

1 the Florida Supreme Court adopt by rule
2 specified provisions limiting the time for
3 postconviction proceedings in capital cases;
4 amending s. 79.01, F.S., relating to
5 application and writ for habeas corpus;
6 providing that a judgment of conviction or
7 sentence which has been affirmed on direct
8 appeal constitutes "lawful authority" to detain
9 a person for purposes of construing specified
10 provisions unless specified circumstances are
11 applicable; amending s. 924.051, F.S.; revising
12 provisions relating to terms and conditions of
13 appeals and collateral review in criminal cases
14 to provide for elimination of certain
15 postconviction proceedings in state courts;
16 providing that a state court may not review or
17 examine the legality of judgment or sentence
18 imposed in a criminal case by a court of
19 competent jurisdiction, except pursuant to
20 direct appeal; amending s. 924.055, F.S.;
21 prohibiting certain postconviction proceedings
22 in state courts; repealing s. 924.066, F.S.,
23 relating to collateral relief; repealing Rules
24 3.850, 3.851, and 3.852, Florida Rules of
25 Criminal Procedure, relating to motion to
26 vacate, set aside, or correct sentence,
27 collateral relief after death sentence has been
28 imposed, and capital postconviction public
29 records production, respectively; providing an
30 effective date.
31

1 WHEREAS, convicted murderers sentenced to death are
2 allowed to file multiple appeals of their convictions and
3 sentences and to reargue factual and legal rulings, causing
4 years of delay in death penalty cases in state courts, and

5 WHEREAS, the federal courts also review the conviction
6 and sentence of every convicted murderer sentenced to death in
7 this state, wherein the convicted murderer again challenges
8 factual and legal rulings of the state courts of this state,
9 and

10 WHEREAS, in cases such as Thompson v. Keohane, 64
11 U.S.L.W. 4027 (Nov. 29, 1995), the United States Supreme Court
12 has allowed state prisoners to relitigate state courts'
13 factual and legal rulings in the federal courts, and

14 WHEREAS, convicted murderers sentenced to death often
15 return to the state courts to file further appeals after
16 previously receiving extensive judicial review in state and
17 federal courts, and

18 WHEREAS, this duplicative system of judicial review of
19 state court judgments and sentences in criminal cases causes
20 unjustifiable delays in death penalty cases, causing further
21 suffering to victims and fostering disrespect of the courts
22 and the rule of law in this state, and

23 WHEREAS, the state courts have granted criminal
24 defendants in this state more rights than ever before in
25 history, including extensive pretrial discovery in which
26 defendants are entitled to examine all evidence long before
27 trial, and

28 WHEREAS, Florida provides free legal representation to
29 criminal defendants, including free postconviction legal
30 representation, to exercise these legal rights before trial,
31 during trial, on direct appeal in state courts, on appeal to

1 the United States Supreme Court, and on postconviction review
2 in lower federal courts, and

3 WHEREAS, the Board of Executive Clemency has the power
4 to pardon or commute any criminal sentence should the board
5 find sufficient grounds to justify granting such relief, and

6 WHEREAS, the Federal Constitution does not require this
7 state to allow repetitive appeals of criminal judgments and
8 sentences, and

9 WHEREAS, the elimination of state court postconviction
10 review of criminal judgments and sentences that have
11 previously been upheld on direct appeal will further justice,
12 finality, and the rule of law, NOW, THEREFORE,

13

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

15

16 Section 1. This act shall be known and may be cited as
17 the "Death Penalty Appeals Reform Act of 1998."

18 Section 2. Section 27.7001, Florida Statutes, is
19 amended to read:

20 27.7001 Legislative intent.--It is the intent of the
21 Legislature to create part IV of this chapter, consisting of
22 ss. 27.7001-27.708, inclusive, to provide for the collateral
23 representation of any person convicted and sentenced to death
24 in this state, so that collateral legal proceedings to
25 challenge any Florida capital conviction and sentence may be
26 commenced in a timely manner and so as to assure the people of
27 this state that the judgments of its courts may be regarded
28 with the finality to which they are entitled in the interests
29 of justice. It is the further intent of the Legislature that
30 collateral representation shall not include representation
31 during retrials, resentencings, proceedings commenced under

