

By Senator Burt

16-1385-98

1 A bill to be entitled
2 An act relating to postconviction capital
3 collateral proceedings; requesting that the
4 Division of Statutory Revision designate part
5 IV of ch. 27, F.S., as "Capital Collateral
6 Representation"; amending s. 27.702, F.S.;
7 deleting a requirement that specifies the time
8 for the capital collateral regional counsel to
9 commence the representation of a person
10 sentenced to death; creating s. 27.710, F.S.;
11 requiring that the Justice Administrative
12 Commission maintain a registry of attorneys in
13 private practice who are available to be
14 appointed to represent defendants in
15 postconviction capital collateral proceedings;
16 authorizing the commission to obtain names of
17 attorneys who may register for appointment;
18 providing eligibility requirements for
19 appointment as counsel in postconviction
20 capital collateral proceedings; providing for
21 appointment of an attorney selected from the
22 registry; providing that more than one attorney
23 may not be appointed at any one time to
24 represent a capital defendant; creating s.
25 27.711, F.S.; requiring that an attorney
26 appointed to represent a capital defendant file
27 a notice of appearance; providing a schedule of
28 fees to which the attorney is entitled for
29 specified appearances and representations;
30 providing that such fees constitute the
31 exclusive means of compensation for such

1 representation; authorizing compensation as
2 provided by federal law under certain
3 circumstances; authorizing the use of
4 investigative services and the payment of fees
5 for such services; providing that by accepting
6 appointment to represent a capital defendant
7 the attorney agrees to continue such
8 representation until the defendant's sentence
9 is reversed, reduced, or carried out; limiting
10 the number of capital defendants that an
11 attorney may represent; prohibiting a claim of
12 ineffective assistance of counsel based on an
13 action by the attorney who represents a capital
14 defendant; prohibiting the attorney from
15 representing the capital defendant in certain
16 other proceedings; providing an effective date.

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

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20 Section 1. The Division of Statutory Revision is
21 requested to designate part IV of chapter 27, Florida
22 Statutes, as "Capital Collateral Representation."

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24 Section 2. Subsections (1) and (2) of section 27.702,
25 Florida Statutes, are amended to read:

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27 27.702 Duties of the capital collateral regional
28 counsel; reports.--

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30 (1) The capital collateral regional counsel shall
31 represent each person convicted and sentenced to death in this
state for the sole purpose of instituting and prosecuting
collateral actions challenging the legality of the judgment
and sentence imposed against such person in the state courts,

1 federal courts in this state, the United States Court of
2 Appeals for the Eleventh Circuit, and the United States
3 Supreme Court. ~~Representation by the regional counsel shall~~
4 ~~commence automatically upon termination of direct appellate~~
5 ~~proceedings in state or federal courts. Within 91 days after~~
6 ~~the date the Supreme Court issues a mandate on a direct appeal~~
7 ~~or the United States Supreme Court denies a petition for~~
8 ~~certiorari, whichever is later, the capital collateral~~
9 ~~regional counsel shall file a notice of appearance in the~~
10 ~~trial court in which the judgment and sentence were entered~~
11 ~~and shall secure all direct appeal files for collateral~~
12 ~~representation. Upon receipt of files from the public~~
13 ~~defender or other counsel, the capital collateral regional~~
14 ~~counsel shall assign each such case to personnel in his or her~~
15 ~~office for investigation, client contact, and any further~~
16 ~~action the circumstances 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 shall
28 represent persons ~~each person~~ convicted and sentenced to death
29 within the region in collateral postconviction proceedings,
30 unless a court appoints or permits other counsel to appear as
31 counsel of record.

1 Section 3. Section 27.710, Florida Statutes, is
2 created to read:

3 27.710 Registry of attorneys applying to represent
4 persons in postconviction capital collateral proceedings;
5 certification of minimum requirements; appointment by trial
6 court.--

7 (1) The Justice Administrative Commission shall
8 compile and maintain a statewide registry of attorneys in
9 private practice who have certified that they meet the minimum
10 requirements of s. 27.704(2) and who are available for
11 appointment by the court under this section to represent
12 persons convicted and sentenced to death in this state in
13 postconviction capital collateral proceedings. To ensure that
14 sufficient attorneys are available for appointment by the
15 court, when the number of attorneys on the registry falls
16 below 50, the Justice Administrative Commission shall notify
17 the chief judge of each circuit by letter and request the
18 chief judge to promptly submit the names of at least three
19 private attorneys who regularly practice criminal law in that
20 circuit and who appear to meet the minimum requirements to
21 represent persons in postconviction capital collateral
22 proceedings. The Justice Administrative Commission shall send
23 an application to each attorney identified by the chief judge
24 so that the attorney may register for appointment as counsel
25 in postconviction capital collateral proceedings. As
26 necessary, the Justice Administrative Commission may also
27 advertise in legal publications and other appropriate media
28 for qualified attorneys interested in registering for
29 appointment as counsel in postconviction capital collateral
30 proceedings. Not later than September 1 of each year, and as
31 necessary thereafter, the Justice Administrative Commission

1 shall provide to the Chief Justice of the Supreme Court, the
2 chief judge and state attorney in each judicial circuit, and
3 the Attorney General a current copy of its registry of
4 attorneys who are available for appointment as counsel in
5 postconviction capital collateral proceedings. The registry
6 must be indexed by judicial circuit and must contain the
7 requisite information submitted by the applicants in
8 accordance with this section.

