

1 A bill to be entitled
2 An act relating to legal representation for indigent
3 persons; amending s. 27.40, F.S.; removing responsibility
4 for appointment of attorneys for indigent persons from
5 courts; providing for appointment of attorneys for
6 indigent persons by public defenders; limiting
7 expenditures; providing contract requirements; repealing
8 s. 27.42, F.S.; eliminating indigent services committees;
9 amending s. 27.51, F.S.; providing additional duties for
10 public defenders related to proving attorney services in
11 certain cases; requiring reports; amending s. 27.512,
12 F.S.; adding a cross-reference; amending s. 27.52, F.S.;
13 changing references; limiting expenditures; eliminating
14 payment for indigent for costs; amending s. 27.525, F.S.;
15 changing the name of a trust fund; limiting expenditures;
16 amending s. 27.53, F.S.; providing that public defender
17 investigators are authorized to act in any judicial
18 circuit; amending s. 27.5303, F.S.; providing for
19 appointment of counsel by a public defender in conflict
20 cases; deleting a requirement to file a report with the
21 Justice Administration Commission; amending s. 27.5304,
22 F.S.; limiting expenditures; removing references to the
23 Justice Administration Commission; deleting forms of
24 billing and payment by private attorneys representing
25 indigent persons; deleting report of the Article V
26 Indigent Services Advisory Board; providing for amendment
27 of standard fee per case in the General Appropriations
28 Act; allowing for extraordinary payment; providing that a
29 public defender who achieves cost savings may be entitled

30 | to propose alternative use for up to half of such savings;
 31 | amending s. 27.561, F.S.; making conforming changes;
 32 | amending s. 27.562, F.S.; making conforming changes;
 33 | amending s. 27.58, F.S.; providing that the public
 34 | defender is the chief administrator of all indigent
 35 | representation services in the public defender's circuit;
 36 | amending s. 27.59, F.S.; providing that attorneys
 37 | appointed by a public defender have the same access to
 38 | prisoners as the public defender; amending s. 29.007,
 39 | F.S.; providing for attorneys appointed by the public
 40 | defender; deleting references to the Justice
 41 | Administration Commission; amending s. 29.015, F.S.;
 42 | moving responsibility for a deficit in the indigent
 43 | services fund from the Justice Administration Commission
 44 | to the state courts system; requiring establishment of a
 45 | peer review committee; amending s. 29.018, F.S.; making
 46 | conforming changes; amending s. 29.0185, F.S.; limiting
 47 | expenditures for due process costs; amending s. 744.331,
 48 | F.S.; providing for appointment by the public defender of
 49 | an attorney for an alleged incapacitated person; amending
 50 | s. 938.29, F.S.; providing for a lien against an
 51 | individual who has been provided attorney services as an
 52 | indigent; directing payment of monies collected from the
 53 | lien; creating a transitional plan for payment of expenses
 54 | accruing before the effective date of this bill; providing
 55 | an effective date.

56 |
 57 | Be It Enacted by the Legislature of the State of Florida:
 58 |

59 Section 1. Section 27.40, Florida Statutes, is amended to
60 read:

61 27.40 Appointed ~~Court-appointed~~ counsel system; ~~circuit~~
62 ~~registries~~ component programs; minimum requirements; ~~appointment~~
63 ~~by court~~.--

64 (1) Counsel shall be appointed by the public defender of
65 the circuit to represent any individual in a criminal or civil
66 proceeding entitled to appointed ~~court-appointed~~ counsel under
67 the Federal or State Constitution or as authorized by general
68 law. No court may order that a particular attorney be named as an
69 appointed attorney in a case. No court may enter any court order
70 affecting, nor otherwise direct or control, the provision of
71 appointed attorney services; however, a court shall not be
72 prohibited from exercising traditional means of discipline of
73 attorneys appearing before the court. Any reference in this part
74 to the appointment of the public defender shall also refer to the
75 subsequent selection and appointment by the public defender of
76 another attorney to represent an individual in the event of a
77 conflict of interest or for representation of indigent litigants
78 in civil proceedings where necessary to meet constitutional or
79 statutory requirements. ~~The court shall appoint a public defender~~
80 ~~to represent indigent persons as authorized in s. 27.51. Private~~
81 ~~counsel shall be appointed to represent indigents in those cases~~
82 ~~in which provision is made for court appointed counsel but the~~
83 ~~public defender is unable to provide representation due to a~~
84 ~~conflict of interest or is not authorized to provide~~
85 ~~representation.~~

86 (2) The public defender of each judicial circuit of the
87 state shall be the administrator of all appointed attorney

PCB SSC 07-07

ORIGINAL

2007

88 services authorized under s. 27.51 within the circuit. The
89 public defender shall administratively create component programs
90 as a separate unit of each public defender's office and the
91 public defender shall sufficiently insulate the units from each
92 other so as to assure that confidential client information is not
93 exchanged. Component programs under the administration of each
94 public defender shall include:

95 (a) A criminal and delinquency program which shall represent
96 any person described in ss. 27.51(1)(a), (b), or (c);

97 (b) A dependency and termination of parental rights program
98 which shall represent any person described in s. 27.51(1)(e);

99 (c) A civil program which shall represent any person
100 described in ss. 25.51(1)(d), (f) - (m); and

101 (d) A conflict program which shall represent any person
102 described in ss. 27.51(1)(a) - (m) when the public defender
103 determines that a conflict of interest exists in accordance with
104 s. 27.5303. Private counsel appointed by the court to provide
105 representation shall be selected from a registry of individual
106 attorneys established by the circuit Article V indigent services
107 committee or procured through a competitive bidding process.

108 (3) Each public defender shall have the authority to
109 determine the most cost effective method or methods for the
110 delivery of appointed attorney services for their circuit.
111 Authorized methods shall include, but not be limited to, the use
112 of state employees, cross-circuit conflict representation,
113 assigned attorney registries, and contractual agreements with
114 individual attorneys, law firms, or groups of attorneys or law
115 firms. Any contractual agreement may be terminated by a
116 successor public defender without penalty. No contract or

117 agreement may obligate the state to pay sums in excess of the
118 monies appropriated to the public defender for indigent services,
119 and any contract shall be subject to appropriations. In
120 utilizing a registry:

121 ~~(a) Each circuit Article V indigent services committee~~
122 ~~shall compile and maintain a list of attorneys in private~~
123 ~~practice, by county and by category of cases. From October 1,~~
124 ~~2005, through September 30, 2007, the list of attorneys compiled~~
125 ~~by the Eleventh Judicial Circuit shall provide the race, gender,~~
126 ~~and national origin of assigned attorneys. To be included on a~~
127 ~~registry, attorneys shall certify that they meet any minimum~~
128 ~~requirements established in general law for court appointment,~~
129 ~~are available to represent indigent defendants in cases requiring~~
130 ~~court appointment of private counsel, and are willing to abide by~~
131 ~~the terms of the contract for services. To be included on a~~
132 ~~registry, an attorney also must enter into a contract for~~
133 ~~services with the Justice Administrative Commission. Failure to~~
134 ~~comply with the terms of the contract for services may result in~~
135 ~~termination of the contract and removal from the registry. Each~~
136 ~~attorney on the registry shall be responsible for notifying the~~
137 ~~circuit Article V indigent services committee and the Justice~~
138 ~~Administrative Commission of any change in his or her status.~~
139 ~~Failure to comply with this requirement shall be cause for~~
140 ~~termination of the contract for services and removal from the~~
141 ~~registry until the requirement is fulfilled.~~

142 ~~(b) The court shall appoint attorneys in rotating order in~~
143 ~~the order in which names appear on the applicable registry,~~
144 ~~unless the court makes a finding of good cause on the record for~~
145 ~~appointing an attorney out of order. An attorney not appointed in~~

PCB SSC 07-07

ORIGINAL

2007

146 ~~the order in which his or her name appears on the list shall~~
147 ~~remain next in order.~~

148 ~~(c) If it finds the number of attorneys on the registry in~~
149 ~~a county or circuit for a particular category of cases is~~
150 ~~inadequate, the circuit Article V indigent services committee~~
151 ~~shall notify the chief judge of the particular circuit in~~
152 ~~writing. The chief judge shall submit the names of at least three~~
153 ~~private attorneys with relevant experience. The clerk of court~~
154 ~~shall send an application to each of these attorneys to register~~
155 ~~for appointment.~~

156 ~~(d) Quarterly, each circuit Article V indigent services~~
157 ~~committee shall provide a current copy of each registry to the~~
158 ~~Chief Justice of the Supreme Court, the chief judge, the state~~
159 ~~attorney and public defender in each judicial circuit, the clerk~~
160 ~~of court in each county, the Justice Administrative Commission,~~
161 ~~and the Indigent Services Advisory Board. From October 1, 2005,~~
162 ~~through September 30, 2007, the report submitted by the Eleventh~~
163 ~~Judicial Circuit shall include the race, gender, and national~~
164 ~~origin of all attorneys listed in and appointed under the~~
165 ~~registry.~~

166 (4) To be eligible for court appointment, an attorney must
167 be a member in good standing of The Florida Bar, must meet in
168 addition to any other qualifications specified by general law,
169 and must meet any criteria established by the public defender.

