

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/SB 596

INTRODUCER: Judiciary Committee and Senator Baxley

SUBJECT: Criminal Conflict and Civil Regional Councils

DATE: February 23, 2022

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bond</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u>Dale</u>	<u>Harkness</u>	<u>ACJ</u>	Recommend: Favorable
3.	<u>Dale</u>	<u>Sadberry</u>	<u>AP</u>	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 596 brings the Offices of Criminal Conflict and Civil Regional Counsel into parity with the offices of the public defenders and other governmental entities in the following areas:

- Witness coordination.
- Electronic filing of court documents.
- Security access to courthouses.
- Procedure for setting a classification and pay plan.
- Access to confidential court and state records.
- Limits of witness cost reimbursement.
- Investigator death benefits.
- Confidential motor vehicle registration.
- Criminal justice history access.

Current law requires that an existing Regional Counsel plus between two and five additional individuals be nominated for an open Regional Counsel position. The bill lowers the number of nominees in addition to the existing Regional Counsel that are required to be presented to the Governor for a position as Regional Counsel to between zero and three.

The bill also waives an 8-hour guardianship education requirement for attorneys employed by an Office of Criminal Conflict and Civil Regional Counsel; and clarifies that the court must appoint the Office of Criminal Conflict and Civil Regional Counsel if the Public Defender has a conflict

of interest in a case involving involuntary treatment of sexually violent predator or involuntary mental health treatment of a prisoner.

The bill takes effect July 1, 2022.

II. Present Situation:

The Office of Criminal Conflict and Civil Regional Counsel

The state is divided into five regions, each of which has an Office of Criminal Conflict and Civil Regional Counsel (regional counsel). The regions are defined by the boundaries of the five district courts of appeal. A regional counsel provides legal representation to some indigent persons who are entitled by law to taxpayer-funded legal representation.¹ These persons may be involved in criminal or civil cases. Just as a public defender's office has one public defender and numerous assistant public defenders, each regional counsel's office has a regional counsel and subordinate assistant regional counsels with appropriate staff support.² Each regional counsel is appointed by the Governor to a 4-year term, subject to Senate confirmation.³

The initial appointment of an attorney to represent a criminal defendant is by reference to the Office of the Public Defender for the judicial circuit. The court appoints the Office of the Public Defender for that judicial circuit, and the Public Defender selects one or more attorneys in the office to appear as attorney of record for the defendant. However, if the public defender's office determines that it cannot represent a defendant because of a conflict of interest, the public defender must ask the court for permission to withdraw as counsel.⁴ If the court grants the motion, the court must appoint the Office of Criminal Conflict and Civil Regional Counsel to represent the defendant.⁵ Similarly, the Office of Criminal Conflict and Civil Regional Counsel will select one or more staff attorneys to represent the defendant. If the office has a conflict, the court appoints a private attorney to be paid by the state.

The process is similar in many civil actions where legal representation of an indigent person is required to be furnished at state expense by the federal or state constitution or by state law. The first appointment to represent an indigent individual in most civil actions is to appoint the office of the regional counsel. Subsequent appointments where the office of the regional counsel has a conflict are to appoint a willing private attorney, chosen on a rotating basis. The appointment of a regional counsel in civil matters primarily occurs in mental health cases and dependency proceedings.⁶

¹ Section 27.511, F.S.

² Section 27.511(4), F.S.

³ Section 27.511(3)(a), F.S.

⁴ Just like a private law firm, the public defender's representation of two or more individuals whose interests are in conflict is unethical. Primarily, this occurs where two or more defendants are charged with jointly committing a criminal act.

⁵ Section 27.511(5), F.S.

⁶ Section 27.511(6)(a), F.S.

III. Effect of Proposed Changes:

Regional Counsel Parity with Public Defenders and Other Entities

The bill puts the Regional Councils in parity with public defenders and other public agencies and organizations in the following areas:

Witness Coordination (Section 1 amending s. 27.0065, F.S.)

Witness coordination describes the process for coordinating court appearance by witnesses, contacting witnesses regarding on-call status, contacting witnesses when appearances are cancelled, and contacting the employer of a subpoenaed person to confirm the existence of the summons. A primary goal of witness coordination is to minimize witness time and wage losses.

