

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 685 Criminal Conflict & Civil Regional Counsels
SPONSOR(S): Criminal Justice & Public Safety Subcommittee, Brannan and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 756

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|--|------------------|---------|--|
| 1) Criminal Justice & Public Safety Subcommittee | 17 Y, 0 N, As CS | Padgett | Hall |
| 2) Justice Appropriations Subcommittee | | | |
| 3) Judiciary Committee | | | |

SUMMARY ANALYSIS

The Office of Criminal Conflict and Civil Regional Counsel (CCCRC) was created by the Legislature in 2007 to provide legal representation to indigent persons that are constitutionally entitled to court-appointed counsel. In representing a defendant in a criminal case, the CCCRC performs similar functions to that of a traditional public defender.

The CCCRC primarily provides representation in three types of cases:

- Criminal cases in which the public defender must withdraw due to a conflict of interest;
- Dependency cases; and
- Involuntary civil commitment cases involving a mentally ill person, sexually violent predator, or a person with developmental disabilities.

CS/HB 685 makes several changes related to the duties of CCCRC to generally align the duties and privileges of CCCRC to that of the public defender, including:

- Authorizing CCCRC to coordinate witness appearances in court proceedings and reimbursing specified witnesses for certain costs.
- Requiring the state attorney to consult CCCRC regarding electronic filing of court documents.
- Removing CCCRC from the Justice Administrative Commission's salary and benefits plan.
- Authorizing the currently serving Regional Counsel to be nominated for reappointment without additional nominations being provided to the Governor.
- Requiring the court to allow a CCCRC attorney to access the courthouse in the same manner as a state attorney or public defender, subject to courthouse security requirements.
- Authorizing CCCRC to access specified dependency, juvenile, investigative and commitment records without the need for court approval.
- Providing CCCRC investigators with a death benefit if the investigator is killed while on duty.
- Explicitly authorizing the court to appoint CCCRC in specified cases if the public defender is required to withdraw due to a conflict of interest.
- Affirming a CCCRC investigator has the authority to carry a concealed weapon without a license.
- Waiving a prerequisite education requirement for CCCRC attorneys in guardianship and incapacity proceedings.
- Waiving the fee for a Florida Department of Law Enforcement criminal history check for a request made by CCCRC.

The bill may have an insignificant fiscal impact on state government.

The bill provides an effective date of July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

The Office of Criminal Conflict and Civil Regional Counsel (CCCRC) was created by the Legislature in 2007 to provide legal representation to indigent persons that are constitutionally entitled to court-appointed counsel.¹ In representing a defendant in a criminal case, the CCCRC performs similar functions to that of a traditional public defender. The CCCRC primarily provides representation in three types of cases:

- Criminal cases in which the public defender must withdraw due to a conflict of interest;
- Dependency cases; and
- Involuntary civil commitment cases involving a mentally ill person, sexually violent predator, or a person with developmental disabilities.

Witnesses Coordination and Reimbursement

Background

Section 27.0065, F.S., provides that each state attorney and public defender is responsible for coordinating court appearances with a witness that has been subpoenaed in a criminal proceeding. Section 92.153, F.S., requires the state attorney and public defender to compensate a disinterested witness² for the costs associated with producing documents relevant to a subpoena or records request.

Effect of Proposed Changes – Witness Coordination

CS/HB 685 adds CCCRC to the entities responsible for coordinating court appearances with a witness in a criminal proceeding, and authorizes a CCCRC to reimburse a disinterested witness for the costs associated with producing documents relevant to a subpoena or records request.

Electronic Filing of Court Documents

Background

Section 27.341, F.S., requires each state attorney to file and receive court documents electronically. The state attorney must consult with the public defender, the clerk of court, the Florida Court Technology Commission, and any authority that governs the operation of a statewide electronic filing portal regarding the electronic filing and receipt of court documents.³

Effect of Proposed Changes – Electronic Filing of Court Documents

The bill adds CCCRC to the specified entities with which the state attorney must consult regarding electronic filing and receipt of court documents.

Regional Counsel Selection Process

Background

¹ Ch. 2007-62, Laws of Fla.

