders  
17          payment in excess of the flat fee established by law;  
18          amending s. 39.8296, F.S.; authorizing court-appointed  
19          volunteers to transport children who are abused,  
20          abandoned, or neglected; prohibiting a guardian ad  
21          litem program or the court from requiring that  
22          volunteers transport children; creating s. 39.8297,  
23          F.S.; authorizing a county and the Statewide Guardian  
24          Ad Litem Office to enter into an agreement whereby the  
25          county provides funding to the office in order to  
26          employ additional guardian ad litem personnel to serve  
27          in the county; requiring an agreement between the  
28          county and the Statewide Guardian Ad Litem Office;  
29          specifying the duties and responsibilities of the

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30 county and the participating guardian ad litem office;  
31 prohibiting the Statewide Guardian Ad Litem Office  
32 from using county-paid positions in a formula to  
33 measure the county's need for additional guardian ad  
34 litem personnel; providing that an agreement between  
35 the county and the office does not obligate the state  
36 to provide additional funds to the county; amending s.  
37 318.18, F.S.; requiring the clerk of court and the  
38 Florida Clerks of Court Operations Corporation to  
39 submit reports on local traffic assessments in an  
40 electronic format; providing an effective date.

41  
42 Be It Enacted by the Legislature of the State of Florida:

43  
44 Section 1. Subsection (3) of section 27.511, Florida  
45 Statutes, is amended to read:

46 27.511 Offices of criminal conflict and civil regional  
47 counsel; legislative intent; qualifications; appointment;  
48 duties.—

49 (3) (a) Each regional counsel must be, and must have been  
50 for the preceding 5 years, a member in good standing of The  
51 Florida Bar ~~or a similar organization in another state~~. Each  
52 regional counsel shall be appointed by the Governor and is  
53 subject to confirmation by the Senate. The Supreme Court  
54 Judicial Nominating Commission shall recommend to the Governor  
55 not fewer than three or more than six qualified candidates for  
56 appointment to each of the five regional counsel positions.  
57 Unless the current regional counsel has been removed from office  
58 or is otherwise no longer qualified, a current regional counsel

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59 who has reapplied shall have his or her name included in the  
60 list of nominees submitted to the Governor for consideration.

61 The Governor shall appoint the regional counsel for the five  
62 regions from among the recommendations, or, if it is in the best  
63 interest of the fair administration of justice, the Governor may  
64 reject the nominations and request that the Supreme Court  
65 Judicial Nominating Commission submit three new nominees. The  
66 regional counsel shall be appointed to a term of 4 years, the  
67 ~~first~~ term beginning on October 1, 2015 ~~July 1, 2007~~. Vacancies  
68 shall be filled in the ~~same~~ manner provided in paragraph (b) as  
69 appointments.

70 (b) Each regional counsel shall designate a chief assistant  
71 who shall be charged with fulfilling the duties of regional  
72 counsel if the regional counsel is legally unable to carry out  
73 the duties of the office or until such time as the Governor  
74 appoints a replacement in the manner prescribed in paragraph  
75 (a).

76 Section 2. Paragraph (a) of subsection (2) of section  
77 27.52, Florida Statutes, is amended to read:

78 27.52 Determination of indigent status.—

79 (2) DETERMINATION BY THE CLERK.—The clerk of the court  
80 shall determine whether an applicant seeking appointment of a  
81 public defender is indigent based upon the information provided  
82 in the application and the criteria prescribed in this  
83 subsection.

84 (a)~~1~~. An applicant, including an applicant who is a minor  
85 or an adult tax-dependent person, is indigent if the applicant's  
86 income is equal to or below 200 percent of the then-current  
87 federal poverty guidelines prescribed for the size of the

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88 household of the applicant by the United States Department of  
89 Health and Human Services or if the person is receiving  
90 Temporary Assistance for Needy Families-Cash Assistance,  
91 poverty-related veterans' benefits, or Supplemental Security  
92 Income (SSI).

93 ~~1.2.a.~~ There is a presumption that the applicant is not  
94 indigent if the applicant owns, or has equity in, any intangible  
95 or tangible personal property or real property or the expectancy  
96 of an interest in any such property having a net equity value of  
97 \$2,500 or more, excluding the value of the person's homestead  
98 and one vehicle having a net value not exceeding \$5,000.

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

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

113 27.5304 Private court-appointed counsel; compensation.—

114 (12) The Legislature recognizes that on rare occasions an  
115 attorney may receive a case that requires extraordinary and  
116 unusual effort.

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

122 1. Before ~~Prior to~~ filing the motion, the counsel shall  
123 deliver a copy of the intended billing, together with supporting  
124 affidavits and all other necessary documentation, to the Justice  
125 Administrative Commission.

