

By Representatives Crist, Heyman, King, Valdes, Fuller, Sembler, Smith, Minton, Bronson, K. Pruitt, Kelly, Spratt, Bainter, Jones, Littlefield, Boyd, Andrews, Bitner, Mackey, Albright, Feeney, Arnall, Crady, Thrasher, Westbrook, Goode, (Additional Sponsors on Last Printed Page)

1 A bill to be entitled
2 An act relating to counsel in legal proceedings
3 involving persons sentenced to death; creating
4 s. 16.61, F.S.; providing for the Attorney
5 General to be co-counsel of record to assist
6 the state attorney in postconviction capital
7 collateral proceedings in circuit court;
8 amending s. 27.701, F.S.; providing for the
9 office of capital collateral representative to
10 be replaced by three capital collateral
11 regional counsels appointed within regions of
12 the state comprising areas in specified
13 judicial circuits; requiring the Governor to
14 appoint the regional counsels; providing for
15 terms of office; prohibiting a regional counsel
16 from running for or accepting appointment to a
17 state office for a specified period after
18 leaving office; amending s. 27.702, F.S.;
19 specifying the duties of the capital collateral
20 regional counsel; requiring the regional
21 counsel to provide certain reports to the
22 President of the Senate and the Speaker of the
23 House of Representatives; providing for
24 assignment of representation; amending s.
25 27.703, F.S.; providing for the appointment of
26 substitute counsel in instances of conflict of
27 interest; requiring the court to set attorney's
28 fees for such cases; amending s. 27.704, F.S.;
29 authorizing the capital collateral regional
30 counsel to appoint assistant counsel,
31 investigators, and support personnel; providing

1 employment qualifications for certain
2 positions; amending s. 27.705, F.S.; providing
3 for the capital collateral counsel to be paid
4 under the General Appropriations Act; providing
5 for the payment of office and travel expenses;
6 requiring the regional counsel to submit a pay
7 plan each year to the Justice Administrative
8 Commission; amending s. 27.706, F.S.;
9 prohibiting the capital collateral regional
10 counsel and full-time assistants from engaging
11 in the private practice of law; amending s.
12 27.707, F.S.; authorizing investigators
13 employed by the capital collateral regional
14 counsel to serve subpoenas and court orders;
15 amending s. 27.708, F.S.; providing for access
16 to persons sentenced to death who are
17 incarcerated; requiring the regional counsel to
18 approve requests for public records made by
19 assistant counsel or appointed counsel;
20 creating the Joint Legislative Committee on the
21 Administration of Justice in Capital Cases;
22 providing for membership; requiring the joint
23 committee to review the management of the
24 regional offices of capital collateral counsel;
25 requiring that the joint committee hear
26 complaints regarding the practice of any such
27 office; amending s. 924.051, F.S.; limiting
28 collateral and postconviction relief in any
29 capital case to motions that allege newly
30 discovered evidence or a fundamental change in
31 the law; providing for summary dismissal of

1 certain motions unless the motion contains
2 specified sworn statements by the movant's
3 attorney; prohibiting the testimony of an
4 expert witness in any such case unless approved
5 by the court; providing recommendations for the
6 Supreme Court; providing an effective date.

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

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10 Section 1. Section 16.61, Florida Statutes, is created
11 to read:

12 16.61 Assisting state attorneys; capital collateral
13 proceedings.--In postconviction capital collateral proceedings
14 in circuit court, the Attorney General shall be co-counsel of
15 record to assist the state attorney on behalf of the state.

16 Section 2. Section 27.701, Florida Statutes, is
17 amended to read:

18 27.701 Capital collateral regional counsels
19 ~~representative.~~--There is hereby created in the judicial
20 branch of state government three regional offices ~~the office~~
21 of capital collateral counsel. The region in which the
22 northern regional office shall be located shall be composed of
23 the areas within the First, Second, Third, Fourth, Eighth, and
24 Fourteenth Judicial Circuits. The region in which the central
25 regional office shall be located shall be composed of the
26 areas within the Fifth, Sixth, Seventh, Ninth, Tenth, Twelfth,
27 Thirteenth, and Eighteenth Judicial Circuits. The region in
28 which the southern regional office shall be located shall be
29 composed of the areas within the Eleventh, Fifteenth,
30 Sixteenth, Seventeenth, Nineteenth, and Twentieth Judicial
31 Circuits. Each regional office shall be administered by a