9 (2) To be eligible for court appointment as counsel in
10 postconviction capital collateral proceedings, an attorney
11 must certify on an application provided by the Justice
12 Administrative Commission that he or she satisfies the minimum
13 requirements for private counsel set forth in s. 27.704(2).

14 (3) An attorney who applies for registration and court
15 appointment as counsel in postconviction capital collateral
16 proceedings must certify that he or she is counsel of record
17 in not more than four such proceedings and, if appointed to
18 represent a person in postconviction capital collateral
19 proceedings, intends to continue such representation under the
20 terms and conditions set forth in s. 27.711 until the sentence
21 is reversed, reduced, or carried out.

22 (4) Upon notification by the Attorney General that:

23 (a) Ninety-one days have elapsed since the Supreme
24 Court issued a mandate on a direct appeal, or the Supreme
25 Court of the United States has denied a petition for
26 certiorari, whichever is later; or

27 (b) A person under sentence of death who was
28 previously represented by private counsel is currently
29 unrepresented in a postconviction capital collateral
30 proceeding,

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1 the Justice Administrative Commission shall immediately notify
2 the trial court that imposed the sentence of death that the
3 court must immediately appoint an attorney, selected from the
4 current registry, to represent such person in collateral
5 actions challenging the legality of the judgment and sentence
6 in the appropriate state and federal courts. In making an
7 assignment, the court shall give priority to attorneys whose
8 experience and abilities in criminal law, especially in
9 capital proceedings, are known by the court to be commensurate
10 with the responsibility of representing a person sentenced to
11 death. The trial court must issue an order of appointment
12 which contains specific findings that the appointed counsel
13 meets the statutory requirements and has the high ethical
14 standards necessary to represent a person sentenced to death.

15 (5) More than one attorney may not be appointed and
16 compensated at any one time under s. 27.711 to represent a
17 person in postconviction capital collateral proceedings.

18 Section 4. Section 27.711, Florida Statutes, is
19 created to read:

20 27.711 Terms and conditions of appointment of
21 attorneys as counsel in postconviction capital collateral
22 proceedings.--

23 (1) As used in this section, the term:

24 (a) "Capital defendant" means the person who is
25 represented in postconviction capital collateral proceedings
26 by an attorney appointed under s. 27.710.

27 (b) "Postconviction capital collateral proceedings"
28 means one series of collateral litigation of an affirmed
29 conviction and sentence of death, including the proceedings in
30 the trial court that imposed the capital sentence, any
31 appellate review of the sentence by the Supreme Court, any

1 certiorari review of the sentence by the United States Supreme
2 Court, and any authorized federal habeas corpus litigation
3 with respect to the sentence. The term does not include
4 repetitive or successive collateral challenges to a conviction
5 and sentence of death which is affirmed by the Supreme Court
6 and undisturbed by any collateral litigation.

7 (2) After appointment by the trial court under s.
8 27.710, the attorney must immediately file a notice of
9 appearance with the trial court indicating acceptance of the
10 appointment to represent the capital defendant throughout all
11 postconviction capital collateral proceedings in accordance
12 with this section or until released by order of the trial
13 court.

14 (3) An attorney appointed to represent a capital
15 defendant is entitled to payment of the fees set forth in this
16 section only upon full performance by the attorney of the
17 duties specified in this section and submission of the
18 appropriate documentation to the Justice Administrative
19 Commission. Appropriate documentation must include a current
20 and detailed hourly accounting of time spent representing the
21 capital defendant. The fee and payment schedule in this
22 section is, for the state and any of its political
23 subdivisions, the exclusive means of compensating a
24 court-appointed attorney who represents a capital defendant.
25 When appropriate, a court-appointed attorney may seek further
26 compensation from the Federal Government, as provided in 18
27 U.S.C. s. 3006A or other federal law, in habeas corpus
28 litigation in the federal courts.

29 (4) An attorney appointed to represent a capital
30 defendant under s. 27.710 is entitled to payment of the
31 following fees by the Justice Administrative Commission:

1 (a) Regardless of the stage of postconviction capital
2 collateral proceedings, the attorney is entitled to \$100 per
3 hour, up to a maximum of \$2,500, upon accepting appointment
4 and submitting to the Justice Administrative Commission copies
5 of the trial court's order of assignment and the attorney's
6 notice of appearance. This fee is in the nature of a fee for a
7 retainer agreement.