170 (5) ~~The Justice Administrative Commission shall approve~~
171 ~~uniform contract forms for use in procuring the services of~~
172 ~~private court-appointed counsel and uniform procedures and forms~~
173 ~~for use by a court appointed attorney in support of billing for~~

PCB SSC 07-07

ORIGINAL

2007

174 ~~attorney's fees, costs, and related expenses to demonstrate the~~
175 ~~attorney's completion of specified duties.~~

176 ~~(6) After court appointment, the attorney must immediately~~
177 ~~file a notice of appearance with the court indicating acceptance~~
178 ~~of the appointment to represent the defendant.~~

179 ~~(7)(a) An A private attorney appointed by a public defender~~
180 ~~to represent a defendant or other client is entitled to payment~~
181 ~~for services pursuant to s. 27.5304, only upon full performance~~
182 ~~by the attorney of specified duties, adherence to any billing~~
183 ~~procedures specified in the contract by the public defender,~~
184 ~~submission of all documentation required by the contract,~~
185 ~~approval of payment by the public defender, court, except for~~
186 ~~payment based on a flat fee per case as provided in s. 27.5304,~~
187 ~~and attorney submission of a payment request to the Justice~~
188 ~~Administrative Commission within 60 days following completion of~~
189 ~~the work unless otherwise specified in the contract. Upon being~~
190 ~~permitted to withdraw from a case, a court-appointed attorney~~
191 ~~shall submit a copy of the order to the Justice Administrative~~
192 ~~Commission at the time it is issued by the court. If a private an~~
193 ~~attorney is permitted to withdraw or is otherwise removed from~~
194 ~~representation prior to full performance of the duties specified~~
195 ~~in this section for reasons other than breach of duty, the public~~
196 ~~defender trial court shall approve payment of attorney's fees and~~
197 ~~costs for work performed as provided in the contract in an amount~~
198 ~~not to exceed the amounts specified in s. 27.5304. Withdrawal~~
199 ~~from a case prior to full performance of the duties specified~~
200 ~~shall create a rebuttable presumption that the attorney is not~~
201 ~~entitled to the entire flat fee for those cases paid on a flat-~~
202 ~~fee-per-case basis.~~

PCB SSC 07-07

ORIGINAL

2007

203 ~~(6)-(b)~~ A private ~~The~~ attorney shall maintain appropriate
204 documentation, including a current and detailed hourly accounting
205 of time spent representing the defendant or other client. These
206 records and documents are subject to review by the public
207 defender and the Justice Administrative Commission, subject to
208 the attorney-client privilege and work product privilege. Subject
209 to the attorney-client privilege, these records and documents
210 shall be made available to the Governor, the Legislature and the
211 general public upon request.

212 ~~(7)-(8)~~ Subject to the attorney-client privilege and the
213 work-product privilege, a private ~~an~~ attorney who withdraws or is
214 removed from representation shall deliver all files, notes,
215 documents, and research to a the successor attorney designated by
216 the public defender within 15 days after receiving notice from
217 the successor attorney. The successor attorney shall bear the
218 cost of transmitting all files, notes, documents, and research.

219 ~~(8)-(9)~~ ~~A circuit Article V indigent services committee or~~
220 Any interested person may advise the public defender ~~court~~ of any
221 circumstance affecting the quality of representation, including,
222 but not limited to, false or fraudulent billing, misconduct,
223 failure to meet continuing legal education requirements,
224 solicitation to receive compensation from the defendant or other
225 client a private ~~the~~ attorney is appointed to represent, or
226 failure to file appropriate motions in a timely manner.

227 ~~(9)-(10)~~ This section does not apply to attorneys appointed
228 to represent persons in postconviction capital collateral cases
229 pursuant to part IV of this chapter.

230 Section 2. Section 27.42, Florida Statutes, is repealed.

231 Section 3. Subsections (1) and (2) of section 27.51,
 232 Florida Statutes, are amended, and subsection (7) is added, to
 233 read:

234 27.51 Duties of a public defender.--

235 (1) The public defender shall represent, or secure
 236 representation for, without additional compensation, any person
 237 determined to be indigent under s. 27.52 and:

238 (a) Under arrest for, or charged with, a felony;

239 (b) Under arrest for, or charged with:

240 1. A misdemeanor authorized for prosecution by the state
 241 attorney;

242 2. A violation of chapter 316 punishable by imprisonment;

243 3. Criminal contempt; or

244 4. A violation of a special law or county or municipal
 245 ordinance ancillary to a state charge, or if not ancillary to a
 246 state charge, only if the public defender contracts with the
 247 county or municipality to provide representation pursuant to ss.
 248 27.54 and 125.69.

249
 250 The public defender shall not provide representation pursuant to
 251 this paragraph if the court, prior to trial, files in the cause
 252 an order of no imprisonment as provided in s. 27.512;

253 (c) Alleged to be a delinquent child pursuant to a petition
 254 filed before a circuit court;

255 (d) Sought by petition filed in such court to be
 256 involuntarily placed as a mentally ill person under part I of
 257 chapter 394, involuntarily committed as a sexually violent
 258 predator under part V of chapter 394, or involuntarily admitted
 259 to residential services as a person with developmental

PCB SSC 07-07

ORIGINAL

2007

260 disabilities under chapter 393. A public defender shall not
261 represent any plaintiff in a civil action brought under the
262 Florida Rules of Civil Procedure, the Federal Rules of Civil
263 Procedure, or the federal statutes, or represent a petitioner in
264 a rule challenge under chapter 120, unless specifically
265 authorized by statute;

266 (e) The parent of a child involved in shelter hearings and
267 termination of parental rights proceedings as specifically
268 authorized under parts V and XI of chapter 39, Florida Statutes.

269 (f) Alleged to be infected with a sexually transmitted
270 disease and for whom isolation, hospitalization, or confinement
271 is sought pursuant to chapter 384, Florida Statutes;

272 (g) A minor who petitions the court for waiver of parental
273 notification under s. 390.01114, F.S.;

274 (h) Alleged to be infected with active tuberculosis and for
275 whom isolation, hospitalization, or confinement is sought
276 pursuant to chapter 392, Florida Statutes;

277 (i) Alleged to be substance-abuse impaired and for whom
278 involuntary assessment, stabilization, or treatment is sought
279 pursuant to chapter 397, Florida Statutes;

280 (j) Alleged to be a vulnerable adult in need of protective
281 services pursuant to 415.1051, F.S.;

282 (k) Alleged to be incapacitated and for whom an involuntary
283 guardianship is sought pursuant to chapter 744, Florida Statutes;

284 (l) A person for whom involuntary commitment is sought
285 subsequent to an acquittal by reason of insanity pursuant to s.
286 916.15;

287 (m) A parent of a child alleged to be in need of services
 288 or as a child alleged to be in contempt under chapter 984,
 289 Florida Statutes;

290 (n)-(e) Convicted and sentenced to death, for purposes of
 291 handling an appeal to the Supreme Court; or

292 (o)-(f) Is appealing a matter in a case arising under
 293 paragraphs (a) - (n)-(d).

294 ~~(2) The court may not appoint~~ The public defender may not
 295 be appointed to represent, even on a temporary basis, any person
 296 who is not indigent. The court, however, may appoint private
 297 counsel in capital cases as provided in ss. 27.40 and 27.5303.

298 (7) Each public defender shall maintain the following
 299 information for his or her circuit on an ongoing basis which
 300 shall be updated at least quarterly and provided to the
 301 Legislature, the Governor, the state courts system and the
 302 general public on a circuit-by-circuit basis through the website
 303 of the Justice Administrative Commission:

304 (a) A complete description of the manner in which the public
 305 defender provides or arranges for services for each type of case
 306 described in paragraphs (1) (a)-(o), including rates of payment
 307 for services provided by outside entities;

308 (b) The number of defendants or litigants found to be
 309 indigent pursuant to s. 27.52, F.S. and appointed by the court to
 310 be represented by the public defender or for whom the public
 311 defender arranges for representation by case type as described in
 312 paragraphs (1) (a)-(o);

313 (c) The number of defendants or litigants referred to
 314 outside counsel by case type as described in paragraphs (1) (a)-
 315 (o) including specific identification of the number of defendants

316 or litigants referred to outside counsel as a result of a
 317 conflict of interest;

318 (d) A list of all attorneys and other contracted service
 319 providers that received payment during the quarter and the amount
 320 paid to each;

321 (e) Any other information that the public defender or the
 322 Justice Administrative Commission determines would be in the
 323 public interest to maintain and disseminate on a regular basis.

324 Section 4. Subsection (1) of section 27.512, Florida
 325 Statutes, is amended to read:

326 27.512 Order of no imprisonment.--

327 (1) In each case set forth in s. 27.51(1)(b), ~~if in which~~
 328 the court determines that it will not sentence the defendant to
 329 imprisonment if convicted, the court shall issue an order of no
 330 imprisonment and ~~the court may not appoint~~ the public defender
 331 may not be appointed to represent the defendant. If the court
 332 issues an order of no imprisonment following the appointment of
 333 the public defender, the court shall immediately terminate the
 334 public defender's services. However, if at any time the court
 335 withdraws the order of no imprisonment with respect to an
 336 indigent defendant, the court shall appoint the public defender
 337 to represent the defendant.

