



Conference Committee on
House Justice Appropriations Subcommittee/Senate Appropriations Subcommittee on
Criminal and Civil Justice

House Offer #1
Implementing Bill

Sunday, March 8, 2020
4:45 p.m.

HOUSE JUSTICE APPROPRIATIONS SUBCOMMITTEE / SENATE APPROPRIATIONS SUBCOMMITTEE ON CRIMINAL AND CIVIL JUSTICE

IMPLEMENTING BILL						
Line	HB 5003	Status	SB 2502	SENATE OFFER #1	HOUSE OFFER #1	Line
5	Section XX. In order to implement Specific Appropriation 707 of the 2020-2021 General Appropriations Act, upon the expiration and reversion of the amendment made to section 1011.80, Florida Statutes, pursuant to section 53 of chapter 2019-116, Laws of Florida, paragraph (c) is added to subsection (8) of section 1011.80, Florida Statutes, to read:	Different	Section XX. In order to implement Specific Appropriation 707 of the 2020-2021 General Appropriations Act, and upon the expiration and reversion of the amendments made by section 52 of chapter 2019-116, Laws of Florida, paragraph (b) of subsection (8) of section 1011.80, Florida Statutes, is amended to read:	Senate	Senate	5
6	1011.80 Funds for operation of workforce education programs.--	Identical	1011.80 Funds for operation of workforce education programs.--			6
7	(8)(c) Notwithstanding paragraph (b), state funds provided for the operation of postsecondary workforce programs may be expended for the education of state inmates with more than 24 months of time remaining on their sentences or federal inmates if funds are specifically appropriated for such purpose in the 2020-2021 General Appropriations Act. This paragraph expires July 1, 2021.	Different	(8)(b) State funds provided for the operation of postsecondary workforce programs may not be expended for the education of state or federal inmates, except to the extent that such funds are specifically appropriated for such purpose in the 2020-2021 General Appropriations Act with more than 24 months of time remaining to serve on their sentences or federal inmates.	Senate	Senate	7
8						8
12						12
16						16
17	Section XX. In order to implement Specific Appropriations 731 through 752, 916 through 1062, and 1083 through 1119 of the 2020-2021 General Appropriations Act, upon the expiration and reversion of the amendments made to section 27.40, F.S. pursuant to section 57 of chapter 2019-116, Laws of Florida, subsection (1), paragraph (a) of subsection (2), paragraph (a) of subsection (3), and subsections (5), (6), and (7) of section 27.40, Florida Statutes, are amended to read:	Different	Section XX. In order to implement Specific Appropriations 731 through 752, 916 through 1062, and 1083 through 1119 of the 2020-2021 General Appropriations Act, and notwithstanding the expiration date in section 57 of chapter 2019-116, Laws of Florida, present subsection (11) of section 27.40, Florida Statutes is renumbered as subsection (12), a new subsection (11) is added to that section, and subsection (1), paragraph (a) of subsection (2), paragraph (a) of subsection (3), and subsections (5), (6), and (7) of that section are reenacted, to read:	Senate	House	17
18	27.40 Court-appointed counsel; circuit registries; minimum requirements; appointment by court.--	Identical	27.40 Court-appointed counsel; circuit registries; minimum requirements; appointment by court.--			18
19	(1) Counsel shall be appointed to represent any individual in a criminal or civil proceeding entitled to court-appointed counsel under the Federal or State Constitution or as authorized by general law. The court shall appoint a public defender to represent indigent persons as authorized in s. 27.51. The office of criminal conflict and civil regional counsel shall be appointed to represent persons in those cases in which provision is made for court-appointed counsel, but <u>only after</u> the public defender <u>has certified to the court in writing that the public defender is unable to provide representation due to a conflict of interest or is not authorized to provide representation. The public defender shall report, in the aggregate, the specific basis of all conflicts of interest certified to the court. On a quarterly basis, the public defender shall submit this information to the Justice Administrative Commission.</u>	Identical	(1) Counsel shall be appointed to represent any individual in a criminal or civil proceeding entitled to court-appointed counsel under the Federal or State Constitution or as authorized by general law. The court shall appoint a public defender to represent indigent persons as authorized in s. 27.51. The office of criminal conflict and civil regional counsel shall be appointed to represent persons in those cases in which provision is made for court-appointed counsel, but only after the public defender has certified to the court in writing that the public defender is unable to provide representation due to a conflict of interest or is not authorized to provide representation. The public defender shall report, in the aggregate, the specific basis of all conflicts of interest certified to the court. On a quarterly basis, the public defender shall submit this information to the Justice Administrative Commission.	Senate	Senate	19