Current law requires the state attorney and public defender to work together on witness coordination programs.⁷ The bill adds that the appropriate Regional Counsel must act together with the state attorney and public defender to administer witness coordination.

Electronic Filing and Receipt (Section 2 amending s. 27.341, F.S.)

The state attorney and public defender of each circuit are required to consult with the local clerks of court, the Florida Court Technology Commission, and the operator of the legal filing portal, regarding the electronic filing and receipt of court documents. The bill adds that the appropriate Regional Counsel must join the state attorney and public defender in consultations regarding the electronic filing and receipt of court documents.

Court Appointments (part of Section 3 amending s. 27.571, F.S.)

A court is prohibited from appointing the public defender to represent any person who is not indigent or who is already represented by a private attorney. The bill adds that a Regional Counsel, similarly, may not be appointed to represent any person who is already represented by a private attorney.

Courthouse Security and Access (part of Section 3 amending s. 27.571, F.S.)

County sheriffs, judges, and the county commission are jointly responsible for courthouse security. Together, they develop plans and procedures for securing the courthouse, which vary throughout the state. Some counties screen all persons entering the courthouse, others allow certain trusted persons easier access through minimal or no screening. Assistant state attorneys and assistant public defenders are commonly part of the trusted persons groups. The bill adds a requirement that a Regional Counsel and assistant regional counsels be treated the same as the Public Defender and assistant public defenders are treated regarding courthouse security requirements.

⁷ Section 27.0065, F.S.

Classification and Pay Plans (Sections 3 amending s. 27.571, F.S., and section 4 amending s. 27.53, F.S.)

The 20 state attorneys of all judicial circuits must jointly develop a coordinated classification and pay plan that must be submitted on or before January 1 of each year to the Justice Administrative Commission, the office of the President of the Senate, and the office of the Speaker of the House of Representatives.⁸ Similarly, the 20 public defenders must jointly develop a coordinated classification and pay plan.⁹ However, the five regional counsel offices are subject to the classification and pay plan of the Justice Administration Commission,¹⁰ and may only recommend changes to the classification and pay plan.¹¹ The bill changes the classification and pay plan procedure to have the five regional counsels jointly develop a coordinated classification and pay plan for their offices, mirroring the current state attorneys and public defenders policies.

Dependency Court Records (Section 5 amending s. 39.0132, F.S.)

A regional counsel may be appointed to represent an indigent parent in a dependency proceeding. Current law generally limits access to the records of dependency court proceedings to the child, the parents of the child, an attorney representing the child or a parent, the guardian ad litem, law enforcement, representatives of the Department of Children and Families, and any other person by court order.¹² Not included in this list are Regional Counsels, but these Regional Counsels may be appointed to represent parents involved in the proceedings. The bill adds Regional Counsels to the list of persons who are expressly authorized to access the dependency court file.

Witness Cost Reimbursement (Section 6 amending s. 92.153, F.S.)

In any court proceeding, a disinterested witness is entitled to reimbursement for any reasonable costs incurred in producing, searching for, reproducing, and transporting documents produced under subpoena or pursuant to a records request. However, such costs are limited to 15 cents per page and \$10 per hour when the subpoena or records request is from a state attorney or public defender.¹³ The bill adds that reimbursement related to a subpoena or records request from a regional counsel is also limited to 15 cents per page and \$10 per hour.

Investigator Death Benefits (Section 7 amending s. 112.19, F.S.)

The lawful beneficiary of a state or local law enforcement officer, correctional officer, correctional probation officer, state attorney investigator, or public defender investigator is entitled to a death benefit for a line-of-duty death ranging between \$75,000 and \$375,000, depending upon the circumstances of the death. In addition, funeral expense reimbursements, health benefits, and educational benefits for dependents are authorized.¹⁴ The bill adds regional counsel investigators to the list of persons entitled to the line-of-duty death benefits.

⁸ Section 27.25(1), F.S.

⁹ Section 27.53(1), F.S.

¹⁰ Section 27.511(2), F.S.

¹¹ Section 27.53(4), F.S.

¹² Section 39.0132(3), F.S.

¹³ Section 92.153(2), F.S.

¹⁴ Section 112.19, F.S.

Confidential Motor Vehicle and Vessel Registration (Section 8 amending s. 320.025, F.S.)

