

By the Committee on Criminal Justice and Senators Williams,
Kirkpatrick and Brown-Waite

307-1756A-98

1 A bill to be entitled
2 An act relating to state postconviction
3 proceedings; creating the "Death Penalty
4 Appeals Reform Act of 1998"; amending s.
5 27.7001, F.S.; revising legislative intent with
6 respect to collateral representation to exclude
7 postconviction proceedings in state court;
8 amending s. 27.701, F.S.; making the regions of
9 the capital collateral regional counsel offices
10 coincident with the jurisdictional areas of
11 certain federal court districts; amending s.
12 27.702, F.S., relating to duties of capital
13 collateral regional counsel; eliminating
14 certain duties for representation in state
15 court proceedings; revising time limitation for
16 application for relief in federal court;
17 prohibiting use of state funds by the capital
18 collateral regional counsel offices for
19 purposes of state court litigation; amending s.
20 27.704, F.S.; providing for contracts with
21 private counsel for representation in federal
22 postconviction proceedings; amending s. 27.707,
23 F.S.; providing for service of process of
24 certain subpoenas or court orders issued by
25 federal courts or federal judges; amending s.
26 12, ch. 97-313, Laws of Florida, to eliminate
27 legislative recommendation that the Florida
28 Supreme Court adopt by rule specified
29 provisions limiting the time for postconviction
30 proceedings in capital cases; amending s.
31 27.708, F.S., relating to access to prisoners

1 and compliance with Florida Rules of Criminal
2 Procedure; removing certain provisions with
3 respect to compliance with Florida Rules of
4 Criminal Procedure; amending s. 79.01, F.S.,
5 relating to application and writ for habeas
6 corpus; providing that a judgment of conviction
7 or sentence in a capital case which has been
8 affirmed on direct appeal constitutes "lawful
9 authority" to detain a person for purposes of
10 construing specified provisions; amending s.
11 924.051, F.S.; providing that provisions
12 relating to terms and conditions of appeals and
13 collateral review apply only in noncapital
14 cases; providing for elimination of capital
15 postconviction proceedings in state courts;
16 prohibiting a state court from reviewing or
17 examining the legality of a judgment or
18 sentence imposed in a capital case by a court
19 of competent jurisdiction, except pursuant to a
20 direct appeal or habeas corpus, as prescribed
21 and limited; amending s. 924.055, F.S.;
22 prohibiting state courts from reviewing or
23 examining the legality of a judgment or
24 sentence in a capital case by a court of
25 competent jurisdiction, except pursuant to a
26 direct appeal or habeas corpus, as prescribed
27 and limited; amending s. 924.066, F.S.,
28 relating to collateral relief; restricting
29 collateral relief to a prisoner in custody in a
30 noncapital case; repealing Rules 3.851 and
31 3.852, Florida Rules of Criminal Procedure,

1 relating to collateral relief after a death
2 sentence has been imposed and records
3 production in a capital postconviction
4 proceeding; providing an effective date.
5

6 WHEREAS, convicted murderers sentenced to death are
7 allowed to file multiple appeals of their convictions and
8 sentences and to reargue factual and legal rulings, causing
9 years of delay in death penalty cases in state courts, and
10 WHEREAS, the federal courts also review the conviction
11 and sentence of every convicted murderer sentenced to death in
12 this state, wherein the convicted murderer again challenges
13 factual and legal rulings of the state courts of this state,
14 and

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

19 WHEREAS, convicted murderers sentenced to death often
20 return to the state courts to file further appeals after
21 previously receiving extensive judicial review in state and
22 federal courts, and

23 WHEREAS, this duplicative system of judicial review of
24 state court judgments and sentences in criminal cases causes
25 unjustifiable delays in death penalty cases, causing further
26 suffering to victims and fostering disrespect of the courts
27 and the rule of law in this state, and

28 WHEREAS, the state courts have granted criminal
29 defendants in this state more rights than ever before in
30 history, including extensive pretrial discovery in which
31