² A “disinterested witness” is a person to whom a summons is issued with respect to documents involving or relating to transactions of others and who has not initiated a proceeding, is not a party to a proceeding, and is not the subject of investigation in a proceeding and who, at the time the summons is issued, is not an officer, employee, accountant, or attorney, or acting as such, for a person who has initiated, is a party to, or is the subject of investigation in a proceeding. S. 92.153(1)(a), F.S.

³ S. 27.341, F.S.

The head of each CCCRC office is known as the regional counsel. The regional counsel is appointed by the Governor for a four year term.⁴ The Supreme Court Judicial Nominating Commission (SCJNC) nominates a list of regional counsel candidates to the Governor.⁵ Under current law, the candidates must include the current regional counsel, if such person is seeking reappointment, and no less than two or more than five other candidates.⁶

Effect of Proposed Changes – Regional Counsel Selection Process

The bill authorizes the SCJNC to nominate the existing regional counsel for reappointment without providing any additional nominations to the Governor. At its discretion, the SCJNC may nominate up to three additional regional counsel candidates for consideration by the Governor. The bill makes the changes to the nomination and appointment process for the Regional Counsels retroactive to the term beginning on October 1, 2019.

CCCRC Classification and Pay Plan

Background

The Justice Administrative Commission (JAC) provides administrative services to state attorneys, public defenders, the CCCRC, the Capital Collateral Regional Counsel, and the guardian ad litem program.⁷ The primary administrative services provided by JAC include accounting, budget, financial services, and human resources.⁸ Although JAC does not supervise or direct the CCCRC, CCCRC employees are subject to the classification and salary and benefits plan of the JAC by statute.⁹ As a result, the CCCRC must seek JAC approval for any variation from the classification and pay plan of JAC, regardless of how minor. The CCCRC offices are required to jointly develop recommended modifications to the classification plan and submit the recommendation to the JAC, the Speaker of the House of Representatives, and the President of the Senate by January 1 of each year.¹⁰

Effect of Proposed Changes – CCCRC Classification and Pay Plan

The bill deletes the requirement that CCCRC is subject to the classification and salary and benefits plan of the JAC, which allows CCCRC greater flexibility to make administrative decisions without first seeking and receiving approval by the JAC. The CCCRC offices are still required to submit a classification and pay plan to JAC, the Speaker of the House, and the President of the Senate by January 1 of each year.

Court Access

Background

Section 30.15(4), F.S., provides the sheriff and chief judge are jointly responsible for security of trial court facilities. The sheriff has authority over the implementation and provision of law enforcement services, and the chief judge has decision-making authority to protect due process rights, such as in the scheduling and conduct of judicial proceedings.¹¹ Employees of the offices of the state attorney and public defender are sometimes provided expedited access when entering court facilities and authorized to avoid security screenings when entering the courthouse.

Effect of Proposed Changes – Court Access

⁴ S. 27.511(3)(a), F.S.

⁵ *Id.*

⁶ *Id.*

⁷ S. 43.16, F.S.

⁸ Justice Administrative Commission, <https://www.justiceadmin.org/> (last visited Mar. 16, 2021).

⁹ S. 27.511(2), F.S.

¹⁰ S. 27.53(4), F.S. The state attorneys and public defenders are required to submit a coordinated classification and pay plan to the JAC, the Speaker of the House, and the President of the Senate by January 1 of each year. Ss. 27.25(1) and 27.53(1), F.S.

¹¹ S. 30.15(4), F.S.

The bill requires a court to allow a CCCRC attorney access to court facilities in the same manner as a state attorney and public defender, subject to existing courthouse security requirements.

Access to Dependency Records

Background

Access to specified court and criminal history records is restricted under Florida law. Section 39.0132, F.S., provides that records of all dependency cases are not subject to inspection by the public, and are only available for inspection by persons deemed by the court to have a proper interest in such records. Current law provides a child, the parents of the child and their attorneys, law enforcement agencies, and the Department of Children and Families have the right to access records of a dependency proceeding.¹²

Effect of Proposed Changes – Access to Dependency Records

The bill adds CCCRC to the list of specified persons or agencies that are authorized to access records in a dependency proceeding. Since CCCRC represents the parents of a child in a dependency case, CCCRC currently has access to records of dependency proceedings as an interested party. The bill clarifies CCCRC's access to records and eliminates ambiguity in the statute that refers generally to the attorney for the parents of the child in a dependency proceeding.