1 chapter 940, ~~or~~ civil litigation, or any postconviction
2 proceedings in state court.
3 Section 3. Section 27.701, Florida Statutes, is
4 amended to read:
5 27.701 Capital collateral regional counsels.--There
6 are created three regional offices of capital collateral
7 counsel, which shall be located in a northern, middle, and
8 southern region of the state. The northern region shall
9 consist of the area under the jurisdiction of the United
10 States District Court, Northern District of Florida ~~First,~~
11 ~~Second, Third, Fourth, Eighth, and Fourteenth~~ Judicial
12 Circuits; the middle region shall consist of the area under
13 the jurisdiction of the United States District Court, Middle
14 District of Florida ~~Fifth, Sixth, Seventh, Ninth, Tenth,~~
15 ~~Twelfth, Thirteenth, and Eighteenth~~ Judicial Circuits; and the
16 southern region shall consist of the area under the
17 jurisdiction of the United States District Court, Southern
18 District of Florida ~~Eleventh, Fifteenth, Sixteenth,~~
19 ~~Seventeenth, Nineteenth, and Twentieth~~ Judicial Circuits. Each
20 regional office shall be administered by a regional counsel. A
21 regional counsel must be, and must have been for the preceding
22 5 years, a member in good standing of The Florida Bar or a
23 similar organization in another state. Each capital collateral
24 regional counsel shall be appointed by the Governor, and is
25 subject to confirmation by the Senate. The Supreme Court
26 Judicial Nominating Commission shall recommend to the Governor
27 three qualified candidates for each appointment as regional
28 counsel. The Governor shall appoint a regional counsel for
29 each region from among the recommendations, or, if it is in
30 the best interest of the fair administration of justice in
31 capital cases, the Governor may reject the nominations and

1 request submission of three new nominees by the Supreme Court
2 Judicial Nominating Commission. Each capital collateral
3 regional counsel shall be appointed to a term of 3 years.
4 Vacancies in the office of capital collateral regional counsel
5 shall be filled in the same manner as appointments. A person
6 appointed as a regional counsel may not run for or accept
7 appointment to any state office for 2 years following vacation
8 of office.

9 Section 4. Section 27.702, Florida Statutes, is
10 amended to read:

11 27.702 Duties of the capital collateral regional
12 counsel; reports.--

13 (1) The capital collateral regional counsel shall
14 represent each person ~~convicted and~~ sentenced to death by a
15 court of in this state for the sole purpose of instituting and
16 prosecuting collateral actions challenging the legality of the
17 judgment and sentence imposed against such person in the ~~state~~
18 ~~courts~~, federal courts in this state, the United States Court
19 of Appeals for the Eleventh Circuit, and the United States
20 Supreme Court. Representation by the regional counsel shall
21 commence automatically upon termination of direct appellate
22 proceedings in state or federal courts. Within 180 ~~90~~ days
23 after the date the Supreme Court issues a mandate on a direct
24 appeal or the United States Supreme Court denies a petition
25 for certiorari, whichever is later, the capital collateral
26 regional counsel ~~shall file a notice of appearance in the~~
27 ~~trial court in which the judgment and sentence were entered~~
28 ~~and~~ shall secure all direct-appeal files for collateral
29 representation and file a petition or motion for any
30 appropriate relief in federal court, unless the capital
31 collateral regional counsel determines there are no grounds

1 for federal relief. The capital collateral regional counsel
2 shall comply with all applicable federal laws and rules. Upon
3 receipt of files from the public defender or other counsel,
4 the capital collateral regional counsel shall assign each such
5 case to personnel in his or her office for investigation,
6 client contact, and any further action the circumstances
7 warrant. The three capital collateral regional counsels'
8 offices shall function independently and be separate budget
9 entities, and the regional counsels shall be the office heads
10 for all purposes. The Justice Administrative Commission shall
11 provide administrative support and service to the three
12 offices to the extent requested by the regional counsels. The
13 three regional offices shall not be subject to control,
14 supervision, or direction by the Justice Administrative
15 Commission in any manner, including, but not limited to,
16 personnel, purchasing, transactions involving real or personal
17 property, and budgetary matters.