Current law provides for confidential registration and issuance of a license plate or registration certificate of a motor vehicle or vessel owned by a local, state, or federal law enforcement agency, by the Attorney General Medicaid Fraud Unit, or by a public defender. If searched, the registration will show a fictitious name as the registered owner.¹⁵ The bill adds regional counsels to the list of government entities eligible for registration of a motor vehicle or vessel under a fictitious name.

Criminal History Fees and Access (Section 12 amending s. 943.053, F.S.)

The Florida Department of Law Enforcement is the state's central repository of criminal justice information. The department is authorized to charge a fee for furnishing the criminal history information of an individual, which fee varies based on the entity requesting the information. Fees are waived for an office of a public defender,¹⁶ and the department is required to provide public defenders the criminal history records by online access.¹⁷ The bill waives the fee and requires online access for the regional counsels.

Access to Certain Records of the Department of Corrections (Section 13 amending s. 945.10, F.S.)

Certain records of the Department of Corrections are confidential and exempt from public records laws, and may be released only to authorized persons or entities. Among other exceptions, public defenders are authorized to access preplea, pretrial intervention, and presentence or postsentence investigative records, except for portions of those records related to the victim.¹⁸ The bill adds that a regional counsel may also access preplea, pretrial intervention, and presentence or postsentence investigative records of the Department of Corrections, except for portions of those records related to the victim.

Access to Delinquency Court Records (Section 15 amending s. 985.045, F.S.)

Delinquency court records held by a clerk of court are confidential and exempt from public records laws, and may be released only to authorized persons or entities. Among other exceptions, public defenders are authorized to access the official records of a juvenile on whose behalf that the public defender is expected to appear in detention or other hearing before formal appointment of an attorney.¹⁹ The bill adds that a regional counsel is also authorized to access the official records of a juvenile on whose behalf that the regional counsel is expected to appear in detention or other hearing before formal appointment of an attorney.

¹⁵ Section 320.025, F.S.

¹⁶ Section 943.053(3)(e), F.S.

¹⁷ Section 943.053(7), F.S.

¹⁸ Section 945.10(2)(d), F.S.

¹⁹ Section 985.045(2), F.S.

Other Provisions regarding Regional Councils

Appointment Process for the Regional Counsel (part of Section 3 amending s. 27.511, F.S.)

Each regional council is appointed by the Governor to a 4-year term, subject to Senate confirmation.²⁰ The terms of office of the current five Regional Council are from October 1, 2019, to September 30, 2023. The Governor must make an appointment from the nominees given to him or her by the Supreme Court Judicial Nominating Commission.²¹ For each position, the Supreme Court Judicial Nominating Commission must nominate the current regional council for reappointment, and must also recommend to the Governor not fewer than two or more than five additional qualified candidates for appointment to the position. If it is in the best interest of the fair administration of justice, the Governor may reject the nominations and request that the Supreme Court Judicial Nominating Commission submit three new nominees.

If for any reason a regional council is unable to complete a full term in office, the Governor may immediately appoint an interim regional council. This appointee must meet the qualifications to be a regional council and will be appointed to serve as regional council until a new regional council is appointed by the same process to serve the remainder of the term of office.

The bill changes the appointment process to require nomination of the current regional council only if he or she seeks reappointment. The bill also reduces the number of persons nominated (in addition to the current regional council) to between zero and three. This change applies to the current five positions should one of them become vacant in this current term.

Guardian Advocacy Education Requirement (Section 9 amending s. 393.12, F.S.)

Guardian advocacy is a process for a family member, caregiver, or friend of an individual having a developmental disability²² to obtain the legal authority to act on their behalf if the individual lacks the decision-making ability to do some, but not all, of the decision-making tasks necessary to care for his or her person or property. Guardian advocacy does not require a finding of incapacity and it is less intrusive and simpler than formal guardianship. An individual who is found to have a developmental disability loses certain legal rights but is also entitled to certain services, levels of which are based on the individual's disability.²³

A petition to determine whether an individual has a developmental disability starts a contested proceeding at which the alleged disabled person has a right to have an attorney appointed. If the person is deemed to be indigent, the attorney will be provided at no cost from a regional council office or, in the case of a conflict, from a registry of qualified attorneys. If the person is not

²⁰ Section 27.511(3)(a), F.S.

