

By the Committee on Criminal Justice and Senator Burt

307-1688-98

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 executive director of the
12 Commission on the Administration of Justice in
13 Capital Cases maintain a registry of attorneys
14 in private practice who are available to be
15 appointed to represent defendants in
16 postconviction capital collateral proceedings;
17 authorizing the executive director to obtain
18 names of attorneys who may register for
19 appointment; providing eligibility requirements
20 for appointment as counsel in postconviction
21 capital collateral proceedings; providing for
22 appointment of an attorney selected from the
23 registry; providing that more than one attorney
24 may not be appointed at any one time to
25 represent a capital defendant; creating s.
26 27.711, F.S.; requiring that an attorney
27 appointed to represent a capital defendant file
28 a notice of appearance; providing a schedule of
29 fees to which the attorney is entitled for
30 specified appearances and representations;
31 providing that such fees constitute the

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

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

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

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

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

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

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

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

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

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

9 (1) The executive director of the Commission on the
10 Administration of Justice in Capital Cases shall compile and
11 maintain a statewide registry of attorneys in private practice
12 who have certified that they meet the minimum requirements of
13 s. 27.704(2) and who are available for appointment by the
14 court under this section to represent persons convicted and
15 sentenced to death in this state in postconviction capital
16 collateral proceedings. To ensure that sufficient attorneys
17 are available for appointment by the court, when the number of
18 attorneys on the registry falls below 50, the executive
19 director shall notify the chief judge of each circuit by
20 letter and request the chief judge to promptly submit the
21 names of at least three private attorneys who regularly
22 practice criminal law in that circuit and who appear to meet
23 the minimum requirements to represent persons in
24 postconviction capital collateral proceedings. The executive
25 director shall send an application to each attorney identified
26 by the chief judge so that the attorney may register for
27 appointment as counsel in postconviction capital collateral
28 proceedings. As necessary, the executive director may also
29 advertise in legal publications and other appropriate media
30 for qualified attorneys interested in registering for
31 appointment as counsel in postconviction capital collateral

1 proceedings. Not later than September 1 of each year, and as
2 necessary thereafter, the executive director shall provide to
3 the Chief Justice of the Supreme Court, the chief judge and
4 state attorney in each judicial circuit, and the Attorney
5 General a current copy of its registry of attorneys who are
6 available for appointment as counsel in postconviction capital
7 collateral proceedings. The registry must be indexed by
8 judicial circuit and must contain the requisite information
9 submitted by the applicants in accordance with this section.

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

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

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

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

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

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

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

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

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

24 (1) As used in s. 27.710 and this section, the term:

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

28 (b) "Executive director" means the executive director
29 of the Commission on the Administration of Justice in Capital
30 Cases.

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1 (c) "Postconviction capital collateral proceedings"
2 means one series of collateral litigation of an affirmed
3 conviction and sentence of death, including the proceedings in
4 the trial court that imposed the capital sentence, any
5 appellate review of the sentence by the Supreme Court, any
6 certiorari review of the sentence by the United States Supreme
7 Court, and any authorized federal habeas corpus litigation
8 with respect to the sentence. The term does not include
9 repetitive or successive collateral challenges to a conviction
10 and sentence of death which is affirmed by the Supreme Court
11 and undisturbed by any collateral litigation.

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

19 (3) An attorney appointed to represent a capital
20 defendant is entitled to payment of the fees set forth in this
21 section only upon full performance by the attorney of the
22 duties specified in this section and submission of the
23 appropriate documentation to the Justice Administrative
24 Commission and the executive director. Appropriate
25 documentation must include a current and detailed hourly
26 accounting of time spent representing the capital defendant.
27 The fee and payment schedule in this section is, for the state
28 and any of its political subdivisions, the exclusive means of
29 compensating a court-appointed attorney who represents a
30 capital defendant. When appropriate, a court-appointed
31 attorney may seek further compensation from the Federal

1 Government, as provided in 18 U.S.C. s. 3006A or other federal
2 law, in habeas corpus litigation in the federal courts.

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

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

13 (b) The attorney is entitled to \$100 per hour, up to a
14 maximum of \$20,000, after timely filing in the trial court the
15 capital defendant's complete original motion for
16 postconviction relief under the Florida Rules of Criminal
17 Procedure and upon submitting to the executive director and
18 the Justice Administrative Commission an affidavit that states
19 that such motion fully raises all issues to be addressed by
20 the trial court and is timely filed.

21 (c) The attorney is entitled to \$100 per hour, up to a
22 maximum of \$10,000, after the trial court issues a final order
23 granting or denying the capital defendant's motion for
24 postconviction relief and upon submitting to the executive
25 director and the Justice Administrative Commission a copy of
26 the trial court's final order granting or denying the capital
27 defendant's original motion for postconviction relief.

