

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 383 Criminal Conflict and Civil Regional Councils

**SPONSOR(S):** Judiciary Committee, Criminal Justice & Public Safety Subcommittee, Maney

**TIED BILLS:** HB 385 **IDEN./SIM. BILLS:** CS/SB 596

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice & Public Safety Subcommittee	14 Y, 0 N, As CS	Padgett	Hall
2) Appropriations Committee	23 Y, 0 N	Smith	Pridgeon
3) Judiciary Committee	19 Y, 0 N, As CS	Padgett	Kramer

### 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/CS/HB 383 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.
- Changing the number of regional counsel nominations required to be submitted to the Governor.
- Prohibiting a court from appointing CCCRC to jointly represent a defendant who has already retained private counsel.
- Requiring the court to allow a CCCRC attorney to access the courthouse in the same manner as a public defender or assistant public defender, subject to courthouse security requirements.
- Removing CCCRC employees from the Justice Administrative Commission's salary and benefits plan and requiring CCCRC's to jointly develop and subsequently submit a coordinated classification and pay plan to the President of the Senate, Speaker of the House of Representatives, and the JAC by January 1 each year.
- 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.
- Authorizing CCCRC to register a vehicle or vessel under a fictitious name with the Department of Highway Safety and Motor Vehicles and receive a license plate or decal based on such fictitious name.
- Explicitly authorizing the court to appoint CCCRC in specified cases if the public defender is required to withdraw due to a conflict of interest.
- Waiving a prerequisite education requirement for CCCRC attorneys in guardian advocate and incapacity proceedings.
- Waiving the fee for a Florida Department of Law Enforcement criminal history check when the request is made by CCCRC.

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

The bill provides an effective date of July 1, 2022.

# 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.<sup>1</sup> 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 witness<sup>2</sup> for the costs associated with producing documents relevant to a subpoena or records request.

#### Effect of Proposed Changes – Witness Coordination and Reimbursement

CS/CS/HB 383 amends s. 27.0065, F.S., to add CCCRC to the entities responsible for coordinating court appearances with a witness in a criminal proceeding, and amends s. 92.153, F.S., to authorize 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.<sup>3</sup>

#### Effect of Proposed Changes – Electronic Filing of Court Documents

The bill amends s. 27.341, F.S., to add 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

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<sup>1</sup> Ch. 2007-62, Laws of Fla.

<sup>2</sup> 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.

<sup>3</sup> 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.<sup>4</sup> The Supreme Court Judicial Nominating Commission (SCJNC) nominates a list of regional counsel candidates to the Governor.<sup>5</sup> Under current law, the candidates must include the current regional counsel and no less than two or more than five other candidates.<sup>6</sup>

#### Effect of Proposed Changes – Regional Counsel Selection Process

The bill amends s. 27.511, F.S., to authorize 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.

### **Temporary or Simultaneous Appointment of CCCRC**

#### Background

Section 27.51, F.S., prohibits a judge from appointing the public defender to represent a person who is not indigent, even on a temporary basis. A judge is also prohibited from appointing the public defender to simultaneously represent a person in a case where a defendant has already retained private counsel.<sup>7</sup> Section 27.511(7), F.S., similarly prohibits a court from appointing CCCRC to represent a person who is not indigent. However, there is no prohibition on appointing CCCRC to simultaneously represent a defendant who has already retained private counsel.

#### Effect of Proposed Changes – Temporary or Simultaneous Appointment of CCCRC

The bill amends s. 27.511(7), F.S., to prohibit a judge from appointing CCCRC to simultaneously represent a person who has already retained private counsel.

### **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.<sup>8</sup> 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

The bill amends s. 27.511, F.S., to require a court to allow a CCCRC attorney access to court facilities in the same manner as a public defender or assistant public defender, subject to the security requirements of each courthouse.

### **CCCRC Classification and Pay Plan**

#### Background

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<sup>4</sup> S. 27.511(3)(a), F.S.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> S. 27.51(2), F.S.

<sup>8</sup> S. 30.15(4), F.S.

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.<sup>9</sup> The primary administrative services provided by JAC include accounting, budget, financial services, and human resources.<sup>10</sup> 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.<sup>11</sup> As a result, the CCCRC must seek JAC approval for any variation from the classification and pay plan of JAC. 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.<sup>12</sup>

#### Effect of Proposed Changes – CCCRC Classification and Pay Plan

The bill amends s. 27.511, F.S., to delete the requirement that makes CCCRC 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. Under s. 27.53, F.S., the five regional counsels are still required to submit a classification and pay plan to the JAC, the Speaker of the House, and the President of the Senate by January 1 of each year.

### **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, the guardian ad litem, law enforcement agencies, and the Department of Children and Families have the right to access records of a dependency proceeding.<sup>13</sup>

#### Effect of Proposed Changes – Access to Dependency Records

The bill amends s. 39.0132, F.S., to add 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.

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<sup>9</sup> S. 43.16, F.S.

<sup>10</sup> Justice Administrative Commission, <https://www.justiceadmin.org/> (last visited Feb. 8, 2022).

