

By Senator Silver

38-942-99

See HB

1 A bill to be entitled
2 An act relating to postconviction proceedings;
3 creating the "Death Penalty Appeals Reform Act
4 of 1999"; amending s. 27.701, F.S., relating to
5 capital collateral regional counsels; removing
6 time limitation upon running for or holding
7 state office by regional counsel in order to
8 permit a person appointed as regional counsel
9 to run for or accept appointment to a state
10 office within 2 years following vacation of
11 office; amending s. 27.702, F.S., relating to
12 duties of the capital collateral regional
13 counsel; providing for certain representation
14 of persons sentenced to death to conform to
15 changes made by the act; providing a
16 cross-reference; prohibiting any state
17 employee, or person contracting with a state
18 officer, from using state resources to file,
19 argue, research, or prepare in any way a
20 "successive postconviction pleading," as
21 defined, in state or federal court; restricting
22 the use of state resources to the filing of one
23 postconviction pleading in any of specified
24 courts; amending s. 27.708, F.S., relating to
25 access to prisoners and compliance by capital
26 collateral regional counsel with the Florida
27 Rules of Criminal Procedure; removing reference
28 to compliance with such rules and providing for
29 compliance by the regional counsel with s.
30 924.055, F.S., to conform to changes made by
31 the act; amending s. 27.710, F.S., relating to

1 registry of attorneys applying to represent
2 persons in postconviction capital collateral
3 proceedings and notification to the Attorney
4 General; revising guidelines and time
5 limitation for certain notice relating to
6 appointment of counsel to conform to changes
7 made by the act; amending s. 27.711, F.S.,
8 relating to terms and conditions of appointment
9 of attorneys as counsel in postconviction
10 capital collateral proceedings; substituting
11 reference to timely filing of motion for
12 postconviction relief under the Florida Rules
13 of Criminal Procedure with reference to filing
14 under s. 924.055, F.S., to conform to changes
15 made by the act; amending s. 79.01, F.S.,
16 relating to application and writ of habeas
17 corpus; providing that a judgment of conviction
18 or sentence which has been affirmed on direct
19 appeal constitutes lawful authority to detain a
20 person for purposes of construing specified
21 provisions unless the trial court did not have
22 jurisdiction over the person or subject matter
23 jurisdiction, or unless the trial court
24 exceeded the maximum sentence allowed by
25 statute; amending s. 119.19, F.S., relating to
26 capital postconviction public records
27 production; substituting reference to certain
28 court rules with reference to s. 924.055, F.S.,
29 to conform to changes made by the act;
30 conforming terminology; removing requirements
31 that the Attorney General provide certain

1 notification to the Department of Corrections
2 and that the department deliver certain public
3 records to the capital postconviction records
4 repository; providing for certain notification
5 of compliance by law enforcement agencies to
6 the state attorney in lieu of the Attorney
7 General; removing certain requirements for
8 notification or certification of compliance by
9 the Secretary of Corrections, public defenders
10 or private counsel, state attorneys, the
11 Attorney General, and other persons or
12 agencies; revising guidelines and time
13 limitations relating to certain notification to
14 law enforcement agencies, provision of public
15 records by law enforcement agencies, written
16 demands for public records or additional
17 records by counsel representing defendants, and
18 filing of objections and hearings on demands;
19 conforming terminology; removing provisions
20 relating to pending court motions to conform to
21 changes made by the act; removing provisions
22 relating to filing of affidavits of diligent
23 search of the records repository by defendant's
24 counsel; removing provisions relating to court
25 orders for agency production of additional
26 public records; removing requirement that the
27 trial court resolve disputes arising under s.
28 119.19, F.S.; revising responsibilities and
29 duties of defendant's counsel, including duties
30 relating to copying of records at the records
31 repository; prohibiting defendant's counsel

1 from soliciting another person to make a
2 request for public records; providing for
3 imposition of sanctions; providing that the
4 provisions of s. 119.19, F.S., do not
5 constitute grounds to expand the time
6 limitations in s. 924.055, F.S.; amending s.
7 922.06, F.S., relating to stay of execution of
8 death sentence; providing that the execution of
9 a death sentence may be stayed only by the
10 Governor incident to a direct appeal, a
11 postconviction proceeding conducted in
12 accordance with specified provisions, or a
13 habeas corpus proceeding conducted in
14 accordance with specified provisions;
15 conforming terminology to changes made by the
16 act; reenacting s. 922.052(2), F.S., relating
17 to issuance of warrant of execution, to
18 incorporate the amendment in a reference;
19 amending s. 924.051, F.S., relating to terms
20 and conditions of appeals and collateral review
21 in criminal cases; removing provisions
22 prohibiting consideration of motion for
23 collateral or other postconviction relief in a
24 capital case under specified circumstances and
25 removing provisions prohibiting calling of
26 expert witness to testify unless approved by
27 the court; specifying that collateral relief is
28 not available based on certain grounds "in a
29 noncapital proceeding"; specifying in a
30 "collateral noncapital proceeding" which party
31 has the burden of demonstrating prejudicial

1 error; conforming terminology to changes made
2 by the act; amending s. 924.055, F.S, relating
3 to postconviction review in capital cases;
4 providing legislative findings and intent;
5 providing procedures for state postconviction
6 proceedings in capital cases in which the trial
7 court imposes a sentence of death; requiring
8 appointment of private counsel, or of a public
9 defender of a circuit that has not represented
10 the defendant within a specified period after
11 imposition of a death sentence; providing an
12 exception and prohibiting expenditure of state
13 resources if the defendant declines the
14 appointment of postconviction counsel;
15 requiring the defendant to waive
16 attorney-client privilege with trial counsel
17 regarding certain matters; requiring the
18 defendant to instruct his or her trial counsel
19 to assist and cooperate fully with
20 postconviction counsel; providing circumstances
21 under which the defendant is not entitled to
22 further postconviction legal representation
23 provided by the state; requiring the court to
24 order that postconviction counsel be excused
25 from representing the defendant, and
26 prohibiting expenditure of further state
27 resources for postconviction representation of
28 that defendant, under specified circumstances
29 when the defendant has requested removal of
30 counsel; restricting the number of pleadings
31 and appeals that appointed counsel may file to

1 one pleading seeking postconviction relief in
2 state court, one pleading seeking
3 postconviction in federal district court, and,
4 if deemed necessary and appropriate under
5 federal law, one appeal in the federal circuit
6 court of appeals; permitting the filing of an
7 appropriate petition in the United States
8 Supreme Court if deemed necessary and
9 permissible under federal law; requiring notice
10 by the state attorney to the deceased victim's
11 family regarding orders for appointment of
12 postconviction counsel; requiring the state
13 attorney and the defendant's trial counsel to
14 provide copies of certain records and documents
15 to postconviction counsel within a specified
16 period; providing that a claim or demand
17 regarding public records does not constitute
18 legal cause for a court to consider any
19 postconviction pleading filed in violation of
20 specified provisions; requiring orders for
21 expedited transcripts and provision of copies
22 to postconviction counsel within a specified
23 period; requiring all postconviction pleadings
24 that challenge the judgment or sentence,
25 including challenges to effectiveness of
26 counsel, to be filed in the Florida Supreme
27 Court within 30 days after the Supreme Court
28 issues a mandate on a direct appeal affirming a
29 sentence of death; requiring the filing of any
30 postconviction action challenging the
31 effectiveness of the defendant's counsel on