18 (2) The capital collateral regional counsel shall
19 represent each person ~~convicted and~~ sentenced to death by a
20 court of this state within the counsel's region, who has
21 grounds to seek appropriate federal relief, in federal court
22 ~~collateral postconviction proceedings only, unless a court~~
23 ~~appoints or permits other counsel to appear as counsel of~~
24 ~~record.~~

25 (3)(a) The capital collateral regional counsel shall
26 file motions seeking compensation for representation and
27 reimbursement for expenses pursuant to 18 U.S.C. s. 3006A when
28 providing representation to indigent persons in the federal
29 courts, and shall deposit all such payments received into the
30 Capital Collateral Trust Fund established for such purpose.

31

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

13 (4) Each capital collateral regional counsel shall
14 provide a quarterly report to the President of the Senate, the
15 Speaker of the House of Representatives, and the Commission on
16 the Administration of Justice in Capital Cases which details
17 the number of hours worked by investigators and legal counsel
18 per case and the amounts per case expended during the
19 preceding quarter in investigating and litigating capital
20 collateral cases.

21 (5) Unless otherwise authorized by the Legislature,
22 the capital collateral regional counsel offices and their
23 personnel are prohibited from using, expending, or otherwise
24 committing any state funds for purposes of litigating cases in
25 the courts of this state, or from entering into any agreement
26 or contract which would result directly or indirectly in the
27 ultimate use, expenditure, or commitment of any state funds
28 for such purposes.

29 Section 5. Section 27.704, Florida Statutes, is
30 amended to read:

31

1 27.704 Appointment of assistants and other staff;
2 method of payments.--Each capital collateral regional counsel
3 may:
4 (1) Appoint, employ, and establish, in such numbers as
5 he or she determines, full-time or part-time assistant
6 counsel, investigators, and other clerical and support
7 personnel who shall be paid from funds appropriated for that
8 purpose. A full-time assistant capital collateral counsel
9 must be a member in good standing of The Florida Bar, with not
10 less than 3 years' experience in the practice of criminal law,
11 and, prior to employment, must have participated in at least
12 five felony jury trials, five felony appeals, or five capital
13 postconviction evidentiary hearings or any combination of at
14 least five of such proceedings. Law school graduates who do
15 not have the qualifications of a full-time assistant capital
16 collateral counsel may be employed as members of the legal
17 staff but may not be designated as sole counsel for any
18 person.
19 (2) Contract with private counsel who are members in
20 good standing of The Florida Bar or with public defenders for
21 the purpose of providing prompt and cost-effective
22 representation for individuals who are sentenced to death in
23 this state in federal postconviction proceedings. A private
24 counsel or public defender under contract with the regional
25 counsel must have at least 3 years' experience in the practice
26 of criminal law, and, prior to the contract, must have
27 participated in at least five felony jury trials, five felony
28 appeals, or five capital postconviction evidentiary hearings
29 or any combination of at least five of such proceedings.
30 (3) Appoint pro bono assistant counsel, who must be
31 members in good standing of The Florida Bar, and who shall

1 serve without compensation at the discretion of the capital
2 collateral regional counsel.

3 Section 6. Section 27.707, Florida Statutes, is
4 amended to read:

5 27.707 Investigators; service of process.--Each
6 investigator employed by the capital collateral regional
7 counsel has full authority to serve any subpoena or court
8 order issued by any federal court or federal judge in any case
9 for which the office has responsibility for providing
10 representation.

11 Section 7. Section 27.708, Florida Statutes, is
12 amended to read:

13 27.708 Access to prisoners; ~~compliance with the~~
14 ~~Florida Rules of Criminal Procedure in capital collateral~~
15 ~~litigation; records requests; approval of records requests.--~~

16 (1) Each capital collateral regional counsel and his
17 or her assistants may inquire of all persons sentenced to
18 death who are incarcerated and tender them advice and counsel
19 at any reasonable time, but this section does not apply with
20 respect to persons who are represented by other counsel.

