

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; providing  
11 for contracts with private counsel or public  
12 defenders; amending s. 27.705, F.S.; providing  
13 for the capital collateral counsel to be paid  
14 under the General Appropriations Act; providing  
15 for the payment of office and travel expenses;  
16 requiring the regional counsel to submit a pay  
17 plan each year; amending s. 27.706, F.S.;  
18 prohibiting the capital collateral regional  
19 counsel and full-time assistants from engaging  
20 in the private practice of law; amending s.  
21 27.707, F.S.; authorizing investigators  
22 employed by the capital collateral regional  
23 counsel to serve subpoenas and court orders;  
24 amending s. 27.708, F.S.; providing for access  
25 to persons sentenced to death who are  
26 incarcerated; requiring the regional counsel  
27 and contracted private counsel to comply with  
28 the Rules of Criminal Procedure; requiring the  
29 regional counsel to approve requests for public  
30 records made by assistant counsel or appointed  
31 counsel; creating the Commission on the

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

1 transitional period; providing an effective  
2 date.

3  
4 Be It Enacted by the Legislature of the State of Florida:

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

1 recommendations, or, if it is in the best interest of the fair  
 2 administration of justice in capital cases, the Governor may  
 3 reject the nominations and request submission of three new  
 4 nominees by the Supreme Court Judicial Nominating Commission.  
 5 Each capital collateral regional counsel shall be appointed to  
 6 a term of 3 years., ~~from three or more nominations submitted~~  
 7 ~~by any or all elected public defenders and shall serve a term~~  
 8 ~~of 4 years. Six months prior to the end of any such term, the~~  
 9 ~~Governor shall accept nominations from any or all elected~~  
 10 ~~public defenders for the office of capital collateral~~  
 11 ~~representative for the next succeeding term and may appoint~~  
 12 ~~the incumbent or any other nominated person for the next~~  
 13 ~~succeeding term.~~ Vacancies in the office of capital collateral  
 14 regional counsel representative shall be filled in the same  
 15 manner as appointments. A person appointed as a regional  
 16 counsel may not run ~~capital collateral representative is~~  
 17 ~~prohibited from running for or~~ accept ~~accepting~~ appointment to  
 18 any state office 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 regional counsel ~~capital~~  
6 ~~collateral representative~~ shall commence automatically upon  
7 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 region ~~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.

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. Law school graduates who do  
 11 not have the qualifications of a full-time assistant capital  
 12 collateral counsel may be employed as members of the legal  
 13 staff but may not be designated as sole counsel for any  
 14 person.

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

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

1 Section 5. Section 27.705, Florida Statutes, is  
2 amended to read:

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

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

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

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

27 (4) Each ~~The~~ capital collateral regional counsel  
28 ~~representative~~ shall develop a classification and pay plan to  
29 be submitted on or before January 1 of each year to the  
30 Justice Administrative Commission, the office of the President  
31 of the Senate, and the office of the Speaker of the House of

1 Representatives. Such plan shall be developed in accordance  
2 with policies and procedures of the Executive Office of the  
3 Governor established pursuant to s. 216.181.

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

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

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

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

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

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

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

31

1           (2) The capital collateral regional counsel and  
2 contracted private counsel must timely comply with all  
3 provisions of the Florida Rules of Criminal Procedure  
4 governing collateral review of capital cases, including  
5 provisions pertaining to requests for records under Florida  
6 Rule of Criminal Procedure 3.852.

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

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

17                 1. Two members appointed by the Governor.

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

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

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

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

31

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

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

13           (f) The Joint Legislative Management Committee shall  
14 staff the commission.

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

24           Section 10. Present subsections (6), (7), and (8) of  
25 section 16.01, Florida Statutes, are renumbered as subsections  
26 (7), (8), and (9), respectively, and a new subsection (6) is  
27 added to that section, to read:

28           16.01 Residence, office, and duties of Attorney  
29 General.--The Attorney General:

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

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

3           924.051 Terms and conditions of appeals and collateral  
4 review in criminal cases.--

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

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

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

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

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

25           1. A motion for collateral or other postconviction  
26 relief may not be considered if the motion is filed more than  
27 1 year after the judgment and sentence became final, unless  
28 the facts upon which the claim is predicated were unknown to  
29 the petitioner or his or her attorney and could not have been  
30 ascertained by the exercise of due diligence, or the  
31 fundamental constitutional right asserted was not established

1 within the period provided for in this subsection and has been  
2 held to apply retroactively.

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

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

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

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

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

26 Section 14. This act shall take effect upon becoming  
27 law.