1 direct appeal within 90 days after the Supreme
2 Court issues its mandate; prohibiting the
3 Supreme Court from entertaining a pleading
4 filed in violation of certain time limitations;
5 providing an exception to permit the defendant
6 one 30-day extension; permitting the Attorney
7 General to file any responsive pleading within
8 60 days after the filing of any postconviction
9 petition; providing for extensions of time;
10 prohibiting the consideration of amendments to
11 a pleading which are filed in violation of the
12 time limitations; providing that factual
13 allegations made by the defendant in any
14 petition and not admitted by the state are
15 deemed denied; prohibiting the expenditure of
16 state resources in preparation or consideration
17 of any pleading, claim, or amendment to a
18 pleading filed in violation of specified
19 provisions; providing for applicability of such
20 provisions to cases in which the trial court
21 imposed a sentence of death before July 1,
22 1999; requiring constructive waiver of
23 pleadings filed in violation of such
24 provisions; providing for denial of all
25 postconviction claims in that case by operation
26 of law; providing that the alleged inability of
27 postconviction counsel to provide legal
28 representation or obtain evidence or records
29 may not be a basis for consideration of
30 pleadings filed in violation of the time
31 limitations; prescribing a restriction upon the

1 amount and rate of compensation to which
2 private counsel is entitled if the
3 postconviction claim is denied by operation of
4 law, and prohibiting reappointment of the
5 private counsel in future capital
6 postconviction proceedings under certain
7 circumstances; specifying that a postconviction
8 claim may not be based on any ground that was
9 or could have been raised at trial or, if
10 properly preserved, on direct appeal; requiring
11 denial as a matter of law of such an unbased
12 claim and prohibiting the court from
13 considering it; requiring the defendant to
14 explain with specificity why each claim is
15 based on a ground that was not or could not
16 have been so raised; providing for
17 applicability of such provisions to cases in
18 which the trial court imposed a sentence of
19 death before July 1, 1999; prohibiting the
20 court from granting relief on a postconviction
21 claim unless the defendant demonstrates clearly
22 and convincingly that but for the alleged
23 collateral error there would have been a
24 different outcome at trial, in the penalty
25 phase, or on appeal; requiring the court to
26 apply the rule of harmless error to any capital
27 postconviction pleading; providing for
28 applicability of such provisions to cases in
29 which the trial court imposed a sentence of
30 death before July 1, 1999; requiring the
31 circuit court to conduct an evidentiary hearing

1 within a specified period if requested by the
2 defendant; providing that the defendant may
3 call to testify at the hearing only those
4 witnesses identified in the postconviction
5 pleading; providing that no expert witness may
6 be called unless approved by the court;
7 requiring the court to issue a final order
8 denying or granting postconviction relief
9 within 10 days after the conclusion of the
10 hearing; requiring the Supreme Court to render
11 a final decision denying or granting any
12 postconviction relief or remanding the case
13 within a specified period; requiring the
14 circuit court to expedite any case so remanded
15 and make all factual findings and conclusions
16 of law within a specified period; requiring the
17 Supreme Court to render a final decision within
18 90 days of the circuit court's order on remand;
19 prohibiting any state court from hearing a
20 successive petition for postconviction relief
21 of any type in a capital case; prohibiting the
22 utilization by a state employee, contracting
23 party, or other person receiving state
24 compensation to file a successive
25 postconviction claim in a state or federal
26 court; requiring the Attorney General to notify
27 the Speaker of the House of Representatives,
28 the President of the Senate, and the Commission
29 on the Administration of Justice regarding an
30 attempt by such person receiving state
31 compensation to file a successive

1 postconviction claim in a state or federal
2 court; providing for applicability of such
3 provisions to cases in which the trial court
4 imposed a sentence of death before July 1,
5 1999; providing postconviction procedures
6 applicable to cases in which the trial court
7 imposed a sentence of death before July 1,
8 1999; revising guidelines and time limitations
9 previously applicable to such cases under
10 former s. 924.055, F.S.; requiring filing of
11 the motion for postconviction relief in the
12 trial court, or filing of the claim alleging
13 ineffectiveness of counsel in the Supreme
14 Court, within 180 days after the effective date
15 of the act; prohibiting the filing of any
16 further motion, or amendment to a motion, for
17 postconviction relief after this 180-day
18 period; providing that failure by the defendant
19 to file the motion or claim within this period
20 constitutes waiver of all postconviction
21 claims, and providing for such claims to be
22 denied by operation of law; providing that a
23 claim by defendant or defendant's
24 postconviction counsel that the counsel is
25 unable to meet this time limitation does not
26 constitute legal cause for a court to allow a
27 filing in violation of this time limitation;
28 providing that a claim regarding public records
29 or other matters does not constitute legal
30 cause for the court to consider any
31 postconviction pleading filed in violation of

1 specified provisions; prohibiting the circuit
2 court from entertaining any pleading filed in
3 violation of the 180-day time limitation;
4 providing an exception permitting the court to
5 grant a 30-day extension; providing for the
6 state attorney or Attorney General to file any
7 responsive pleading within 30 days after the
8 filing of any postconviction motion; providing
9 that matters alleged by the defendant and not
10 admitted by the state are deemed denied;
11 providing for a 30-day extension; requiring the
12 state attorney and the defendant's trial
13 counsel to provide copies of certain records
14 and documents to postconviction counsel within
15 a specified period; providing an exception;
16 reenacting s. 27.7091, F.S., relating to
17 legislative recommendations to Supreme Court
18 regarding capital postconviction proceedings,
19 to incorporate the amendment in references;
20 repealing Rule 3.850, Florida Rules of Criminal
21 Procedure, relating to grant of new trial, to
22 the extent of inconsistency with the act;
23 repealing Rule 3.851, Florida Rules of Criminal
24 Procedure, relating to collateral relief after
25 death sentence has been imposed; providing an
26 effective date.

27
28 Be It Enacted by the Legislature of the State of Florida:

29
30 Section 1. This act may be cited as the "Death Penalty
31 Appeals Reform Act of 1999."

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

1 ~~not run for or accept appointment to any state office for 2~~
2 ~~years following vacation of office.~~

3 Section 3. Subsection (1) of section 27.702, Florida
4 Statutes, 1998 Supplement, is amended to read:

5 27.702 Duties of the capital collateral regional
6 counsel; reports.--

7 (1)(a) The capital collateral regional counsel shall
8 represent each person convicted and sentenced to death in this
9 state for the sole purpose of instituting and prosecuting
10 collateral actions challenging the legality of the judgment
11 and sentence imposed against such person in the state courts,
12 federal courts in this state, the United States Court of
13 Appeals for the Eleventh Circuit, and the United States
14 Supreme Court in compliance with s. 924.055. In no event,
15 however, may any state employee, or person contracting with
16 any state officer, utilize state resources to file, argue,
17 research, or prepare in any way a successive postconviction
18 pleading, as defined in paragraph (b), in state or federal
19 court.The three capital collateral regional counsels' offices
20 shall function independently and be separate budget entities,
21 and the regional counsels shall be the office heads for all
22 purposes. The Justice Administrative Commission shall provide
23 administrative support and service to the three offices to the
24 extent requested by the regional counsels. The three regional
25 offices shall not be subject to control, supervision, or
26 direction by the Justice Administrative Commission in any
27 manner, including, but not limited to, personnel, purchasing,
28 transactions involving real or personal property, and
29 budgetary matters.

30 (b) For purposes of this section, the term "successive
31 postconviction pleading" means any pleading filed after the

1 state or federal courts have considered and ruled upon an
2 initial postconviction pleading filed by the defendant. State
3 resources may be utilized to file one postconviction pleading
4 in the state trial court, one postconviction pleading in the
5 Florida Supreme Court, one postconviction pleading in the
6 federal district court, one postconviction pleading in the
7 federal circuit court of appeals, if authorized, and one
8 postconviction pleading in the United States Supreme Court.