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20	(2)(a) Private counsel shall be appointed to represent persons in those cases in which provision is made for court-appointed counsel but <u>only after the office of criminal conflict and civil regional counsel has been appointed and has certified to the court in writing that the criminal conflict and civil regional counsel is unable to provide representation due to a conflict of interest. The criminal conflict and civil regional counsel shall report, in the aggregate, the specific basis of all conflicts of interest certified to the court. On a quarterly basis, the criminal conflict and civil regional counsel shall submit this information to the Justice Administrative Commission.</u>	Identical	(2)(a) Private counsel shall be appointed to represent persons in those cases in which provision is made for court-appointed counsel but only after the office of criminal conflict and civil regional counsel has been appointed and has certified to the court in writing that the criminal conflict and civil regional counsel is unable to provide representation due to a conflict of interest. The criminal conflict and civil regional counsel shall report, in the aggregate, the specific basis of all conflicts of interest certified to the court. On a quarterly basis, the criminal conflict and civil regional counsel shall submit this information to the Justice Administrative Commission.	Senate	Senate	20
25	3. Is willing to abide by the terms of the contract for services, s. <u>27.5304, and this section.</u>	Identical	3. Is willing to abide by the terms of the contract for services, s. 27.5304, and this section.	Senate	Senate	25
27	(5) The Justice Administrative Commission shall approve uniform contract forms for use in procuring the services of private court-appointed counsel and uniform procedures and forms for use by a court-appointed attorney in support of billing for attorney's fees, costs, and related expenses to demonstrate the attorney's completion of specified duties. <u>Such uniform contracts and forms for use in billing must be consistent with s. 27.5304, s. 216.311, and the General Appropriations Act and must contain the following statement: "The State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature."</u>	Identical	(5) The Justice Administrative Commission shall approve uniform contract forms for use in procuring the services of private court-appointed counsel and uniform procedures and forms for use by a court-appointed attorney in support of billing for attorney's fees, costs, and related expenses to demonstrate the attorney's completion of specified duties. Such uniform contracts and forms for use in billing must be consistent with s. 27.5304, s. 216.311, and the General Appropriations Act and must contain the following statement: "The State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature."	Senate	Senate	27
28	(6) After court appointment, the attorney must immediately file a notice of appearance with the court indicating acceptance of the appointment to represent the defendant <u>and of the terms of the uniform contract as specified in subsection (5).</u>	Identical	(6) After court appointment, the attorney must immediately file a notice of appearance with the court indicating acceptance of the appointment to represent the defendant and of the terms of the uniform contract as specified in subsection (5).	Senate	Senate	28
29	(7)(a) A private attorney appointed by the court from the registry to represent a client is entitled to payment as provided in s. 27.5304 <u>so long as the requirements of subsection (1) and paragraph (2)(a) are met.</u> An attorney appointed by the court who is not on the registry list may be compensated under s. 27.5304 <u>only if the court finds in the order of appointment that there were no registry attorneys available for representation for that case and only if the requirements of subsection (1) and paragraph (2)(a) are met.</u>	Identical	(7)(a) A private attorney appointed by the court from the registry to represent a client is entitled to payment as provided in s. 27.5304 so long as the requirements of subsection (1) and paragraph (2)(a) are met. An attorney appointed by the court who is not on the registry list may be compensated under s. 27.5304 only if the court finds in the order of appointment that there were no registry attorneys available for representation for that case and only if the requirements of subsection (1) and paragraph (2)(a) are met.	Senate	Senate	29