126 2. The Justice Administrative Commission shall review the  
127 billings, affidavit, and documentation for completeness and  
128 compliance with contractual and statutory requirements. If the  
129 Justice Administrative Commission objects to any portion of the  
130 proposed billing, the objection and supporting reasons must  
131 ~~therefor shall~~ be communicated in writing to the private court-  
132 appointed counsel. The counsel may thereafter file his or her  
133 motion, which must specify whether the commission objects to any  
134 portion of the billing or the sufficiency of documentation, and  
135 shall attach the commission's letter stating its objection.

136 (b) Following receipt of the motion to exceed the fee  
137 limits, the chief judge or a designee shall hold an evidentiary  
138 hearing.

139 1. At the hearing, the attorney seeking compensation must  
140 prove by competent and substantial evidence that the case  
141 required extraordinary and unusual efforts. The chief judge or  
142 designee shall consider criteria such as the number of  
143 witnesses, the complexity of the factual and legal issues, and  
144 the length of trial. The fact that a trial was conducted in a  
145 case does not, by itself, constitute competent substantial

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146 evidence of an extraordinary and unusual effort. In a criminal  
147 case, relief under this section may not be granted if the number  
148 of work hours does not exceed 75 or the number of the state's  
149 witnesses deposed does not exceed 20.

150 2. The chief judge or designee shall enter a written order  
151 detailing his or her findings and identifying the extraordinary  
152 nature of the time and efforts of the attorney in the case which  
153 warrant exceeding the flat fee established by this section and  
154 the General Appropriations Act.

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

171 (d) If the chief judge or a single designee finds that  
172 counsel has proved by competent and substantial evidence that  
173 the case required extraordinary and unusual efforts, the chief  
174 judge or designee shall order the compensation to be paid to the

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175 attorney at a percentage above the flat fee rate, depending on  
176 the extent of the unusual and extraordinary effort required. The  
177 percentage must ~~shall~~ be only the rate necessary to ensure that  
178 the fees paid are not confiscatory under common law. The  
179 percentage may not exceed 200 percent of the established flat  
180 fee, absent a specific finding that 200 percent of the flat fee  
181 in the case would be confiscatory. If the chief judge or  
182 designee determines that 200 percent of the flat fee would be  
183 confiscatory, he or she shall order the amount of compensation  
184 using an hourly rate not to exceed \$75 per hour for a noncapital  
185 case and \$100 per hour for a capital case. However, the  
186 compensation calculated by using the hourly rate shall be only  
187 that amount necessary to ensure that the total fees paid are not  
188 confiscatory.

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

192 (f) For criminal cases only if the court orders payment in  
193 excess of the flat fee established by law, fees shall be paid as  
194 follows:

195 1. The flat fee shall be paid from funds appropriated to  
196 the Justice Administrative Commission in the General  
197 Appropriations Act.

198 2. The amount ordered by the court in excess of the flat  
199 fee shall be paid by the Justice Administrative Commission in a  
200 special category designated for that purpose in the General  
201 Appropriations Act.

202 3. If, during the fiscal year, all funds designated for  
203 payment of the amount ordered by the court in excess of the flat

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204 fee are spent, the amount of payments in excess of the flat fee  
205 shall be made from the due process funds, or other funds as  
206 necessary, appropriated to the state court system in the General  
207 Appropriations Act. Funds from the state court system must be  
208 used in a manner approved by the Chief Justice and administered  
209 by the Trial Court Budget Commission.

210 (g)~~(f)~~ The Justice Administrative Commission shall provide  
211 to the Office of the State Courts Administrator data concerning  
212 the number of cases approved for compensation in excess of the  
213 limitation and the amount of these awards by circuit and by  
214 judge. ~~The office of the State Courts Administrator shall report~~  
215 the data quarterly in an electronic format to the chairs of the  
216 legislative appropriations committees ~~President of the Senate,~~  
217 ~~the Speaker of the House of Representatives,~~ the Chief Justice  
218 of the Supreme Court, and the chief judge of each circuit.

219 Section 4. Paragraph (b) of subsection (2) of section  
220 39.8296, Florida Statutes, is amended to read:

221 39.8296 Statewide Guardian Ad Litem Office; legislative  
222 findings and intent; creation; appointment of executive  
223 director; duties of office.-

224 (2) STATEWIDE GUARDIAN AD LITEM OFFICE.-There is created a  
225 Statewide Guardian Ad Litem Office within the Justice  
226 Administrative Commission. The Justice Administrative Commission  
227 shall provide administrative support and service to the office  
228 to the extent requested by the executive director within the  
229 available resources of the commission. The Statewide Guardian Ad  
230 Litem Office shall not be subject to control, supervision, or  
231 direction by the Justice Administrative Commission in the  
232 performance of its duties, but the employees of the office shall



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233 be governed by the classification plan and salary and benefits  
234 plan approved by the Justice Administrative Commission.

235 (b) The Statewide Guardian Ad Litem Office shall, within  
236 available resources, have oversight responsibilities for and  
237 provide technical assistance to all guardian ad litem and  
238 attorney ad litem programs located within the judicial circuits.

239 1. The office shall identify the resources required to  
240 implement methods of collecting, reporting, and tracking  
241 reliable and consistent case data.