1 defendants are entitled to examine all evidence long before
2 trial, and

3 WHEREAS, Florida provides free legal representation to
4 criminal defendants, including free postconviction legal
5 representation, to exercise these legal rights before trial,
6 during trial, on direct appeal in state courts, on appeal to
7 the United States Supreme Court, and on postconviction review
8 in lower federal courts, and

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

12 WHEREAS, the Federal Constitution does not require this
13 state to allow repetitive appeals of criminal judgments and
14 sentences in capital cases, and

15 WHEREAS, the elimination of state court postconviction
16 review of criminal judgments and sentences in capital cases
17 that have previously been upheld on direct appeal will further
18 justice, finality, and the rule of law, NOW, THEREFORE,

19

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

21

22 Section 1. This act may be cited as the "Death Penalty
23 Appeals Reform Act."

24 Section 2. Section 27.7001, Florida Statutes, is
25 amended to read:

26 27.7001 Legislative intent.--It is the intent of the
27 Legislature to create part IV of this chapter, consisting of
28 ss. 27.7001-27.708, inclusive, to provide for the collateral
29 representation of any person convicted and sentenced to death
30 in this state, so that collateral legal proceedings to
31 challenge any Florida capital conviction and sentence may be

1 commenced in a timely manner and so as to assure the people of
2 this state that the judgments of its courts may be regarded
3 with the finality to which they are entitled in the interests
4 of justice. It is the further intent of the Legislature that
5 collateral representation shall not include representation
6 during retrials, resentencings, proceedings commenced under
7 chapter 940, ~~or civil litigation, or any postconviction~~
8 proceedings in state court.

9 Section 3. Section 27.701, Florida Statutes, is
10 amended to read:

11 27.701 Capital collateral regional counsels.--There
12 are created three regional offices of capital collateral
13 counsel, which shall be located in a northern, middle, and
14 southern region of the state. The northern region shall
15 consist of the area under the jurisdiction of the United
16 States District Court, Northern District of Florida ~~First,~~
17 ~~Second, Third, Fourth, Eighth, and Fourteenth Judicial~~
18 ~~Circuits~~; the middle region shall consist of the area under
19 the jurisdiction of the United States District Court, Middle
20 District of Florida ~~Fifth, Sixth, Seventh, Ninth, Tenth,~~
21 ~~Twelfth, Thirteenth, and Eighteenth Judicial Circuits~~; and the
22 southern region shall consist of the area under the
23 jurisdiction of the United States District Court, Southern
24 District of Florida ~~Eleventh, Fifteenth, Sixteenth,~~
25 ~~Seventeenth, Nineteenth, and Twentieth Judicial Circuits~~. Each
26 regional office shall be administered by a regional counsel. A
27 regional counsel must be, and must have been for the preceding
28 5 years, a member in good standing of The Florida Bar or a
29 similar organization in another state. Each capital collateral
30 regional counsel shall be appointed by the Governor, and is
31 subject to confirmation by the Senate. The Supreme Court

1 Judicial Nominating Commission shall recommend to the Governor
2 three qualified candidates for each appointment as regional
3 counsel. The Governor shall appoint a regional counsel for
4 each region from among the recommendations, or, if it is in
5 the best interest of the fair administration of justice in
6 capital cases, the Governor may reject the nominations and
7 request submission of three new nominees by the Supreme Court
8 Judicial Nominating Commission. Each capital collateral
9 regional counsel shall be appointed to a term of 3 years.
10 Vacancies in the office of capital collateral regional counsel
11 shall be filled in the same manner as appointments. A person
12 appointed as a regional counsel may not run for or accept
13 appointment to any state office for 2 years following vacation
14 of office.