8 (b) The attorney is entitled to \$100 per hour, up to a
9 maximum of \$2,500, after timely filing in the trial court the
10 capital defendant's complete original motion for
11 postconviction relief under the Florida Rules of Criminal
12 Procedure and upon submitting an affidavit to the Justice
13 Administrative Commission which states that such motion fully
14 raises all issues to be addressed by the trial court and is
15 timely filed.

16 (c) The attorney is entitled to \$100 per hour, up to a
17 maximum of \$2,500, after the trial court issues a final order
18 granting or denying the capital defendant's motion for
19 postconviction relief and upon submitting to the Justice
20 Administrative Commission a copy of the trial court's final
21 order granting or denying the capital defendant's original
22 motion for postconviction relief.

23 (d) The attorney is entitled to \$100 per hour, up to a
24 maximum of \$2,500, after timely filing in the Supreme Court
25 the capital defendant's brief or briefs that address the trial
26 court's final order granting or denying the capital
27 defendant's motion for postconviction relief and the state
28 petition for writ of habeas corpus. The attorney is entitled
29 to such payment upon submitting an affidavit to the Justice
30 Administrative Commission which states that such brief was
31 timely filed.

1 (e) The attorney is entitled to \$100 per hour, up to a
2 maximum of \$2,500, after the appeal of the trial court's
3 denial of the capital defendant's motion for postconviction
4 relief and the capital defendant's state petition for writ of
5 habeas corpus become final in the Supreme Court. The attorney
6 is entitled to such payment upon submitting a copy of the
7 mandate of the Supreme Court to the Justice Administrative
8 Commission.

9 (f) At the conclusion of the capital defendant's
10 postconviction capital collateral proceedings in state court,
11 the attorney is entitled to \$100 per hour, up to a maximum of
12 \$2,500, after filing a petition for writ of certiorari in the
13 Supreme Court of the United States and upon submitting an
14 affidavit to the Justice Administrative Commission which
15 states that such petition was timely filed.

16 (g) If, at any time, the Supreme Court of the United
17 States accepts for review the capital defendant's collateral
18 challenge of the conviction and sentence of death, the
19 attorney is entitled to \$100 per hour, up to a maximum of
20 \$2,500, upon submitting to the Justice Administrative
21 Commission an affidavit that states that the case has been
22 accepted for review. This payment shall be full compensation
23 for representing the capital defendant throughout the
24 certiorari proceedings before the United States Supreme Court.

25 (5) An attorney who represents a capital defendant may
26 use the services of one or more investigators to assist in
27 representing a capital defendant who is collaterally
28 challenging his or her judgment and sentence of death. Upon
29 submission by the attorney of an affidavit to the Justice
30 Administrative Commission which states that the services of an
31 investigator are necessary to properly prepare the capital

1 defendant's original postconviction collateral challenge to
2 the conviction and sentence in the trial court, the attorney
3 is entitled to payment from the Justice Administrative
4 Commission of \$20 per hour, up to a maximum of \$1,000, for the
5 purpose of paying for investigative services.

6 (6) By accepting court appointment under s. 27.710 to
7 represent a capital defendant, the attorney agrees to continue
8 such representation under the terms and conditions set forth
9 in this section until the capital defendant's sentence is
10 reversed, reduced, or carried out, and the attorney is
11 permitted to withdraw from such representation by a court of
12 competent jurisdiction.

13 (7) An attorney may not represent more than five
14 capital defendants at any one time.

15 (8) This section does not authorize an attorney who
16 represents a capital defendant to file repetitive or frivolous
17 pleadings that are not supported by law or by the facts of the
18 case. An action taken by an attorney who represents a capital
19 defendant in postconviction capital collateral proceedings may
20 not be the basis for a claim of ineffective assistance of
21 counsel.

22 (9) An attorney appointed under s. 27.710 to represent
23 a capital defendant may not represent the capital defendant
24 during a retrial, a resentencing proceeding, a proceeding
25 commenced under chapter 940, a proceeding challenging a
26 conviction or sentence other than the conviction and sentence
27 of death for which the appointment was made, or any civil
28 litigation other than habeas corpus proceedings.

29 Section 5. This act shall take effect July 1, 1998.
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SENATE SUMMARY

Requires that the Justice Administrative Commission maintain a statewide registry of attorneys in private practice who are qualified and available to represent persons sentenced to death in postconviction collateral proceedings. Provides for the trial court to select an attorney from the registry and issue an order or appointment. Provides that, by accepting such appointment, the attorney agrees to represent the capital defendant until the defendant's sentence is reversed, reduced, or carried out. Specifies the amount of fees that may be paid to the attorney who represents a capital defendant at specified stages of litigation. Prohibits an attorney from representing more than five capital defendants at any one time. Provides that an action by the attorney may not be the basis for a claim of ineffective assistance of counsel. (See bill for details.)