9 Section 4. Section 27.708, Florida Statutes, 1998
10 Supplement, is amended to read:

11 27.708 Access to prisoners; compliance with the
12 Florida Rules of Criminal Procedure; records requests.--

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

18 (2) The capital collateral regional counsel and
19 contracted private counsel must timely comply with s. 924.055
20 ~~all provisions of the Florida Rules of Criminal Procedure~~
21 ~~governing collateral review of capital cases.~~

22 (3) Except as provided in s. 119.19, the capital
23 collateral regional counsel or contracted private counsel
24 shall not make any public records request on behalf of his or
25 her client.

26 Section 5. Section 27.710, Florida Statutes, 1998
27 Supplement, is amended to read:

28 27.710 Registry of attorneys applying to represent
29 persons in postconviction capital collateral proceedings;
30 certification of minimum requirements; appointment by trial
31 court.--

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

1 judicial circuit and must contain the requisite information
2 submitted by the applicants in accordance with this section.

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

8 (3) An attorney who applies for registration and court
9 appointment as counsel in postconviction capital collateral
10 proceedings must certify that he or she is counsel of record
11 in not more than four such proceedings and, if appointed to
12 represent a person in postconviction capital collateral
13 proceedings, shall continue such representation under the
14 terms and conditions set forth in s. 27.711 until the sentence
15 is reversed, reduced, or carried out or unless permitted to
16 withdraw from representation by the trial court. The court may
17 not permit an attorney to withdraw from representation without
18 a finding of sufficient good cause. The court may impose
19 appropriate sanctions if it finds that an attorney has shown
20 bad faith with respect to continuing to represent a defendant
21 in a postconviction capital collateral proceeding. This
22 section does not preclude the court from reassigning a case to
23 a capital collateral regional counsel following
24 discontinuation of representation if a conflict of interest no
25 longer exists with respect to the case.

26 (4) Each private attorney who is appointed by the
27 court to represent a capital defendant must enter into a
28 contract with the Comptroller. The executive director of the
29 Commission on the Administration of Justice in Capital Cases
30 shall develop the form of the contract, and the Comptroller
31 shall function as contract manager and shall enforce

1 performance of the terms and conditions of the contract. By
2 signing such contract, the attorney certifies that he or she
3 intends to continue the representation under the terms and
4 conditions set forth in the contract until the sentence is
5 reversed, reduced, or carried out or until released by order
6 of the trial court.

7 (5) Upon notification by the Attorney General that:

8 (a) Thirty ~~Ninety-one~~ days have elapsed since the
9 defendant has been sentenced to death ~~Supreme Court issued a~~
10 ~~mandate on a direct appeal, or the Supreme Court of the United~~
11 ~~States has denied a petition for certiorari, whichever is~~
12 ~~later;~~

13 (b) A person under sentence of death who was
14 previously represented by private counsel is currently
15 unrepresented in a postconviction capital collateral
16 proceeding; or

17 (c) The trial court has issued an order finding that ~~a~~
18 ~~year and a day have elapsed since the commencement of the~~
19 ~~period for filing~~ a motion for postconviction relief under s.
20 924.055(2) ~~has not been timely filed, and the defendant's~~
21 ~~complete original motion for postconviction relief has not~~
22 ~~been filed in the trial court,~~

23
24 the executive director shall immediately notify the trial
25 court that imposed the sentence of death that the court must
26 immediately appoint an attorney, selected from the current
27 registry, to represent such person in collateral actions
28 challenging the legality of the judgment and sentence in the
29 appropriate state and federal courts. The court shall have the
30 authority to strike a notice of appearance filed by a Capital
31 Collateral Regional Counsel, if the court finds the notice was

1 not filed in good faith and may so notify the executive
2 director that the client is no longer represented by the
3 Office of Capital Collateral Regional Counsel. In making an
4 assignment, the court shall give priority to attorneys whose
5 experience and abilities in criminal law, especially in
6 capital proceedings, are known by the court to be commensurate
7 with the responsibility of representing a person sentenced to
8 death. The trial court must issue an order of appointment
9 which contains specific findings that the appointed counsel
10 meets the statutory requirements and has the high ethical
11 standards necessary to represent a person sentenced to death.

12 (6) More than one attorney may not be appointed and
13 compensated at any one time under s. 27.711 to represent a
14 person in postconviction capital collateral proceedings.

15 Section 6. Section 27.711, Florida Statutes, 1998
16 Supplement, is amended to read:

17 27.711 Terms and conditions of appointment of
18 attorneys as counsel in postconviction capital collateral
19 proceedings.--

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

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

24 (b) "Executive director" means the executive director
25 of the Commission on the Administration of Justice in Capital
26 Cases.

27 (c) "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, including
12 federal habeas corpus proceedings, in accordance with this
13 section or until released by order of the trial 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 approval of payment by
18 the trial court, and the submission of a payment request by
19 the attorney, subject to the availability of sufficient
20 funding specifically appropriated for this purpose. The
21 Justice Administrative Commission shall notify the executive
22 director and the court if it appears that sufficient funding
23 has not been specifically appropriated for this purpose to pay
24 any fees which may be incurred. The attorney shall maintain
25 appropriate documentation, including a current and detailed
26 hourly accounting of time spent representing the capital
27 defendant. The fee and payment schedule in this section is the
28 exclusive means of compensating a court-appointed attorney who
29 represents a capital defendant. When appropriate, a
30 court-appointed attorney must seek further compensation from
31 the Federal Government, as provided in 18 U.S.C. s. 3006A or

1 other federal law, in habeas corpus litigation in the federal
2 courts.

3 (4) Upon approval by the trial court, an attorney
4 appointed to represent a capital defendant under s. 27.710 is
5 entitled to payment of the following fees by the Comptroller:

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 filing a notice of appearance. This fee is in the nature
10 of a fee for a retainer agreement.

11 (b) The attorney is entitled to \$100 per hour, up to a
12 maximum of \$20,000, after timely filing in the trial court the
13 capital defendant's complete original motion for
14 postconviction relief ~~under the Florida Rules of Criminal~~
15 ~~Procedure~~. The motion must raise all issues to be addressed by
16 the trial court.

17 (c) The attorney is entitled to \$100 per hour, up to a
18 maximum of \$10,000, after the trial court issues a final order
19 granting or denying the capital defendant's motion for
20 postconviction relief.

21 (d) The attorney is entitled to \$100 per hour, up to a
22 maximum of \$4,000, after timely filing in the Supreme Court
23 the capital defendant's brief or briefs that address the trial
24 court's final order granting or denying the capital
25 defendant's motion for postconviction relief and the state
26 petition for writ of habeas corpus.

27 (e) The attorney is entitled to \$100 per hour, up to a
28 maximum of \$20,000, after the appeal of the trial court's
29 denial of the capital defendant's motion for postconviction
30 relief and the capital defendant's state petition for writ of
31 habeas corpus become final in the Supreme Court.

1 (f) At the conclusion of the capital defendant's
2 postconviction capital collateral proceedings in state court,
3 the attorney is entitled to \$100 per hour, up to a maximum of
4 \$2,500, after filing a petition for writ of certiorari in the
5 Supreme Court of the United States.

6 (g) If, at any time, the Supreme Court of the United
7 States accepts for review the capital defendant's collateral
8 challenge of the conviction and sentence of death, the
9 attorney is entitled to \$100 per hour, up to a maximum of
10 \$5,000. This payment shall be full compensation for
11 representing the capital defendant throughout the certiorari
12 proceedings before the United States Supreme Court.