242 2. The office shall review the current guardian ad litem  
243 programs in Florida and other states.

244 3. The office, in consultation with local guardian ad litem  
245 offices, shall develop statewide performance measures and  
246 standards.

247 4. The office shall develop a guardian ad litem training  
248 program. The office shall establish a curriculum committee to  
249 develop the training program specified in this subparagraph. The  
250 curriculum committee shall include, but not be limited to,  
251 dependency judges, directors of circuit guardian ad litem  
252 programs, active certified guardians ad litem, a mental health  
253 professional who specializes in the treatment of children, a  
254 member of a child advocacy group, a representative of the  
255 Florida Coalition Against Domestic Violence, and a social worker  
256 experienced in working with victims and perpetrators of child  
257 abuse.

258 5. The office shall review the various methods of funding  
259 guardian ad litem programs, shall maximize the use of those  
260 funding sources to the extent possible, and shall review the  
261 kinds of services being provided by circuit guardian ad litem

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262 programs.

263 6. The office shall determine the feasibility or  
264 desirability of new concepts of organization, administration,  
265 financing, or service delivery designed to preserve the civil  
266 and constitutional rights and fulfill other needs of dependent  
267 children.

268 7. In an effort to promote normalcy and establish trust  
269 between a court-appointed volunteer guardian ad litem and a  
270 child alleged to be abused, abandoned, or neglected under this  
271 chapter, a guardian ad litem may transport a child. However, a  
272 guardian ad litem volunteer may not be required or directed by  
273 the program or a court to transport a child.

274 ~~8.7. No later than October 1, 2004,~~ The office shall submit  
275 to the Governor, the President of the Senate, the Speaker of the  
276 House of Representatives, and the Chief Justice of the Supreme  
277 Court an interim report describing the progress of the office in  
278 meeting the goals as described in this section. ~~No later than~~  
279 ~~October 1, 2004,~~ The office shall submit to the Governor, the  
280 President of the Senate, the Speaker of the House of  
281 Representatives, and the Chief Justice of the Supreme Court a  
282 proposed plan including alternatives for meeting the state's  
283 guardian ad litem and attorney ad litem needs. This plan may  
284 include recommendations for less than the entire state, may  
285 include a phase-in system, and shall include estimates of the  
286 cost of each of the alternatives. Each year ~~thereafter,~~ the  
287 office shall provide a status report and provide further  
288 recommendations to address the need for guardian ad litem  
289 services and related issues.

290 Section 5. Section 39.8297, Florida Statutes, is created to

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291 read:

292 39.8297 County funding for guardian ad litem employees.-

293 (1) A county and the executive director of the Statewide  
294 Guardian Ad Litem Office may enter into an agreement by which  
295 the county agrees to provide funds to the local guardian ad  
296 litem office in order to employ persons who will assist in the  
297 operation of the guardian ad litem program in the county.

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

299 (a) Funding for the persons who are employed will be  
300 provided on at least a fiscal-year basis.

301 (b) The persons who are employed will be hired, supervised,  
302 managed, and terminated by the executive director of the  
303 Statewide Guardian Ad Litem Office. The statewide office is  
304 responsible for compliance with all requirements of federal and  
305 state employment laws.

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

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

312 (e) Persons employed under this section may be terminated  
313 after a substantial breach of the agreement or because funding  
314 to the program has expired.

315 (3) Persons employed under this section may not be counted  
316 in a formula or similar process used by the Statewide Guardian  
317 Ad Litem Office to measure personnel needs of a judicial  
318 circuit's guardian ad litem program.

319 (4) Agreements created pursuant to this section do not

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320 obligate the state to allocate funds to a county to employ  
321 persons in the guardian ad litem program.

322 Section 6. Paragraph (b) of subsection (13) of section  
323 318.18, Florida Statutes, is amended to read:

324 318.18 Amount of penalties.—The penalties required for a  
325 noncriminal disposition pursuant to s. 318.14 or a criminal  
326 offense listed in s. 318.17 are as follows:

327 (13)

328 (b) A county may impose a surcharge under subparagraph  
329 (a)1., subparagraph(a)2., or subparagraph(a)3., but may not  
330 impose more than one surcharge under this subsection. A county  
331 may elect to impose a different authorized surcharge but may not  
332 impose more than one surcharge at a time. The clerk of court  
333 shall report, no later than 30 days after the end of the  
334 quarter, the amount of funds collected under this subsection  
335 during each quarter of the fiscal year. The clerk shall submit  
336 the report, in an electronic ~~a~~ format developed by the Florida  
337 Clerks of Court Operations Corporation ~~Office of State Courts~~  
338 ~~Administrator~~, to the chief judge of the circuit and to, the  
339 Florida Clerks of Court Operations Corporation. The corporation  
340 shall submit the report in an electronic format to the Governor,  
341 the President of the Senate, the Speaker of the House of  
342 Representatives, and the board of county commissioners.

343 Section 7. This act shall take effect July 1, 2012.