

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	_____	(Y/N)
ADOPTED AS AMENDED	_____	(Y/N)
ADOPTED W/O OBJECTION	_____	(Y/N)
FAILED TO ADOPT	_____	(Y/N)
WITHDRAWN	_____	(Y/N)
OTHER		

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1 Committee/Subcommittee hearing bill: Criminal Justice  
 2 Subcommittee

3 Representative Sirois offered the following:

4  
 5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:

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

10 790.401 Risk protection orders.—

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

13 (c) The respondent has a right to be represented by an  
 14 attorney. If the respondent is indigent and desires  
 15 representation, the court shall appoint an attorney as provided

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16 in s. 27.40. However, such petition for a risk protection order  
17 does not require either party to be represented by an attorney.

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

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

24 (a) Upon receipt of a petition, the court must order a  
25 hearing to be held no later than 14 days after the date of the  
26 order and must issue a notice of hearing to the respondent for  
27 the same. Such notice of hearing must inform the respondent of  
28 his or her right to be represented by an attorney and inform the  
29 respondent that if he or she is indigent and desires  
30 representation, that an attorney will be appointed as provided  
31 in s. 27.40.

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

36 2. The court may, as provided in subsection (4), issue a  
37 temporary ex parte risk protection order pending the hearing  
38 ordered under this subsection. Such temporary ex parte order  
39 must be served concurrently with the notice of hearing and  
40 petition as provided in subsection (5).

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41 3. The court may conduct a hearing by telephone pursuant  
42 to a local court rule to reasonably accommodate a disability or  
43 exceptional circumstances. The court must receive assurances of  
44 the petitioner's identity before conducting a telephonic  
45 hearing.

46 (d) A person, including an officer of the court, who  
47 offers evidence or recommendations relating to the cause of  
48 action either must present the evidence or recommendations in  
49 writing to the court with copies to each party and his or her  
50 attorney, if one is retained or appointed, or must present the  
51 evidence under oath at a hearing at which all parties are  
52 present.

53 Section 2. Paragraphs (e) and (f) of subsection (1) of  
54 section 27.51, Florida Statutes, are redesignated as paragraphs  
55 (f) and (g), respectively, and a new paragraph (e) is added to  
56 that subsection, to read:

57 27.51 Duties of public defender.—

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

61 (e) Named as the respondent in a petition filed before a  
62 circuit court for a risk protection order pursuant to s.  
63 790.401;

64 Section 3. Paragraphs (e), (f), and (g) of subsection (5)  
65 of section 27.511, Florida Statutes, are redesignated as

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66 paragraphs (f), (g), and (h), respectively, subsection (8) of  
67 that section is amended, and a new paragraph (e) is added to  
68 subsection (5), to read:

69 27.511 Offices of criminal conflict and civil regional  
70 counsel; legislative intent; qualifications; appointment;  
71 duties.—

72 (5) When the Office of the Public Defender, at any time  
73 during the representation of two or more defendants, determines  
74 that the interests of those accused are so adverse or hostile  
75 that they cannot all be counseled by the public defender or his  
76 or her staff without a conflict of interest, or that none can be  
77 counseled by the public defender or his or her staff because of  
78 a conflict of interest, and the court grants the public  
79 defender's motion to withdraw, the office of criminal conflict  
80 and civil regional counsel shall be appointed and shall provide  
81 legal services, without additional compensation, to any person  
82 determined to be indigent under s. 27.52, who is:

83 (e) Named as the respondent in a petition filed before a  
84 circuit court for a risk protection order pursuant to s.  
85 790.401;

86 (8) The public defender for the judicial circuit specified  
87 in s. 27.51(4) shall, after the record on appeal is transmitted  
88 to the appellate court by the office of criminal conflict and  
89 civil regional counsel which handled the trial and if requested  
90 by the regional counsel for the indicated appellate district,

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91 handle all circuit court and county court appeals authorized  
92 pursuant to paragraph (5) (g) ~~(5) (f)~~ within the state courts  
93 system and any authorized appeals to the federal courts required  
94 of the official making the request. If the public defender  
95 certifies to the court that the public defender has a conflict  
96 consistent with the criteria prescribed in s. 27.5303 and moves  
97 to withdraw, the regional counsel shall handle the appeal,  
98 unless the regional counsel has a conflict, in which case the  
99 court shall appoint private counsel pursuant to s. 27.40.