338 Section 5. Section 27.52, Florida Statutes, is amended to
 339 read:

340 27.52 Determination of indigent status.--

341 (1) APPLICATION TO THE CLERK.--A person seeking appointment
 342 of a public defender under s. 27.51 based upon an inability to
 343 pay must apply to the clerk of the court for a determination of
 344 indigent status using an application form developed by the

345 Florida Clerks of Court Operations Corporation with final
 346 approval by the Supreme Court.

347 (a) The application must include, at a minimum, the
 348 following financial information:

349 1. Net income, consisting of total salary and wages, minus
 350 deductions required by law, including court-ordered support
 351 payments.

352 2. Other income, including, but not limited to, social
 353 security benefits, union funds, veterans' benefits, workers'
 354 compensation, other regular support from absent family members,
 355 public or private employee pensions, unemployment compensation,
 356 dividends, interest, rent, trusts, and gifts.

357 3. Assets, including, but not limited to, cash, savings
 358 accounts, bank accounts, stocks, bonds, certificates of deposit,
 359 equity in real estate, and equity in a boat or a motor vehicle or
 360 in other tangible property.

361 4. All liabilities and debts.

362 5. If applicable, the amount of any bail paid for the
 363 applicant's release from incarceration and the source of the
 364 funds.

365
 366 The application must include a signature by the applicant which
 367 attests to the truthfulness of the information provided. The
 368 application form developed by the corporation must include notice
 369 that the applicant may seek court review of a clerk's
 370 determination that the applicant is not indigent, as provided in
 371 this section.

372 (b) An applicant shall pay a \$40 application fee to the
 373 clerk for each application for appointed ~~court-appointed~~ counsel

374 filed. The applicant shall pay the fee within 7 days after
 375 submitting the application. If the applicant does not pay the fee
 376 prior to the disposition of the case, the clerk shall notify the
 377 court, and the court shall:

378 1. Assess the application fee as part of the sentence or as
 379 a condition of probation; or

380 2. Assess the application fee pursuant to s. 938.29.

381 (c) Notwithstanding any provision of law, court rule, or
 382 administrative order, the clerk shall assign the first \$40 of any
 383 fees or costs paid by an indigent person as payment of the
 384 application fee. A person found to be indigent may not be refused
 385 counsel or other required due process services for failure to pay
 386 the fee.

387 (d) All application fees collected by the clerk under this
 388 section shall be transferred monthly by the clerk to the
 389 Department of Revenue for deposit in the Indigent ~~Criminal~~
 390 Defense Services Trust Fund administered by the Justice
 391 Administrative Commission, to be used ~~to~~ as appropriated by the
 392 Legislature. The clerk may retain 2 percent of application fees
 393 collected monthly for administrative costs prior to remitting the
 394 remainder to the Department of Revenue.

395 (e)1. The clerk shall assist a person who appears before
 396 the clerk and requests assistance in completing the application,
 397 and the clerk shall notify the court if a person is unable to
 398 complete the application after the clerk has provided assistance.

399 2. If the person seeking appointment of a public defender
 400 is incarcerated, the public defender is responsible for providing
 401 the application to the person and assisting him or her in its
 402 completion and is responsible for submitting the application to

PCB SSC 07-07

ORIGINAL

2007

403 the clerk on the person's behalf. The public defender may enter
 404 into an agreement for jail employees, pretrial services
 405 employees, or employees of other criminal justice agencies to
 406 assist the public defender in performing functions assigned to
 407 the public defender under this subparagraph.

408 (2) DETERMINATION BY THE CLERK.--The clerk of the court
 409 shall determine whether an applicant seeking appointment of a
 410 public defender is indigent based upon the information provided
 411 in the application and the criteria prescribed in this
 412 subsection.

413 (a)1. An applicant, including an applicant who is a minor
 414 or an adult tax-dependent person, is indigent if the applicant's
 415 income is equal to or below 200 percent of the then-current
 416 federal poverty guidelines prescribed for the size of the
 417 household of the applicant by the United States Department of
 418 Health and Human Services or if the person is receiving Temporary
 419 Assistance for Needy Families-Cash Assistance, poverty-related
 420 veterans' benefits, or Supplemental Security Income (SSI).

421 2. There is a presumption that the applicant is not
 422 indigent if the applicant owns, or has equity in, any intangible
 423 or tangible personal property or real property or the expectancy
 424 of an interest in any such property having a net equity value of
 425 \$2,500 or more, excluding the value of the person's homestead and
 426 one vehicle having a net value not exceeding \$5,000.

427 (b) Based upon its review, the clerk shall make one of the
 428 following determinations:

- 429 1. The applicant is not indigent.
- 430 2. The applicant is indigent.

431 (c)~~1~~. If the clerk determines that the applicant is
432 indigent, the clerk shall submit the determination to the office
433 of the public defender and immediately file the determination in
434 the case file.

435 ~~2. If the public defender is unable to provide~~
436 ~~representation due to a conflict pursuant to s. 27.5303, the~~
437 ~~public defender shall move the court for withdrawal from~~
438 ~~representation and appointment of private counsel.~~

439 (d) The duty of the clerk in determining whether an
440 applicant is indigent shall be limited to receiving the
441 application and comparing the information provided in the
442 application to the criteria prescribed in this subsection. The
443 determination of indigent status is a ministerial act of the
444 clerk and not a decision based on further investigation or the
445 exercise of independent judgment by the clerk. The clerk may
446 contract with third parties to perform functions assigned to the
447 clerk under this section.

448 (e) The applicant may seek review of the clerk's
449 determination that the applicant is not indigent in the court
450 having jurisdiction over the matter at the next scheduled
451 hearing. If the applicant seeks review of the clerk's
452 determination of indigent status, the court shall make a final
453 determination as provided in subsection (4).

454 (3) APPOINTMENT OF COUNSEL ON INTERIM BASIS.--If the clerk
455 of the court has not made a determination of indigent status at
456 the time a person requests appointment of a public defender, the
457 court shall make a preliminary determination of indigent status,
458 pending further review by the clerk, and may, by court order,

PCB SSC 07-07

ORIGINAL

2007

459 | appoint the a public defender ~~or private counsel~~ on an interim
460 | basis.

461 | (4) REVIEW OF CLERK'S DETERMINATION.--

462 | (a) If the clerk of the court determines that the applicant
463 | is not indigent, and the applicant seeks review of the clerk's
464 | determination, the court shall make a final determination of
465 | indigent status by reviewing the information provided in the
466 | application against the criteria prescribed in subsection (2) and
467 | by considering the following additional factors:

468 | 1. Whether the applicant has been released on bail in an
469 | amount of \$5,000 or more.

470 | 2. Whether a bond has been posted, the type of bond, and
471 | who paid the bond.

472 | 3. Whether paying for private counsel in an amount that
473 | exceeds the limitations in s. 27.5304, or other due process
474 | services creates a substantial hardship for the applicant or the
475 | applicant's family.

476 | 4. Any other relevant financial circumstances of the
477 | applicant or the applicant's family.

478 | (b) Based upon its review, the court shall make one of the
479 | following determinations and, if the applicant is indigent, shall
480 | appoint the a public defender ~~or, if appropriate, private~~
481 | ~~counsel~~:

482 | 1. The applicant is not indigent.

483 | 2. The applicant is indigent.

484 | (5) No funds appropriated to the public defender or the
485 | Justice Administrative Commission shall be expended for costs
486 | incurred by privately retained counsel or a pro se litigant or

487 defendant except as specifically authorized by this chapter and
 488 the public defender.