15 Section 4. Section 27.702, Florida Statutes, is
16 amended to read:

17 27.702 Duties of the capital collateral regional
18 counsel; reports.--

19 (1) The capital collateral regional counsel shall
20 represent each person ~~convicted and~~ sentenced to death by a
21 court of in this state for the sole purpose of instituting and
22 prosecuting collateral actions challenging the legality of the
23 judgment and sentence imposed against such person in the ~~state~~
24 ~~courts~~, federal courts in this state, the United States Court
25 of Appeals for the Eleventh Circuit, and the United States
26 Supreme Court. Representation by the regional counsel shall
27 commence automatically upon termination of direct appellate
28 proceedings in state or federal courts. Within 180 ~~91~~ days
29 after the date the Supreme Court issues a mandate on a direct
30 appeal or the United States Supreme Court denies a petition
31 for certiorari, whichever is later, the capital collateral

1 regional counsel ~~shall file a notice of appearance in the~~
2 ~~trial court in which the judgment and sentence were entered~~
3 ~~and shall secure all direct-appeal files for collateral~~
4 ~~representation and file a petition or motion for any~~
5 ~~appropriate relief in federal court, unless the capital~~
6 ~~collateral regional counsel determines there are no grounds~~
7 ~~for federal relief. The capital collateral regional counsel~~
8 ~~shall comply with all applicable federal laws and rules.~~ Upon
9 receipt of files from the public defender or other counsel,
10 the capital collateral regional counsel shall assign each such
11 case to personnel in his or her office for investigation,
12 client contact, and any further action the circumstances
13 warrant. The three capital collateral regional counsels'
14 offices shall function independently and be separate budget
15 entities, and the regional counsels shall be the office heads
16 for all purposes. The Justice Administrative Commission shall
17 provide administrative support and service to the three
18 offices to the extent requested by the regional counsels. The
19 three regional offices shall not be subject to control,
20 supervision, or direction by the Justice Administrative
21 Commission in any manner, including, but not limited to,
22 personnel, purchasing, transactions involving real or personal
23 property, and budgetary matters.

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

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

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

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

27 (5) Unless otherwise authorized by the Legislature,
28 the capital collateral regional counsel offices and their
29 personnel are prohibited from using, expending, or otherwise
30 committing any state funds for purposes of litigating cases in
31 the courts of this state, or from entering into any agreement

1 or contract that would result directly or indirectly in the
2 ultimate use, expenditure, or commitment of any state funds
3 for such purposes.

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

6 27.704 Appointment of assistants and other staff;
7 method of payments.--Each capital collateral regional counsel
8 may:

9 (1) Appoint, employ, and establish, in such numbers as
10 he or she determines, full-time or part-time assistant
11 counsel, investigators, and other clerical and support
12 personnel who shall be paid from funds appropriated for that
13 purpose. A full-time assistant capital collateral counsel
14 must be a member in good standing of The Florida Bar, with not
15 less than 3 years' experience in the practice of criminal law,
16 and, prior to employment, must have participated in at least
17 five felony jury trials, five felony appeals, or five capital
18 postconviction evidentiary hearings or any combination of at
19 least five of such proceedings. Law school graduates who do
20 not have the qualifications of a full-time assistant capital
21 collateral counsel may be employed as members of the legal
22 staff but may not be designated as sole counsel for any
23 person.

24 (2) Contract with private counsel who are members in
25 good standing of The Florida Bar or with public defenders for
26 the purpose of providing prompt and cost-effective
27 representation for individuals who are sentenced to death in
28 this state in federal postconviction proceedings. A private
29 counsel or public defender under contract with the regional
30 counsel must have at least 3 years' experience in the practice
31 of criminal law, and, prior to the contract, must have

1 participated in at least five felony jury trials, five felony
2 appeals, or five capital postconviction evidentiary hearings
3 or any combination of at least five of such proceedings.

4 (3) Appoint pro bono assistant counsel, who must be
5 members in good standing of The Florida Bar, and who shall
6 serve without compensation at the discretion of the capital
7 collateral regional counsel.

8 Section 6. Section 27.707, Florida Statutes, is
9 amended to read:

10 27.707 Investigators; service of process.--Each
11 investigator employed by the capital collateral regional
12 counsel has full authority to serve any subpoena or court
13 order issued by any federal court or federal judge in any case
14 for which the office has responsibility for providing
15 representation.

