

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: SPB 2506

INTRODUCER: For Consideration by the Appropriations Committee

SUBJECT: Compensation for Representation

DATE: February 2, 2016

REVISED: \_\_\_\_\_

ANALYST

Harkness

STAFF DIRECTOR

Kynoch

REFERENCE

ACTION

**Pre-Meeting**

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**I. Summary:**

SPB 2506 modifies compensation limits of fees paid to court-appointed attorneys. The bill conforms the statutes, relating to court-appointed counsel, to the Senate Proposed General Appropriations, SPB 2500, for Fiscal Year 2016-2017. The bill amends section 27.5304, Florida Statutes.

The bill has no fiscal impact per se, but permits the Legislature to increase the fee rates paid to court-appointed attorneys annually.

The bill provides an effective date of July 1, 2016.

**II. Present Situation:**

Pursuant to section 27.51, F.S., the Office of the Public Defender in each judicial circuit is primarily responsible for representing indigent defendants who have been charged or arrested for criminal offenses. If the Office of the Public Defender has a conflict of interest, then the judge appoints the Office of Criminal Conflict and Civil Regional Counsel to provide legal services.<sup>1</sup> If the Office of Criminal Conflict and Civil Regional Counsel has a conflict, then the judge appoints counsel from a registry of private attorneys willing to take these conflict cases.<sup>2</sup> Private court-appointed attorneys are compensated according to a schedule of flat fees listed each year in the General Appropriations Act (GAA). Section 27.5304(1), F.S., requires that the GAA annually set out the actual specific attorney fee. The specific attorney fees listed in the GAA annually may not exceed limits, or caps, established in section 27.5304(5), F.S.

Until 2014, the flat fees paid to private court-appointed counsel had not changed significantly since 1981. In a legislatively-directed report published in 2013, the Office of the State Court Administrator questioned whether the flat fees were adequate or reasonable and recommended

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<sup>1</sup> Section 27.511(5), F.S.

<sup>2</sup> Section 27.40(2)(a), F.S.

rate adjustments.<sup>3</sup> As a result, the 2014 Legislature passed SB 2510, which increased the flat fee statutory caps for noncapital, nonlife felonies, life felonies, capital cases, and appeals cases. The Legislature then adjusted the flat fees for eight case types, shown below, in the General Appropriations Act but did not adjust the fees for the remaining 22 case types.

Case Description	Flat Fee Before SB 2510	Statutory Cap Before SB 2510	Revised Flat Fee
Capital – 1 <sup>st</sup> Degree Murder (Lead/Co-counsel)	\$15,000	\$15,000	\$25,000
Capital – 1 <sup>st</sup> Degree – Death Penalty Waived (Lead Counsel)	\$2,500	\$3,000	\$9,000
Felony Life	\$2,500	\$3,000	\$5,000
Felony Life - RICO	\$2,500	\$3,000	\$9,000
Capital Appeals	\$2,000	\$2,500	\$9,000
Capital Sexual Battery	\$2,000	\$3,000	\$4,000
Felony Punishable by Life – RICO	\$2,000	\$2,500	\$6,000
Felony – 1 <sup>st</sup> Degree - RICO	\$1,500	\$2,500	\$5,000

Flat fees can vary significantly for similar case types. For example, the flat fee paid to an attorney who represents a defendant charged with murder varies depending on the classification, or degree, of the murder charge. Attorneys defending a client charged with capital murder are paid \$25,000 but only \$9,000 if the death penalty is waived. Further, an attorney representing a client charged with second degree murder may only receive a flat fee of \$5,000, the fee for “Felony Life”, or \$2,000 for “Felony – Punishable by Life”.<sup>4</sup>

Murder cases, regardless of the degree, can be complex and time-consuming. For example, murder cases will require more preparatory time for preliminary hearings and motions than other less serious case types. A murder case, regardless of the degree, may have significant discovery requirements, involve numerous witnesses, and may include complex scientific evidence, such as DNA evidence.

**III. Effect of Proposed Changes:**

**Section 1** revises the statutory maximum compensation for court-appointed attorneys handling noncapital, nonlife and life felony cases at the trial level. The changes provide higher compensation maximums for two classes of cases:

Case Type	Current Maximum Fee	Proposed Maximum Fee
Noncapital, nonlife felonies	\$6,000	\$15,000
Life felony cases	\$9,000	\$15,000

These changes give the Legislature more flexibility to change the flat fee payments for felony cases, which are set annually in the GAA. For example, these changes would permit the Legislature to pay a maximum of \$15,000 for all murder cases, regardless of the degree.

<sup>3</sup> Office of the State Court Administrator, *A Study of the Compensation of Private Court-Appointed Conflict Counsel in Criminal Cases in Florida*, January 15, 2013.

<sup>4</sup> Pursuant to s. 782.04(2), “[t]he unlawful killing of a human being, when perpetrated by any act imminently dangerous to another and evincing a depraved mind regardless of human life, although without any premeditated design to effect the death of any particular individual, is murder in the second degree and constitutes a felony of the first degree, punishable by imprisonment for a term of years not exceeding life or as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#).”

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

SPB 2506 increases the statutory maximum compensation for court-appointed attorneys handling selected case types. However, since the actual flat fee rates are established in the GAA, the bill does not have a fiscal impact. The bill will only have a fiscal impact if the Legislature changes the flat fee rates in the GAA.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 27.5304 of the Florida Statutes:

**IX. Additional Information:**

## A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

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