489 ~~INDIGENT FOR COSTS. A person who is eligible to be represented~~
 490 ~~by a public defender under s. 27.51 but who is represented by~~
 491 ~~private counsel not appointed by the court for a reasonable fee~~
 492 ~~as approved by the court, on a pro bono basis, or who is~~
 493 ~~proceeding pro se, may move the court for a determination that he~~
 494 ~~or she is indigent for costs and eligible for the provision of~~
 495 ~~due process services, as prescribed by ss. 29.006 and 29.007,~~
 496 ~~funded by the state.~~

497 ~~(a) The person must submit to the court:~~

498 ~~1. The completed application prescribed in subsection (1).~~

499 ~~2. In the case of a person represented by counsel, an~~
 500 ~~affidavit attesting to the estimated amount of attorney's fees~~
 501 ~~and the source of payment for these fees.~~

502 ~~(b) In reviewing the motion, the court shall consider:~~

503 ~~1. Whether the applicant applied for a determination of~~
 504 ~~indigent status under subsection (1) and the outcome of such~~
 505 ~~application.~~

506 ~~2. The extent to which the person's income equals or~~
 507 ~~exceeds the income criteria prescribed in subsection (2).~~

508 ~~3. The additional factors prescribed in subsection (4).~~

509 ~~4. Whether the applicant is proceeding pro se.~~

510 ~~5. When the applicant retained private counsel.~~

511 ~~6. The amount of any attorney's fees and who is paying the~~
 512 ~~fees.~~

513 ~~(c) Based upon its review, the court shall make one of the~~
 514 ~~following determinations:~~

515 ~~1. The applicant is not indigent for costs.~~

516 ~~2. The applicant is indigent for costs.~~

517 ~~(d) The provision of due process services based upon a~~

518 ~~determination that a person is indigent for costs under this~~

519 ~~subsection must be effectuated pursuant to a court order, a copy~~

520 ~~of which the clerk shall provide to counsel representing the~~

521 ~~person, or to the person directly if he or she is proceeding pro~~

522 ~~se, for use in requesting payment of due process expenses through~~

523 ~~the Justice Administrative Commission. Counsel representing a~~

524 ~~person declared indigent for costs shall execute the Justice~~

525 ~~Administrative Commission's contract for counsel representing~~

526 ~~persons determined to be indigent for costs.~~

527 (6) DUTIES OF PARENT OR LEGAL GUARDIAN.--A nonindigent

528 parent or legal guardian of an applicant who is a minor or an

529 adult tax-dependent person shall furnish the minor or adult tax-

530 dependent person with the necessary legal services and costs

531 incident to a delinquency proceeding or, upon transfer of such

532 person for criminal prosecution as an adult pursuant to chapter

533 985, a criminal prosecution in which the person has a right to

534 legal counsel under the Constitution of the United States or the

535 Constitution of the State of Florida. The failure of a parent or

536 legal guardian to furnish legal services and costs under this

537 section does not bar the appointment of legal counsel pursuant to

538 this section, s. 27.40, or s. 27.5303. When the public defender,

539 ~~a private court appointed conflict counsel, or a private attorney~~

540 is appointed to represent a minor or an adult tax-dependent

541 person in any proceeding in circuit court or in a criminal

542 proceeding in any other court, the parents or the legal guardian

543 shall be liable for payment of the fees, charges, and costs of

544 the representation even if the person is a minor being tried as

PCB SSC 07-07

ORIGINAL

2007

545 an adult. Liability for the fees, charges, and costs of the
546 representation shall be imposed in the form of a lien against the
547 property of the nonindigent parents or legal guardian of the
548 minor or adult tax-dependent person. The lien is enforceable as
549 provided in s. 27.561 or s. 938.29.

550 (7) FINANCIAL DISCREPANCIES; FRAUD; FALSE INFORMATION.--

551 (a) If the court learns of discrepancies between the
552 application or motion and the actual financial status of the
553 person found to be indigent or indigent for costs, the court
554 shall determine whether the public defender ~~or private attorney~~
555 shall continue representation or whether the authorization for
556 any other due process services previously authorized shall be
557 revoked. The person may be heard regarding the information
558 learned by the court. If the court, based on the information,
559 determines that the person is not indigent or indigent for costs,
560 the court shall order the public defender ~~or private attorney~~ to
561 discontinue representation and revoke the provision of any other
562 authorized due process services.

563 (b) If the court has reason to believe that any applicant,
564 through fraud or misrepresentation, was improperly determined to
565 be indigent or indigent for costs, the matter shall be referred
566 to the state attorney. Twenty-five percent of any amount
567 recovered by the state attorney as reasonable value of the
568 services rendered, including fees, charges, and costs paid by the
569 state on the person's behalf, shall be remitted to the Department
570 of Revenue for deposit into the Grants and Donations Trust Fund
571 within the Justice Administrative Commission. Seventy-five
572 percent of any amount recovered shall be remitted to the
573 Department of Revenue for deposit into the General Revenue Fund.

PCB SSC 07-07

ORIGINAL

2007

574 (c) A person who knowingly provides false information to
 575 the clerk or the court in seeking a determination of indigent
 576 status under this section commits a misdemeanor of the first
 577 degree, punishable as provided in s. 775.082 or s. 775.083.

578 Section 6. Section 27.525, Florida Statutes, is amended to
 579 read:

580 27.525 Indigent Services ~~Criminal Defense~~ Trust Fund.--The
 581 Indigent Services ~~Criminal Defense~~ Trust Fund is hereby created,
 582 to be administered by the Justice Administrative Commission.
 583 Funds shall be credited to the trust fund as provided in s.
 584 27.52, to be used exclusively for indigent services in each
 585 circuit in accordance with this part ~~the purposes set forth~~
 586 ~~therein~~. The Justice Administrative Commission shall account for
 587 these funds on a circuit basis, and appropriations from the fund
 588 shall be proportional to each circuit's collections.

589 Section 7. Subsection (1) of section 27.53, Florida
 590 Statutes, is amended to read:

591 27.53 Appointment of assistants and other staff; method of
 592 payment.--

593 (1) (a) The public defender of each judicial circuit is
 594 authorized to employ and establish, in such numbers as authorized
 595 by the General Appropriations Act, assistant public defenders and
 596 other staff and personnel pursuant to s. 29.006, who shall be
 597 paid from funds appropriated for that purpose.

598 (b) Notwithstanding the provisions of s. 790.01, s. 790.02,
 599 or s. 790.25(2)(a), an investigator employed by a public
 600 defender, while actually carrying out official duties, is
 601 authorized to carry concealed weapons if the investigator
 602 complies with s. 790.25(3)(o). However, such investigators are

PCB SSC 07-07

ORIGINAL

2007

603 not eligible for membership in the Special Risk Class of the
604 Florida Retirement System. Each investigator employed by a public
605 defender shall have full authority to serve any witness subpoena
606 or court order issued, by any court or judge within any judicial
607 circuit served by such public defender, in a criminal case in
608 which such public defender has been appointed.

609 (c) The public defenders of all judicial circuits shall
610 jointly develop a coordinated classification and pay plan which
611 shall be submitted on or before January 1 of each year to the
612 Justice Administrative Commission, the office of the President of
613 the Senate, and the office of the Speaker of the House of
614 Representatives. Such plan shall be developed in accordance with
615 policies and procedures of the Executive Office of the Governor
616 established in s. 216.181.

617 (d) Each assistant public defender appointed by a public
618 defender under this section shall serve at the pleasure of the
619 public defender. ~~Each investigator employed by a public defender~~
620 ~~shall have full authority to serve any witness subpoena or court~~
621 ~~order issued, by any court or judge within the judicial circuit~~
622 ~~served by such public defender, in a criminal case in which such~~
623 ~~public defender has been appointed to represent the accused.~~

624 Section 8. Section 27.5303, Florida Statutes, is amended to
625 read:

626 27.5303 Public defenders; conflict of interest.--

627 (1) ~~(a)~~ If, at any time during the representation of two or
628 more clients ~~defendants~~, a public defender determines that the
629 interests of those clients ~~accused~~ are so adverse or hostile that
630 they cannot all be counseled by members of the public defender or
631 his or her staff practicing within a single unit of his or her

PCB SSC 07-07

ORIGINAL

2007

632 office without conflict of interest, or that none can be
633 counseled by the public defender or his or her staff because of a
634 conflict of interest, then the public defender shall reassign one
635 or more of the clients to the appropriate conflict unit of his or
636 her office. ~~file a motion to withdraw and move the court to~~
637 ~~appoint other counsel. If requested by the Justice Administrative~~
638 ~~Commission, the public defender shall submit a copy of the motion~~
639 ~~to the Justice Administrative Commission at the time it is filed~~
640 ~~with the court. The Justice Administrative Commission shall have~~
641 ~~standing to appear before the court to contest any motion to~~
642 ~~withdraw due to a conflict of interest. The Justice~~
643 ~~Administrative Commission may contract with other public or~~
644 ~~private entities or individuals to appear before the court for~~
645 ~~the purpose of contesting any motion to withdraw due to a~~
646 ~~conflict of interest. The court shall review and may inquire or~~
647 ~~conduct a hearing into the adequacy of the public defender's~~
648 ~~representations regarding a conflict of interest without~~
649 ~~requiring the disclosure of any confidential communications. The~~
650 ~~court shall deny the motion to withdraw if the court finds the~~
651 ~~grounds for withdrawal are insufficient or the asserted conflict~~
652 ~~is not prejudicial to the indigent client. If the court grants~~
653 ~~the motion to withdraw, the court shall appoint one or more~~
654 ~~attorneys to represent the accused.~~

655 (2)(b) Upon its own motion, the court shall notify the
656 appropriate public defender ~~appoint such other counsel~~ when the
657 facts developed upon the face of the record and court files in
658 the case disclose a conflict of interest. The court shall advise
659 the appropriate public defender ~~and clerk of court~~, in writing,
660 ~~with a copy to the Justice Administrative Commission, if so~~

PCB SSC 07-07

ORIGINAL

2007

661 ~~requested by the Justice Administrative Commission, when making~~
662 ~~the motion and appointing one or more attorneys to represent the~~
663 ~~accused. The court shall specify specifically stating the basis~~
664 ~~for the conflict. Upon receipt of such notice, the public~~
665 ~~defender shall resolve the conflict of interest by reassigning~~
666 ~~one or more of the clients to outside counsel or to the conflict~~
667 ~~unit of his or her office.~~

668 ~~(3)(e)~~ In no case shall the court approve a withdrawal by
669 the public defender based solely upon inadequacy of funding or
670 excess workload of the public defender.

