

By the Committee on Civil Justice & Claims and Representatives Crist, Heyman, King, Valdes, Fuller, Sembler, Smith, Minton, Bronson, K. Pruitt, Kelly, Spratt, Bainter, Jones, Littlefield, Boyd, Andrews, Bitner, Mackey, Albright, (Additional Sponsors on Last Printed Page)

1 A bill to be entitled
2 An act relating to the representation of
3 persons sentenced to death; amending s. 27.701,
4 F.S.; transferring the capital collateral
5 regional counsels to the executive branch;
6 providing for the office of capital collateral
7 representative to be replaced by three capital
8 collateral regional counsels appointed within
9 the northern, middle, and southern regions of
10 the state; providing for nominations of the
11 regional counsels by the Supreme Court Judicial
12 Nominating Commission; requiring the Governor
13 to appoint the regional counsels; providing for
14 terms of office; prohibiting a regional counsel
15 from running for or accepting appointment to a
16 state office for a specified period after
17 leaving office; amending s. 27.702, F.S.;
18 specifying the duties of the capital collateral
19 regional counsel; establishing the independence
20 of the regional offices but consolidating the
21 administrative functions of three offices
22 within the Justice Administrative Commission;
23 authorizing the court to assess attorney's fees
24 and costs against a nonindigent or
25 indigent-but-able-to-contribute defendant;
26 providing for a determination of indigency;
27 providing for lien imposition and enforcement
28 against such defendant's property; requiring
29 the regional counsel to provide certain reports
30 to the President of the Senate, the Speaker of
31 the House of Representatives, and the

1 Commission on the Administration of Justice in
2 Capital Cases; amending s. 27.703, F.S.;
3 providing for the appointment of substitute
4 counsel in instances of conflict of interest;
5 establishing qualifications for appointed
6 counsel; establishing a rate of compensation
7 for attorney's fees in such cases; amending s.
8 27.704, F.S.; authorizing the capital
9 collateral regional counsel to appoint
10 assistant counsel, investigators, and support
11 personnel; providing employment qualifications
12 for certain positions; amending s. 27.705,
13 F.S.; providing for the capital collateral
14 counsel to be paid under the General
15 Appropriations Act; providing for the payment
16 of office and travel expenses; requiring the
17 regional counsel to submit a pay plan each year
18 to the Justice Administrative Commission and
19 Legislature; amending s. 27.706, F.S.;
20 prohibiting the capital collateral regional
21 counsel and full-time assistants from engaging
22 in the private practice of law; amending s.
23 27.707, F.S.; authorizing investigators
24 employed by the capital collateral regional
25 counsel to serve subpoenas and court orders;
26 amending s. 27.708, F.S.; providing for access
27 to persons sentenced to death who are
28 incarcerated; requiring the regional counsel
29 and contracted private counsel to comply with
30 the Rules of Criminal Procedure; requiring the
31 assigned attorney or the regional counsel to

1 approve requests for public records made by
2 assistant counsel or appointed counsel;
3 creating the Commission on the Administration
4 of Justice in Capital Cases; providing for
5 membership; setting terms of membership;
6 providing for the selection of a chair;
7 providing for per diem and travel expenses;
8 requiring quarterly meetings of the commission;
9 providing for the Executive Office of the
10 Governor to staff the commission; requiring the
11 commission to review the administration of
12 justice in capital collateral cases, receive
13 relevant public input, review the operation of
14 the regional offices of capital collateral
15 counsel, and advise and make recommendations to
16 the Governor, Legislature, and Supreme Court;
17 requiring that the commission hear complaints
18 regarding the practice of any such office;
19 amending s. 16.01, F.S.; requiring that the
20 Attorney General act as co-counsel in capital
21 collateral proceedings; amending s. 924.051,
22 F.S.; limiting collateral and postconviction
23 relief in any capital case to motions that
24 allege newly discovered evidence or a change in
25 the law; prohibiting the testimony of an expert
26 witness in any such case unless approved by the
27 court; providing recommendations for the
28 Supreme Court; providing for appointment of
29 regional counsels and interim counsels by
30 specified dates; providing for continuity of
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1 legal representation under certain
2 circumstances; providing an effective date.

