

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** HB 67 Public Defender Duties  
**SPONSOR(S):** Fernandez-Barquin  
**TIED BILLS:** **IDEN./SIM. BILLS:** SB 752

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**FINAL HOUSE FLOOR ACTION:** 116 Y's 0 N's **GOVERNOR'S ACTION:** Approved

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### SUMMARY ANALYSIS

HB 67 passed the House on April 1, 2021, and subsequently passed the Senate on April 8, 2021.

A person has the right to legal counsel in a criminal proceeding. A person may either hire a private attorney or, in most circumstances, if a person cannot afford an attorney, the court may appoint one. Absent a conflict of interest, the court appoints a public defender to represent an indigent person. The court is prohibited from appointing a public defender to represent someone who is not indigent, even on a temporary basis.

In December 2010, in Hillsborough County, defendant Michael Keetley was indicted for two counts of murder and four counts of attempted murder. Although Keetley was initially declared indigent, over the course of several years his parents hired multiple private attorneys to represent him. After the case had been pending for seven years, the court appointed a public defender to represent Keetley as cocounsel even though he was still being represented by a private attorney. The public defender appealed the appointment as cocounsel, but the appeal was denied on jurisdictional grounds.

The bill amends s. 27.51, F.S., to clarify that a judge may not appoint a public defender to represent a defendant if a private attorney is already representing a defendant on the same case. The bill does not prohibit a defendant who initially hires a private attorney from discharging the private attorney, filing an application for indigent status, and requesting the court to appoint a public defender.

The bill has an insignificant positive fiscal impact on the state.

The bill was approved by the Governor on May 7, 2021, ch. 2021-18, L.O.F., and becomes effective on July 1, 2021.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### Background

##### Public Defender Representation

A person has the right to legal counsel in a criminal proceeding.<sup>1</sup> A person can either hire a private attorney or, in most circumstances, if a person cannot afford an attorney, the court may appoint one.<sup>2</sup> Absent a conflict of interest, the court appoints a public defender to represent an indigent person.<sup>3</sup> The Court is prohibited from appointing a public defender to represent someone who is not indigent, even on a temporary basis.<sup>4</sup> Section 27.51, F.S., requires a public defender to represent any person who is determined to be indigent and:

- Under arrest for, or charged with, a felony,
- Under arrest for, or charged with:
  - A misdemeanor authorized for prosecution by the state attorney;
  - A violation of chapter 316 punishable by imprisonment;
  - Criminal contempt; or
  - A violation of a special law or county or municipal ordinance ancillary to a state charge or if the public defender contracts with the county or municipality to provide representation pursuant to ss. 27.54 and 125.69, F.S.;
- Alleged to be a delinquent child;
- The subject of a petition to be involuntarily placed as a mentally ill person under part I of chapter 394 (Baker Act), involuntarily placed as a sexually violent predator under part V of chapter 394 (Jimmy Ryce Act), or involuntarily admitted to residential services as a person with developmental disabilities under chapter 393;
- Convicted and sentenced to death, for the purposes of handling an appeal to the Supreme Court; or
- Appealing any civil or criminal matter previously listed.

A person seeking the appointment of the public defender based on the inability to afford private counsel must complete an application of indigent status with the clerk of the court. The person must provide the following information:

- Net income, consisting of total salary and wages, minus deductions required by law, including court-ordered support payments.
- Other income, including, but not limited to, social security benefits, union funds, veterans' benefits, workers' compensation, other regular support from absent family members, public or private employee pensions, reemployment assistance or unemployment compensation, dividends, interest, rent, trusts, and gifts.
- Assets, including, but not limited to, cash, savings accounts, bank accounts, stocks, bonds, certificates of deposit, equity in real estate, and equity in a boat or a motor vehicle or in other tangible property.
- All liabilities and debts.
- The amount of any bail paid for the applicant's release from incarceration and the source of the funds.<sup>5</sup>

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<sup>1</sup> U.S. Const. amend. VI.

<sup>2</sup> S. 27.40, F.S.

<sup>3</sup> A person is determined to be indigent if the person's income is equal to or below 200 percent of the current federal poverty guidelines prescribed by the United States Department of Health and Human Services or if the person is receiving Temporary Assistance for Needy Families-Cash Assistance, poverty-related veterans' benefits, or Supplemental Security Income. S. 27.51(2)(a), F.S.

<sup>4</sup> S. 27.51(2), F.S.

<sup>5</sup> S. 27.52(1)(a), F.S.

A person applying for indigent status is only required to report his or her personal assets and liabilities.<sup>6</sup> The application does not require a person to disclose other sources of funds that may be used to hire an attorney, such as direct payment from a family member to the attorney. Thus, a person may be simultaneously indigent under s. 27.52, F.S., and also have funds to hire a private attorney.

### *Indigent for Costs*

The court may declare a person who is represented by a private attorney but who is also eligible to be represented by the public defender to be indigent for costs.<sup>7</sup> If the court determines a person is indigent for costs, the person is eligible to have the state pay for certain due process services that are necessary to prepare a legal defense, such as the costs of transcribing depositions, witnesses, mental health professionals, travel expenses, and legal research.<sup>8</sup> The Justice Administrative Commission pays for the costs for these services.<sup>9</sup>

### *Simultaneous Appointment*

On December 16, 2010, in Hillsborough County, Michael Keetley was indicted on two counts of first degree murder and four counts of attempted murder.<sup>10</sup> Keetley was initially declared indigent and the court appointed the public defender to represent him. Subsequently, Keetley's parents hired a series of private attorneys to represent him, incurring over \$200,000 in legal fees during the first four years of representation. In 2014, the court declared Keetley indigent for costs. In 2017, Keetley's private attorney requested the court to appoint a second attorney to serve as cocounsel.<sup>11</sup> The court appointed the public defender as cocounsel even though Keetley was still represented by a private attorney. The public defender appealed the appointment as cocounsel, but the appeal was denied on jurisdictional grounds.<sup>12</sup>

### **Effect of the Bill**

The bill amends s. 27.51, F.S., to clarify that a judge may not appoint a public defender to represent a defendant if a private attorney is already representing a defendant on the same case. The bill does not prohibit a defendant who initially hires a private attorney from discharging the private attorney, filing an application for indigent status, and requesting the court to appoint a public defender.

The bill was approved by the Governor on May 7, 2021, ch. 2021-18, L.O.F., and becomes effective on July 1, 2021.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

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<sup>6</sup> *Id.*

<sup>7</sup> S. 27.52(5), F.S.

<sup>8</sup> *Id.* and ss. 29.006 and 29.007, F.S.

<sup>9</sup> S. 27.52(5)(f), F.S. The Justice Administrative Commission provides administrative and financial services on behalf of the offices of State Attorney, Public Defender, Criminal Conflict and Civil Regional Counsel, Capital Collateral and Regional Counsel, the Guardian Ad Litem Program, private attorneys who have been appointed to represent indigent persons, and expenses for persons who have been determined to be indigent for costs. S. 43.16, F.S.

<sup>10</sup> *Hillsborough County v. Keetley*, 250 So.3d 206 (Fla. 2d DCA 2018).

<sup>11</sup> *Id.* at 208-209.

<sup>12</sup> *Id.* at 210.

None.

2. Expenditures:

To the extent a court would be prevented from appointing a public defender to a case in which a defendant has already retained private counsel, the bill may reduce workload and other associated expenditures for public defenders who could currently be appointed to these cases by an indeterminate amount.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill will prevent a court from appointing the public defender to a case in which a defendant has already retained private counsel, potentially providing the public defender's office the ability to expend available resources in other indigent defense cases.