13
14 The hours billed by a contracting attorney under this
15 subsection may include time devoted to representation of the
16 defendant by another attorney who is qualified under s. 27.710
17 and who has been designated by the contracting attorney to
18 assist him or her.

19 (5) An attorney who represents a capital defendant may
20 use the services of one or more investigators to assist in
21 representing a capital defendant. Upon approval by the trial
22 court, the attorney is entitled to payment from the
23 Comptroller of \$40 per hour, up to a maximum of \$15,000, for
24 the purpose of paying for investigative services.

25 (6) An attorney who represents a capital defendant is
26 entitled to a maximum of \$5,000 for miscellaneous expenses,
27 such as the costs of preparing transcripts, compensating
28 expert witnesses, and copying documents. Upon approval by the
29 trial court, the attorney is entitled to payment by the
30 Comptroller for miscellaneous expenses.

31

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

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

10 (9) This section does not authorize an attorney who
11 represents a capital defendant to file repetitive or frivolous
12 pleadings that are not supported by law or by the facts of the
13 case. An action taken by an attorney who represents a capital
14 defendant in postconviction capital collateral proceedings may
15 not be the basis for a claim of ineffective assistance of
16 counsel.

17 (10) An attorney appointed under s. 27.710 to
18 represent a capital defendant may not represent the capital
19 defendant during a retrial, a resentencing proceeding, a
20 proceeding commenced under chapter 940, a proceeding
21 challenging a conviction or sentence other than the conviction
22 and sentence of death for which the appointment was made, or
23 any civil litigation other than habeas corpus proceedings.

24 Section 7. Section 79.01, Florida Statutes, is amended
25 to read:

26 79.01 Application and writ.--

27 (1) When any person detained in custody, whether
28 charged with a criminal offense or not, applies to the Supreme
29 Court or any justice thereof, or to any district court of
30 appeal or any judge thereof or to any circuit judge for a writ
31 of habeas corpus and shows by affidavit or evidence probable

1 cause to believe that he or she is detained without lawful
2 authority, the court, justice, or judge to whom such
3 application is made shall grant the writ forthwith, against
4 the person in whose custody the applicant is detained and
5 returnable immediately before any of the courts, justices, or
6 judges as the writ directs.

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

10 (a) The trial court did not have jurisdiction over the
11 person.

12 (b) The trial court did not have subject matter
13 jurisdiction.

14 (c) The trial court exceeded the maximum sentence
15 allowed by statute.

16 Section 8. Section 119.19, Florida Statutes, 1998
17 Supplement, is amended to read:

18 119.19 Capital postconviction public records
19 production.--

20 (1) As used in this section, the term "trial court"
21 means:

22 (a) The judge who entered the judgment and imposed the
23 sentence of death; or

24 (b) If a motion under s. 924.055 ~~Rule 3.850~~ or ~~Rule~~
25 ~~3.851~~ has been filed and a different judge has already been
26 assigned to that motion, the judge who is assigned to rule on
27 that motion.

28 (2) The Secretary of State shall establish and
29 maintain a records repository for the purpose of archiving
30 capital postconviction public records as provided for in this
31 section.

1 (3)(a) Upon the imposition of a death sentence
2 ~~issuance of the Florida Supreme Court's mandate, the Attorney~~
3 ~~General shall promptly provide written notification to the~~
4 ~~state attorney who prosecuted the case that a death sentence~~
5 ~~has been affirmed. Upon receipt of such notification, the~~
6 ~~state attorney shall promptly provide written notification to~~
7 ~~each law enforcement agency involved in the case.~~

8 (b) Within 30 ~~90~~ days after receipt of notification,
9 each law enforcement agency involved in the case and the state
10 attorney who prosecuted the case shall copy, seal, and deliver
11 to the repository all public records, except for those filed
12 in the trial court, which were produced in the investigation
13 or prosecution of the case. Each agency shall bear the costs.

14 ~~(4)(a) Upon issuance of the Florida Supreme Court's~~
15 ~~mandate, the Attorney General shall promptly provide written~~
16 ~~notification to the Department of Corrections that a death row~~
17 ~~inmate's sentence has been affirmed.~~

18 ~~(b) Within 90 days after notification, the Department~~
19 ~~of Corrections shall copy, seal, and deliver to the repository~~
20 ~~all public records determined by the department to be relevant~~
21 ~~to the subject matter of a proceeding under Rule 3.850 or Rule~~
22 ~~3.851 and where such production would not be unduly burdensome~~
23 ~~for the department. The department shall bear the costs.~~

24 (4)(5)(a) The chief law enforcement officer of each
25 law enforcement agency that was involved in the case, whether
26 through an investigation, arrest, prosecution, or
27 incarceration, shall notify the state attorney ~~Attorney~~
28 ~~General~~ upon compliance with subsection (3) and shall certify
29 that to the best of his or her knowledge and belief all public
30 records in possession of the agency or in possession of any
31 employee of the agency have been copied, indexed, and

1 delivered to the records repository as required by subsection
2 (3).

3 (b) The state attorney who prosecuted the case shall
4 provide written notification to the Attorney General upon
5 compliance with subsection (3) and shall certify that to the
6 best of his or her knowledge and belief all public records in
7 his or her possession have been copied, indexed, and delivered
8 to the records repository as required by subsection (3).

9 ~~(c) The Secretary of Corrections shall provide written~~
10 ~~notification to the Attorney General upon compliance with~~
11 ~~subsection (4) and shall certify that to the best of his or~~
12 ~~her knowledge and belief all public records in the~~
13 ~~department's possession have been copied, indexed, and~~
14 ~~delivered to the records repository as required by paragraph~~
15 ~~(4)(b).~~

16 ~~(6)(a) Within 90 days after issuance of the Florida~~
17 ~~Supreme Court's mandate affirming a death sentence, both the~~
18 ~~public defender or private counsel for the defendant and the~~
19 ~~state attorney involved in the case shall provide written~~
20 ~~notification to the Attorney General of the name and address~~
21 ~~of any person or agency in addition to those persons and~~
22 ~~agencies listed in subsections (3) and (4) which may have~~
23 ~~information pertinent to the case unless previously provided~~
24 ~~to the capital collateral regional counsel or postconviction~~
25 ~~private counsel. The Attorney General shall promptly provide~~
26 ~~written notification to each identified person or agency after~~
27 ~~receiving the information from the public defender, private~~
28 ~~counsel for the defendant, or state attorney and shall request~~
29 ~~that all public records in the possession of the person or~~
30 ~~agency which pertain to the case be copied, sealed, and~~
31 ~~delivered to the records repository.~~

1 ~~(b) Within 90 days after receiving a request for~~
2 ~~public records under paragraph (a), the person or agency shall~~
3 ~~provide written notification to the Attorney General of~~
4 ~~compliance with this subsection and shall certify that to the~~
5 ~~best of his or her knowledge and belief all public records~~
6 ~~requested have been copied, indexed, and delivered to the~~
7 ~~records repository.~~

8 (5)~~(7)~~(a) Any public record delivered to the records
9 repository under this section which is confidential or exempt
10 from the requirements of s. 119.07(1) and s. 24(a), Art. I of
11 the State Constitution must be separately boxed, without being
12 redacted, and sealed. The outside of the box must clearly
13 identify the public records as exempt, and the seal may not be
14 broken without an order of the trial court. The outside of the
15 box must identify the nature of the public records and the
16 legal basis under which the public records are exempt.