671 ~~(4)(d)~~ In determining whether or not there is a conflict of
672 interest, the public defender shall apply the standards contained
673 in the Uniform Standards for Use in Conflict of Interest Cases
674 found in appendix C to the Final Report of the Article V Indigent
675 Services Advisory Board dated January 6, 2004.

676 ~~(2) The court shall appoint conflict counsel pursuant to s.~~
677 ~~27.40. The appointed attorney may not be affiliated with the~~
678 ~~public defender or any assistant public defender in his or her~~
679 ~~official capacity or any other private attorney appointed to~~
680 ~~represent a codefendant. The public defender may not participate~~
681 ~~in case related decisions, performance evaluations, or expense~~
682 ~~determinations in conflict cases.~~

683 ~~(3) Private court appointed counsel shall be compensated as~~
684 ~~provided in s. 27.5304.~~

685 ~~(4)(a) If a defendant is convicted and the death sentence~~
686 ~~is imposed, the appointed attorney shall continue representation~~
687 ~~through appeal to the Supreme Court. The attorney shall be~~
688 ~~compensated as provided in s. 27.5304. If the attorney first~~
689 ~~appointed is unable to handle the appeal, the court shall appoint~~

PCB SSC 07-07

ORIGINAL

2007

690 ~~another attorney and that attorney shall be compensated as~~
691 ~~provided in s. 27.5304.~~

692 ~~(5)(b)~~ The public defender ~~or an attorney appointed~~
693 ~~pursuant to this section~~ may be appointed by the court rendering
694 the judgment imposing the death penalty to represent an indigent
695 defendant who has applied for executive clemency as relief from
696 the execution of the judgment imposing the death penalty.

697 ~~(c)~~ ~~When the appointed attorney in a capital case has~~
698 ~~completed the duties imposed by this section, the attorney shall~~
699 ~~file a written report in the trial court stating the duties~~
700 ~~performed by the attorney and apply for discharge.~~

701 Section 9. Section 27.5304, Florida Statutes, is amended to
702 read:

703 27.5304 Limits on appointed private court-appointed
704 counsel; compensation.--

705 (1) Private ~~court-appointed~~ counsel appointed by a public
706 defender pursuant to this part shall be compensated by the
707 Justice Administrative Commission from the budget allocated to
708 the public defender appointing the counsel in an amount not to
709 exceed the contract between the public defender and the attorney
710 or the fee limits established in this section, whichever is
711 lower. The attorney may also ~~shall~~ be reimbursed for reasonable
712 and necessary expenses in accordance with s. 29.007, subject to
713 limits in the contract between the public defender and the
714 attorney. In no event may payment be made to a private attorney
715 if such payment would exceed the public defender's approved
716 operating budget. If the attorney is representing a defendant
717 ~~charged with more than one offense in the same case, the attorney~~
718 ~~shall be compensated at the rate provided for the most serious~~

PCB SSC 07-07

ORIGINAL

2007

719 ~~offense for which he or she represented the defendant. This~~
720 ~~section does not allow stacking of the fee limits established by~~
721 ~~this section. Private court appointed counsel providing~~
722 ~~representation under an alternative model shall enter into a~~
723 ~~uniform contract with the Justice Administrative Commission and~~
724 ~~shall use the Justice Administrative Commission's uniform~~
725 ~~procedures and forms in support of billing for attorney's fees,~~
726 ~~costs, and related expenses. Failure to comply with the terms of~~
727 ~~the contract for services may result in termination of the~~
728 ~~contract.~~

729 (2) The public defender ~~Justice Administrative Commission~~
730 ~~shall review an intended billing by private court appointed~~
731 ~~counsel for attorney's fees or costs, and shall not approve any~~
732 ~~fee or cost not authorized by the contract or that is excessive.~~
733 ~~If any court finds that an appointed attorney has provided~~
734 ~~incompetent representation, the appointed attorney shall not be~~
735 ~~entitled to further appointments, shall not be entitled to~~
736 ~~payment of costs and fees for the case, shall repay all costs and~~
737 ~~fees already paid for the representation, shall reimburse the~~
738 ~~public defender for the cost of replacement counsel at all~~
739 ~~subsequent hearings or trials, and may be subject to a~~
740 ~~malpractice action by the client pursuant to law. based on a flat~~
741 ~~fee per case for completeness and compliance with contractual,~~
742 ~~statutory, and circuit Article V indigent services committee~~
743 ~~requirements. The commission may approve the intended bill for a~~
744 ~~flat fee per case for payment without approval by the court if~~
745 ~~the intended billing is correct. For all other intended billings,~~
746 ~~prior to filing a motion for an order approving payment of~~
747 ~~attorney's fees, costs, or related expenses, the private court-~~

PCB SSC 07-07

ORIGINAL

2007

748 ~~appointed counsel shall deliver a copy of the intended billing,~~
749 ~~together with supporting affidavits and all other necessary~~
750 ~~documentation, to the Justice Administrative Commission. The~~
751 ~~Justice Administrative Commission shall review the billings,~~
752 ~~affidavit, and documentation for completeness and compliance with~~
753 ~~contractual and statutory requirements. If the Justice~~
754 ~~Administrative Commission objects to any portion of the proposed~~
755 ~~billing, the objection and reasons therefor shall be communicated~~
756 ~~to the private court appointed counsel. The private court~~
757 ~~appointed counsel may thereafter file his or her motion for order~~
758 ~~approving payment of attorney's fees, costs, or related expenses~~
759 ~~together with supporting affidavits and all other necessary~~
760 ~~documentation. The motion must specify whether the Justice~~
761 ~~Administrative Commission objects to any portion of the billing~~
762 ~~or the sufficiency of documentation and shall attach the Justice~~
763 ~~Administrative Commission's letter stating its objection. The~~
764 ~~attorney shall have the burden to prove the entitlement to~~
765 ~~attorney's fees, costs, or related expenses. A copy of the motion~~
766 ~~and attachments shall be served on the Justice Administrative~~
767 ~~Commission at least 5 business days prior to the date of a~~
768 ~~hearing. The Justice Administrative Commission shall have~~
769 ~~standing to appear before the court to contest any motion for~~
770 ~~order approving payment of attorney's fees, costs, or related~~
771 ~~expenses and may participate in a hearing on the motion by use of~~
772 ~~telephonic or other communication equipment unless ordered~~
773 ~~otherwise. The Justice Administrative Commission may contract~~
774 ~~with other public or private entities or individuals to appear~~
775 ~~before the court for the purpose of contesting any motion for~~
776 ~~order approving payment of attorney's fees, costs, or related~~

PCB SSC 07-07

ORIGINAL

2007

777 ~~expenses. The fact that the Justice Administrative Commission has~~
778 ~~not objected to any portion of the billing or to the sufficiency~~
779 ~~of the documentation is not binding on the court. The court~~
780 ~~retains primary authority and responsibility for determining the~~
781 ~~reasonableness of all billings for attorney's fees, costs, and~~
782 ~~related expenses, subject to statutory limitations. Private~~
783 ~~court appointed counsel is entitled to compensation upon final~~
784 ~~disposition of a case, except as provided in subsections (7),~~
785 ~~(8), and (10). Before final disposition of a case, a private~~
786 ~~court appointed counsel may file a motion for fees, costs, and~~
787 ~~related expenses for services completed up to the date of the~~
788 ~~motion in any case or matter in which legal services have been~~
789 ~~provided by the attorney for more than 1 year. The amount~~
790 ~~approved by the court may not exceed 80 percent of the fees~~
791 ~~earned, or costs and related expenses incurred, to date, or an~~
792 ~~amount proportionate to the maximum fees permitted under this~~
793 ~~section based on legal services provided to date, whichever is~~
794 ~~less. The court may grant the motion if counsel shows that~~
795 ~~failure to grant the motion would work a particular hardship upon~~
796 ~~counsel.~~

797 (3) The compensation for representation in a criminal
798 proceeding shall not exceed the following:

799 (a)1. For misdemeanors and juveniles represented at the
800 trial level: \$1,000.

801 2. For noncapital, nonlife felonies represented at the
802 trial level: \$2,500.

803 3. For life felonies represented at the trial level:
804 \$3,000.

PCB SSC 07-07

ORIGINAL

2007

805 4. For capital cases represented at the trial level:
806 \$3,500.

807 5. For representation on appeal: \$2,000.

808 (b) If a death sentence is imposed and affirmed on appeal
809 to the Supreme Court, the appointed attorney shall be allowed
810 compensation, not to exceed \$1,000, for attorney's fees and costs
811 incurred in representing the defendant as to an application for
812 executive clemency, with compensation to be paid out of general
813 revenue from funds budgeted to the Department of Corrections.

