

1 A bill to be entitled
2 An act relating to criminal proceedings; repealing s.
3 27.703, F.S., relating to conflict of interest and
4 substitute counsel; repealing s. 27.7081, F.S.,
5 relating to capital postconviction public records
6 production; repealing s. 918.19, F.S., relating to the
7 order in which closing arguments are given; repealing
8 s. 922.095, F.S., relating to grounds for a death
9 warrant and limitations of actions; repealing s.
10 922.108, F.S., relating to sentencing orders in
11 capital cases; repealing s. 924.051, F.S., relating to
12 terms and conditions of appeals and collateral review
13 in criminal cases; repealing s. 924.055, F.S.,
14 relating to postconviction review in capital cases;
15 repealing s. 924.056, F.S., relating to commencement
16 of capital postconviction actions for which sentence
17 of death is imposed on or after January 14, 2000, and
18 limitations on actions; repealing s. 924.057, F.S.,
19 relating to limitation on postconviction cases in
20 which the death sentence was imposed before January
21 14, 2000; repealing s. 924.058, F.S., relating to
22 capital postconviction claims; repealing s. 924.059,
23 F.S., relating to time limitations and judicial review
24 in capital postconviction actions; repealing s.
25 924.395, F.S., relating to sanctions in postconviction
26 proceedings; amending s. 925.12, F.S.; deleting
27 provisions relating to legislative intent concerning
28 the adoption of rules concerning acceptance of guilty

29 | pleas and the effect of certain postponements for
 30 | speedy trial purposes; amending s. 948.01, F.S.;
 31 | deleting provisions relating to the development of a
 32 | uniform order of supervision form; amending s. 948.06,
 33 | F.S.; deleting a provision providing for imposition of
 34 | a sanction following revocation of probation or
 35 | parole; amending s. 948.09, F.S.; deleting a provision
 36 | allowing for offenders under supervision to be charged
 37 | for urinalysis testing in certain circumstances;
 38 | deleting a provision providing for payment plans and
 39 | establishment of priority orders for payments;
 40 | amending ss. 27.708, 27.7091, 27.710, 924.055, and
 41 | 985.534, F.S.; conforming provisions to changes made
 42 | by the act; providing an effective date.

43 |
 44 | Be It Enacted by the Legislature of the State of Florida:
 45 |

46 | Section 1. Sections 27.703, 27.7081, 918.19, 922.095,
 47 | 922.108, 924.051, 924.055, 924.056, 924.057, 924.058, 924.059,
 48 | and 924.395, Florida Statutes, are repealed.

49 | Section 2. Subsections (3) and (4) of section 925.12,
 50 | Florida Statutes, are amended to read:

51 | 925.12 DNA testing; defendants entering pleas.—

52 | ~~(3) It is the intent of the Legislature that the Supreme~~
 53 | ~~Court adopt rules of procedure consistent with this section for~~
 54 | ~~a court, prior to the acceptance of a plea, to make an inquiry~~
 55 | ~~into the following matters:~~

56 | ~~(a) Whether counsel for the defense has reviewed the~~

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57 ~~discovery disclosed by the state and whether such discovery~~
58 ~~included a listing or description of physical items of evidence.~~

59 ~~(b) Whether the nature of the evidence against the~~
60 ~~defendant disclosed through discovery has been reviewed with the~~
61 ~~defendant.~~

62 ~~(c) Whether the defendant or counsel for the defendant is~~
63 ~~aware of any physical evidence disclosed by the state for which~~
64 ~~DNA testing may exonerate the defendant.~~

65 ~~(d) Whether the state is aware of any physical evidence~~
66 ~~for which DNA testing may exonerate the defendant.~~

67 ~~(4) It is the intent of the Legislature that the~~
68 ~~postponement of the proceedings by the court on the defendant's~~
69 ~~behalf under subsection (2) constitute an extension attributable~~
70 ~~to the defendant for purposes of the defendant's right to a~~
71 ~~speedy trial.~~

72 Section 3. Subsection (1) of section 948.01, Florida
73 Statutes, is amended to read:

74 948.01 When court may place defendant on probation or into
75 community control.—

76 (1) Any state court having original jurisdiction of
77 criminal actions may at a time to be determined by the court,
78 with or without an adjudication of the guilt of the defendant,
79 hear and determine the question of the probation of a defendant
80 in a criminal case, except for an offense punishable by death,
81 who has been found guilty by the verdict of a jury, has entered
82 a plea of guilty or a plea of nolo contendere, or has been found
83 guilty by the court trying the case without a jury.