17 (b) Upon the entry of an appropriate court order,
18 sealed boxes subject to an inspection by the trial court shall
19 be shipped to the respective clerk of court. Such a box may be
20 opened only for an inspection by the trial court in camera and
21 only with a representative of the agency present at the
22 unsealing by the court. The moving party shall bear all costs
23 associated with the transportation and inspection of such
24 records by the trial court.

25 (6)~~(8)~~(a) Within 30 ~~90~~ days after ~~a capital collateral~~
26 ~~regional counsel or private~~ counsel is appointed to represent
27 a defendant sentenced to death, the ~~regional counsel, private~~
28 ~~counsel, or other~~ counsel who is ~~a member of The Florida Bar~~
29 ~~and is authorized by such counsel~~ representing a defendant
30 shall send a written demand for additional public records to
31 each person or agency submitting public records under

1 ~~subsection~~ subsections (3) and (4) and to each person or
2 agency identified as having information pertinent to the case
3 under ~~subsection~~ (6). Each person or agency notified under
4 this subsection shall, within 30 ~~90~~ days after receipt of the
5 written demand, deliver to the records repository any
6 additional public records in the possession of the person or
7 agency which pertain to the case and shall certify that to the
8 best of his or her knowledge and belief all additional public
9 records have been delivered ~~to the Attorney General~~ or, if no
10 additional public records are found, shall recertify that the
11 public records previously delivered are complete.

12 (b) Within 30 ~~60~~ days after receiving the written
13 demand, the agency or person may file an objection in the
14 trial court. Within 10 ~~30~~ days after the filing of an
15 objection, the trial court shall hold a hearing and order an
16 agency or person to produce additional public records if it
17 finds each of the following:

18 1. The defendant's ~~regional counsel or private~~ counsel
19 has made a timely and diligent search as provided in this
20 section.

21 2. The defendant's ~~regional or private~~ counsel's
22 written demand identifies, with specificity, those additional
23 public records that are not at the repository.

24 3. The additional public records sought are relevant
25 to the subject matter of a proceeding under s. 924.055 ~~Rule~~
26 ~~3.850 or Rule 3.851~~ or appear reasonably calculated to lead to
27 the discovery of admissible evidence.

28 4. The additional public records request is not
29 overbroad or unduly burdensome.

30 (c) ~~The Attorney General and state attorney shall~~
31 ~~provide notification as provided in subsections (3) and (4) on~~

1 ~~cases where the mandate has issued on the date that this~~
2 ~~statute becomes effective, but where initial requests for~~
3 ~~public records have not been made.~~

4 (c)~~(d)~~ If, on the date that this statute becomes
5 effective, a defendant is represented by appointed ~~capital~~
6 ~~collateral regional counsel or private~~ counsel, and he or she
7 has initiated the public records request process, counsel
8 shall file within 30 ~~90~~ days of the effective date of this
9 statute, a written demand for any additional records that have
10 not previously been the subject of a notice to produce. An
11 agency may file an objection to such additional demand, and
12 the trial court shall hold a hearing as provided by paragraph
13 (b). This statute shall not be a basis for renewing requests
14 that have been initiated previously or for relitigating issues
15 pertaining to production of public records upon which a court
16 has ruled prior to the effective date of the statute, or for
17 stopping an execution which has been scheduled based upon a
18 warrant executed by the Governor prior to the effective date
19 of the statute.

20 ~~(e)~~ If, on the date that this statute becomes
21 effective, the defendant has had a Rule 3.850 motion denied
22 and no Rule 3.850 motion is pending, no additional requests
23 shall be made by ~~capital collateral regional counsel or~~
24 ~~contracted private counsel until a death warrant is signed by~~
25 ~~the Governor and an execution is scheduled. Within 10 days of~~
26 ~~the signing of the death warrant, capital collateral regional~~
27 ~~counsel or contracted private counsel may request of a person~~
28 ~~or agency that the defendant has previously requested to~~
29 ~~produce records any records previously requested to which no~~
30 ~~objection was raised or sustained, but which the agency has~~
31 ~~received or produced since the previous request or which for~~

1 ~~any reason the agency has in its possession and did not~~
2 ~~produce within 10 days of the receipt of the previous notice~~
3 ~~or such shorter time period ordered by the court to comply~~
4 ~~with the time for the scheduled execution. The person or~~
5 ~~agency shall produce the record or shall file in the trial~~
6 ~~court an affidavit stating that it does not have the requested~~
7 ~~record or that the record has been produced previously.~~

8 (7)(9)(a) ~~After production of additional public~~
9 ~~records or recertification as provided in subsection (8),The~~
10 ~~defendant's regional counsel or the private counsel is~~
11 ~~prohibited from making any further public records requests~~
12 ~~except~~ under this chapter. An agency is not required to
13 produce additional public records except by court order as
14 provided in this subsection.

15 ~~(b) In order to obtain additional public records~~
16 ~~beyond those provided under subsection (8), the regional~~
17 ~~counsel, private counsel, or other counsel who is a member of~~
18 ~~The Florida Bar and is authorized by the regional counsel or~~
19 ~~private counsel shall file an affidavit in the trial court~~
20 ~~which attests that he or she has made a timely and diligent~~
21 ~~search of the records repository and specifically identifies~~
22 ~~those additional public records that are not at the repository~~
23 ~~and are relevant to the subject matter of a proceeding under~~
24 ~~Rule 3.850 or Rule 3.851 or are reasonably calculated to lead~~
25 ~~to the discovery of admissible evidence. The affiant shall~~
26 ~~provide a copy of the affidavit to all affected agencies upon~~
27 ~~the filing of such affidavit in the trial court.~~

28 ~~(c) Within 30 days after the filing of an affidavit,~~
29 ~~the trial court shall order an agency to produce additional~~
30 ~~public records only if it finds each of the following:~~

31

1 ~~1. The regional counsel or private counsel has made a~~
2 ~~timely and diligent search as provided in this section.~~

3 ~~2. The regional or private counsel's affidavit~~
4 ~~identifies, with specificity, those additional public records~~
5 ~~that are not at the repository.~~

6 ~~3. The additional public records sought are relevant~~
7 ~~to the subject matter of a proceeding under Rule 3.850 or Rule~~
8 ~~3.851 or appear reasonably calculated to lead to the discovery~~
9 ~~of admissible evidence.~~

10 ~~4. The additional public records request is not~~
11 ~~overbroad or unduly burdensome.~~

12 ~~(8)(10) The defendant's capital collateral regional~~
13 ~~counsel or private counsel shall provide the personnel,~~
14 ~~supplies, and any necessary equipment used by the capital~~
15 ~~collateral regional counsel or private counsel to copy records~~
16 ~~held at the records repository.~~

17 ~~(11) The trial court shall resolve any dispute that~~
18 ~~arises under this section, unless the appellate court has~~
19 ~~exclusive jurisdiction.~~

20 ~~(9)(12) The defendant's capital collateral regional~~
21 ~~counsel or private counsel shall not solicit another person to~~
22 ~~make a request for public records on behalf of the regional~~
23 ~~counsel or private counsel. The trial court shall impose~~
24 ~~appropriate sanctions against any regional counsel or private~~
25 ~~counsel found in violation of this subsection.~~

26 ~~(10)(13) Sixty days after a capital sentence is~~
27 ~~carried out, 60 days after a defendant is released from~~
28 ~~incarceration following the granting of a pardon or reversal~~
29 ~~of the sentence, or 60 days after the defendant has been~~
30 ~~resentenced to a term of years, the Attorney General shall~~
31 ~~provide written notification to the Secretary of State, who~~

1 may then destroy the records held by the records repository
2 which pertain to that case.