814 ~~(4) By January 1 of each year, the Article V Indigent
815 Services Advisory Board shall recommend to the Legislature any
816 adjustments to the compensation provisions of this section.~~

817 ~~(5)(a)~~ If counsel is entitled to receive compensation for
818 representation pursuant to court appointment in a termination of
819 parental rights proceeding under chapter 39, such compensation
820 shall not exceed \$1,000 at the trial level and \$2,500 at the
821 appellate level.

822 (5)(b) Counsel entitled to receive compensation for
823 representation pursuant to court appointment in a proceeding
824 under chapter 384 or chapter 392 shall receive reasonable
825 compensation as fixed by the public defender court making the
826 appointment.

827 (6) A private attorney appointed in lieu of the public
828 defender to represent an indigent defendant may not reassign or
829 subcontract the case to another attorney or allow another
830 attorney to appear at a critical stage of a case except as
831 authorized by the public defender ~~who is not on the registry~~
832 ~~developed under s. 27.40.~~

PCB SSC 07-07

ORIGINAL

2007

833 (7) The public defender may authorize ~~Private court-~~
834 ~~appointed counsel representing a parent in a dependency case that~~
835 ~~is open may submit a request for payment to the Justice~~
836 ~~Administrative Commission at the following~~ in intervals in
837 complex or lengthy cases.+

838 ~~(a) Upon entry of an order of disposition as to the parent~~
839 ~~being represented.~~

840 ~~(b) Upon conclusion of a 12-month permanency review.~~

841 ~~(c) Following a judicial review hearing.~~

842

843 ~~In no case, however, may counsel submit requests under this~~
844 ~~subsection more than once per quarter, unless the court finds~~
845 ~~extraordinary circumstances justifying more frequent submission~~
846 ~~of payment requests.~~

847 (8) The General Appropriations Act may amend the general
848 limits per case provided for in this section. ~~Private court-~~
849 ~~appointed counsel representing an individual in an appeal to a~~
850 ~~district court of appeal or the Supreme Court may submit a~~
851 ~~request for payment to the Justice Administrative Commission at~~
852 ~~the following intervals+.~~

853 ~~(a) Upon the filing of an appellate brief, including, but~~
854 ~~not limited to, a reply brief.~~

855 ~~(b) When the opinion of the appellate court is finalized.~~

856 (9) A public defender may, in extraordinary circumstances,
857 approve a fee in excess of the general limits per case provided
858 for in this section. Extraordinary circumstances will not,
859 however, authorize the public defender to expend monies in excess
860 of the total appropriation for indigent services provided in the
861 General Appropriations Act. The public defenders of the state

PCB SSC 07-07

ORIGINAL

2007

862 shall jointly establish criteria for determining what are
863 extraordinary circumstances. No court shall have jurisdiction to
864 determine what are extraordinary circumstances, nor shall any
865 court order that a public defender find that extraordinary
866 circumstances exist. The question of whether a case or cases
867 present extraordinary circumstances is one of discretion within
868 the limited budgetary authority of a public defender. Private
869 ~~court-appointed counsel may not bill for preparation of invoices~~
870 ~~whether or not the case is paid on the basis of an hourly rate or~~
871 ~~by flat fee.~~

872 (10) ~~The Justice Administrative Commission shall develop a~~
873 ~~schedule to provide partial payment of criminal attorney fees for~~
874 ~~eases that are not resolved within 6 months. The schedule must~~
875 ~~provide that the aggregate payments shall not exceed limits~~
876 ~~established by law. Any partial payment made pursuant to this~~
877 ~~subsection shall not exceed the actual value of services provided~~
878 ~~to date. Any partial payment shall be proportionate to the value~~
879 ~~of services provided based on payment rates included in the~~
880 ~~contract, not to exceed any limit provided by law. A public~~
881 ~~defender that achieves cost savings in the provision of appointed~~
882 counsel services may request that up to 50% of the amount of
883 savings that would otherwise revert be used instead for
884 priorities identified by the public defender. Such requests are
885 subject to review and approval of the Legislative Budget
886 Commission.

887 Section 10. Section 27.561, Florida Statutes, is amended to
888 read:

889 27.561 Effect of nonpayment.--

PCB SSC 07-07

ORIGINAL

2007

890 (1) Whenever a recipient ~~defendant-recipient~~ or parent of a
 891 recipient is ordered to pay attorney's fees or costs, default in
 892 the payment thereof shall be cause for finding the recipient
 893 ~~defendant-recipient~~ or parent of a recipient in contempt of
 894 court, and the court may issue a show cause citation or a warrant
 895 of arrest ~~for the defendant-recipient's or parent's appearance.~~

896 (2) Unless the recipient ~~defendant-recipient~~ or parent of a
 897 recipient shows that default was not attributable to an
 898 intentional refusal to obey the order of the court or to a
 899 failure on his or her part to make a good faith effort to make
 900 the payment, the court may find that the default constitutes
 901 contempt and order him or her committed until the attorney's fees
 902 or costs, or a specified part thereof, are paid or may take any
 903 other action appropriate under the circumstances, including
 904 revocation of probation.

905 (3) If it appears to the satisfaction of the court that the
 906 default in the payment of the attorney's fees or costs is not
 907 contempt, the court may enter an order allowing the recipient
 908 ~~defendant-recipient~~ or parent or a recipient additional time for,
 909 ~~or reducing the amount of,~~ payment ~~or revoking the assessed~~
 910 ~~attorney's fees or costs, or the unpaid portion thereof, in whole~~
 911 ~~or in part.~~

912 Section 11. Section 27.562, Florida Statutes, is amended to
 913 read:

914 27.562 Disposition of funds.--The first \$40 of all funds
 915 collected pursuant to s. 938.29 shall be deposited into the
 916 Indigent ~~Criminal Defense~~ Services Trust Fund pursuant to s.
 917 27.525. The remaining funds collected pursuant to s. 938.29 shall
 918 be distributed as follows:

PCB SSC 07-07

ORIGINAL

2007

919 (1) Twenty-five percent shall be remitted to the Department
 920 of Revenue for deposit into the Justice Administrative
 921 Commission's Indigent ~~Criminal Defense~~ Services Trust Fund.

922 (2) Seventy-five percent shall be remitted to the
 923 Department of Revenue for deposit into the General Revenue Fund.

924
 925 The Justice Administrative Commission shall account for funds
 926 deposited into the Indigent ~~Criminal Defense~~ Services Trust Fund
 927 by circuit. Appropriations from the fund shall be proportional to
 928 each circuit's collections. All judgments entered pursuant to
 929 this part shall be in the name of the state.

930 Section 12. Section 27.58, Florida Statutes, is amended to
 931 read:

932 27.58 Administration of public defender services.--The
 933 public defender of each judicial circuit of the state shall be
 934 the chief administrator of all public defender services
 935 authorized under s. 27.51 within the circuit. The public
 936 defender of each judicial circuit shall also be the chief
 937 administrator of all indigent representation services within the
 938 circuit.

939 Section 13. Section 27.59, Florida Statutes, is amended to
 940 read:

941 27.59 Access to prisoners.--The public defender, ~~defenders~~
 942 ~~and~~ assistant public defenders, and attorneys appointed to
 943 provide indigent services by a public defender pursuant to this
 944 part shall be empowered to inquire of all persons who are
 945 incarcerated in lieu of bond or detained and to tender them
 946 advice and counsel at any time. ~~but~~ The provisions of this

PCB SSC 07-07

ORIGINAL

2007

947 section shall not apply with respect to persons who have engaged
948 private counsel.

949 Section 14. Section 29.007, Florida Statutes, is amended to
950 read:

951 29.007 Court-appointed counsel.--For purposes of
952 implementing s. 14, Art. V of the State Constitution, the
953 elements of court-appointed counsel to be provided from state
954 revenues appropriated by general law are as follows:

955 (1) Private attorneys appointed by the public defender
956 ~~court~~ to handle cases where the defendant is indigent and cannot
957 be represented by the public defender under ss. 27.42 and 27.53.

958 (2) Private attorneys appointed by the public defender
959 ~~court~~ to represent indigents or other classes of litigants in
960 civil proceedings requiring appointed ~~court-appointed~~ counsel in
961 accordance with state and federal constitutional guarantees and
962 federal and state statutes.

963 (3) Reasonable court reporting and transcription services
964 necessary to meet constitutional or statutory requirements,
965 including the cost of transcribing and copying depositions of
966 witnesses and the cost of foreign language and sign-language
967 interpreters and translators.

968 (4) Witnesses, including expert witnesses, summoned to
969 appear for an investigation, preliminary hearing, or trial in a
970 case when the witnesses are summoned on behalf of an indigent,
971 and any other expert witnesses approved by the court.

972 (5) Mental health professionals appointed pursuant to s.
973 394.473 and required in a court hearing involving an indigent,
974 mental health professionals appointed pursuant to s. 916.115(2)
975 and required in a court hearing involving an indigent, and any

976 other mental health professionals required by law for the full
 977 adjudication of any civil case involving an indigent person.

978 (6) Reasonable pretrial consultation fees and costs.