²¹ The Supreme Court Judicial Nominating Commission is required by FLA. CONST art. V, s. 11(d), and its membership is specified by s. 43.291, F.S. The Supreme Court JNC consists of four members of The Florida Bar, selected by the Governor from a list of nominees recommended by The Florida Bar, and five individuals selected by the Governor. Members of the commission must be residents of the state, and all of the Bar nominees and two of the five Governor nominees must be actively practicing law. Members serve staggered 4-year terms.

²² "Developmental disability" means a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermid syndrome, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely. Section 393.063(12), F.S.

²³ See generally, ch. 393, F.S.

deemed to be indigent, a private attorney will be appointed from a rotating list of qualified attorneys. Before appointment, the attorney must have completed a minimum of 8 hours of education in guardianship, except that the court may waive the educational requirement for an attorney experienced in guardian advocate proceedings or who has 3 years or more experience as an attorney for guardian advocates.²⁴ The bill adds that the requirement for the education in guardianship does not apply to an attorney employed by a regional counsel office.

Appointment in Cases Involving Sexually Violent Predators (Section 10 amending s. 394.916, F.S.)

There is a civil commitment procedure for the involuntary long-term care and treatment of sexually violent predators.²⁵ An individual subject to involuntary care and treatment is entitled to legal representation. If the individual is indigent, the public defender is appointed to represent the individual. If the public defender has a conflict, the statute requires appointment of “other counsel.”²⁶ The statute on regional counsels provides that the regional counsel is to be appointed if a public defender has a conflict,²⁷ this bill amends the law on sexually violent predators to reaffirm that a regional counsel may be appointed if the public defender has a conflict.

Guardianship Education Requirement (Section 11 amending s. 744.331, F.S.)

Guardianship is a process for an interested person to petition for appointment of a guardian to represent an individual lacking capacity. An individual who is found to be legally incapacitated loses certain legal rights based on the individual’s incapacity.²⁸ An individual subject to guardianship proceedings who is indigent is entitled to appointment of an attorney. Before appointment of any attorney, the attorney must have completed a minimum of 8 hours of education in guardianship, except that the court may waive the educational requirement for an attorney who has 3 years or more experience as an attorney in guardianship proceedings.²⁹ The bill adds that the requirement for the education in guardianship does not apply to an attorney employed by a regional counsel office.

Appointment in Cases Involving Mental Health Treatment of a Prisoner (Section 14 amending s. 945.48, F.S.)

There is a court procedure for the involuntary mental health treatment of state prisoners.³⁰ A prisoner subject to involuntary treatment is entitled to legal representation. If the prisoner is indigent, the public defender is appointed to represent the prisoner. If the public defender has a conflict, the statute requires appointment of “private counsel.”³¹ The statute on regional counsels provides that the regional counsel is to be appointed if a public defender has a conflict.³² This bill amends the law on prisoners subject to involuntary mental health treatment to reaffirm that a regional counsel may be appointed if the public defender has a conflict.

²⁴ Section 393.12(5)(a), F.S.

²⁵ See generally, part V of ch. 394, F.S.

²⁶ Section 394.916(3), F.S.

²⁷ Section 27.40, F.S.

²⁸ See generally, ch. 744, F.S.

²⁹ Section 744.331(2)(d), F.S.

³⁰ See generally, s. 945.48, F.S.

³¹ Section 945.28(3), F.S.

³² Section 27.40, F.S.

Effective Date

The bill takes effect July 1, 2022.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

The bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

CS/SB 596 may have a minimal fiscal impact on state government. For example, section 12 of the bill waives the fee charged by FDLE to furnish criminal history information to the regional counsels. This may result in an insignificant cost savings to the regional counsels and a corresponding insignificant revenue loss to FDLE. This bill does not appear to have a fiscal impact on local governments.

VI. Technical Deficiencies:

Section 8 of the bill should be contingent on passage of CS/SB 598, a companion public records bill.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 27.0065, 27.341, 27.511, 27.53, 39.0132, 92.153, 112.19, 320.025, 393.12, 394.916, 744.331, 943.053, 945.10, 945.48, and 985.045.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on January 10, 2022:

The committee substitute rewords several provisions without making substantive changes, makes technical changes, and corrects a date related to the terms of a Criminal Conflict and Civil Regional Counsel.

B. Amendments:

None.