3 (11)~~(14)~~ This section pertains only to the production
4 of records for capital postconviction defendants and does not
5 change or alter any time periods specified in s. 924.055 ~~Rule~~
6 ~~3.850 or Rule 3.851, Florida Rules of Criminal Procedure.~~
7 Furthermore, this section does not ~~affect, expand, or limit~~
8 the production of public records for any purposes other than
9 use in a proceeding held pursuant to s. 924.055 ~~Rule 3.850 or~~
10 ~~Rule 3.851, Florida Rules of Criminal Procedure.~~ Nothing in
11 this section shall constitute grounds to expand the time
12 limitations in s. 924.055.

13 Section 9. Section 922.06, Florida Statutes, is
14 amended to read:

15 922.06 Stay of execution of death sentence.--

16 (1) The execution of a death sentence may be stayed
17 only by the Governor or incident to a direct ~~an~~ appeal, a
18 postconviction proceeding conducted in accordance with s.
19 924.055, or a habeas corpus proceeding conducted in accordance
20 with chapter 79.

21 (2)(a) If execution of the death sentence is stayed by
22 the Governor, and the Governor subsequently lifts or dissolves
23 the stay, the Governor shall immediately notify the Attorney
24 General that the stay has been lifted or dissolved. Within 10
25 days after such notification, the Governor must set the new
26 date for execution of the death sentence.

27 (b) If execution of the death sentence is stayed
28 incident to a legal proceeding described in this section ~~an~~
29 appeal, upon certification by the Attorney General that the
30 stay has been lifted or dissolved, within 10 days after such
31

1 certification, the Governor must set the new date for
2 execution of the death sentence.

3

4 When the new date for execution of the death sentence is set
5 by the Governor under this subsection, the Attorney General
6 shall notify the inmate's counsel of record of the date and
7 time of execution of the death sentence.

8 Section 10. For the purpose of incorporating the
9 amendment to section 922.06, Florida Statutes, in a reference
10 thereto, subsection (2) of section 922.052, Florida Statutes,
11 is reenacted to read:

12 922.052 Issuance of warrant of execution.--

13 (2) If, for any reason, the sentence is not executed
14 during the week designated, the warrant shall remain in full
15 force and effect and the sentence shall be carried out as
16 provided in s. 922.06.

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

19 924.051 Terms and conditions of appeals and collateral
20 review in criminal cases.--

21 (1) As used in this section:

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

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

30 (2) The right to direct appeal and the provisions for
31 collateral review created in this chapter may only be

1 implemented in strict accordance with the terms and conditions
2 of this section.

3 (3) An appeal may not be taken from a judgment or
4 order of a trial court unless a prejudicial error is alleged
5 and is properly preserved or, if not properly preserved, would
6 constitute fundamental error. A judgment or sentence may be
7 reversed on appeal only when an appellate court determines
8 after a review of the complete record that prejudicial error
9 occurred and was properly preserved in the trial court or, if
10 not properly preserved, would constitute fundamental error.

11 (4) If a defendant pleads nolo contendere without
12 expressly reserving the right to appeal a legally dispositive
13 issue, or if a defendant pleads guilty without expressly
14 reserving the right to appeal a legally dispositive issue, the
15 defendant may not appeal the judgment or sentence.

16 (5) Collateral relief is not available in a noncapital
17 case on grounds that were or could have been raised at trial
18 and, if properly preserved, on direct appeal of the conviction
19 and sentence.

20 (6)~~(a)~~ In a noncapital case, a petition or motion for
21 collateral or other postconviction relief may not be
22 considered if it is filed more than 2 years after the judgment
23 and sentence became final, unless the petition or motion
24 alleges that:

25 (a)~~1~~. The facts upon which the claim is predicated
26 were unknown to the petitioner or his or her attorney and
27 could not have been ascertained by the exercise of due
28 diligence;

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

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

6 ~~(b) In a capital case in which the sentence of death
7 has been imposed:~~

8 ~~1. A motion for collateral or other postconviction
9 relief may not be considered if the motion is filed more than
10 1 year after the judgment and sentence became final, unless
11 the facts upon which the claim is predicated were unknown to
12 the petitioner or his or her attorney and could not have been
13 ascertained by the exercise of due diligence, or the
14 fundamental constitutional right asserted was not established
15 within the period provided for in this subsection and has been
16 held to apply retroactively.~~

17 ~~2. An expert witness may not be called to testify
18 unless approved by the court.~~

19 (7) In a direct appeal or a collateral noncapital
20 proceeding, the party challenging the judgment or order of the
21 trial court has the burden of demonstrating that a prejudicial
22 error occurred in the trial court. A conviction or sentence
23 may not be reversed absent an express finding that a
24 prejudicial error occurred in the trial court.

25 (8) It is the intent of the Legislature that all terms
26 and conditions of direct appeal and collateral review be
27 strictly enforced, including the application of procedural
28 bars, to ensure that all claims of error are raised and
29 resolved at the first opportunity. It is also the
30 Legislature's intent that all procedural bars to direct appeal
31

1 and collateral review be fully enforced by the courts of this
2 state.

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

7 Section 12. Section 924.055, Florida Statutes, is
8 amended to read:

9 924.055 Postconviction review in capital cases ~~Time~~
10 ~~limitations for postconviction proceedings in capital cases.--~~

11 (1)(a) The Legislature finds that postconviction
12 delays in state court in capital cases have increased without
13 justification, despite the state's substantial efforts and
14 allocations of resources since 1987 to provide postconviction
15 legal representation to indigent prisoners sentenced to death.
16 The Legislature further finds that previous legislation
17 enacted in 1996 requiring the state courts to resolve capital
18 postconviction litigation in a timely fashion has failed to
19 reduce delays in capital cases.

20 (b) The Legislature finds that, because of multiple
21 filings in postconviction capital proceedings, the average
22 convicted murderer sentenced to death and executed since 1994
23 has been allowed to file 10 appeals in state and federal
24 courts. These appeals have delayed the execution of death
25 sentences an average of over 13 years since 1994. The vast
26 majority of these appeals are postconviction appeals. The
27 Legislature finds that these delays have allowed convicted
28 murderers sentenced to death to abuse judicial postconviction
29 procedures, resulting in unwarranted delays that diminish
30 respect for the rule of law and the importance of the criminal
31 trial and appellate process. These delays further traumatize

1 victims' families and deny justice to the people of this
2 state.

3 (c) The Legislature finds that the United States
4 Constitution does not limit the states' authority to restrict
5 postconviction legal remedies in capital cases, nor does it
6 require the state to expend resources to provide
7 postconviction legal representation to convicted murderers
8 sentenced to death. The Legislature recognizes that in Murray
9 v. Giarratano, 492 U.S. 1,10 (1989), Chief Justice Rehnquist
10 stated that: "State collateral proceedings are not
11 constitutionally required as an adjunct to the state criminal
12 proceedings and serve a different and more limited purpose
13 than either the trial or appeal." The Legislature further
14 recognizes that, in that same case, at 492 U.S. 1,13, Justice
15 O'Connor stated that: "A postconviction proceeding is not part
16 of the criminal process itself, but is instead a civil action
17 designed to overturn a presumptively valid criminal judgment"
18 and "Nothing in the Constitution requires the states to
19 provide such proceedings."

20 (d) The Legislature finds that it is the criminal
21 trial and direct appeal, and not the state postconviction
22 proceedings, that are and should be the primary focus in all
23 capital criminal cases in this state. The Legislature finds
24 that state postconviction proceedings are civil in nature and
25 a matter of substantive law subject to limitations provided by
26 general law.