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

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6 Section 1. Section 27.701, Florida Statutes, is
7 amended to read:

8 27.701 Capital collateral regional counsels
9 ~~representative.~~--There are ~~is hereby~~ created in the executive
10 ~~judicial~~ branch of state government three regional offices ~~the~~
11 ~~office~~ of capital collateral counsel, which shall be located
12 in a northern region, middle region, and southern region of
13 the state. The northern region shall consist of the First,
14 Second, Third, Fourth, Eighth, and Fourteenth Judicial
15 Circuits; the middle region shall consist of the Fifth, Sixth,
16 Seventh, Ninth, Tenth, Twelfth, Thirteenth, and Eighteenth
17 Judicial Circuits; and the southern region shall consist of
18 the Eleventh, Fifteenth, Sixteenth, Seventeenth, Nineteenth,
19 and Twentieth Judicial Circuits. Each regional office shall
20 be administered by a regional counsel. A regional counsel must
21 ~~representative, the head of which shall be the capital~~
22 ~~collateral representative for the state. The capital~~
23 ~~collateral representative shall be, and must shall~~ have been
24 for the preceding 5 years, a member in good standing of The
25 Florida Bar. Each ~~The~~ capital collateral regional counsel
26 ~~representative~~ shall be appointed by the Governor, and is
27 subject to confirmation by the Senate. The Supreme Court
28 Judicial Nominating Commission shall recommend to the Governor
29 three qualified candidates for each appointment as regional
30 counsel. The Governor shall appoint a regional counsel for
31 each region from among the recommendations, or, if it is in

1 the best interest of the fair administration of justice in
2 capital cases, the Governor may reject the nominations and
3 request submission of three new nominees by the Supreme Court
4 Judicial Nominating Commission. Each capital collateral
5 regional counsel shall be appointed to a term of 3 years.~~7~~
6 ~~from three or more nominations submitted by any or all elected~~
7 ~~public defenders and shall serve a term of 4 years. Six~~
8 ~~months prior to the end of any such term, the Governor shall~~
9 ~~accept nominations from any or all elected public defenders~~
10 ~~for the office of capital collateral representative for the~~
11 ~~next succeeding term and may appoint the incumbent or any~~
12 ~~other nominated person for the next succeeding term.~~
13 Vacancies in the office of capital collateral regional counsel
14 ~~representative~~ shall be filled in the same manner as
15 appointments. A person appointed as a regional counsel may
16 not run ~~capital collateral representative is prohibited from~~
17 ~~running for or~~ accept ~~accepting~~ appointment to any state
18 office within ~~for a period of~~ 2 years following vacation of
19 office. ~~The principal office of the capital collateral~~
20 ~~representative shall be located in Tallahassee. The capital~~
21 ~~collateral representative may establish such branch offices as~~
22 ~~may, in his or her discretion, be warranted to fulfill~~
23 ~~statutory duties herein.~~

24 Section 2. Section 27.702, Florida Statutes, 1996
25 Supplement, is amended to read:

26 27.702 Duties of the capital collateral regional
27 counsel; reports ~~representative.~~--

28 (1) The capital collateral regional counsel
29 ~~representative~~ shall represent, ~~without additional~~
30 ~~compensation,~~ each person convicted and sentenced to death in
31 this state for the sole purpose of instituting and prosecuting