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Line	HB 5003	Status	SB 2502	SENATE OFFER #1	HOUSE OFFER #1	Line
30	(b)1. <u>The flat fee established in s. 27.5304 and the General Appropriations Act shall be presumed by the court to be sufficient compensation.</u> The attorney shall maintain appropriate documentation, including contemporaneous and detailed hourly accounting of time spent representing the client. If the attorney fails to maintain such contemporaneous and detailed hourly records, the attorney waives the right to seek compensation in excess of the flat fee established in s. 27.5304 and the General Appropriations Act. These records and documents are subject to review by the Justice Administrative Commission <u>and audit by the Auditor General</u> , subject to the attorney-client privilege and work-product privilege. The attorney shall maintain the records and documents in a manner that enables the attorney to redact any information subject to a privilege in order to facilitate the commission's review of the records and documents and not to impede such review. The attorney may redact information from the records and documents only to the extent necessary to comply with the privilege. <u>The Justice Administrative Commission shall review such records and shall contemporaneously document such review before authorizing payment to an attorney. Objections by or on behalf of the Justice Administrative Commission to records or documents or to claims for payment by the attorney shall be presumed correct by the court unless the court determines in writing competent and substantial evidence exists to justify overcoming the presumption.</u>	Different	(b)1. The flat fee established in s. 27.5304 and the General Appropriations Act shall be presumed by the court to be sufficient compensation. The attorney shall maintain appropriate documentation, including contemporaneous and detailed hourly accounting of time spent representing the client. If the attorney fails to maintain such contemporaneous and detailed hourly records, the attorney waives the right to seek compensation in excess of the flat fee established in s. 27.5304 and the General Appropriations Act. These records and documents are subject to review by the Justice Administrative Commission and audit by the Auditor General, subject to the attorney-client privilege and work-product privilege. The attorney shall maintain the records and documents in a manner that enables the attorney to redact any information subject to a privilege in order to facilitate the commission's review of the records and documents and not to impede such review. The attorney may redact information from the records and documents only to the extent necessary to comply with the privilege. The Justice Administrative Commission shall review such records and shall contemporaneously document such review before authorizing payment to an attorney. Objections by or on behalf of the Justice Administrative Commission to records or documents or to claims for payment by the attorney shall be presumed correct by the court unless the court determines, in writing, that competent and substantial evidence exists to justify overcoming the presumption.	Senate	Senate	30
31	2. If an attorney fails, refuses, or declines to permit the commission <u>or the Auditor General</u> to review documentation for a case as provided in this paragraph, the attorney waives the right to seek, and the commission may not pay, compensation in excess of the flat fee established in s. 27.5304 and the General Appropriations Act for that case.	Identical	2. If an attorney fails, refuses, or declines to permit the commission or the Auditor General to review documentation for a case as provided in this paragraph, the attorney waives the right to seek, and the commission may not pay, compensation in excess of the flat fee established in s. 27.5304 and the General Appropriations Act for that case.	Senate	Senate	31
32	3. A finding by the commission that an attorney has waived the right to seek compensation in excess of the flat fee established in s. 27.5304 and the General Appropriations Act, as provided in this paragraph, <u>shall be is- presumed to be correct valid, unless the, as determined by a court determines, in writing, that competent and substantial evidence exists to justify overcoming the presumption, the commission's finding is not- supported by competent and substantial evidence.</u>	Different	3. A finding by the commission that an attorney has waived the right to seek compensation in excess of the flat fee established in s. 27.5304 and the General Appropriations Act, as provided in this paragraph, shall be presumed to be correct, unless the court determines, in writing, that competent and substantial evidence exists to justify overcoming the presumption.	Senate	Senate	32
33		Different	<u>(11)(a) The Cross-Jurisdictional Death Penalty Pilot Program is established within the Office of Criminal Conflict and Civil Regional Counsel of the Second Appellate District.</u>	Senate	House	33