1 regional counsel. A regional counsel must representative, the
2 ~~head of which shall be the capital collateral representative~~
3 ~~for the state. The capital collateral representative shall~~
4 ~~be, and must shall~~ have been for the preceding 5 years, a
5 member in good standing of The Florida Bar. Each ~~The~~ capital
6 collateral regional counsel representative shall be appointed
7 by the Governor, and is subject to confirmation by the Senate.
8 The chief circuit judges of each region shall recommend to the
9 Governor qualified candidates for appointment as regional
10 counsel. The Governor shall appoint a regional counsel from
11 among the recommendations, or, if it is in the best interest
12 of the fair administration of justice in capital cases, the
13 Governor may appoint a regional counsel whose name has not
14 been recommended by a chief judge. Each capital collateral
15 counsel shall be appointed to a term of 2 years., ~~from three~~
16 ~~or more nominations submitted by any or all elected public~~
17 ~~defenders and shall serve a term of 4 years. Six months prior~~
18 ~~to the end of any such term, the Governor shall accept~~
19 ~~nominations from any or all elected public defenders for the~~
20 ~~office of capital collateral representative for the next~~
21 ~~succeeding term and may appoint the incumbent or any other~~
22 ~~nominated person for the next succeeding term.~~ Vacancies in
23 the office of capital collateral regional counsel
24 ~~representative~~ shall be filled in the same manner as
25 appointments. A person appointed as a regional counsel may
26 not run ~~capital collateral representative is prohibited from~~
27 ~~running~~ for or accept ~~accepting~~ appointment to any state
28 office for ~~a period of~~ 2 years following vacation of office.
29 ~~The principal office of the capital collateral representative~~
30 ~~shall be located in Tallahassee. The capital collateral~~
31 ~~representative may establish such branch offices as may, in~~

1 ~~his or her discretion, be warranted to fulfill statutory~~
2 ~~duties herein.~~

3 Section 3. Section 27.702, Florida Statutes, 1996
4 Supplement, is amended to read:

5 27.702 Duties of the capital collateral regional
6 counsel; reports ~~representative~~.--

7 (1) The capital collateral regional counsel
8 ~~representative~~ shall represent, ~~without additional~~
9 ~~compensation,~~ each person convicted and sentenced to death in
10 a circuit located in the counsel's region in this state for
11 the purpose of instituting and prosecuting collateral actions
12 challenging the legality of the judgment and sentence imposed
13 against such person in the state courts, federal courts in
14 this state, the United States Court of Appeals for the
15 Eleventh Circuit, and the United States Supreme Court.
16 Representation by the regional counsel ~~capital collateral~~
17 ~~representative~~ shall commence automatically upon termination
18 of direct appellate proceedings in state or federal courts.
19 Within 91 days after the date the Supreme Court issues a
20 mandate on a direct appeal or the United States Supreme Court
21 denies a petition for certiorari, whichever is later, the
22 capital collateral regional counsel ~~representative~~ shall file
23 a notice of appearance in the trial court in which the
24 judgment and sentence were entered and shall secure all
25 direct-appeal files for collateral representation. Upon
26 receipt of files from the public defender or other counsel,
27 the capital collateral regional counsel ~~representative~~ shall
28 assign each such case to personnel in his or her office or
29 other assigned personnel for investigation, client contact,
30 and any ~~such~~ further action ~~as~~ the circumstances ~~may~~ warrant.
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1 (2) The capital collateral regional counsel
2 ~~representative~~ shall represent or assign representation for
3 each person convicted and sentenced to death within the region
4 ~~in this state~~ in collateral postconviction proceedings, unless
5 a court appoints or permits other counsel to appear as counsel
6 of record.

7 (3) The capital collateral regional counsel
8 ~~representative~~ shall file motions seeking compensation for
9 representation and reimbursement for expenses pursuant to 18
10 U.S.C. s. 3006A when providing representation to indigent
11 persons in the federal courts, and shall deposit all such
12 payments received into the Capital Collateral Trust Fund
13 established for such purpose.

14 (4) Each capital collateral regional counsel shall
15 provide a quarterly report to the President of the Senate and
16 the Speaker of the House of Representatives which details the
17 number of hours worked by investigators and legal counsel and
18 the amounts expended during the proceeding quarter in
19 investigating and litigating capital collateral cases.

20 Section 4. Section 27.703, Florida Statutes, 1996
21 Supplement, is amended to read:

22 27.703 Conflict of interest and substitute counsel.--

23 (1) If, at any time during the representation of two
24 or more persons, the capital collateral regional counsel
25 ~~representative~~ determines that the interests of those persons
26 are so adverse or hostile that they cannot all be counseled by
27 the regional counsel ~~capital collateral representative~~ or his
28 or her staff without conflict of interest, the sentencing
29 court shall, upon application therefor by the regional
30 counsel, appoint another capital collateral regional counsel
31 or, if necessary, a public defender or, if necessary, capital

1 ~~collateral representative~~ appoint one or more members of The
2 Florida Bar to represent one or more of such persons.

3 (2) Appointed private capital collateral counsel in
4 case of conflict of interest shall be paid from funds
5 appropriated to the Justice Administrative Commission. The
6 court shall set standard fees for appointed counsel which must
7 reflect:

8 (a) The complexity of the legal issues of the case.