1 collateral actions challenging the legality of the judgment
2 and sentence imposed against such person in the state courts,
3 federal courts in this state, the United States Court of
4 Appeals for the Eleventh Circuit, and the United States
5 Supreme Court. Representation by the capital collateral
6 regional counsel ~~representative~~ shall commence automatically
7 upon termination of direct appellate proceedings in state or
8 federal courts. Within 91 days after the date the Supreme
9 Court issues a mandate on a direct appeal or the United States
10 Supreme Court denies a petition for certiorari, whichever is
11 later, the capital collateral regional counsel ~~representative~~
12 shall file a notice of appearance in the trial court in which
13 the judgment and sentence were entered and shall secure all
14 direct-appeal files for collateral representation. Upon
15 receipt of files from the public defender or other counsel,
16 the capital collateral regional counsel ~~representative~~ shall
17 assign each such case to personnel in his or her office for
18 investigation, client contact, and any such further action ~~as~~
19 the circumstances ~~may~~ warrant. The three capital collateral
20 regional counsels' offices shall function independently and be
21 separate budget entities, and the regional counsels shall be
22 the office heads for all purposes. The Justice Administrative
23 Commission shall provide administrative support and service to
24 the three offices to the extent requested by the regional
25 counsels. The three regional offices shall not be subject to
26 control, supervision, or direction by the Justice
27 Administrative Commission in any manner, including, but not
28 limited to, personnel, purchasing, transactions involving real
29 or personal property, and budgetary matters.

30 (2) The capital collateral regional counsel
31 ~~representative~~ shall represent each person convicted and

1 sentenced to death within the district ~~in this state~~ in
2 collateral postconviction proceedings, unless a court appoints
3 or permits other counsel to appear as counsel of record.

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

11 (b) The court having jurisdiction over any nonindigent
12 or indigent-but-able-to-contribute defendant who has been
13 receiving the services of the capital collateral regional
14 counsel may assess attorney's fees and costs against the
15 defendant at any stage in the proceedings as the court may
16 deem appropriate. The determination of indigency or
17 nonindigency of any defendant shall be made by the court
18 pursuant to s. 27.52. Liability for the costs of such
19 representation may be imposed in the form of a lien against
20 the property of the nonindigent or
21 indigent-but-able-to-contribute defendant, which lien shall be
22 enforceable as provided in s. 27.56 or s. 27.561.

23 (4) Each capital collateral regional counsel shall
24 provide a quarterly report to the President of the Senate, the
25 Speaker of the House of Representatives, and the Commission on
26 the Administration of Justice in Capital Cases which details
27 the number of hours worked by investigators and legal counsel
28 per case and the amounts per case expended during the
29 preceding quarter in investigating and litigating capital
30 collateral cases.

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1 Section 3. Section 27.703, Florida Statutes, 1996
2 Supplement, is amended to read:
3 27.703 Conflict of interest and substitute counsel.--
4 (1) If, at any time during the representation of two
5 or more persons, the capital collateral regional counsel
6 ~~representative~~ determines that the interests of those persons
7 are so adverse or hostile that they cannot all be counseled by
8 the regional counsel ~~capital collateral representative~~ or his
9 or her staff without conflict of interest, the sentencing
10 court shall, upon application ~~therefor~~ by the regional
11 counsel, designate another regional counsel and, only if a
12 conflict exists with the other two counsels, ~~capital~~
13 ~~collateral representative~~ appoint one or more members of The
14 Florida Bar to represent one or more of such persons.
15 (2) Appointed counsel shall be paid from funds
16 appropriated to the Justice Administrative Commission. The
17 hourly rate may not exceed \$100.
18 (3) Prior to employment, counsel appointed pursuant to
19 this section must have participated in at least five felony
20 jury trials, five felony appeals, or five capital
21 postconviction evidentiary hearings, or any combination of at
22 least five of such proceedings.
23 Section 4. Section 27.704, Florida Statutes, is
24 amended to read:
25 27.704 Appointment of assistants and other staff;
26 method of payments.--Each capital collateral regional counsel
27 may:
28 (1) ~~The capital collateral representative is~~
29 ~~authorized to~~ Appoint, employ, and establish, in such numbers
30 as he or she determines ~~shall determine~~, full-time or
31 part-time assistant counsel ~~capital collateral~~

1 ~~representatives~~, investigators, and other clerical and support
2 personnel who shall be paid from funds appropriated for that
3 purpose. A full-time assistant capital collateral counsel
4 must ~~representatives shall~~ be a member ~~members~~ in good
5 standing of The Florida Bar, with not less than 3 2 years'
6 experience in the practice of criminal law, and, prior to
7 employment, must have participated in at least five felony
8 jury trials, five felony appeals, or five capital
9 postconviction evidentiary hearings or any combination of at
10 least five of such proceedings.