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34		Different	<u>(b) If the public defender for the Fifth Judicial Circuit or the Ninth Judicial Circuit is unable to provide representation to an indigent defendant charged with a crime under s. 782.04(1) or s. 790.161(4) to which the provisions of s. 921.141 apply due to a conflict of interest and the Criminal Conflict and Civil Regional Counsel of the Fifth Appellate District is also unable to provide representation for an indigent defendant due to a conflict of interest, the Criminal Conflict and Civil Regional Counsel of the Second Appellate District shall be appointed. If the Criminal Conflict and Civil Regional Counsel of the Second Appellate District is unable to provide representation to an indigent defendant due to a conflict of interest, private counsel shall be appointed as provided pursuant to this chapter.</u>	Senate	House	34
35		Different	<u>(c) The Office of Criminal Conflict and Civil Regional Counsel of the Second Appellate District shall provide a report on the implementation of the Cross-Jurisdictional Death Penalty Pilot Program to the Governor and the chairs of the appropriations committees of the Senate and House of Representatives no later than 30 days after the end of each calendar quarter. The reports must include the number of cases retained, the number of cases conflicted, the estimated cost savings of the program, and any recommendations to improve the program. The Justice Administrative Commission shall provide data to assist with the program.</u>	Senate	House	35
36		Different	<u>(d) This subsection expires June 30, 2021. Notwithstanding the expiration of this subsection, appointments made pursuant to this section before June 30, 2021, shall continue until completion of the case.</u>	Senate	House	36
37						37
38	<u>Section XX. The amendments to s. 27.40(1), (2)(a), (3)(a), (5), (6), and (7), Florida Statutes, made by this act expire July 1, 2021, and the text of those subsections and paragraphs, as applicable, shall revert to that in existence on June 30, 2019, except that any amendments to such text enacted other than by this act shall be preserved and continue to operate to the extent that such amendments are not dependent upon the portions of text which expire pursuant to this section.</u>	Different		Senate	House	38
39						39
40	Section XX. In order to implement Specific Appropriations 731 through 752, 916 through 1062, and 1083 through 1119 of the 2020-2021 General Appropriations Act, upon the expiration and reversion of the amendments made to section 27.5304, Florida Statutes, pursuant to section 59 of chapter 2019-116, Laws of Florida, subsections (1), (3), (7), and (11), paragraphs (a) through (e) of subsection (12), and subsection (13) of section 27.5304, Florida Statutes, are amended to read:	Different	Section XX. In order to implement Specific Appropriations 731 through 752, 916 through 1062, and 1083 through 1119 of the 2020-2021 General Appropriations Act, and notwithstanding the expiration date in section 59 of chapter 2019-116, Laws of Florida, subsections (1), (3), (7), and (11), and paragraphs (a) through (e) of subsection (12) of section 27.5304, Florida Statutes, are reenacted, and subsection (13) of that section is amended, to read:	Senate	Senate	40
41	27.5304 Private court-appointed counsel; compensation; notice.--	Identical	27.5304 Private court-appointed counsel; compensation; notice.--			41