<sup>11</sup> S. 27.511(2), F.S.

<sup>12</sup> 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.

<sup>13</sup> S. 39.0132(3), F.S.

## 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.<sup>14</sup> Such employees include a law enforcement officer, correctional officer, state attorney investigator, and public defender investigator.<sup>15</sup> The death benefits vary depending on the circumstances under which the employee was killed, and range from \$75,000 to \$225,000.<sup>16</sup> CCCRC investigators perform similar duties to that of a public defender investigator, including serving subpoenas, interviewing witnesses, gathering evidence, and conducting after-the-fact crime scene investigations.

### Effective of Proposed Changes – Death Benefits

The bill amends s. 112.19, F.S., to add 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.

## Vehicle Registration under Fictitious Name

### Background

Section 320.025, F.S., authorizes the Department of Highway Safety and Motor Vehicles (DHSMV) to issue a confidential registration certificate and registration license plate or decal under a fictitious name for a motor vehicle or vessel owned or operated by:

- A law enforcement agency of state, county, municipal, or federal government;
- The Attorney General's Medicaid Fraud Control Unit; or
- Any state public defender's office.<sup>17</sup>

To register a motor vehicle or vessel under a fictitious name, the law enforcement agency, Fraud Control Unit, or public defender's office must file a written application with DHSMV affirming the license plate or decal will be used for activities that require concealment of the true owner of the vehicle and listing individuals who are authorized to use the vehicle.<sup>18</sup>

### Effect of Proposed Changes – Vehicle Registration under Fictitious Name

The bill amends s. 320.025, F.S., to authorize CCCRC to register a vehicle or vessel under a fictitious name with DHSMV and receive a license plate or decal based on such fictitious name. The bill provides CCCRC with the same protections and confidentiality enjoyed by a public defender's office, which performs a virtually identical function.

## Education Requirements

### Background

Section 393.12, F.S., authorizes the circuit court to appoint a guardian advocate to represent the interests of a person with a developmental disability if he or she lacks the decision-making ability to do some, but not all, of the tasks necessary to care for his or her person or property, or if the person has voluntarily petitioned for an appointment of a guardian advocate. Within three days of a petition being filed to appoint a guardian advocate, the court is required to appoint an attorney to represent the person with a developmental disability.<sup>19</sup> Under s. 27.511(6)(a), F.S., CCCRC has the primary

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<sup>14</sup> S. 112.19, F.S.

<sup>15</sup> S. 112.19(1)(b), F.S.

<sup>16</sup> S.112.19(2), F.S.

<sup>17</sup> S. 320.025(1), F.S.

<sup>18</sup> *Id.*

<sup>19</sup> S. 393.12(5), F.S.

responsibility for representing persons entitled to court-appointed counsel in guardian advocate proceedings. An attorney appointed by the court to represent a person in a guardian advocate proceeding must complete eight hours of guardianship training prior to appointment, or have served as a court-appointed advocate in guardian advocate proceedings or as an attorney of record for a guardian advocate for at least three years.<sup>20</sup>

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 or to have served as a court-appointed attorney in incapacity proceedings or as an attorney of record for a guardian for at least three years. 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.<sup>21</sup>

#### Effect of Proposed Changes – Education Requirements

The bill amends s. 393.12, F.S., and s. 744.331, F.S., to explicitly waive the education requirement for a CCCRC attorney representing a person in guardian advocate or incapacity and guardianship cases.

### **Involuntary Commitment of Sexually Violent Predators**

#### Background

Chapter 394, F.S., 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.<sup>22</sup> If the person is indigent, the court is required to appoint the public defender.<sup>23</sup> If the public defender cannot provide representation due to a conflict, the court is required to appoint “other counsel.”<sup>24</sup>

#### Effect of Proposed Changes – Involuntary Commitment of Sexually Violent Predators

The bill amends s. 394.916, F.S., to specifically authorize 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.

### **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.<sup>25</sup> The portal does not contain criminal history information that is confidential and exempt from public records disclosure, such as a juvenile record.<sup>26</sup> The statutory fee to access a criminal history record through the FDLE portal is \$24.<sup>27</sup> This fee is waived for criminal history requests by the public defender.<sup>28</sup>

#### Effect of Proposed Changes – Access to Criminal History Records

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<sup>20</sup> S. 393.12(5)(a), F.S.

<sup>21</sup> S. 744.331(2)(d), F.S.

<sup>22</sup> S. 394.916(3), F.S.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> This provision is identical to language in CS/HB 685 (2021) which was previously reviewed by FDLE. Florida Department of Law Enforcement, Agency Analysis of 2021 House Bill 685, p.2 (Feb. 16, 2021).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> S. 943.053(3)(e), F.S.

The bill amends s. 943.053, F.S., to waive the statutory fee for FDLE criminal history records requested by CCCRC and requires FDLE to provide each CCCRC online access to criminal records that are not confidential and exempt from disclosure under ch. 119, F.S. The bill specifies CCCRC is responsible for the costs associated with establishing and maintaining such online access.