27 (e) It is the intent of the Legislature to eliminate
28 the abuse of postconviction judicial procedures and the
29 unwarranted delays in capital cases. The Legislature finds
30 that, in order to restore finality to capital cases, any
31 postconviction action in a capital case must be resolved

1 within 1 year after the Florida Supreme Court upholds a death
2 sentence. The Legislature further intends that no more than
3 one postconviction action may be filed in any capital case,
4 and that repetitive postconviction pleadings are not required
5 under the United States Constitution and cause undue delay.

6 (f) The Legislature recognizes that any allegations
7 regarding actual innocence in capital cases raised after the
8 postconviction process is complete may be filed with the
9 Executive Board of Clemency, which has the power to pardon or
10 commute any criminal sentence should the board find sufficient
11 grounds to justify granting such relief.

12 (g) The Legislature finds that all postconviction
13 remedies in capital cases must be filed in strict conformity
14 with the time limits provided in this act, and that the courts
15 of this state must resolve these cases in conformity with
16 these time limitations. It is the intent of the Legislature
17 that the time limitations and prohibitions on successive
18 capital postconviction proceedings provided in this section be
19 strictly enforced. No court shall delay capital postconviction
20 proceedings for any reason not authorized in this act. The
21 Legislature recognizes that while convicted murderers
22 sentenced to death may have a right to demand public records,
23 as does any other citizen, that right does not include the
24 right to delay state capital postconviction proceedings.

25 (h) It is the further intent of the Legislature that
26 no state resources be expended in violation of this act. In
27 the event that any state employee or party contracting with
28 the state willfully and substantially violates the provisions
29 of this act, the Attorney General shall notify the Speaker of
30 the House of Representatives, the President of the Senate, and
31 the Commission on the Administration of Justice. In addition,

1 the Legislature authorizes the Attorney General to file a writ
2 of prohibition in the Florida Supreme Court when there is a
3 violation of the time limitations or the prohibition against
4 successive capital postconviction proceedings provided in this
5 act.

6 (2) In every capital case in which the trial court
7 imposes a sentence of death after July 1, 1999, the following
8 procedures shall apply in all postconviction proceedings in
9 state court:

10 (a)1. Within 15 days after imposing a sentence of
11 death, the court shall appoint as postconviction counsel the
12 office of the capital collateral regional counsel, private
13 counsel, or the office of the public defender of any circuit
14 that has not represented the defendant as postconviction
15 counsel, unless the defendant affirmatively states that he or
16 she refuses to accept postconviction legal representation. If
17 the defendant declines the appointment of postconviction
18 counsel, no further state resources shall be expended for such
19 purposes. In the event that the office of the capital
20 collateral regional counsel informs the court that it is
21 unable to represent the defendant, or declines to accept the
22 appointment by the trial court, the court shall appoint
23 private counsel or the office of the public defender of any
24 circuit that has not represented the defendant as
25 postconviction counsel. The state attorney or Attorney General
26 shall notify the Speaker of the House of Representatives, the
27 President of the Senate, and the Commission on the
28 Administration of Justice whenever the office of the capital
29 collateral regional counsel is not appointed as postconviction
30 counsel in a capital case.

31

1 2. The defendant must waive the attorney-client
2 privilege with the defendant's trial counsel regarding any
3 matter which the postconviction counsel determines he or she
4 must investigate. The defendant must instruct his or her trial
5 counsel to cooperate with and assist postconviction counsel.
6 If the defendant declines or fails to waive the
7 attorney-client privilege or obstructs the efforts of
8 postconviction counsel, or if the sentencing court finds the
9 defendant is not cooperating with postconviction counsel, the
10 defendant shall not be entitled to any further postconviction
11 legal representation provided by the state in postconviction
12 proceedings. If the defendant requests that any attorney
13 appointed under this subsection be removed from the case, the
14 court shall order that the attorney assigned to represent the
15 defendant in postconviction proceedings be excused from any
16 such representation, and no further state resources may be
17 expended for postconviction representation for that defendant.

18 3. The counsel appointed to represent the defendant in
19 capital postconviction proceedings is authorized to file one
20 pleading seeking postconviction relief in state court,
21 including one appeal to the Florida Supreme Court, one
22 pleading seeking postconviction relief in the appropriate
23 federal district court, and one appeal, if deemed necessary
24 and appropriate under federal law, in the federal circuit
25 court of appeals having jurisdiction over the case. If deemed
26 necessary and permissible under federal law, postconviction
27 counsel may file one appropriate petition in the United States
28 Supreme Court. Postconviction counsel provided by the state
29 shall not be authorized to expend or utilize state resources
30 to file any further postconviction pleadings in any court.

31

1 (b)1. Within 15 days after the appointment of counsel,
2 the state attorney shall provide postconviction counsel with
3 copies of all pretrial and trial discovery provided to the
4 defendant's trial counsel and all contents of the state
5 attorney's file containing information regarding the capital
6 criminal charges against the defendant, except for those
7 materials which the state attorney has a legal right to
8 withhold from disclosure. The defendant's trial counsel shall
9 provide copies of all appropriate records and documents to
10 postconviction counsel.

11 2. A claim or demand regarding public records by the
12 postconviction counsel does not constitute legal cause for a
13 court to consider any postconviction pleading filed in
14 violation of this section.

15 3. The court shall order the court reporter to
16 expedite the transcript of all proceedings in the case and
17 provide a copy of all transcripts to postconviction counsel
18 within 30 days of the date the sentence of death is imposed.
19 The courts and clerks of court are encouraged to utilize
20 state-of-the-art technology to assist in complying with this
21 and any other time limitation.

22 (c)1. Within 30 days after the date the Supreme Court
23 issues a mandate on a direct appeal affirming a sentence of
24 death, all postconviction pleadings that challenge the
25 judgment or death sentence must be filed in the sentencing
26 court, including any allegations that the defendant's trial
27 counsel was ineffective, that the state withheld evidence in
28 violation of the United States Constitution, or that newly
29 discovered evidence demonstrates that no rational fact finder
30 could have found the defendant guilty beyond a reasonable
31 doubt.

1 2. Within 90 days after the Supreme Court issues its
2 mandate, any postconviction action challenging the
3 effectiveness of the defendant's counsel on direct appeal must
4 be filed in the Supreme Court.

5 3. The circuit court or Supreme Court shall not
6 entertain any pleading filed in violation of these time
7 limitations, except that either court may grant the defendant
8 one 30-day extension of time based on good cause shown. The
9 state attorney shall be permitted to file any responsive
10 pleading within 60 days after the filing of any postconviction
11 motion in the circuit court, and the Attorney General shall be
12 permitted to file any responsive pleading to a claim of
13 ineffective appellate counsel in the Supreme Court within 60
14 days after the filing of any postconviction petition. Factual
15 allegations made by the defendant in any petition and not
16 admitted by the state are deemed denied.

17 4. The circuit court may grant the state attorney a
18 30-day extension of time based on good cause shown. The
19 Supreme Court may grant the Attorney General a 30-day
20 extension of time based on good cause shown.

21 5. An amendment to a postconviction claim, or any
22 other capital postconviction pleading, may not be considered
23 if filed in violation of the time limitations provided in this
24 act.