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Line	HB 5003	Status	SB 2502	SENATE OFFER #1	HOUSE OFFER #1	Line
42	(1) Private court-appointed counsel <u>appointed in the manner prescribed in s. 27.40(1) and (2)(a)</u> shall be compensated by the Justice Administrative Commission <u>only</u> as provided in this section and the General Appropriations Act. The flat fees prescribed in this section are limitations on compensation. The specific flat fee amounts for compensation shall be established annually in the General Appropriations Act. The attorney also shall be reimbursed for reasonable and necessary expenses in accordance with s. 29.007. If the attorney is representing a defendant charged with more than one offense in the same case, the attorney shall be compensated at the rate provided for the most serious offense for which he or she represented the defendant. This section does not allow stacking of the fee limits established by this section.	Identical	(1) Private court-appointed counsel appointed in the manner prescribed in s. 27.40(1) and (2)(a) shall be compensated by the Justice Administrative Commission only as provided in this section and the General Appropriations Act. The flat fees prescribed in this section are limitations on compensation. The specific flat fee amounts for compensation shall be established annually in the General Appropriations Act. The attorney also shall be reimbursed for reasonable and necessary expenses in accordance with s. 29.007. If the attorney is representing a defendant charged with more than one offense in the same case, the attorney shall be compensated at the rate provided for the most serious offense for which he or she represented the defendant. This section does not allow stacking of the fee limits established by this section.	Senate	Senate	42
43	(3) The court retains primary authority and responsibility for determining the reasonableness of all billings for attorney fees, costs, and related expenses, subject to statutory limitations <u>and the requirements of s. 27.40(7)</u> . Private court-appointed counsel is entitled to compensation upon final disposition of a case.	Identical	(3) The court retains primary authority and responsibility for determining the reasonableness of all billings for attorney fees, costs, and related expenses, subject to statutory limitations and the requirements of s. 27.40(7). Private court-appointed counsel is entitled to compensation upon final disposition of a case.	Senate	Senate	43
44	(7) Counsel <u>eligible entitled</u> to receive compensation from the state for representation pursuant to court appointment <u>made in accordance with the requirements of s. 27.40(1) and (2)(a)</u> in a proceeding under chapter 384, chapter 390, chapter 392, chapter 393, chapter 394, chapter 397, chapter 415, chapter 743, chapter 744, or chapter 984 shall receive compensation not to exceed the limits prescribed in the General Appropriations Act. <u>Any such compensation must be determined as provided in s. 27.40(7)</u> .	Different	(7) Counsel eligible to receive compensation from the state for representation pursuant to court appointment made in accordance with the requirements of s. 27.40(1) and (2)(a) in a proceeding under chapter 384, chapter 390, chapter 392, chapter 393, chapter 394, chapter 397, chapter 415, chapter 743, chapter 744, or chapter 984 shall receive compensation not to exceed the limits prescribed in the General Appropriations Act. Any such compensation must be determined as provided in s. 27.40(7).	Senate	Senate	44
45	(11) It is the intent of the Legislature that the flat fees prescribed under this section and the General Appropriations Act comprise the full and complete compensation for private court-appointed counsel. It is further the intent of the Legislature that the fees in this section are prescribed for the purpose of providing counsel with notice of the limit on the amount of compensation for representation in particular proceedings <u>and the sole procedure and requirements for obtaining payment for the same</u> .	Identical	(11) It is the intent of the Legislature that the flat fees prescribed under this section and the General Appropriations Act comprise the full and complete compensation for private court-appointed counsel. It is further the intent of the Legislature that the fees in this section are prescribed for the purpose of providing counsel with notice of the limit on the amount of compensation for representation in particular proceedings and the sole procedure and requirements for obtaining payment for the same.	Senate	Senate	45
52	2. The Justice Administrative Commission shall review the billings, affidavit, and documentation for completeness and compliance with contractual and statutory requirements <u>and shall contemporaneously document such review before authorizing payment to an attorney</u> . If the Justice Administrative Commission objects to any portion of the proposed billing, the objection and supporting reasons must be communicated in writing to the private court-appointed counsel. The counsel may thereafter file his or her motion, which must specify whether the commission objects to any portion of the billing or the sufficiency of documentation, and shall attach the commission's letter stating its objection.	Identical	2. The Justice Administrative Commission shall review the billings, affidavit, and documentation for completeness and compliance with contractual and statutory requirements and shall contemporaneously document such review before authorizing payment to an attorney. If the Justice Administrative Commission objects to any portion of the proposed billing, the objection and supporting reasons must be communicated in writing to the private court-appointed counsel. The counsel may thereafter file his or her motion, which must specify whether the commission objects to any portion of the billing or the sufficiency of documentation, and shall attach the commission's letter stating its objection.	Senate	Senate	52