84 ~~(a)~~ If the court places the defendant on probation or into

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85 | community control for a felony, the department shall provide
86 | immediate supervision by an officer employed in compliance with
87 | the minimum qualifications for officers as provided in s.
88 | 943.13. A private entity may not provide probationary or
89 | supervision services to felony or misdemeanor offenders
90 | sentenced or placed on probation or other supervision by the
91 | circuit court.

92 | ~~(b) The department, in consultation with the Office of the~~
93 | ~~State Courts Administrator, shall develop and disseminate to the~~
94 | ~~courts uniform order of supervision forms by July 1 of each year~~
95 | ~~or as necessary. The courts shall use the uniform order of~~
96 | ~~supervision forms provided by the department for all persons~~
97 | ~~placed on community supervision.~~

98 | Section 4. Paragraphs (g) and (h) of subsection (2) of
99 | section 948.06, Florida Statutes, are redesignated as paragraphs
100 | (f) and (g), respectively, and present paragraph (f) of that
101 | subsection is amended, to read:

102 | 948.06 Violation of probation or community control;
103 | revocation; modification; continuance; failure to pay
104 | restitution or cost of supervision.—

105 | (2)

106 | ~~(f) Notwithstanding s. 775.082, when a period of probation~~
107 | ~~or community control has been tolled, upon revocation or~~
108 | ~~modification of the probation or community control, the court~~
109 | ~~may impose a sanction with a term that when combined with the~~
110 | ~~amount of supervision served and tolled, exceeds the term~~
111 | ~~permissible pursuant to s. 775.082 for a term up to the amount~~
112 | ~~of the tolled period of supervision.~~

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113 Section 5. Subsections (6) and (7) of section 948.09,
114 Florida Statutes, are amended to read:

115 948.09 Payment for cost of supervision and
116 rehabilitation.—

117 ~~(6) In addition to any other required contributions, the~~
118 ~~department, at its discretion, may require offenders under any~~
119 ~~form of supervision to submit to and pay for urinalysis testing~~
120 ~~to identify drug usage as part of the rehabilitation program.~~
121 ~~Any failure to make such payment, or participate, may be~~
122 ~~considered a ground for revocation by the court, the Parole~~
123 ~~Commission, or the Control Release Authority, or for removal~~
124 ~~from the pretrial intervention program by the state attorney.~~
125 ~~The department may exempt a person from such payment if it~~
126 ~~determines that any of the factors specified in subsection (3)~~
127 ~~exist.~~

128 ~~(7) The department shall establish a payment plan for all~~
129 ~~costs ordered by the courts for collection by the department and~~
130 ~~a priority order for payments, except that victim restitution~~
131 ~~payments authorized under s. 948.03(1)(f) take precedence over~~
132 ~~all other court-ordered payments. The department is not required~~
133 ~~to disburse cumulative amounts of less than \$10 to individual~~
134 ~~payees established on this payment plan.~~

135 Section 6. Subsection (3) of section 27.708, Florida
136 Statutes, is amended to read:

137 27.708 Access to prisoners; compliance with the Florida
138 Rules of Criminal Procedure; records requests.—

139 (3) ~~Except as provided in s. 27.7081, The capital~~
140 collateral regional counsel or contracted private counsel shall

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141 not make any public records request on behalf of his or her
142 client.

143 Section 7. Section 27.7091, Florida Statutes, is amended
144 to read:

145 27.7091 Legislative recommendations to Supreme Court;
146 postconviction proceedings; pro bono service credit.—In the
147 interest of promoting justice and integrity with respect to
148 capital collateral representation, the Legislature recommends
149 that the Supreme Court—

150 ~~(1) Adopt by rule the provisions of s. 924.055, which~~
151 ~~limit the time for postconviction proceedings in capital cases.~~

152 ~~(2)~~ award pro bono service credit for time spent by an
153 attorney in providing legal representation to an individual
154 sentenced to death in this state, regardless of whether the
155 attorney receives compensation for such representation.

