

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 Appropriations Committee on Criminal and Civil Justice

BILL: CS/CS/SB 762

INTRODUCER: Appropriations Committee on Criminal and Civil Justice, Judiciary Committee, and Senator Martin

SUBJECT: Offices of Criminal Conflict and Civil Regional Counsel

DATE: February 27, 2026

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	Fav/CS
2.	<u>Kolich</u>	<u>Harkness</u>	<u>ACJ</u>	Fav/CS
3.	_____	_____	<u>FP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 762 authorizes a court to appoint a different Office of Criminal Conflict and Civil Regional Counsel, in lieu of private counsel, to represent an indigent defendant in a death penalty case if certain conditions are met. Before this appointment may occur, the primary office must provide written notice to the court stating that: the client is indigent, the state has filed a notice that it intends to seek the death penalty, and legal representation may no longer be provided by the office due to a conflict of interest or a lack of qualified attorneys. The court is authorized to make the appointment if the designated counsel is qualified to provide competent representation in a death penalty case. However, the court must consider judicial economy and geographic proximity when evaluating a case for referral and appointment.

The office that is appointed to represent the defendant must submit documentation for all due process costs and services of representation to the Judicial Administrative Commission and file reports containing specified information relating to the case.

If another regional office is unable to accept an appointment because of a conflict of interest or a lack of qualified death penalty attorneys, private counsel must be appointed to represent the client.

The bill may decrease state expenditures for private court-appointed counsel in death penalty cases. See Section V., Fiscal Impact Statement.

The bill takes effect July 1, 2026.

II. Present Situation:

Overview

Under current law, if an indigent defendant in a death penalty case cannot be represented by a public defender due to a conflict of interest, the case is assigned to an Office of Criminal Conflict and Civil Regional Counsel in that same region. If that office is unable to accept the case, the case is assigned to a private court-appointed attorney. The costs of representation by a private court-appointed attorney are significantly higher than the costs of representation by attorneys within the offices of the public defender or regional counsel.

The Office of Criminal Conflict and Civil Regional Counsel

The Legislature created the Office of Criminal Conflict and Civil Regional Counsel in 2007. When creating the office, the Legislature stated that its purpose was to provide representation for people entitled to court-appointed counsel “in a fiscally sound manner, while safeguarding constitutional principles.”¹ Five regional offices were established in the state based on the geographic boundaries established for the five District Courts of Appeal that existed at that time.²

The Office primarily represents indigent people³ who are charged with crimes that public defenders are not able to represent because of a legal conflict of interest among the clients.⁴ A conflict of interest occurs when two or more defendants are being represented by one office and the interest of one defendant is adverse or hostile to the interest of another defendant such that the office cannot, in good faith, represent both defendants.⁵

Each of the five district offices is led by a regional counsel who is appointed to a 4-year term. The regional counsel is chosen by the Governor from a list of names submitted by the Supreme Court Nominating Commission and is subject to Senate confirmation.⁶

For administrative purposes, each office is assigned to the Justice Administrative Commission. The Commission is charged with providing administrative support and service as requested by each office, within the Commission’s available resources.⁷

¹ Section 27.511(1), F.S.

² Chapter 2007-62, s. 1, Laws of Fla. and s. 27.511(1), F.S. A sixth regional office has not been created although a Sixth District Court of Appeals was created in 2022. See ch. 2022-163, s. 2, 8, and 9, Laws of Fla.

³ To determine whether a person is “indigent” to qualify for the appointment of a public defender, he or she must fill out an application with the clerk of court and meet the criteria set forth in s. 27.52, F.S.

⁴ Section 27.511(5) and (6)(a), F.S.

⁵ See s. 27.511(5), F.S.

⁶ Section 27.511(3)(a), F.S.

⁷ Section 27.511(2), F.S.

If a public defender's office and a regional counsel's office cannot represent an indigent client due to a conflict of interest, the court will appoint an attorney in private practice from a registry of qualified attorneys.⁸

The Justice Administrative Commission

The Justice Administrative Commission (JAC) is a state agency that was created in 1965 to provide administrative services for judicial-related offices. Currently, the JAC provides administrative services to all state attorney and public defender offices, each Office of Criminal Conflict and Civil Regional Counsel, the Capital Collateral Regional Counsel, and the Statewide Guardian ad Litem Office. The JAC primarily provides accounting, budgeting, financial, and human resource services to these entities. In addition, the JAC reviews the billing records of private attorneys who are appointed by the court to represent indigent clients.⁹

Cost Data for Court-Appointed Attorneys in Capital First Degree Murder Cases

According to payment data supplied by the JAC, the total amount of funds expended over the last 6 years for private court-appointed counsel in these cases is \$49,315,531.89.¹⁰ The chart below shows the annual due process costs¹¹ and attorney fees.

Fiscal Year	Due Process	Attorney Fees	Annual Total
2019-20	\$4,059,331.44	\$7,876,301.53	\$11,935,632.97
2020-21	\$2,189,866.79	\$3,629,874.60	\$5,819,741.39
2021-22	\$2,481,876.64	\$3,897,727.77	\$6,379,604.41
2022-23	\$3,192,762.32	\$4,815,264.00	\$8,008,026.32
2023-24	\$3,354,407.70	\$6,355,549.85	\$9,709,957.55
2024-25	\$3,137,753.35	\$4,324,815.90	\$7,462,569.25
Totals	\$18,415,998.24	\$30,899,533.65	\$49,315,531.89

Minimum Standards for an Attorney to Defend a Death Penalty Case

To ensure that a defendant has competent representation in a death penalty case, The Florida Supreme Court has established minimum standards that an attorney must meet. Each judicial circuit must keep a list of qualified conflict counsel in each of three categories: lead trial counsel, trial co-counsel, and appellate counsel.¹²

⁸ Sections 27.40(1), (2), and (3), and 27.5303(1), F.S.