## **Department of Corrections – Confidential Information**

### Background

Section 945.10, F.S., provides specified information held by the Department of Corrections (DOC) is confidential and exempt from disclosure as a public record. Such information includes preplea, pretrial intervention, and presentence or postsentence investigative records.<sup>29</sup> A public defender representing a defendant is granted access to such records under current law, except for portions of the records containing a victim's statement or address, or the statement or address of a relative of the victim.<sup>30</sup>

### Effect of Proposed Changes - Department of Corrections – Confidential Information

The bill amends s. 945.10, F.S., to authorize 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.<sup>31</sup> 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.<sup>32</sup>

### Effect of Proposed Changes - Department of Corrections – Involuntary Treatment

The bill amends s. 945.48, F.S., to require a court to appoint CCCRC, instead of private counsel, to represent an inmate in a hearing for involuntary mental health treatment if the public defender is required to withdraw because of a conflict.

## **Juvenile Court Records – Confidential Information**

### Background

Section 985.045, F.S., provides that juvenile court records that are held by the clerk of court 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 authorizes a child who has been alleged to have committed a violation of law and the parents, guardians, or legal custodians of the child and their attorneys, law enforcement agencies, the Department of Juvenile Justice, DOC, the Florida Commission on Offender Review, and JAC to inspect and copy any juvenile records pertaining to the child.<sup>33</sup> Prior to being appointed by the court to represent a juvenile, a public defender is permitted to access the court records of a juvenile on whose behalf he or she is expected to appear in detention or other hearings.<sup>34</sup>

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<sup>29</sup> S. 945.10(1), F.S.

<sup>30</sup> S. 945.10(2)(d), F.S.

<sup>31</sup> S. 945.48(3), F.S.

<sup>32</sup> *Id.*

<sup>33</sup> S. 985.045(2), F.S.

<sup>34</sup> *Id.*

The bill amends s. 984.045, F.S., to authorize CCCRC, prior to being appointed by the court to represent a juvenile, to access the court records of a juvenile on whose behalf they are expected to appear in detention or other hearings in the same manner as a public defender.

**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.

**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. 320.025, F.S., relating to registration certificate and license plate or decal issued under fictitious name; application.

**Section 9:** Amends s. 393.12, F.S., relating to capacity; appointment of guardian advocate.

**Section 10:** Amends s. 394.916, F.S., relating to trial; counsel and experts; indigent persons; jury.

**Section 11:** Amends s. 744.331, F.S., relating to procedures to determine incapacity.

**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:** Reenacts s. 110.123, F.S., relating to state group insurance program.

**Section 17:** Reenacts s. 112.1912, F.S., relating to first responders; death benefits for educational expenses.

**Section 18:** Provides an effective date of July 1, 2022.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

**1. Revenues:**

The bill would have an indeterminate, yet insignificant fiscal impact on revenues deposited into the FDLE Operating Trust Fund by waiving the \$24 statutory fee required by FDLE for criminal history records checks accessed by CCCRC. FDLE states that CCCRC submits relatively few requests through the FDLE's Criminal History Information on the Internet (CCHINet) paid service. As such, FDLE is unable to accurately report any potential loss of revenue.<sup>35</sup>

**2. Expenditures:**

The bill would have an indeterminate, yet positive fiscal impact on CCCRC expenditures by waiving the \$24 statutory fee for criminal history records checks required by FDLE. Additionally, the bill may have an indeterminate, yet negative fiscal impact to state expenditures for providing a death benefit for CCCRC investigators who are killed while engaged in the lawful performance of their duties.

<sup>35</sup> Florida Department of Law Enforcement, Agency Analysis of 2022 House Bill 383, p.3 (Jan. 20, 2022).



**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**D. FISCAL COMMENTS:**

The bill removes CCCRC from the JAC classification and pay plan and authorizes the CCCRC regions to jointly create a separate classification and pay plan that is required to be submitted to the President of the Senate, Speaker of the House of Representatives, and the JAC by January 1 annually. In the event that CCCRC were to reclassify any of the current Regular Class positions to other classifications such as Senior Management Service, state expenditures related to annual Florida Retirement System employer contribution adjustment distributions may increase in future years. However, any such changes to classifications would be subject to annual appropriation by the Legislature.

**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 December 2, 2021, the Criminal Justice & Public Safety Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Moved the prohibition on appointing CCCRC to simultaneously represent a defendant who has already retained a private attorney from a section of statute relating to the duties of a public defender to s. 27.511, F.S., which relates to the duties of the CCCRC, and
- Changed the retroactive date for the regional counsel nomination and appointment process to October, 1, 2019, which aligns with the statutory terms of office for the regional counsels.

On February 8, 2022, the Judiciary Committee adopted an amendment and reported the bill favorably as a committee substitute. The amendment reenacted two provisions of existing statute, ss. 110.123 and 112.1912, F.S., to incorporate the amendment made by the bill to s. 112.19, F.S.

This analysis is drafted to the committee substitute as passed by the Judiciary Committee.