21 (2) ~~The capital collateral regional counsel and~~
22 ~~contracted private counsel must timely comply with all~~
23 ~~provisions of the Florida Rules of Criminal Procedure~~
24 ~~governing collateral review of capital cases, including~~
25 ~~provisions pertaining to requests for records under Florida~~
26 ~~Rule of Criminal Procedure 3.852.~~

27 (3) ~~All requests for records in capital postconviction~~
28 ~~proceedings must be made in accordance with Florida Rule of~~
29 ~~Criminal Procedure 3.852, and, if the person sentenced to~~
30 ~~death is represented by an assistant capital collateral~~
31 ~~regional counsel or other attorney appointed to assist the~~

1 ~~regional counsel, the regional counsel must approve the~~
2 ~~request.~~

3 Section 8. Section 27.7091, Florida Statutes, is
4 amended to read:

5 27.7091 Legislative recommendations to Supreme Court;
6 postconviction proceedings; pro bono service credit.--In the
7 interest of promoting justice ~~and integrity with respect to~~
8 ~~capital collateral representation~~, the Legislature recommends
9 that the Supreme Court+

10 ~~(1) Adopt by rule the provisions of s. 924.055, which~~
11 ~~limit the time for postconviction proceedings in capital~~
12 ~~cases.~~

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

17 Section 9. Section 79.01, Florida Statutes, is amended
18 to read:

19 79.01 Application and writ.--

20 (1) When any person detained in custody, whether
21 charged with a criminal offense or not, applies to the Supreme
22 Court or any justice thereof, or to any district court of
23 appeal or any judge thereof or to any circuit judge for a writ
24 of habeas corpus and shows by affidavit or evidence probable
25 cause to believe that he or she is detained without lawful
26 authority, the court, justice, or judge to whom such
27 application is made shall grant the writ forthwith, against
28 the person in whose custody the applicant is detained and
29 returnable immediately before any of the courts, justices, or
30 judges as the writ directs.

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1 (2) For purposes of construing this section, a
2 judgment of conviction or sentence which has been affirmed on
3 direct appeal constitutes "lawful authority," unless:

4 (a) The trial court did not have jurisdiction over the
5 person.

6 (b) The trial court did not have subject matter
7 jurisdiction.

8 (c) The statute or other law under which the inmate is
9 being held is unconstitutional.

10 (d) The trial court exceeded the maximum sentence
11 allowed by statute or other law.

12 Section 10. Subsection (6) of section 924.051, Florida
13 Statutes, is repealed, and subsections (2), (5), (7), (8), and
14 (9) of said section are amended to read:

15 924.051 Terms and conditions of appeals and collateral
16 review in criminal cases.--

17 (1) As used in this section:

18 (a) "Prejudicial error" means an error in the trial
19 court that harmfully affected the judgment or sentence.

20 (b) "Preserved" means that an issue, legal argument,
21 or objection to evidence was timely raised before, and ruled
22 on by, the trial court, and that the issue, legal argument, or
23 objection to evidence was sufficiently precise that it fairly
24 apprised the trial court of the relief sought and the grounds
25 therefor.

26 (2) The right to direct appeal ~~and the provisions for~~
27 ~~collateral review~~ created in this chapter may only be
28 implemented in strict accordance with the terms and conditions
29 of this section.

30 (3) An appeal may not be taken from a judgment or
31 order of a trial court unless a prejudicial error is alleged

1 and is properly preserved or, if not properly preserved, would
2 constitute fundamental error. A judgment or sentence may be
3 reversed on appeal only when an appellate court determines
4 after a review of the complete record that prejudicial error
5 occurred and was properly preserved in the trial court or, if
6 not properly preserved, would constitute fundamental error.

7 (4) If a defendant pleads nolo contendere without
8 expressly reserving the right to appeal a legally dispositive
9 issue, or if a defendant pleads guilty without expressly
10 reserving the right to appeal a legally dispositive issue, the
11 defendant may not appeal the judgment or sentence.

12 (5) Collateral relief is not available in state courts
13 ~~on grounds that were or could have been raised at trial and,~~
14 ~~if properly preserved, on direct appeal of the conviction and~~
15 ~~sentence. A state court shall not review or examine the~~
16 legality of a judgment or sentence imposed in a criminal case
17 by a court of competent jurisdiction, except pursuant to a
18 direct appeal of the judgment or sentence to the court having
19 appellate jurisdiction over that criminal case.