9 (b) The geographic area where the legal representation
10 is provided.

11 (c) The amount of experience necessary to provide the
12 quality of legal representation required.

13 (d) Any other factors deemed appropriate by the court.

14 Section 5. Section 27.704, Florida Statutes, is
15 amended to read:

16 27.704 Appointment of assistants and other staff;
17 method of payments.--Each capital collateral regional counsel
18 may:

19 ~~(1) The capital collateral representative is~~
20 ~~authorized to~~ Appoint, employ, and establish, in such numbers
21 as he or she determines shall determine, full-time or
22 part-time assistant counsel ~~capital collateral~~
23 ~~representatives~~, investigators, and other clerical and support
24 personnel who shall be paid from funds appropriated for that
25 purpose. A full-time, part-time, or privately-contracted
26 assistant capital collateral counsel must ~~representatives~~
27 ~~shall be a member~~ members in good standing of The Florida Bar,
28 with not less than 3 ~~2~~ years' experience in the practice of
29 criminal law, and, prior to employment, must have conducted at
30 least five felony jury trials, five felony appeals, or five
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1 capital postconviction evidentiary hearings or any combination
2 of at least five of such proceedings.

3 (2) Contract with qualified private counsel who are
4 members in good standing of The Florida Bar or with public
5 defenders in order to provide prompt and cost-effective
6 representation for individuals who are sentenced to death in
7 this state.

8 (3)~~(2)~~ The capital collateral representative is
9 authorized to Appoint part-time assistant counsel capital
10 collateral representatives, who must ~~shall~~ be members in good
11 standing of The Florida Bar, and who shall serve without
12 compensation at the discretion of the capital collateral
13 regional counsel representative.

14 Section 6. Section 27.705, Florida Statutes, is
15 amended to read:

16 27.705 Salaries of ~~the~~ capital collateral regional
17 counsel ~~representative~~ and assistant capital collateral
18 counsel ~~representatives~~.--

19 (1) Each ~~The~~ capital collateral regional counsel
20 ~~representative~~ shall be paid a salary by the state, which
21 shall be as provided in the General Appropriations Act and
22 shall be paid in equal monthly installments.

23 (2) Full-time assistant capital collateral counsel
24 ~~representatives~~ shall be compensated in an amount set by the
25 capital collateral regional counsel, which may ~~representative~~
26 not ~~to~~ exceed 100 percent of the salary of the capital
27 collateral regional counsel ~~representative~~ and shall be paid
28 from funds appropriated for that purpose.

29 (3) All payments of the salary of each of the capital
30 collateral regional counsel ~~representative~~ and employees of
31 his or her office, and payments for other necessary expenses

1 of office from state funds appropriated therefor, ~~are shall be~~
2 ~~considered as being~~ for a valid public purpose. Travel
3 expenses for official business within and outside the state
4 shall be paid in accordance with ~~the provisions of~~ s. 112.061.
5 For purposes of s. 112.061 only, part-time assistant capital
6 collateral counsel ~~representatives~~ shall be considered
7 employees of the regional office of capital collateral counsel
8 ~~representative~~.

9 (4) ~~Each~~ The capital collateral regional counsel
10 ~~representative~~ shall develop a classification and pay plan to
11 be submitted on or before January 1 of each year to the
12 Justice Administrative Commission, the office of the President
13 of the Senate, and the office of the Speaker of the House of
14 Representatives. Such plan shall be developed in accordance
15 with policies and procedures of the Executive Office of the
16 Governor established pursuant to s. 216.181.

17 Section 7. Section 27.706, Florida Statutes, is
18 amended to read:

19 27.706 Private practice of law prohibited.--~~Each~~ The
20 capital collateral regional counsel ~~representative~~ and all
21 full-time assistants appointed by him or her shall serve on a
22 full-time basis and may not engage ~~are prohibited from~~
23 ~~engaging~~ in the private practice of law.

24 Section 8. Section 27.707, Florida Statutes, is
25 amended to read:

26 27.707 Investigators; service of process.--Each
27 investigator employed by the capital collateral regional
28 counsel ~~has representative shall have~~ full authority to serve
29 any subpoena ~~witness subpoenaed~~ or court order issued by any
30 court or judge in any case for which the office has

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1 responsibility for providing representation, in compliance
2 with all applicable rules and case law.

3 Section 9. Section 27.708, Florida Statutes, is
4 amended to read:

5 27.708 Access to prisoners; requests for public
6 records.--

7 (1) Each ~~The~~ capital collateral regional counsel
8 ~~representative~~ and his or her assistants may ~~shall be~~
9 ~~empowered to~~ inquire of all persons sentenced to death who are
10 incarcerated and ~~to~~ tender them advice and counsel at any
11 reasonable time, but ~~the provisions of~~ this section does ~~shall~~
12 not apply with respect to persons who are represented by other
13 counsel.

