

The Florida Bar News - April 15, 2007

Lawmakers work to clean up indigent funding 'mess'

One plan puts PDs in charge of conflict counsel; the other creates regional conflict offices under the auspices of the JAC

By Gary Blankenship

Senior Editor

Key House and Senate panels have taken differing approaches to one of the most important court system questions facing the legislature this year: How to manage legal costs for indigent criminal defendants.

The House Safety and Security Council — working with public defenders — has approved a bill that puts the defenders in charge of conflict counsel, providing interpreters and court reporters, and overseeing other indigent-related costs. Public defenders would assume the duty of representing indigents in dependency cases. They would get an additional \$82 million for handling those functions — and if they can save money through efficiencies, they can use those savings for other office uses.

At the same time, the Senate Criminal Justice and the Senate Criminal and Civil Justice Appropriations committees have “reluctantly” approved a bill that creates five regional offices of conflict and civil counsel. Those offices would be overseen by the Justice Administrative Commission to handle those functions and would have a budget of \$50 million.

Both plans could significantly reduce the role of the private bar in public defender conflict and civil dependency cases.

“This is a work in progress,” said council Chair Rep. Charlie Dean, R-Inverness, as the council passed the House bill on March 21. “We’re rolling our sleeves up and delving into a total mess.”

Dean said changes are likely as the bill makes its way through the lower chamber.

Sen. Victor Crist, R-Tampa, sponsor of the Senate bill and chair of the Criminal and Civil Justice Appropriations Committee, offered a similar appraisal of the upper chamber’s bill.

“Nobody on our committee is enthusiastic about this,” Crist said after the appropriations panel voted on March 28. “We’re embracing it because of budgetary concerns.”

The House bill, PCB SSC 07-07, would place conflict public defender expenses under the control of the public defender instead of special indigent services committees set up in each circuit. And it would give public defenders a new job — representing indigent parties in dependency cases in civil court.

Those costs combined are expected to reach \$93 million this year. Under the proposed bill, public defenders would be given \$83 million for the task, plus a \$2 million contingency fund.

The bill was drawn up after public defenders offered to take on those additional responsibilities, with the understanding they would have the chance to use any savings for other tasks, including representing indigent defendants.

“When we put together our proposal, we were making ourselves available if the legislature decided they preferred the public defenders to handle this responsibility,” said Eighth Circuit Public Defender Rick Parker, chair of the Florida Public Defender Association.

As for the chance to capitalize on savings, “faced with chronic underfunding, any opportunity to improve the base funding for core services is attractive,” Parker said.

While public defenders have only rarely, if ever, handled dependency cases, that shortcoming can be overcome, Parker said.

“I don’t do dependency, I don’t claim to know much about dependency,” he said. “But I am going to hire experts in dependency to handle that responsibility for me.”

The council voted unanimously to support the bill, although some members had reservations, including whether the legislature would follow through with enough funding.

Rep. Yolly Roberson, D-Miami, a former public defender who has done both criminal and dependency cases, expressed concerns that public defenders aren’t equipped to do dependency cases, which she said requires a different expertise.

Rep. Maria Sachs, D-Delray Beach, said she was worried a reduction of private attorneys handling conflict cases would undermine the one-on-one attorney client relationship, adding that it would become “bureaucratized” with fewer private attorneys involved.

Rep. Mark Mahon, R-Jacksonville, said while it’s a new job for public defenders, he thinks they are a logical choice to handle dependency cases.

“I think, fundamentally, public defenders have a duty to the indigent people, and that including not only criminal . . . but dependency services,” he said. “My belief that this is the best bill is based on my belief in the public defenders’ offices.”

Supporters noted the bill gives public defenders flexibility in handling conflict and dependency cases. They can still contract with private attorneys for those services, or they can contract with other public defenders to handle conflicts and hire additional staff for dependency cases. At the public defender association, Parker has heard several public defenders discuss adding staff as the most cost-efficient way to handle dependency matters.

The Senate bill, SB 1088, takes a different approach to conflict and dependency cases. It creates five regional offices, covering the same geographical areas as the state’s district courts of appeal, which, for administrative purposes, would report to the Justice Administrative Commission.

The Supreme Court Judicial Nominating Commission would nominate three candidates for each regional counsel, with the governor making the final appointment for a four-year term. Regional counsel would be authorized to hire staff, including investigators and assistant regional counsel.

Crist said the bill was developed because the Senate budget only has \$50 million to spend on due process and dependency issues. A staff analysis indicated the only way to meet that constraint was to set up a separate agency to handle those duties and reduce dependence on private attorneys.

Attorneys Richard Hersch of Miami and Robert Alex Morris of Tallahassee, representing the Florida Association of Criminal Defense Lawyers, warned the five regional conflict counsel offices would face an overwhelming workload.

Morris said in the Second Circuit, 16 attorneys would have to handle upwards of 3,000 conflict criminal cases per year – and that wouldn’t count dependency cases they would also be expected to handle. Hersch said in Miami-Dade County, six attorneys would be needed just to handle 40 conflict capital cases, leaving only 8.5 full-time positions to handle around 3,900 other conflict cases, involving 25 felony and nine misdemeanor courtrooms.

Sen. Alex Villalobos, R-Miami, noted those statistics understate the workload since a higher percentage of conflict cases tend to go to trial instead of pleading out.

Hersch and Morris recommended the committee focus on a way to contain costs while still utilizing private counsel.

“I don’t know what the solution is. We’re looking at \$50 million [in next year’s budget] versus \$90 million [of costs in this year’s budget],” said Sen. Arthenia Joyner, D-Tampa. “We have to come up with an answer this session.”

Crist welcomed suggested improvements, but said for the moment SB 1088 will proceed through the process. He said the

ultimate resolution may come in the last week of the session in the budget conference committee between the House and Senate. Until then, he said suggestions would be considered and acted on if they are found to be a better solution.

“I can only spend what we’re allocated [by Senate leadership] and I didn’t get enough money [to continue with the present system],” Crist said.

Parker noted that the Justice Administrative Commission estimated that 80 percent of public defender conflicts and dependency cases would be handled by the regional counsel, with the rest going to private attorneys — a substantial reduction in both types of cases handled by private attorneys.

The bills reduce the role of chief judges in appointing conflict counsel and reviewing associated costs, but don’t entirely remove the courts from the process, according to State Courts Administrator Lisa Goodner. The court system had proposed that judges be entirely removed from selecting conflict attorneys or paying due process costs, she added.

In the Senate bill, “the only role they’ve left with the chief judge is appointing the lawyers who go on the registry [from which private attorneys will be appointed to conflict and dependency cases] and to recommend rates for what are termed ‘non-attorney due process providers,’ which means court reporters, expert witnesses, and court interpreters,” Goodner said.

In the House bill, public defenders would exercise all those controls, but courts could still approve costs that are not approved by the public defender, although the funds would come from the court budget, she said.

“Their point is those are due process costs that we would have to absorb within our budget,” Goodner said, noting that neither the House nor Senate have included a line item for those expenses in next year’s proposed court budget.