⁹ See Justice Administrative Commission at <https://www.justiceadmin.org/> (last visited Feb. 22, 2026).

¹⁰ Email from Cris Martinez, General Counsel for the Justice Administrative Commission (Jan. 8, 2025) (on file with the Judiciary Committee). These figures also include cases where the death penalty had not been waived by the time the court-appointed attorney was appointed.

¹¹ Due process costs for indigent clients include the costs for: court reporting and transcription; copying and transcribing depositions; foreign language interpreters and translators, if needed; witnesses and expert witnesses; mental health professionals; reasonable transportation services; some travel expenses; library and electronic legal research services; and reasonable pretrial consultant fees and costs. See s. 29.006, F.S.

¹² Fla. R. Crim. P. 3.112, available at https://www-media.floridabar.org/uploads/2026/01/2026_07-JAN-Criminal-Procedure-Rules-1-1-2026.pdf (last visited Feb. 22, 2026).

To qualify as lead trial counsel, the attorney should have at least five years of litigation experience in criminal law and have served as lead counsel in no fewer than nine state or federal jury trials of serious and complex cases which were tried to completion. He or she should have served as lead defense counsel or co-counsel in at least two state or federal death penalty cases that were tried to completion. Additionally, of the nine jury trials that were tried to completion, the attorney should have served as lead counsel in at least three cases in which the charge was murder, or alternatively, of the nine jury trials, at least one was a murder trial, and an additional five were felony jury trials. Additional requirements that lead and co-counsel should have, including continuing legal requirements, for private attorneys in capital cases are set forth in Rule 3.112 of the Florida Rules of Criminal Procedure.¹³

III. Effect of Proposed Changes:

The bill authorizes a court to appoint a different Office of Criminal Conflict and Civil Regional Counsel, in lieu of private counsel, to represent an indigent defendant in a death penalty case once certain conditions are met. This appointment may occur at any time during representation after the office provides written notice to the court that:

- The defendant is indigent;
- The state has filed a notice of intent to seek the death penalty; and
- Legal counsel in the first regional office has determined it can no longer represent the person because of a conflict of interest or a lack of qualifications.

The court is authorized to make the appointment provided that the designated counsel is qualified to provide competent representation in a death penalty case. However, the court must consider judicial economy and geographic proximity when evaluating a case for referral and appointment.

For clarification, this process does not transfer venue of the case from one circuit to another. Rather, it simply authorizes a different Office of Criminal Conflict and Civil Regional Counsel to handle the case.

Reporting Requirements

The regional office that is appointed to represent a defendant who was previously represented by another regional office must document all due process costs and services for representation to the JAC to receive reimbursement. Payment is subject to legislative appropriation.

By February 1 and August 1 of each year, the regional office that accepts an appointment to represent an indigent person in which the state has filed a notice that it intends to seek the death penalty must submit a report to the JAC that includes all of the following:

- The names of the regional office and the counsel appointed with the date of the appointment.
- The amount of time the case has been pending.
- The date the state filed a notice of intent to seek the death penalty.
- The number of victims in the case.
- The status of ongoing discovery, if any, including any discovery deadline set by the court.
- The number of outstanding motions.

¹³ *Id.*

- Whether the case involves a mitigation specialist and if so, the date of his or her employment and any mitigation work product.

When Another Regional Office Cannot Accept an Appointment

If the office from another region cannot accept an appointment to represent the defendant due to a conflict of interest or due to a lack of qualified attorneys, private counsel must then be appointed. The bill takes effect July 1, 2026.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

If a court appoints another regional office to represent a client, this eliminates the need for a private court-appointed attorney to handle the case. As such, the number of private attorneys receiving fees from these cases would be reduced as would their income from these cases.

Currently, the Legislature authorizes a flat fee of \$25,000 for the lead counsel and \$25,000 for the co-counsel in first degree murder cases.¹⁴ The lead counsel and co-

¹⁴ Chapter 2025-198, s.148, Laws of Fla. and Justice Administrative Commission, Forms and Rates, July 1, 2024 through June 30, 2026, available at

counsel may petition the court for an award of extraordinary fees in an evidentiary hearing. Because of the complexity and duration of indigent death-penalty cases, the request for extraordinary fees is generally granted and the total fees paid are much higher than the flat fee.

C. Government Sector Impact:

In most cases, the cost of appointing a regional office to a death penalty case will be significantly less than the cost of representation by private court-appointed counsel, particularly with respect to attorneys' fees.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 27.511 and 744.331.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS/CS by Appropriations Committee on Criminal and Civil Justice on February 25, 2026:

The committee substitute requires the court to consider judicial economy and geographic proximity when evaluating a case for referral and appointment to a different Office of Criminal Conflict and Civil Regional Counsel to represent an indigent defendant in a death penalty case due to a conflict of interest or lack of qualifications.

CS by Judiciary on January 12, 2026:

The committee substitute differs from the underlying bill by deleting the requirement that the JAC submit reports to the Legislature and by deleting the program's expiration date of July 1, 2027. The language authorizing the appointment of counsel in another region, paragraph (6)(a), is edited for clarity and the committee substitute replaces the reference to the chief judge with references to the court.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