14 (2) The capital collateral regional counsel must
15 approve any request for a public record made by an assistant
16 counsel or an attorney appointed to assist the regional
17 counsel.

18 Section 10. (1) There is created the Joint
19 Legislative Committee on the Administration of Justice in
20 Capital Cases, which shall consist of three members of the
21 Senate appointed by the President of the Senate, one of whom
22 must be a member of the minority party, and three members of
23 the House of Representatives appointed by the Speaker of the
24 House of Representatives, one of whom must be a member of the
25 minority party.

26 (2) The joint committee shall review the management of
27 the three regional offices of capital collateral counsel,
28 including the budgets and expenditures of each office. In
29 addition, the joint committee shall hear complaints regarding
30 the practice of any office of regional counsel and may refer
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1 any complaint to The Florida Bar, the State Supreme Court, or
2 the Commission on Ethics Commission, as appropriate.

3 Section 11. Subsection (6) of section 924.051, Florida
4 Statutes, 1996 Supplement, is amended to read:

5 924.051 Terms and conditions of appeals and collateral
6 review in criminal cases.--

7 (6)(a) In a noncapital case,a petition or motion for
8 collateral or other postconviction relief may not be
9 considered if it is filed more than 2 years after the judgment
10 and sentence became final,~~in a noncapital case or more than 1~~
11 ~~year after the judgment and sentence became final in a capital~~
12 ~~case in which a death sentence was imposed unless the petition~~
13 or motion it alleges that:

14 1.(a) The facts upon which the claim is predicated
15 were unknown to the petitioner or his attorney and could not
16 have been ascertained by the exercise of due diligence;

17 2.(b) The fundamental constitutional right asserted
18 was not established within the period provided for in this
19 subsection and has been held to apply retroactively; or

20 3.(c) The sentence imposed was illegal because it
21 either exceeded the maximum or fell below the minimum
22 authorized by statute for the criminal offense at issue.
23 Either the state or the defendant may petition the trial court
24 to vacate an illegal sentence at any time.

25 (b) In a capital case in which the sentence of death
26 has been imposed:

27 1. A motion for collateral or other postconviction
28 relief may not be considered or filed and shall be summarily
29 dismissed if the motion is filed more than 1 year after the
30 judgment and sentence became final, unless the motion alleges
31 that the facts upon which the claim is predicated is based on

1 newly discovered evidence or a fundamental change in the law,
2 and the motion is sworn by the movant and contains a statement
3 by the attorney representing the movant that the motion is
4 filed in good faith and that the attorney has conducted an
5 investigation of the facts alleged therein, and that such
6 facts are true to the best of the attorney's knowledge.

7 2. An expert witness may not be called to testify in
8 capital collateral postconviction actions unless approved by
9 the court.

10 Section 12. In the interest of promoting justice and
11 integrity with respect to capital collateral representation,
12 the Legislature recommends that the Supreme Court:

13 (1) Adopt by rule the provisions of section 924.055,
14 Florida Statutes, which limit the time for postconviction
15 proceedings in capital cases.

16 (2) Award pro bono service credit for time spent by an
17 attorney in providing legal representation to an individual
18 sentenced to death in this state, regardless of whether the
19 attorney receives compensation for such representation.

20 Section 13. This act shall take effect October 1,
21 1997.

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LEGISLATIVE SUMMARY

Provides for the Attorney General to be co-counsel of record to assist the state attorney in post conviction capital collateral proceedings in circuit court. Provides for responsibility for representing persons sentenced to death in this state to be transferred from the capital collateral representative to three regional offices of capital collateral counsel, located in northern, central, and southern regions comprising areas of specified judicial circuits. Requires that the regional counsel be appointed by the Governor to 2-year terms of office and confirmed by the Senate. Provides for assignment of representation. Requires the regional counsel to provide reports to the Senate and the House of Representatives each quarter with respect to the operations and expenditures of the counsel's respective office. Requires that the court set fees for substitute counsel appointed in cases that involve a conflict of interest. Requires that the regional counsel approve requests for public records made by assistant counsel or appointed counsel. Creates the Joint Legislative Committee on the Administration of Justice in Capital Cases. Requires the joint committee to review the management of the three regional offices of capital collateral counsel. Provides that a motion for collateral relief or other postconviction relief in a capital case may not be heard unless the motion is based on newly discovered evidence or a fundamental change in the law. Prohibits testimony by an expert witness in postconviction proceedings unless approved by the court. Provides for summary dismissal of certain motions unless the motion contains specified sworn statements by the movant's attorney. (See bill for details.)

ADDITIONAL SPONSORS

Putnam, Harrington, Ball, Trovillion, Futch, Flanagan, Stabins, Merchant, Byrd, Morse, Safley and Culp