16 Section 7. Section 12 of chapter 97-313, Laws of
17 Florida, is amended to read:

18 Section 12. In the interest of promoting justice ~~and~~
19 ~~integrity with respect to capital collateral representation,~~
20 the Legislature recommends that the Supreme Court+

21 ~~(1) Adopt by rule the provisions of section 924.055,~~
22 ~~Florida Statutes, which limit the time for postconviction~~
23 ~~proceedings in capital cases.~~

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

28 Section 8. Section 27.708, Florida Statutes, is
29 amended to read:

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1 27.708 Access to prisoners; ~~compliance with the~~
2 ~~Florida Rules of Criminal Procedure in capital collateral~~
3 ~~litigation; records requests; approval of records requests.--~~

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

9 (2) ~~The capital collateral regional counsel and~~
10 ~~contracted private counsel must timely comply with all~~
11 ~~provisions of the Florida Rules of Criminal Procedure~~
12 ~~governing collateral review of capital cases, including~~
13 ~~provisions pertaining to requests for records under Florida~~
14 ~~Rule of Criminal Procedure 3.852.~~

15 (3) ~~All requests for records in capital postconviction~~
16 ~~proceedings must be made in accordance with Florida Rule of~~
17 ~~Criminal Procedure 3.852, and, if the person sentenced to~~
18 ~~death is represented by an assistant capital collateral~~
19 ~~regional counsel or other attorney appointed to assist the~~
20 ~~regional counsel, the regional counsel must approve the~~
21 ~~request.~~

22 Section 9. Section 79.01, Florida Statutes, is amended
23 to read:

24 79.01 Application and writ.--

25 (1) When any person detained in custody, whether
26 charged with a criminal offense or not, applies to the Supreme
27 Court or any justice thereof, or to any district court of
28 appeal or any judge thereof or to any circuit judge for a writ
29 of habeas corpus and shows by affidavit or evidence probable
30 cause to believe that he or she is detained without lawful
31 authority, the court, justice, or judge to whom such

1 application is made shall grant the writ forthwith, against
2 the person in whose custody the applicant is detained and
3 returnable immediately before any of the courts, justices, or
4 judges as the writ directs.

5 (2) For purposes of construing this section as it
6 relates to habeas corpus applications filed by capital
7 defendants, a judgment of conviction or sentence in a capital
8 case which has been affirmed on direct appeal constitutes
9 "lawful authority."

10 Section 10. Section 924.051, Florida Statutes, is
11 amended to read:

12 924.051 Terms and conditions of appeals and collateral
13 review in criminal cases.--

14 (1) As used in this section:

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

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

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

27 (3) An appeal may not be taken from a judgment or
28 order of a trial court unless a prejudicial error is alleged
29 and is properly preserved or, if not properly preserved, would
30 constitute fundamental error. A judgment or sentence may be
31 reversed on appeal only when an appellate court determines

1 after a review of the complete record that prejudicial error
2 occurred and was properly preserved in the trial court or, if
3 not properly preserved, would constitute fundamental error.

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

9 (5) Collateral relief is not available on grounds that
10 were or could have been raised at trial and, if properly
11 preserved, on direct appeal of the conviction and sentence.

12 (6) A petition or motion for collateral or other
13 postconviction relief may not be considered if it is filed
14 more than 2 years after the judgment and sentence became final
15 in a noncapital case or more than 1 year after the judgment
16 and sentence became final in a capital case in which a death
17 sentence was imposed unless it alleges that:

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

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

24 (c) The sentence imposed was illegal because it either
25 exceeded the maximum or fell below the minimum authorized by
26 statute for the criminal offense at issue. Either the state
27 or the defendant may petition the trial court to vacate an
28 illegal sentence at any time.

29 (7) In a direct appeal or a collateral proceeding, the
30 party challenging the judgment or order of the trial court has
31 the burden of demonstrating that a prejudicial error occurred

1 in the trial court. A conviction or sentence may not be
2 reversed absent an express finding that a prejudicial error
3 occurred in the trial court.