11 (2) Contract with private counsel who are members in
12 good standing of The Florida Bar or with public defenders for
13 the purpose of providing prompt and cost-effective
14 representation for individuals who are sentenced to death in
15 this state. A private counsel or public defender under
16 contract with the regional counsel must have at least 3 years'
17 experience in the practice of criminal law, and, prior to the
18 contract, must have participated in at least five felony jury
19 trials, five felony appeals, or five capital postconviction
20 evidentiary hearings or any combination of at least five of
21 such proceedings..

22 ~~(3)(2) The capital collateral representative is~~
23 ~~authorized to Appoint pro bono part-time assistant counsel~~
24 ~~capital collateral representatives, who must shall~~ be members
25 in good standing of The Florida Bar, and who shall serve
26 without compensation at the discretion of the capital
27 collateral regional counsel representative.

28 Section 5. Section 27.705, Florida Statutes, is
29 amended to read:

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1 27.705 Salaries of ~~the~~ capital collateral regional
2 counsel representative and assistant capital collateral
3 counsel representatives.--

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

8 (2) Full-time assistant capital collateral counsel
9 ~~representatives~~ shall be compensated in an amount set by the
10 capital collateral regional counsel, which may ~~representative~~
11 not to exceed 100 percent of the salary of the capital
12 collateral regional counsel representative and shall be paid
13 from funds appropriated for that purpose.

14 (3) All payments of the salary of each of the capital
15 collateral regional counsel representative and employees of
16 his or her office, and payments for other necessary expenses
17 of office from state funds appropriated therefor, are ~~shall be~~
18 ~~considered as being~~ for a valid public purpose. Travel
19 expenses for official business within and outside the state
20 shall be paid in accordance with ~~the provisions of~~ s. 112.061.
21 For purposes of s. 112.061 only, part-time assistant capital
22 collateral counsel representatives shall be considered
23 employees of the regional office of capital collateral counsel
24 ~~representative~~.

25 (4) Each ~~The~~ capital collateral regional counsel
26 ~~representative~~ shall develop a classification and pay plan to
27 be submitted on or before January 1 of each year to the
28 Justice Administrative Commission, the office of the President
29 of the Senate, and the office of the Speaker of the House of
30 Representatives. Such plan shall be developed in accordance
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1 with policies and procedures of the Executive Office of the
2 Governor established pursuant to s. 216.181.

3 Section 6. Section 27.706, Florida Statutes, is
4 amended to read:

5 27.706 Private practice of law prohibited.--~~Each~~ The
6 capital collateral regional counsel ~~representative~~ and all
7 full-time assistants appointed by him or her shall serve on a
8 full-time basis and may not engage ~~are prohibited from~~
9 ~~engaging~~ in the private practice of law.

10 Section 7. Section 27.707, Florida Statutes, is
11 amended to read:

12 27.707 Investigators; service of process.--Each
13 investigator employed by the capital collateral regional
14 counsel ~~has representative shall have~~ full authority to serve
15 any subpoena witness subpoenaed or court order issued by any
16 court or judge in any case for which the office has
17 responsibility for providing representation.

18 Section 8. Section 27.708, Florida Statutes, is
19 amended to read:

20 27.708 Access to prisoners; compliance with the
21 Florida Rules of Criminal Procedure in capital collateral
22 litigation; records requests; approval of records requests.--

23 (1) ~~Each~~ The capital collateral regional counsel
24 ~~representative~~ and his or her assistants may ~~shall be~~
25 ~~empowered to~~ inquire of all persons sentenced to death who are
26 incarcerated and ~~to~~ tender them advice and counsel at any
27 reasonable time, but ~~the provisions of~~ this section does ~~shall~~
28 not apply with respect to persons who are represented by other
29 counsel.

30 (2) The capital collateral regional counsel and
31 contracted private counsel must timely comply with all

1 provisions of the Florida Rules of Criminal Procedure
2 governing collateral review of capital cases, including
3 provisions pertaining to requests for records under Florida
4 Rule of Criminal Procedure 3.852.