28 (d) The attorney is entitled to \$100 per hour, up to a
29 maximum of \$4,000, after timely filing in the Supreme Court
30 the capital defendant's brief or briefs that address the trial
31 court's final order granting or denying the capital

1 defendant's motion for postconviction relief and the state
2 petition for writ of habeas corpus. The attorney is entitled
3 to such payment upon submitting to the executive director and
4 the Justice Administrative Commission an affidavit that states
5 that such brief was timely filed.

6 (e) The attorney is entitled to \$100 per hour, up to a
7 maximum of \$20,000, after the appeal of the trial court's
8 denial of the capital defendant's motion for postconviction
9 relief and the capital defendant's state petition for writ of
10 habeas corpus become final in the Supreme Court. The attorney
11 is entitled to such payment upon submitting to the executive
12 director and the Justice Administrative Commission a copy of
13 the mandate of the Supreme Court.

14 (f) At the conclusion of the capital defendant's
15 postconviction capital collateral proceedings in state court,
16 the attorney is entitled to \$100 per hour, up to a maximum of
17 \$2,500, after filing a petition for writ of certiorari in the
18 Supreme Court of the United States and upon submitting to the
19 executive director and the Justice Administrative Commission
20 an affidavit that states that such petition was timely filed.

21 (g) If, at any time, the Supreme Court of the United
22 States accepts for review the capital defendant's collateral
23 challenge of the conviction and sentence of death, the
24 attorney is entitled to \$100 per hour, up to a maximum of
25 \$5,000, upon submitting to the executive director and the
26 Justice Administrative Commission an affidavit that states
27 that the case has been accepted for review. This payment shall
28 be full compensation for representing the capital defendant
29 throughout the certiorari proceedings before the United States
30 Supreme Court.

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1 (5) An attorney who represents a capital defendant may
2 use the services of one or more investigators to assist in
3 representing a capital defendant who is collaterally
4 challenging his or her judgment and sentence of death. Upon
5 submission by the attorney to the executive director and the
6 Justice Administrative Commission an affidavit that states
7 that the services of an investigator are necessary to properly
8 prepare the capital defendant's original postconviction
9 collateral challenge to the conviction and sentence in the
10 trial court, the attorney is entitled to payment from the
11 Justice Administrative Commission of \$40 per hour, up to a
12 maximum of \$15,000, for the purpose of paying for
13 investigative services.

14 (6) An attorney who represents a capital defendant is
15 entitled to a maximum of \$5,000 for miscellaneous expenses,
16 such as the costs of preparing transcripts, compensating
17 expert witnesses, and copying documents. Upon submission by
18 the attorney to the executive director and the Justice
19 Administrative Commission of an affidavit that states the
20 nature of the expenses, the attorney is entitled to payment by
21 the Justice Administrative Commission.

22 (7) By accepting court appointment under s. 27.710 to
23 represent a capital defendant, the attorney agrees to continue
24 such representation under the terms and conditions set forth
25 in this section until the capital defendant's sentence is
26 reversed, reduced, or carried out, and the attorney is
27 permitted to withdraw from such representation by a court of
28 competent jurisdiction.

29 (8) An attorney may not represent more than five
30 capital defendants at any one time.

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1 (9) This section does not authorize an attorney who
2 represents a capital defendant to file repetitive or frivolous
3 pleadings that are not supported by law or by the facts of the
4 case. An action taken by an attorney who represents a capital
5 defendant in postconviction capital collateral proceedings may
6 not be the basis for a claim of ineffective assistance of
7 counsel.

8 (10) An attorney appointed under s. 27.710 to
9 represent a capital defendant may not represent the capital
10 defendant during a retrial, a resentencing proceeding, a
11 proceeding commenced under chapter 940, a proceeding
12 challenging a conviction or sentence other than the conviction
13 and sentence of death for which the appointment was made, or
14 any civil litigation other than habeas corpus proceedings.

15 Section 5. This act shall take effect July 1, 1998.

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17 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
18 COMMITTEE SUBSTITUTE FOR
19 Senate Bill 1328

- 20 . Shifts the responsibility for compiling and maintaining
21 the attorney registry from the Justice Administrative
22 Commission to the executive director of the
23 Administration of Justice in Capital Cases.
24 . Provides that the executive director of the
25 Administration of Justice in Capital Cases instead of the
26 Justice Administrative Commission must notify the court
27 that private counsel must be appointed.
28 . Amends the fee schedule to increase the maximum fee cap
29 for the various stages of the appeal.
30 . Provides for the payment of miscellaneous expenses to the
31 attorney.