4 (8) It is the intent of the Legislature that all terms
5 and conditions of direct appeal and collateral review be
6 strictly enforced, including the application of procedural
7 bars, to ensure that all claims of error are raised and
8 resolved at the first opportunity. It is also the
9 Legislature's intent that all procedural bars to direct appeal
10 and collateral review be fully enforced by the courts of this
11 state.

12 (9) Funds, resources, or employees of this state or
13 its political subdivisions may not be used, directly or
14 indirectly, in appellate or collateral proceedings unless the
15 use is constitutionally or statutorily mandated.

16 (10) This section applies only to noncapital cases. A
17 state postconviction proceeding is not available in any
18 capital case. A state court may not review or examine the
19 legality of a judgment or sentence imposed in a capital case
20 by a court of competent jurisdiction except pursuant to a
21 direct appeal of the judgment or sentence to the court having
22 appellate jurisdiction over that capital case, or to the
23 extent that such review is available and permissible by habeas
24 corpus application, subject to the limitations provided in s.
25 79.01(2).

26 Section 11. Section 924.055, Florida Statutes, is
27 amended to read:

28 924.055 ~~Time limitations for~~ Postconviction
29 proceedings in capital cases prohibited in state courts.--

30 (1) The Legislature recognizes that unjustified delay
31 in postconviction proceedings in capital cases frustrates

1 justice and diminishes public confidence in the criminal
2 justice system. State postconviction proceedings are not
3 available in capital cases. A state court may not review or
4 examine the legality of a judgment or sentence imposed in a
5 capital case except pursuant to a direct appeal of the
6 judgment or sentence to the court having appellate
7 jurisdiction over that capital case, or to the extent that
8 such review is available or permissible by habeas corpus
9 application, subject to the limitations provided in s.
10 79.01(2). ~~It is the intent of the Legislature that~~
11 ~~postconviction proceedings in capital cases progress in a fair~~
12 ~~but timely fashion and that, absent extreme circumstances, the~~
13 ~~participants in such proceedings abide by the time limitations~~
14 ~~set forth in this section.~~

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

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

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

29 ~~(5) A convicted person must file any petition for~~
30 ~~habeas corpus in the district court of the United States~~

31

1 ~~within 90 days after the date the Supreme Court issues a~~
2 ~~mandate in a postconviction proceeding.~~

3 Section 12. Section 924.066, Florida Statutes, is
4 amended to read:

5 924.066 Collateral relief.--

6 (1) Subject to the terms and conditions set forth in
7 this chapter, a prisoner in custody in a noncapital case may
8 seek relief based upon claims that the judgment of conviction
9 or sentence was imposed in violation of the Constitution or
10 law of the United States or the State of Florida.

11 (2) Either the state or a prisoner in custody in a
12 noncapital case may obtain review in the next higher state
13 court of a trial court's adverse ruling granting or denying
14 collateral relief. The state may obtain review of any trial
15 court ruling that fails to enforce a procedural bar.

16 (3) A prisoner in custody ~~person~~ in a noncapital case
17 who is seeking collateral review under this chapter has no
18 right to a court-appointed lawyer.

19 Section 13. Rules 3.851 and 3.852, Florida Rules of
20 Criminal Procedure, relating to collateral relief after a
21 death sentence has been imposed and the production of records
22 in capital postconviction proceedings, are repealed.

23 Section 14. This act shall take effect July 1 of the
24 year in which enacted, except that section 13 shall take
25 effect only if this act is passed by the affirmative vote of
26 two-thirds of the membership of each house of the Legislature.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 356

- . Provides that limitations on habeas corpus applications apply only to capital defendants.
- . Provides that elimination of state postconviction remedies applies only to capital defendants.
- . Provides that Rule 3.850 remains a vehicle for postconviction challenges by non-capital defendants.
- . Eliminates provisions in the bill that would potentially subject attorneys in capital proceedings to disciplinary action for admitting to providing ineffective assistance of counsel.