

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.; providing for the office of capital
5 collateral representative to be replaced by
6 three capital collateral regional counsels
7 appointed within the northern, middle, and
8 southern regions of the state; providing for
9 nominations of the regional counsels by the
10 Supreme Court Judicial Nominating Commission;
11 requiring the Governor to appoint the regional
12 counsels; providing for terms of office;
13 prohibiting a regional counsel from running for
14 or accepting appointment to a state office for
15 a specified period after leaving office;
16 amending s. 27.702, F.S.; specifying the duties
17 of the capital collateral regional counsel;
18 establishing the independence of the regional
19 offices but consolidating the administrative
20 functions of three offices within the Justice
21 Administrative Commission; authorizing the
22 court to assess attorney's fees and costs
23 against a nonindigent or
24 indigent-but-able-to-contribute defendant;
25 providing for a determination of indigency;
26 requiring the regional counsel to provide
27 certain reports to the President of the Senate,
28 the Speaker of the House of Representatives,
29 and the Commission on the Administration of
30 Justice in Capital Cases; amending s. 27.703,
31 F.S.; providing for the appointment of

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

1 Capital Cases; providing for membership;
2 setting terms of membership; providing for the
3 selection of a chair; providing for per diem
4 and travel expenses; requiring quarterly
5 meetings of the commission; providing for the
6 Joint Legislative Management Committee to staff
7 the commission; requiring the commission to
8 review the administration of justice in capital
9 collateral cases, receive relevant public
10 input, review the operation of the regional
11 offices of capital collateral counsel, and
12 advise and make recommendations to the
13 Governor, Legislature, and Supreme Court;
14 requiring that the commission hear complaints
15 regarding the practice of any such office;
16 amending s. 16.01, F.S.; requiring that the
17 Attorney General act as co-counsel in capital
18 collateral proceedings; amending s. 924.051,
19 F.S.; providing circumstances under which a
20 motion for collateral or postconviction relief
21 in any capital case may be considered after a
22 specified date; prohibiting the testimony of an
23 expert witness in any such case unless approved
24 by the court; providing recommendations for the
25 Supreme Court; providing a transition period;
26 authorizing the Governor to appoint interim and
27 regional counsel by specified dates;
28 authorizing attorneys to continue
29 representation of clients during the
30 transitional period; providing an effective
31 date.

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

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

27.701 Capital collateral regional counsels
~~representative.~~--There are ~~is hereby~~ created three regional
offices in the judicial branch of state government the office
of capital collateral counsel, which shall be located in a
northern, middle, and southern region of the state. The
northern region shall consist of the First, Second, Third,
Fourth, Eighth, and Fourteenth Judicial Circuits; the middle
region shall consist of the Fifth, Sixth, Seventh, Ninth,
Tenth, Twelfth, Thirteenth, and Eighteenth Judicial Circuits;
and the southern region shall consist of the Eleventh,
Fifteenth, Sixteenth, Seventeenth, Nineteenth, and Twentieth
Judicial Circuits. Each regional office shall be administered
by a regional counsel. A regional counsel must ~~representative,~~
~~the head of which shall be the capital collateral~~
~~representative for the state. The capital collateral~~
~~representative shall be, and must shall~~ have been for the
preceding 5 years, a member in good standing of The Florida
Bar or a similar organization in another state. Each ~~The~~
capital collateral regional counsel ~~representative~~ shall be
appointed by the Governor, and is subject to confirmation by
the Senate. The Supreme Court Judicial Nominating Commission
shall recommend to the Governor three qualified candidates for
each appointment as regional counsel. The Governor shall
appoint a regional counsel for each region from among the
recommendations, or, if it is in the best interest of the fair
administration of justice in capital cases, the Governor may
reject the nominations and request submission of three new

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

21 Section 2. Section 27.702, Florida Statutes, 1996
 22 Supplement, is amended to read:

23 27.702 Duties of the capital collateral regional
 24 counsel; reports representative.--

25 (1) The capital collateral regional counsel
 26 ~~representative~~ shall represent, ~~without additional~~
 27 ~~compensation,~~ each person convicted and sentenced to death in
 28 this state for the sole purpose of instituting and prosecuting
 29 collateral actions challenging the legality of the judgment
 30 and sentence imposed against such person in the state courts,
 31 federal courts in this state, the United States Court of

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

27 (2) The capital collateral regional counsel
28 ~~representative~~ shall represent each person convicted and
29 sentenced to death within the region ~~in this state~~ in
30 collateral postconviction proceedings, unless a court appoints
31 or permits other counsel to appear as counsel of record.

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

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

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

28 Section 3. Section 27.703, Florida Statutes, 1996
29 Supplement, is amended to read:

30 27.703 Conflict of interest and substitute counsel.--
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1 (1) If, at any time during the representation of two
2 or more persons, the capital collateral regional counsel
3 ~~representative~~ determines that the interests of those persons
4 are so adverse or hostile that they cannot all be counseled by
5 the regional counsel ~~capital collateral representative~~ or his
6 or her staff without conflict of interest, the sentencing
7 court shall, upon application ~~therefor~~ by the regional
8 counsel, designate another regional counsel and, only if a
9 conflict exists with the other two counsels, ~~capital~~
10 ~~collateral representative~~ appoint one or more members of The
11 Florida Bar to represent one or more of such persons.

12 (2) Appointed counsel shall be paid from funds
13 appropriated to the Justice Administrative Commission. The
14 hourly rate may not exceed \$100.

15 (3) Prior to employment, counsel appointed pursuant to
16 this section must have participated in at least five felony
17 jury trials, five felony appeals, or five capital
18 postconviction evidentiary hearings, or any combination of at
19 least five of such proceedings.

20 Section 4. Section 27.704, Florida Statutes, is
21 amended to read:

22 27.704 Appointment of assistants and other staff;
23 method of payments.--Each capital collateral regional counsel
24 may:

25 (1) ~~The capital collateral representative is~~
26 ~~authorized to~~ Appoint, employ, and establish, in such numbers
27 as he or she determines ~~shall determine~~, full-time or
28 part-time assistant counsel ~~capital collateral~~
29 ~~representatives~~, investigators, and other clerical and support
30 personnel who shall be paid from funds appropriated for that
31 purpose. A full-time assistant capital collateral counsel

1 must representatives shall be a member members in good
2 standing of The Florida Bar, with not less than 3 2 years'
3 experience in the practice of criminal law, and, prior to
4 employment, must have participated in at least five felony
5 jury trials, five felony appeals, or five capital
6 postconviction evidentiary hearings or any combination of at
7 least five of such proceedings. Law school graduates who do
8 not have the qualifications of a full-time assistant capital
9 collateral counsel may be employed as members of the legal
10 staff but may not be designated as sole counsel for any
11 person.

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

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

29 Section 5. Section 27.705, Florida Statutes, is
30 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 must approve the
11 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 Joint Legislative Management Committee shall
12 staff 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 State Supreme Court, or the Commission on
21 Ethics, 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 facts upon which the claim is predicated were unknown to
27 the petitioner or his or her attorney and could not have been
28 ascertained by the exercise of due diligence, or the
29 fundamental constitutional right asserted was not established
30 within the period provided for in this subsection and has been
31 held to apply retroactively.

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

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

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

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

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

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