979 (7) Travel expenses reimbursable under s. 112.061

980 reasonably necessary in the performance of constitutional and
 981 statutory responsibilities.

982
 983 Subsections (3), (4), (5), (6), and (7) apply when ~~court-~~
 984 ~~appointed counsel is appointed; when the court determines that~~
 985 ~~the litigant is indigent for costs; or when the litigant is~~
 986 ~~acting pro se and the court determines that the litigant is~~
 987 ~~indigent for costs at the trial or appellate level.~~ This section
 988 applies in any situation in which the court appoints counsel to
 989 protect a litigant's due process rights. ~~The Justice~~
 990 ~~Administrative Commission shall approve uniform contract forms~~
 991 ~~for use in processing payments for due process services under~~
 992 ~~this section. In each case in which a private attorney represents~~
 993 ~~a person determined by the court to be indigent for costs, the~~
 994 ~~attorney shall execute the commission's contract for private~~
 995 ~~attorneys representing persons determined to be indigent for~~
 996 ~~costs.~~

997 Section 15. Section 29.015, Florida Statutes, is amended to
 998 read:

999 29.015 Contingency fund; limitation of authority to
 1000 transfer funds in contracted due process services appropriation
 1001 categories.--

1002 (1) An appropriation may be provided in the General
 1003 Appropriations Act in the ~~Justice Administrative Commission~~
 1004 state courts system to be used solely ~~serve~~ as a contingency fund

1005 for the purpose of alleviating deficits in contracted due process
 1006 services appropriation categories, including private appointed
 1007 ~~court appointed~~ counsel appropriation categories when the trial
 1008 court determines , ~~that may occur from time to time due to~~
 1009 extraordinary events or circumstances of a case that lead have
 1010 led or will lead to unexpected expenditures and that the public
 1011 defender does not have the ability to accommodate the unexpected
 1012 expenditure from within his or her operating budget.

1013 (2) A peer review committee of at least three judges or
 1014 their designees, each from a different circuit, appointed by the
 1015 chief judge of the circuit in which the case was tried, must
 1016 review and approve each expenditure from the contingency fund
 1017 established pursuant to subsection (1). The judge who presided
 1018 over the trial and the chief judge of the affected circuit may
 1019 not be on the peer review committee. The public defender of the
 1020 circuit in which the case was tried must provide to the peer
 1021 review committee all documentation provided to the trial court
 1022 that made the determination pursuant to subsection (1) and any
 1023 other information requested by the peer review committee.

1024 (3)-(2) In the event that a state attorney or public defender
 1025 incurs a deficit in a contracted due process services
 1026 appropriation category, the following steps shall be taken in
 1027 order:

1028 (a) The state attorney or public defender shall first
 1029 attempt to identify surplus funds from other appropriation
 1030 categories within his or her office and submit a budget amendment
 1031 pursuant to chapter 216 to transfer funds from within the office.

1032 (b) In the event that the state attorney or public defender
 1033 is unable to identify surplus funds from within his or her

PCB SSC 07-07

ORIGINAL

2007

1034 office, he or she shall certify this to the Justice
 1035 Administrative Commission along with a complete explanation of
 1036 the circumstances which led to the deficit and steps the office
 1037 has taken to reduce or alleviate the deficit. The Justice
 1038 Administrative Commission shall inquire as to whether any other
 1039 office has surplus funds in its contracted due process services
 1040 appropriation categories which can be transferred to the office
 1041 that is experiencing the deficit. If other offices indicate that
 1042 surplus funds are available within the same appropriation
 1043 category, the Justice Administrative Commission shall transfer
 1044 the amount needed to fund the deficit and notify the Governor and
 1045 the chair and vice chair of the Legislative Budget Commission 14
 1046 days prior to a transfer pursuant to the notice, review, and
 1047 objection provisions of s. 216.177. If funds appropriated for
 1048 this purpose are available in a different budget entity, the
 1049 Justice Administrative Commission shall request a budget
 1050 amendment pursuant to chapter 216.

1051 (c) If no office indicates that surplus funds are available
 1052 to alleviate the deficit, the Justice Administrative Commission
 1053 may request a budget amendment to transfer funds from the
 1054 contingency fund. Such transfers shall be in accordance with all
 1055 applicable provisions of chapter 216 and shall be subject to
 1056 review and approval by the Legislative Budget Commission. The
 1057 Justice Administrative Commission shall submit the documentation
 1058 provided by the office explaining the circumstances that led to
 1059 the deficit and the steps taken by the office and the Justice
 1060 Administrative Commission to identify surplus funds to the
 1061 Legislative Budget Commission.

PCB SSC 07-07

ORIGINAL

2007

1062 ~~(3) In the event that there is a deficit in a statewide~~
 1063 ~~contracted due process services appropriation category provided~~
 1064 ~~for private court appointed counsel necessary due to withdrawal~~
 1065 ~~of the public defender due to an ethical conflict, the following~~
 1066 ~~steps shall be taken in order:~~

1067 ~~(a) The Justice Administrative Commission shall first~~
 1068 ~~attempt to identify surplus funds from other contracted due~~
 1069 ~~process services appropriation categories within the Justice~~
 1070 ~~Administrative Commission and submit a budget amendment pursuant~~
 1071 ~~to chapter 216 to transfer funds from within the commission.~~

1072 ~~(b) In the event that the Justice Administrative Commission~~
 1073 ~~is unable to identify surplus funds from within the commission,~~
 1074 ~~the commission shall inquire of each of the public defenders as~~
 1075 ~~to whether any office has surplus funds in its contracted due~~
 1076 ~~process services appropriations categories which can be~~
 1077 ~~transferred. If any public defender office or offices indicate~~
 1078 ~~that surplus funds are available, the Justice Administrative~~
 1079 ~~Commission shall request a budget amendment to transfer funds~~
 1080 ~~from the office or offices to alleviate the deficit upon~~
 1081 ~~agreement of the contributing office or offices.~~

1082 ~~(c) If no public defender office has surplus funds~~
 1083 ~~available to alleviate the deficit, the Justice Administrative~~
 1084 ~~Commission may request a budget amendment to transfer funds from~~
 1085 ~~the contingency fund. Such transfers shall be in accordance with~~
 1086 ~~all applicable provisions of chapter 216 and shall be subject to~~
 1087 ~~review and approval by the Legislative Budget Commission. The~~
 1088 ~~Justice Administrative Commission shall submit the documentation~~
 1089 ~~provided by the office explaining the circumstances that led to~~
 1090 ~~the deficit and the steps taken by the Justice Administrative~~

1091 ~~Commission to identify surplus funds to the Legislative Budget~~
 1092 ~~Commission.~~

1093 ~~(4) In the event that there is a deficit in a statewide~~
 1094 ~~appropriation category provided for private court appointed~~
 1095 ~~counsel other than for conflict counsel as described in~~
 1096 ~~subsection (3), the following steps shall be taken in order:~~

1097 ~~(a) The Justice Administrative Commission shall first~~
 1098 ~~attempt to identify surplus funds from other contracted due~~
 1099 ~~process services appropriation categories within the Justice~~
 1100 ~~Administrative Commission and submit a budget amendment pursuant~~
 1101 ~~to chapter 216 to transfer funds from within the commission.~~

1102 ~~(b) In the event that the Justice Administrative Commission~~
 1103 ~~is unable to identify surplus funds from within the commission,~~
 1104 ~~the commission may submit a budget amendment to transfer funds~~
 1105 ~~from the contingency fund. Such transfers shall be in accordance~~
 1106 ~~with all applicable provisions of chapter 216 and shall be~~
 1107 ~~subject to review and approval by the Legislative Budget~~
 1108 ~~Commission. The Justice Administrative Commission shall submit~~
 1109 ~~documentation explaining the circumstances that led to the~~
 1110 ~~deficit and the steps taken to identify surplus funds to the~~
 1111 ~~Legislative Budget Commission.~~

1112 ~~(5) Notwithstanding any provisions in chapter 216 to the~~
 1113 ~~contrary, no office shall transfer funds from a contracted due~~
 1114 ~~process services appropriation category or from a contingency~~
 1115 ~~fund category authorized in this section except as specifically~~
 1116 ~~authorized in this section. In addition, funds shall not be~~
 1117 ~~transferred from a state attorney office to alleviate a deficit~~
 1118 ~~in a public defender office and funds shall not be transferred~~

PCB SSC 07-07

ORIGINAL

2007

1119 | from a public defender office to alleviate a deficit in a state
 1120 | attorney office.

1121 | Section 16. Section 29.018, Florida Statutes, is amended to
 1122 | read:

1123 | 29.018 Cost sharing of due-process services; legislative
 1124 | intent.--It is the intent of the Legislature to provide state-
 1125 | funded due-process services to the state courts system, state
 1126 | attorneys, public defenders, and appointed ~~court-appointed~~
 1127 | counsel in the most cost-effective and efficient manner. The
 1128 | state courts system, state attorneys, and public defenders,~~and~~
 1129 | ~~the Justice Administrative Commission on behalf of court-~~
 1130 | ~~appointed counsel~~ may enter into contractual agreements to share,
 1131 | on a pro rata basis, the costs associated with court reporting
 1132 | services, court interpreter and translation services, court
 1133 | experts, and all other due-process services funded by the state
 1134 | pursuant to this chapter. These costs shall be budgeted within
 1135 | the funds appropriated to each of the affected users of services.