Death Benefits

Background

Specified government employees who serve in a law enforcement or public safety occupation are entitled to certain benefits if the employee is killed in the lawful performance of his or her duties.¹³ Such employees include a law enforcement officer, correctional officer, state attorney investigator, and public defender investigator.¹⁴ The death benefits vary depending on the circumstances in which the employee was killed, and range from \$75,000 to \$225,000.¹⁵

Effective of Proposed Changes – Death Benefits

The bill adds CCCRC investigators to the specified list of law enforcement and public safety employees that are entitled to receive benefits from the state if they are killed while engaged in the lawful performance their duties.

Involuntary Commitment

Background

Chapter 394, part V, provides a procedure for civil commitment proceedings against sexually violent predators. The subject of a civil commitment proceeding is entitled to the assistance of counsel at all adversarial proceedings related to the civil commitment.¹⁶ If the person is indigent, the court is required to appoint the public defender.¹⁷ If the public defender cannot provide representation due to a conflict, the court is required to appoint "other counsel."¹⁸

Effect of Proposed Changes – Involuntary Commitment

¹² S. 39.0132(3), F.S.

¹³ S. 112.19, F.S.

¹⁴ S. 112.19(1)(b), F.S.

¹⁵ S.112.19(2), F.S.

¹⁶ S. 394.916(3), F.S.

¹⁷ *Id.*

¹⁸ *Id.*

The bill specifically authorizes the court to appoint CCCRC to represent a person in civil commitment cases involving a sexually violent predator if the public defender withdraws because of a conflict.

Education Requirements

Background

Section 393.12(5)(a), F.S., requires an attorney appointed by the court to represent a person with a developmental disability who is the subject to an involuntary commitment proceeding to complete eight hours of guardianship training prior to appointment. Similarly, s. 744.331(2)(d), F.S., requires an attorney appointed by the court to represent a person in an incapacity or guardianship proceeding to complete eight hours of guardianship training prior to appointment. The court may waive the requirement for an attorney who has previously served as a court-appointed attorney in an incapacity proceeding or who has been an attorney of record for a guardian for three years or more.¹⁹

Effect of Proposed Changes – Education Requirements

The bill explicitly waives the education requirement for a CCCRC attorney in incapacity and guardianship cases.

CCCRC Investigators – Firearms

Background

A CCCRC investigator is currently authorized to carry a concealed weapon without a permit while carrying out his or her official duties.²⁰ Investigators for the offices of the state attorney, the public defender, and the Capital Collateral Regional Counsel²¹ are also authorized to carry a weapon while performing official duties if they are employed full-time and meet specified firearm training requirements.²²

Effect of Proposed Changes – CCCRC Investigators - Firearms

The bill adds CCCRC investigators to the list of specified persons in s. 790.25(3), F.S., who are authorized to carry a weapon while in the performance of official duties. This does not change current law, but rather includes such authorization in a more appropriate section of law.

Access to Criminal History Records

Background

Section 943.053, F.S., provides a framework for the dissemination of criminal history information by the Florida Department of Law Enforcement (FDLE). CCCRC is currently authorized to access criminal history records online via the FDLE's Internet portal.²³ The portal does not contain criminal history information that is confidential and exempt from public records disclosure, such as a juvenile record.²⁴ The statutory fee to access a criminal history record through the FDLE portal is \$24.²⁵ This fee is waived for criminal history requests by the public defender.²⁶

Effect of Proposed Changes – Access to Criminal History Records

¹⁹ Ss. 393.12 and 744.331(2)(d), F.S.

²⁰ S. 27.53(4), F.S.

²¹ The Capital Collateral Regional Counsel provides for the collateral representation of a person convicted and sentenced to death. S. 27.7001, F.S.

²² S. 790.25(3), F.S.

²³ Florida Department of Law Enforcement, Agency Analysis of 2021 House Bill 685, p.2 (Feb. 16, 2021).

²⁴ *Id.*

²⁵ *Id.*

²⁶ S. 943.053(3)(e), F.S.

The bill waives the statutory fee for FDLE criminal history records requested by CCCRC.