156 Section 8. Subsection (5) of section 27.710, Florida
157 Statutes, is amended to read:

158 27.710 Registry of attorneys applying to represent persons
159 in postconviction capital collateral proceedings; certification
160 of minimum requirements; appointment by trial court.—

161 ~~(5) (a) Upon the motion of the capital collateral regional~~
162 ~~counsel to withdraw pursuant to s. 924.056(1) (a); or~~

163 ~~(b)~~ Upon notification by the state attorney or the
164 Attorney General that:

165 (a)1. Thirty days have elapsed since appointment of the
166 capital collateral regional counsel and no entry of appearance
167 has been filed pursuant to s. 924.056; or

168 (b)2. A person under sentence of death who was previously

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169 | represented by private counsel is currently unrepresented in a
170 | postconviction capital collateral proceeding,
171 |
172 | the executive director shall immediately notify the trial court
173 | that imposed the sentence of death that the court must
174 | immediately appoint an attorney, selected from the current
175 | registry, to represent such person in collateral actions
176 | challenging the legality of the judgment and sentence in the
177 | appropriate state and federal courts. The court shall have the
178 | authority to strike a notice of appearance filed by a Capital
179 | Collateral Regional Counsel, if the court finds the notice was
180 | not filed in good faith and may so notify the executive director
181 | that the client is no longer represented by the Office of
182 | Capital Collateral Regional Counsel. In making an assignment,
183 | the court shall give priority to attorneys whose experience and
184 | abilities in criminal law, especially in capital proceedings,
185 | are known by the court to be commensurate with the
186 | responsibility of representing a person sentenced to death. The
187 | trial court must issue an order of appointment which contains
188 | specific findings that the appointed counsel meets the statutory
189 | requirements and has the high ethical standards necessary to
190 | represent a person sentenced to death.

191 | Section 9. Subsection (1) of section 924.055, Florida
192 | Statutes, is amended to read:

193 | 924.055 Postconviction review in capital cases;
194 | legislative findings and intent.—

195 | (1) It is the intent of the Legislature to reduce delays
196 | in capital cases and to ensure that all appeals and

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197 postconviction actions in capital cases are resolved within 5
198 years after the date a sentence of death is imposed in the
199 circuit court. All capital postconviction actions must be filed
200 as early as possible after the imposition of a sentence of death
201 which may be during a direct appeal of the conviction and
202 sentence. A person sentenced to death or that person's capital
203 postconviction counsel must file any postconviction legal action
204 in compliance with the statutes of limitation established ~~in s.~~
205 ~~924.056 and elsewhere~~ in this chapter. ~~Except as expressly~~
206 ~~allowed by s. 924.056(5),~~ A person sentenced to death or that
207 person's capital postconviction counsel may not file more than
208 one postconviction action in a sentencing court and one appeal
209 therefrom to the Florida Supreme Court, unless authorized by
210 law.

211 Section 10. Subsection (1) of section 985.534, Florida
212 Statutes, is amended to read:

213 985.534 Appeal.—

214 (1) An appeal from an order of the court affecting a party
215 to a case involving a child under this chapter may be taken to
216 the appropriate district court of appeal within the time and in
217 the manner prescribed by ~~s. 924.051~~ and the Florida Rules of
218 Appellate Procedure by:

219 (a) Any child, and any parent or legal guardian or
220 custodian of any child.

221 (b) The state, which may appeal from:

- 222 1. An order dismissing a petition or any section thereof;
- 223 2. An order granting a new adjudicatory hearing;
- 224 3. An order arresting judgment;

- 225 4. A ruling on a question of law when the child is
 226 adjudicated delinquent and appeals from the judgment;
 227 5. The disposition, on the ground that it is illegal;
 228 6. A judgment discharging a child on habeas corpus;
 229 7. An order adjudicating a child insane under the Florida
 230 Rules of Juvenile Procedure; and
 231 8. All other preadjudicatory hearings, except that the
 232 state may not take more than one appeal under this subsection in
 233 any case.

234
 235 In the case of an appeal by the state, the notice of appeal
 236 shall be filed by the appropriate state attorney or his or her
 237 authorized assistant under s. 27.18. Such an appeal shall embody
 238 all assignments of error in each preadjudicatory hearing order
 239 that the state seeks to have reviewed. The state shall pay all
 240 costs of the appeal except for the child's attorney's fee.

241 Section 11. This act shall take effect upon becoming a
 242 law.