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55	2. <u>Objections by or on behalf of the Justice Administrative Commission to records or documents or to claims for payment by the attorney shall be presumed correct by the court unless the court determines, in writing, that competent and substantial evidence exists to justify overcoming the presumption.</u> The chief judge or single designee shall enter a written order detailing his or her findings and identifying the extraordinary nature of the time and efforts of the attorney in the case which warrant exceeding the flat fee established by this section and the General Appropriations Act.	Identical	2. Objections by or on behalf of the Justice Administrative Commission to records or documents or to claims for payment by the attorney shall be presumed correct by the court unless the court determines, in writing, that competent and substantial evidence exists to justify overcoming the presumption. The chief judge or single designee shall enter a written order detailing his or her findings and identifying the extraordinary nature of the time and efforts of the attorney in the case which warrant exceeding the flat fee established by this section and the General Appropriations Act.	Senate	Senate	55
56	(c) A copy of the motion and attachments shall be served on the Justice Administrative Commission at least <u>20</u> 5 business days before the date of a hearing. The Justice Administrative Commission has standing to appear before the court, <u>and may appear in person or telephonically</u> , including at the hearing under paragraph (b), to contest any motion for an order approving payment of attorney fees, costs, or related expenses and may participate in a hearing on the motion by use of telephonic or other communication equipment. The Justice Administrative Commission may contract with other public or private entities or individuals to appear before the court for the purpose of contesting any motion for an order approving payment of attorney fees, costs, or related expenses. The fact that the Justice Administrative Commission has not objected to any portion of the billing or to the sufficiency of the documentation is not binding on the court.	Different	(c) A copy of the motion and attachments shall be served on the Justice Administrative Commission at least 20 business days before the date of a hearing. The Justice Administrative Commission has standing to appear before the court, and may appear in person or telephonically, including at the hearing under paragraph (b), to contest any motion for an order approving payment of attorney fees, costs, or related expenses and may participate in a hearing on the motion by use of telephonic or other communication equipment. The Justice Administrative Commission may contract with other public or private entities or individuals to appear before the court for the purpose of contesting any motion for an order approving payment of attorney fees, costs, or related expenses. The fact that the Justice Administrative Commission has not objected to any portion of the billing or to the sufficiency of the documentation is not binding on the court.	Senate	Senate	56
58	(e) Any order granting relief under this subsection must be attached to the final request for a payment submitted to the Justice Administrative Commission <u>and must satisfy the requirements of subparagraph (b)2.</u>	Identical	(e) Any order granting relief under this subsection must be attached to the final request for a payment submitted to the Justice Administrative Commission and must satisfy the requirements of subparagraph (b)2.	Senate	Senate	58
59	(13) Notwithstanding the limitation set forth in subsection (5) and for the <u>2020-2021</u> 2018-2019 fiscal year only, the compensation for representation in a criminal proceeding may not exceed the following:	Different	(13) Notwithstanding the limitation set forth in subsection (5) and for the <u>2020-2021</u> 2019-2020 fiscal year only, the compensation for representation in a criminal proceeding may not exceed the following:	Senate	Senate	59
65	(f) This subsection expires July 1, <u>2021</u> 2019 .	Different	(f) This subsection expires July 1, <u>2021</u> 2020 .	Senate	Senate	65
66						66
67						67
68	<u>Section XX. The amendments to s. 27.5304(1), (3), (7), (11), and (12)(a)-(e), Florida Statutes, made by this act expire July 1, 2021, and the text of those subsections and paragraphs, as applicable, shall revert to that in existence on June 30, 2019, except that any amendments to such text enacted other than by this act shall be preserved and continue to operate to the extent that such amendments are not dependent upon the portions of text which expire pursuant to this section.</u>	Different	<u>Section XX. The amendments to s. 27.40(1), (2)(a), (3)(a), (5), (6), and (7), Florida Statutes, and 27.5304(1), (3), (7), (11), and (12)(a)-(e), Florida Statutes, as carried forward from chapter 2019-116, Laws of Florida, by this act, expire July 1, 2021, and the text of those subsections and paragraphs, as applicable, shall revert to that in existence on June 30, 2019, except that any amendments to such text enacted other than by this act shall be preserved and continue to operate to the extent that such amendments are not dependent upon the portions of text which expire pursuant to this section.</u>	Senate	House	68
83						83

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Line	HB 5003	Status	SB 2502	SENATE OFFER #1	HOUSE OFFER #1	Line
84		New	<p>Section XX. The text of ss. (2) of s. 20.316, Florida Statutes, is amended to read: 20.316 Department of Juvenile Justice.--There is created a Department of Juvenile Justice. (2) DEPARTMENT PROGRAMS.--The following programs are established within the Department of Juvenile Justice:</p> <ul style="list-style-type: none"> (a) <u>Accountability and Program Support.</u> (d)(a) Prevention and Victim Services. (c)(b) Intake and Detention. (f)(e) Residential and Correctional Facilities. (e)(d) Probation and Community Corrections. (b)(e) Administration. <p>The secretary may establish assistant secretary positions and a chief of staff position as necessary to administer the requirements of this section.</p>		House	84