20 ~~(6) A petition or motion for collateral or other~~
21 ~~postconviction relief may not be considered if it is filed~~
22 ~~more than 2 years after the judgment and sentence became final~~
23 ~~in a noncapital case or more than 1 year after the judgment~~
24 ~~and sentence became final in a capital case in which a death~~
25 ~~sentence was imposed unless it alleges that:~~

26 ~~(a) The facts upon which the claim is predicated were~~
27 ~~unknown to the petitioner or his attorney and could not have~~
28 ~~been ascertained by the exercise of due diligence;~~

29 ~~(b) The fundamental constitutional right asserted was~~
30 ~~not established within the period provided for in this~~
31 ~~subsection and has been held to apply retroactively; or~~

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

6 (6)~~(7)~~ In a direct appeal ~~or a collateral proceeding,~~
7 the party challenging the judgment or order of the trial court
8 has the burden of demonstrating that a prejudicial error
9 occurred in the trial court. A conviction or sentence may not
10 be reversed absent an express finding that a prejudicial error
11 occurred in the trial court.

12 (7)~~(8)~~ It is the intent of the Legislature that all
13 terms and conditions of direct appeal and ~~collateral review be~~
14 ~~strictly enforced, including the application of procedural~~
15 ~~bars, to ensure that all claims of error are raised and~~
16 resolved at the first opportunity. It is also the
17 Legislature's intent that all procedural bars ~~to direct appeal~~
18 ~~and collateral review~~ be fully enforced by the courts of this
19 state.

20 (8)~~(9)~~ Funds, resources, or employees of this state or
21 its political subdivisions may not be used, directly or
22 indirectly, in ~~appellate or collateral proceedings unless the~~
23 ~~use is constitutionally or statutorily mandated.~~

24 Section 11. Section 924.055, Florida Statutes, is
25 amended to read:

26 924.055 ~~Time limitations for~~ Postconviction
27 proceedings in capital cases prohibited in state courts.--

28 ~~(1)~~ The Legislature recognizes that unjustified delay
29 in postconviction proceedings in capital cases frustrates
30 justice and diminishes public confidence in the criminal
31 justice system. A state court shall not review or examine the

1 legality of a judgment or sentence imposed in a criminal case
2 by a court of competent jurisdiction, except pursuant to a
3 direct appeal of the judgment or sentence to the court having
4 appellant jurisdiction over that criminal case. ~~It is the~~
5 ~~intent of the Legislature that postconviction proceedings in~~
6 ~~capital cases progress in a fair but timely fashion and that,~~
7 ~~absent extreme circumstances, the participants in such~~
8 ~~proceedings abide by the time limitations set forth in this~~
9 ~~section.~~

10 ~~(2) Within 1 year after the date the Supreme Court~~
11 ~~issues a mandate on a direct appeal or the United States~~
12 ~~Supreme Court denies a petition for certiorari, whichever is~~
13 ~~later, all postconviction motions and petitions that challenge~~
14 ~~the judgment, sentence, or appellate decision must be filed in~~
15 ~~the appropriate court.~~

16 ~~(3) Within 90 days after the date the state files a~~
17 ~~response to a postconviction motion that challenges the~~
18 ~~judgment or sentence, the circuit court shall conduct all~~
19 ~~necessary hearings and render a decision.~~

20 ~~(4) Within 200 days after the date a notice is filed~~
21 ~~appealing an order of the trial court or an extraordinary writ~~
22 ~~is filed in a postconviction proceeding, the Supreme Court~~
23 ~~shall render a decision.~~

24 ~~(5) A convicted person must file any petition for~~
25 ~~habeas corpus in the district court of the United States~~
26 ~~within 90 days after the date the Supreme Court issues a~~
27 ~~mandate in a postconviction proceeding.~~

28 Section 12. Section 924.066, Florida Statutes, is
29 repealed.

30 Section 13. Rules 3.850, 3.851, and 3.852, Florida
31 Rules of Criminal Procedure, relating to motions to vacate,