100 Section 4. Subsections (6) through (13) of section  
101 27.5304, Florida Statutes, are renumbered as subsections (7)  
102 through (14), respectively, subsection (2) and paragraph (b) of  
103 subsection (11) are amended, and a new subsection (6) is added  
104 to that section, to read:

105 27.5304 Private court-appointed counsel; compensation;  
106 notice.—

107 (2) The Justice Administrative Commission shall review an  
108 intended billing by private court-appointed counsel for attorney  
109 fees based on a flat fee per case for completeness and  
110 compliance with contractual and statutory requirements. The  
111 commission may approve the intended bill for a flat fee per case  
112 for payment without approval by the court if the intended  
113 billing is correct. An intended billing that seeks compensation  
114 for any amount exceeding the flat fee established for a  
115 particular type of representation, as prescribed in the General

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116 Appropriations Act, shall comply with subsections (12) and (13)  
117 subsections ~~(11) and (12)~~.

118 (6) The compensation for representation in a risk  
119 protection order proceeding under s. 790.401 may not exceed  
120 \$1,000.

121 (11) It is the intent of the Legislature that the flat  
122 fees prescribed under this section and the General  
123 Appropriations Act comprise the full and complete compensation  
124 for private court-appointed counsel. It is further the intent of  
125 the Legislature that the fees in this section are prescribed for  
126 the purpose of providing counsel with notice of the limit on the  
127 amount of compensation for representation in particular  
128 proceedings and the sole procedure and requirements for  
129 obtaining payment for the same.

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

137  
138 This subsection constitutes notice to any subsequently appointed  
139 attorney that he or she will not be compensated the full flat  
140 fee.

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

143 39.815 Appeal.—

144 (1) Any child, any parent or guardian ad litem of any  
145 child, any other party to the proceeding who is affected by an  
146 order of the court, or the department may appeal to the  
147 appropriate district court of appeal within the time and in the  
148 manner prescribed by the Florida Rules of Appellate Procedure.  
149 The district court of appeal shall give an appeal from an order  
150 terminating parental rights priority in docketing and shall  
151 render a decision on the appeal as expeditiously as possible.  
152 Appointed counsel shall be compensated as provided in s.  
153 27.5304(7) ~~s. 27.5304(6)~~.

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

155

156

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**T I T L E A M E N D M E N T**

157  
158 Remove everything before the enacting clause and insert:

159 An act relating to representation by counsel in  
160 hearings on petitions for risk protection orders;  
161 amending s. 790.401, F.S.; providing the respondent  
162 has the right to be represented by an attorney in a  
163 risk protection order proceeding and the right to have  
164 an attorney appointed if he or she cannot afford one;  
165 authorizing a private counsel who is appointed to

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166 represent the respondent in a risk protection order to  
167 be compensated; requiring specified notice to a  
168 respondent; conforming a provision to changes made by  
169 the bill; amending s. 27.51, F.S.; authorizing a  
170 public defender to represent a person who is named as  
171 the respondent in a risk protection order; amending s.  
172 27.511, F.S.; authorizing the office of criminal  
173 conflict and civil regional counsel to represent a  
174 person who is named as the respondent in a risk  
175 protection order in specified circumstances;  
176 conforming a cross-reference; amending s. 27.5304,  
177 F.S.; specifying the compensation for a private  
178 counsel who is appointed to represent a respondent in  
179 a risk protection order proceeding; conforming cross-  
180 references; amending s. 39.815, F.S.; conforming a  
181 cross-reference; providing an effective date.