1136 | Section 17. Section 29.0185, Florida Statutes, is amended
 1137 | to read:

1138 | 29.0185 Provision of state-funded due process services to
 1139 | individuals; limitation of liability for payment by the Justice
 1140 | Administrative Commission for certain due process costs.--Due
 1141 | process services may not be provided with state revenues to an
 1142 | individual unless the individual on whose behalf the due process
 1143 | services are being provided is eligible for appointed ~~court-~~
 1144 | ~~appointed~~ counsel under s. 27.40, based upon a determination of
 1145 | indigency under s. 27.52, ~~regardless of whether such counsel is~~
 1146 | ~~appointed or the individual on whose behalf the due process~~
 1147 | ~~services are being provided is eligible for court-appointed~~

PCB SSC 07-07

ORIGINAL

2007

1148 ~~counsel under s. 27.40 and has been determined indigent for costs~~
 1149 ~~pursuant to s. 27.52. The Justice Administrative Commission shall~~
 1150 ~~only make payment for appointed counsel and other due process~~
 1151 ~~services authorized by a state attorney or public defender. The~~
 1152 ~~state courts system shall be responsible for the portion of any~~
 1153 ~~payment ordered that is not authorized by a public defender or~~
 1154 ~~state attorney, is in excess of payment rates established by the~~
 1155 ~~contract, is in excess of limits provided for by law, or is not~~
 1156 ~~specifically authorized by law.~~

1157 Section 18. Subsection (2) of section 744.331, Florida
 1158 Statutes is amended to read

1159 744.331 Procedures to determine incapacity.--

1160 (2) ATTORNEY FOR THE ALLEGED INCAPACITATED PERSON.--

1161 ~~(a) When a court appoints an attorney for an alleged~~
 1162 ~~incapacitated person, the court must appoint an attorney who is~~
 1163 ~~included in the attorney registry compiled pursuant to ss. 27.40~~
 1164 ~~and 27.42 by the circuit's Article V indigent services committee.~~
 1165 ~~Appointments must be made on a rotating basis, taking into~~
 1166 ~~consideration conflicts arising under this chapter.~~

1167 ~~(b)~~ The court shall ask the public defender to appoint an
 1168 attorney for each person alleged to be incapacitated in all cases
 1169 involving a petition for adjudication of incapacity. The alleged
 1170 incapacitated person may substitute her or his own attorney for
 1171 the attorney appointed by the public defender. Only if the
 1172 alleged incapacitated person is found to be indigent pursuant to
 1173 s. 27.52 may the public defender may be appointed to represent
 1174 the person or arrange for representation of the person;
 1175 otherwise, any attorney appointed on behalf of the person must be
 1176 paid from the assets of the alleged incapacitated person.

1177 | ~~(b)(e)~~ Any attorney representing an alleged incapacitated
 1178 | person may not serve as guardian of the alleged incapacitated
 1179 | person or as counsel for the guardian of the alleged
 1180 | incapacitated person or the petitioner.

1181 | ~~(c)(d)~~ Effective January 1, 2007, an attorney seeking to be
 1182 | appointed by a court for incapacity and guardianship proceedings
 1183 | must have completed a minimum of 8 hours of education in
 1184 | guardianship. A court may waive the initial training requirement
 1185 | for an attorney who has served as a court-appointed attorney in
 1186 | incapacity proceedings or as an attorney of record for guardians
 1187 | for not less than 3 years.

1188 | Section 19. Subsections (1) and (2) of section 938.29,
 1189 | Florida Statutes, are amended to read:

1190 | 938.29 Legal assistance; lien for payment of attorney's
 1191 | fees or costs.--

1192 | (1) (a) A defendant determined to be guilty of a criminal
 1193 | act by a court or jury or through a plea of guilty or nolo
 1194 | contendere and who has received the assistance of the public
 1195 | defender's office, whether such assistance was provided by an
 1196 | attorney of the public defender or through a private attorney
 1197 | appointed by the public defender, a special assistant public
 1198 | defender, or a conflict attorney shall be liable for payment of
 1199 | attorney's fees and costs. The court shall determine the amount
 1200 | of the obligation. Such costs shall include, but not be limited
 1201 | to, the cost of depositions; cost of transcripts of depositions,
 1202 | including the cost of defendant's copy, which transcripts are
 1203 | certified by the defendant's attorney as having served a useful
 1204 | purpose in the disposition of the case; investigative costs;
 1205 | witness fees; the cost of psychiatric examinations; or other

PCB SSC 07-07

ORIGINAL

2007

1206 reasonable costs specially incurred by the state and the clerk of
 1207 court for the defense of the defendant in criminal prosecutions.
 1208 Costs shall not include expenses inherent in providing a
 1209 constitutionally guaranteed jury trial or expenditures in
 1210 connection with the maintenance and operation of government
 1211 agencies that must be made by the public irrespective of specific
 1212 violations of law. Any costs assessed pursuant to this paragraph
 1213 shall be reduced by any amount assessed against a defendant
 1214 pursuant to s. 938.05.

1215 (b) Upon entering a judgment of conviction, the defendant
 1216 shall be liable to pay the costs in full after the judgment of
 1217 conviction becomes final.

1218 (c) The defendant shall pay the application fee under s.
 1219 27.52(1)(b) and attorney's fees and costs in full or in
 1220 installments, at the time or times specified. The court may order
 1221 payment of the assessed application fee and attorney's fees and
 1222 costs as a condition of probation, of suspension of sentence, or
 1223 of withholding the imposition of sentence. The first \$40 from
 1224 attorney's ~~Attorney's~~ fees and costs collected under this section
 1225 shall be transferred monthly by the clerk to the Department of
 1226 Revenue for deposit into the Indigent Service Trust Fund. All
 1227 remaining attorney's fees and costs collected under this section
 1228 shall be deposited into the General Revenue Fund.

1229 (2)(a) There is created in the name of the state a lien,
 1230 enforceable as hereinafter provided, upon all the property, both
 1231 real and personal, of any person who:

1232 1. Has received any assistance from any public defender of
 1233 the state, from any special assistant public defender, or from
 1234 any appointed ~~conflict~~ attorney; or

PCB SSC 07-07

ORIGINAL

2007

1235 2. Is a parent of an accused minor or an accused adult tax-
1236 dependent person who is being, or has been, represented by any
1237 public defender of the state, by any special assistant public
1238 defender, or by an appointed ~~a conflict~~ attorney.

1239
1240 Such lien constitutes a claim against the defendant-recipient or
1241 parent and his or her estate, enforceable according to law.

1242 (b) A judgment showing the name and residence of the
1243 defendant-recipient or parent shall be recorded in the public
1244 record, without cost, by the clerk of the circuit court in the
1245 county where the defendant-recipient or parent resides and in
1246 each county in which such defendant-recipient or parent then owns
1247 or later acquires any property. Such judgments shall be enforced
1248 on behalf of the state by the clerk of the circuit court of the
1249 county in which assistance was rendered.

1250 Section 20. As to any contract for legal services pursuant
1251 to provisions of part III of chapter 27, Florida Statutes, which
1252 contract was in existence on or before June 30, 2007, the
1253 following shall apply: Attorneys appointed under such contracts
1254 shall complete the representation of clients assigned to them as
1255 of June 30, 2007, through completion of the case; however, no
1256 such appointment shall extend beyond June 30, 2008. As of July
1257 1, 2008, representation of any person pursuant to said part III
1258 shall only be through a contract with the appropriate public
1259 defender. The Justice Administration Commission shall pay fees
1260 earned by attorneys under contracts for appointments that
1261 commenced prior to June 30, 2007, subject to a specific
1262 appropriation in the FY 2007-2008 General Appropriations Act for
1263 payment of such representation. All provisions of said part III

PCB SSC 07-07

ORIGINAL

2007

1264 as they exist on June 30, 2007, shall control such contracts,
 1265 notwithstanding the amendment or repeal of any applicable
 1266 provision by this act. The public defender shall not be liable
 1267 for fees and costs for any attorney appointed prior to July 1,
 1268 2007.

1269 Section 21. If funds appropriated to the Justice
 1270 Administrative Commission for payment of cases pursuant to
 1271 section 21 of this bill are exhausted, any remaining required
 1272 payments shall be made from funds appropriated to the public
 1273 defender of the circuit in which the case was appointed except
 1274 for the portion of payment in excess of payment rates established
 1275 by the contract, in excess of limits provided for by law, or for
 1276 goods or services not specifically authorized by law which shall
 1277 be paid from funds appropriated to the state courts system. The
 1278 state courts system and the public defender may reduce non-
 1279 essential travel, other non-essential expenses and non-essential
 1280 personnel costs in order to eliminate a deficit that would
 1281 otherwise result from payments required by this section.

1282 Section 22. This act shall take effect July 1, 2007.