5 (3) All requests for records in capital postconviction
6 proceedings must be made in accordance with Florida Rule of
7 Criminal Procedure 3.852, and, if the person sentenced to
8 death is represented by an assistant capital collateral
9 regional counsel or other attorney appointed to assist the
10 regional counsel, the regional counsel or the attorney
11 assigned to the case must approve the request.

12 Section 9. (1)(a) There is created the Commission on
13 the Administration of Justice in Capital Cases, which shall
14 consist of the six following members:

15 1. Two members appointed by the Governor.

16 2. Two members appointed by the President of the
17 Senate from the membership of the Senate. One member shall be
18 a member of the majority party and one member shall be a
19 member of the minority party.

20 3. Two members appointed by the Speaker of the House
21 of Representatives from the membership of the House of
22 Representatives. One member shall be a member of the majority
23 party and one member shall be a member of the minority party.

24 (b) The chair of the commission shall be selected by
25 the members for a term of 1 year.

26 (c) The commission shall meet quarterly, and other
27 meetings may be called by the chair upon giving at least 7
28 days' notice to all members and the public.

29 (d) Members of the commission are entitled to per diem
30 and travel expenses to be paid by the appointing entity.

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1 (e) The initial members of the commission must be
2 appointed on or before October 1, 1997. Members of the
3 commission shall be appointed to serve terms of 4 years each,
4 except that a member's term shall expire upon leaving office
5 as a member of the Senate or the House of Representatives. Two
6 of the initial members, one from the Senate and one from the
7 House of Representatives, shall be appointed for terms of 2
8 years each. Two of the initial members, one from the Senate
9 and one from the House of Representatives, shall be appointed
10 for terms of 3 years each.

11 (f) The Executive Office of the Governor shall staff
12 the commission.

13 (2) The commission shall review the administration of
14 justice in capital collateral cases, receive relevant public
15 input, review the operation of the capital collateral regional
16 counsel, and advise and make recommendations to the Governor,
17 Legislature, and Supreme Court. In addition, the commission
18 shall receive complaints regarding the practice of any office
19 of regional counsel and shall refer any complaint to The
20 Florida Bar, the Supreme Court, or the Commission on Ethics,
21 as appropriate.

22 Section 10. Present subsections (6), (7), and (8) of
23 section 16.01, Florida Statutes, are renumbered as subsections
24 (7), (8), and (9), respectively, and a new subsection (6) is
25 added to that section, to read:

26 16.01 Residence, office, and duties of Attorney
27 General.--The Attorney General:

28 (6) Shall act as co-counsel of record in capital
29 collateral proceedings.

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

1 924.051 Terms and conditions of appeals and collateral
2 review in criminal cases.--

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

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

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

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

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

23 1. A motion for collateral or other postconviction
24 relief may not be considered if the motion is filed more than
25 1 year after the judgment and sentence became final, unless
26 the motion alleges that the facts upon which the claim is
27 predicated are based on newly discovered evidence or a change
28 in the law.

29 2. An expert witness may not be called to testify
30 unless approved by the court.

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

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

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

11 Section 13. The Governor shall appoint each capital
12 collateral regional counsel no later than August 1, 1997.
13 Each capital collateral regional counsel shall assume office
14 on October 1, 1997. The Governor is authorized to appoint
15 three interim capital collateral regional counsels who are
16 authorized to carry out the duties provided herein until
17 September 30, 1997. In order to maintain continuity, all
18 attorneys assigned to represent clients, as of June 30, 1997,
19 shall continue to provide such representation unless or until
20 substitute counsel is ordered by the court or until the
21 capital collateral regional counsel or the interim capital
22 collateral regional counsel removes the attorney from the
23 case.

24 Section 14. This act shall take effect July 1, 1997.
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ADDITIONAL SPONSORS

Feeney, Arnall, Crady, Thrasher, Westbrook, Goode, Putnam,
Harrington, Ball, Trovillion, Futch, Flanagan, Stabins,
Merchant, Byrd, Morse, Safley and Culp