Department of Corrections – Confidential Information

Background

Section 945.10, F.S., provides specified information held by the Department of Corrections (DOC) is confidential and can only be released to certain persons. Such information includes preplea, pretrial intervention, and presentence or postsentence investigative records.²⁷ A public defender representing a defendant is granted access to such records under current law.²⁸

Effect of Proposed Changes - Department of Corrections – Confidential Information

The bill authorizes CCCRC to access a defendant's preplea, pretrial intervention, and presentence or postsentence investigative records held by DOC in the same manner as a public defender.

Department of Corrections – Involuntary Treatment

Background

Section 945.48, F.S., provides a procedure for providing involuntary mental health treatment to an inmate in the custody of DOC. The inmate is entitled to have legal representation at a hearing for involuntary treatment.²⁹ If an inmate is indigent, the court is required to appoint the public defender to represent the inmate or, in the event of a conflict, court-appointed private counsel.³⁰

Effect of Proposed Changes - Department of Corrections – Involuntary Treatment

The bill authorizes a court to appoint CCCRC to represent an inmate in a hearing for involuntary mental health treatment if the public defender is required to withdraw because of a conflict.

Department of Juvenile Justice – Confidential Information

Background

Section 985.045, F.S., provides that records held by the Department of Juvenile Justice (DJJ) are not subject to inspection by the public, and are only available for inspection by persons deemed by the court to have a proper interest in such records. Current law provides a child, the parents of the child and their attorneys, law enforcement agencies, DJJ, DOC, the Florida Commission on Offender Review, JAC, and the public defender have the right to access records held by DJJ.³¹

Effect of Proposed Changes - Department of Juvenile Justice – Confidential Information

The bill adds CCCRC to the list of specified persons that are authorized by statute to access DJJ records, if CCCRC is appearing on behalf of a juvenile in a court proceeding.

The bill provides an effective date of July 1, 2021.

B. SECTION DIRECTORY:

Section 1: Amends s. 27.0065, F.S., relating to witness coordination.

Section 2: Amends s. 27.341, F.S., relating to electronic filing and receipt of court documents.

Section 3: Amends s. 27.511, F.S., relating to offices of criminal conflict and civil regional counsel; legislative intent; qualifications; appointment; duties.

²⁷ S. 945.10(1), F.S.

²⁸ S. 945.10(2)(d), F.S.

²⁹ S. 945.48(3), F.S.

³⁰ *Id.*

³¹ S. 39.0132(3), F.S.

- Section 4:** Amends s. 27.53, F.S., relating to appointment of assistants and other staff; method of payment.
- Section 5:** Amends s. 39.0132, F.S., relating to oaths, records, and confidential information.
- Section 6:** Amends s. 92.153, F.S., relating to production of documents by witnesses; reimbursement of costs.
- Section 7:** Amends s. 112.19, F.S., relating to law enforcement, correctional, and correctional probation officers; death benefits.
- Section 8:** Amends s. 393.12, F.S., relating to capacity; appointment of guardian advocate.
- Section 9:** Amends s. 394.916, F.S., relating to trial; counsel and experts; indigent persons; jury.
- Section 10:** Amends s. 744.331, F.S., relating to procedures to determine incapacity.
- Section 11:** Amends s. 790.25, F.S., relating to lawful ownership, possession, and use of firearms and other weapons.
- Section 12:** Amends s. 943.053, F.S., relating to dissemination of criminal justice information; fees.
- Section 13:** Amends s. 945.10, F.S., relating to confidential information.
- Section 14:** Amends s. 945.48, F.S., relating to rights of inmates provided mental health treatment; procedure for involuntary treatment.
- Section 15:** Amends s. 985.045, F.S., relating to court records.
- Section 16:** Provides an effective date of July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill may have an insignificant fiscal impact on state government by waiving the \$24 statutory fee for criminal history records requested from FDLE and providing a death benefit to CCCRC investigators who are killed while engaged in the lawful performance of their duties.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 16, 2021, the Criminal Justice & Public Safety Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment made the changes to the nomination and appointment process for the Regional Counsels retroactive to the term beginning on October 1, 2019.

This analysis is drafted to the committee substitute as passed by the Criminal Justice & Public Safety Subcommittee.