

1 A bill to be entitled

2 An act relating to representation by counsel in
3 hearings on petitions for risk protection orders;
4 amending s. 790.401, F.S.; providing the respondent
5 has the right to be represented by an attorney in a
6 risk protection order proceeding and the right to have
7 an attorney appointed if he or she cannot afford one;
8 authorizing a private counsel who is appointed to
9 represent the respondent in a risk protection order to
10 be compensated; requiring specified notice to a
11 respondent; conforming a provision to changes made by
12 the act; amending s. 27.51, F.S.; authorizing a public
13 defender to represent a person who is named as the
14 respondent in a risk protection order; amending s.
15 27.511, F.S.; authorizing the office of criminal
16 conflict and civil regional counsel to represent a
17 person who is named as the respondent in a risk
18 protection order in specified circumstances;
19 conforming a cross-reference; amending s. 27.5304,
20 F.S.; specifying the compensation for a private
21 counsel who is appointed to represent a respondent in
22 a risk protection order proceeding; conforming cross-
23 references; amending s. 39.815, F.S.; conforming a
24 cross-reference; providing an effective date.

25

26 Be It Enacted by the Legislature of the State of Florida:

27

28 Section 1. Paragraphs (c) and (d) of subsection (2) and
29 paragraphs (a) and (d) of subsection (3) of section 790.401,
30 Florida Statutes, are amended to read:

31 790.401 Risk protection orders.—

32 (2) PETITION FOR A RISK PROTECTION ORDER.—There is created
33 an action known as a petition for a risk protection order.

34 (c) The respondent has a right to be represented by an
35 attorney. If the respondent is indigent and desires
36 representation, the court shall appoint an attorney as provided
37 in s. 27.40. However, such petition for a risk protection order
38 does not require either party to be represented by an attorney.

39 (d) Notwithstanding any other law, attorney fees may not
40 be awarded in any proceeding under this section. However, this
41 paragraph does not preclude a private counsel who is appointed
42 to represent an indigent respondent from being compensated as
43 provided under s. 27.5304.

44 (3) RISK PROTECTION ORDER HEARINGS AND ISSUANCE.—

45 (a) Upon receipt of a petition, the court must order a
46 hearing to be held no later than 14 days after the date of the
47 order and must issue a notice of hearing to the respondent for
48 the same. Such notice of hearing must inform the respondent of
49 his or her right to be represented by an attorney and inform the
50 respondent that if he or she is indigent and desires

51 representation, that an attorney will be appointed as provided
52 in s. 27.40.

53 1. The clerk of the court shall cause a copy of the notice
54 of hearing and petition to be forwarded on or before the next
55 business day to the appropriate law enforcement agency for
56 service upon the respondent as provided in subsection (5).

57 2. The court may, as provided in subsection (4), issue a
58 temporary ex parte risk protection order pending the hearing
59 ordered under this subsection. Such temporary ex parte order
60 must be served concurrently with the notice of hearing and
61 petition as provided in subsection (5).

62 3. The court may conduct a hearing by telephone pursuant
63 to a local court rule to reasonably accommodate a disability or
64 exceptional circumstances. The court must receive assurances of
65 the petitioner's identity before conducting a telephonic
66 hearing.

67 (d) A person, including an officer of the court, who
68 offers evidence or recommendations relating to the cause of
69 action either must present the evidence or recommendations in
70 writing to the court with copies to each party and his or her
71 attorney, if one is retained or appointed, or must present the
72 evidence under oath at a hearing at which all parties are
73 present.

74 Section 2. Paragraphs (e) and (f) of subsection (1) of
75 section 27.51, Florida Statutes, are redesignated as paragraphs

76 (f) and (g), respectively, and a new paragraph (e) is added to
 77 that subsection, to read:

78 27.51 Duties of public defender.—

79 (1) The public defender shall represent, without
 80 additional compensation, any person determined to be indigent
 81 under s. 27.52 and:

82 (e) Named as the respondent in a petition filed before a
 83 circuit court for a risk protection order pursuant to s.
 84 790.401;

85 Section 3. Paragraphs (e), (f), and (g) of subsection (5)
 86 of section 27.511, Florida Statutes, are redesignated as
 87 paragraphs (f), (g), and (h), respectively, subsection (8) of
 88 that section is amended, and a new paragraph (e) is added to
 89 subsection (5) of that section, to read:

90 27.511 Offices of criminal conflict and civil regional
 91 counsel; legislative intent; qualifications; appointment;
 92 duties.—

93 (5) When the Office of the Public Defender, at any time
 94 during the representation of two or more defendants, determines
 95 that the interests of those accused are so adverse or hostile
 96 that they cannot all be counseled by the public defender or his
 97 or her staff without a conflict of interest, or that none can be
 98 counseled by the public defender or his or her staff because of
 99 a conflict of interest, and the court grants the public
 100 defender's motion to withdraw, the office of criminal conflict

101 and civil regional counsel shall be appointed and shall provide
 102 legal services, without additional compensation, to any person
 103 determined to be indigent under s. 27.52, who is:

104 (e) Named as the respondent in a petition filed before a
 105 circuit court for a risk protection order pursuant to s.
 106 790.401;

107 (8) The public defender for the judicial circuit specified
 108 in s. 27.51(4) shall, after the record on appeal is transmitted
 109 to the appellate court by the office of criminal conflict and
 110 civil regional counsel which handled the trial and if requested
 111 by the regional counsel for the indicated appellate district,
 112 handle all circuit court and county court appeals authorized
 113 pursuant to paragraph (5) (g) ~~(5) (f)~~ within the state courts
 114 system and any authorized appeals to the federal courts required
 115 of the official making the request. If the public defender
 116 certifies to the court that the public defender has a conflict
 117 consistent with the criteria prescribed in s. 27.5303 and moves
 118 to withdraw, the regional counsel shall handle the appeal,
 119 unless the regional counsel has a conflict, in which case the
 120 court shall appoint private counsel pursuant to s. 27.40.

121 Section 4. Subsections (6) through (13) of section
 122 27.5304, Florida Statutes, are renumbered as subsections (7)
 123 through (14), respectively, subsection (2) and paragraph (b) of
 124 subsection (11) are amended, and a new subsection (6) is added
 125 to that section, to read:

126 27.5304 Private court-appointed counsel; compensation;
 127 notice.—

128 (2) The Justice Administrative Commission shall review an
 129 intended billing by private court-appointed counsel for attorney
 130 fees based on a flat fee per case for completeness and
 131 compliance with contractual and statutory requirements. The
 132 commission may approve the intended bill for a flat fee per case
 133 for payment without approval by the court if the intended
 134 billing is correct. An intended billing that seeks compensation
 135 for any amount exceeding the flat fee established for a
 136 particular type of representation, as prescribed in the General
 137 Appropriations Act, shall comply with subsections (12) and (13)
 138 ~~subsections (11) and (12)~~.

139 (6) The compensation for representation in a risk
 140 protection order proceeding under s. 790.401 may not exceed
 141 \$1,000.

142 (11) It is the intent of the Legislature that the flat
 143 fees prescribed under this section and the General
 144 Appropriations Act comprise the full and complete compensation
 145 for private court-appointed counsel. It is further the intent of
 146 the Legislature that the fees in this section are prescribed for
 147 the purpose of providing counsel with notice of the limit on the
 148 amount of compensation for representation in particular
 149 proceedings and the sole procedure and requirements for
 150 obtaining payment for the same.

151 (b) If court-appointed counsel is allowed to withdraw from
 152 representation prior to the full performance of his or her
 153 duties through the completion of the case and the court appoints
 154 a subsequent attorney, the total compensation for the initial
 155 and any and all subsequent attorneys may not exceed the flat fee
 156 established under this section and the General Appropriations
 157 Act, except as provided in subsection (13) ~~(12)~~.

158
 159 This subsection constitutes notice to any subsequently appointed
 160 attorney that he or she will not be compensated the full flat
 161 fee.

162 Section 5. Subsection (1) of section 39.815, Florida
 163 Statutes, is amended to read:

164 39.815 Appeal.—

165 (1) Any child, any parent or guardian ad litem of any
 166 child, any other party to the proceeding who is affected by an
 167 order of the court, or the department may appeal to the
 168 appropriate district court of appeal within the time and in the
 169 manner prescribed by the Florida Rules of Appellate Procedure.
 170 The district court of appeal shall give an appeal from an order
 171 terminating parental rights priority in docketing and shall
 172 render a decision on the appeal as expeditiously as possible.
 173 Appointed counsel shall be compensated as provided in s.
 174 27.5304 (7) ~~s. 27.5304(6)~~.

175 Section 6. This act shall take effect July 1, 2024.