25 6. State resources may not be expended in preparation
26 or in consideration of any pleading, claim, or amendment to
27 any postconviction pleading filed in violation of this
28 subsection. A postconviction pleading filed by the defendant
29 in violation of the time limitations provided in this
30 subsection shall be considered waived, and all postconviction
31 claims in that case shall be deemed denied by operation of

1 law. The alleged inability of postconviction counsel to
2 provide legal representation to a defendant, or to obtain any
3 evidence or records, shall not be a basis for a court to
4 consider a pleading filed in violation of the time limitations
5 provided in this subsection. If private counsel has
6 represented the postconviction defendant and the claim is
7 denied by operation of law, the private counsel shall be
8 entitled only to compensation for services rendered at a rate
9 of \$100 per hour, not to exceed the statutory maximum amounts
10 provided in s. 27.711. Any private counsel who represents a
11 defendant whose claim is denied by operation of law for
12 failure to comply with these time limitations may not be
13 appointed to represent any defendant in any future capital
14 postconviction proceeding in state court.

15 (d) A postconviction claim may not be based on any
16 grounds that were or could have been raised at trial or, if
17 properly preserved, on direct appeal of the conviction and
18 sentence. Any claim based on such a ground shall be denied as
19 a matter of law and may not be considered by any state court.
20 The defendant shall explain with specificity why each claim
21 raised is based on a ground that was not or could not have
22 been raised at trial or, if properly preserved, on direct
23 appeal of the conviction and sentence.

24 (e) Relief may not be granted based on a
25 postconviction claim unless the defendant demonstrates by
26 clear and convincing evidence that but for the alleged
27 collateral error the outcome of the trial or the penalty
28 phase, or the direct appeal, would have been different. The
29 court shall apply the rule of harmless error to any
30 postconviction pleading filed in a capital case.

31

1 (f)1. Within 30 days after the filing of the state's
2 responsive pleading, the circuit court shall conduct an
3 evidentiary hearing if requested by the defendant. Only those
4 witnesses identified by the defendant in the postconviction
5 pleading may be called by the defendant to testify during the
6 evidentiary hearing. An expert witness may not be called to
7 testify unless approved by the court.

8 2. Within 10 days after the conclusion of the
9 evidentiary hearing, the circuit court shall make any
10 necessary factual findings and issue a final order denying or
11 granting postconviction relief to the defendant.

12 (g) Within 90 days after the date the circuit court
13 issues its final order adjudicating all postconviction claims,
14 the Florida Supreme Court shall render a final decision
15 denying or granting any postconviction relief, or remanding
16 the case to the circuit court for further proceedings,
17 including any relief based on the alleged ineffectiveness of
18 direct appeal counsel. Any case remanded to the circuit court
19 shall be expedited by that court, which shall make all factual
20 findings and conclusions of law within 30 days after the date
21 the Supreme Court remands the proceeding. The Supreme Court,
22 shall render a final decision within 60 days after receipt of
23 the circuit court's order on remand.

24 (h)1. A successive petition for postconviction relief
25 of any type in a capital case may not be heard in any state
26 court. State resources may not be utilized by any state
27 employee, contracting party, or other person receiving state
28 compensation to file a successive postconviction claim in a
29 capital case in a state or federal court.

30 2. The Attorney General shall notify the Speaker of
31 the House of Representatives, the President of the Senate, and

1 the Commission on the Administration of Justice regarding any
2 attempt by a state employee, contracting party, or any other
3 person receiving state compensation to file a successive
4 postconviction claim in a capital case in a state or federal
5 court.

6 (3) In every capital case in which the trial court
7 imposed a sentence of death before July 1, 1999, the following
8 procedures shall apply in all postconviction proceedings in
9 state court:

10 (a) The motion for postconviction relief, if any, must
11 be filed in the trial court or, if the claim alleges the
12 ineffectiveness of direct appeal counsel in the Supreme Court,
13 within 180 days after the effective date of this act. No
14 further motion, or amendment to a motion, for postconviction
15 relief may be filed after this 180-day period following the
16 effective date of this act. Any failure by a defendant to file
17 the motion within this time period constitutes a waiver of all
18 postconviction claims, and all such claims shall be deemed
19 denied by operation of law. A claim by a defendant or
20 defendant's postconviction counsel that the postconviction
21 counsel is unable to meet this time limitation does not
22 constitute legal cause for a court to allow a motion,
23 pleading, amendment, or other postconviction pleading to be
24 filed in violation of this 180-day time limitation.

25 (b) A claim or demand regarding public records or
26 other matters does not constitute legal cause for a court to
27 consider any postconviction pleading filed in violation of
28 this section.

29 (c)1. The circuit court shall not entertain any
30 pleading filed in violation of the 180-day time limitation
31 provided in paragraph (a), except that the court may grant the

1 defendant one 30-day extension of time based on good cause
2 shown. The state attorney or Attorney General shall be
3 permitted to file any responsive pleading within 30 days after
4 the filing of any postconviction motion. Matters alleged by
5 the defendant and not admitted by the state shall be deemed
6 denied. The court may grant the state attorney or Attorney
7 General a 30-day extension of time based on good cause shown.

8 2. State resources may not be expended in preparation
9 or in consideration of any pleading, claim, or amendment to
10 any postconviction pleading filed in violation of this
11 subsection. A postconviction pleading filed by the defendant
12 in violation of the time limitations provided in this
13 subsection shall be considered waived, and all postconviction
14 claims in that case shall be deemed denied by operation of
15 law. The alleged inability of postconviction counsel to
16 provide legal representation to a defendant, or to obtain any
17 evidence or records, shall not be a basis for a court to
18 consider a pleading filed in violation of the time limitations
19 provided in this subsection. If private counsel has
20 represented the postconviction defendant and the claim is
21 denied by operation of law, the private counsel shall be
22 entitled only to compensation for services rendered at a rate
23 of \$100 per hour, not to exceed the statutory maximum amounts
24 provided in s. 27.711. Any private counsel who represents a
25 defendant whose claim is denied by operation of law for
26 failure to comply with these time limitations may not be
27 appointed to represent any defendant in any future capital
28 postconviction proceeding in state court.

29 (d) A postconviction claim may not be based on any
30 grounds that were or could have been raised at trial or, if
31 properly preserved, on direct appeal of the conviction and

1 sentence. Any claim based on such a ground shall be denied as
2 a matter of law and may not be considered by any state court.
3 The defendant shall explain with specificity why each claim
4 raised is based on a ground that was not or could not have
5 been raised at trial or, if properly preserved, on direct
6 appeal of the conviction and sentence.

7 (e) Relief may not be granted based on a
8 postconviction claim unless the defendant demonstrates by
9 clear and convincing evidence that but for the alleged
10 collateral error the outcome of the trial or the penalty phase
11 would have been different. The court shall apply the rule of
12 harmless error to any postconviction pleading filed in a
13 capital case.

14 1. A successive petition for postconviction relief in
15 a capital case may not be heard in any state court. State
16 resources may not be utilized by any state employee,
17 contracting party, or other person receiving state
18 compensation to file a successive postconviction claim in a
19 capital case.

20 2. The Attorney General shall notify the Speaker of
21 the House of Representatives, the President of the Senate, and
22 the Commission on the Administration of Justice regarding any
23 attempt by a state employee, contracting party, or other
24 person receiving state compensation to file a successive
25 postconviction claim in a capital case. Any private counsel or
26 other person filing a successive postconviction pleading in a
27 capital case shall be prohibited from receiving any state
28 compensation in any future postconviction legal proceeding.

29 3. Within 30 days after the effective date of this
30 act, the state attorney, if he or she has not already provided
31 such information to postconviction counsel, shall provide

1 postconviction counsel with copies of all pretrial and trial
2 discovery provided to the defendant's trial counsel and all
3 contents of the state attorney's file containing information
4 regarding the capital criminal charges against the defendant,
5 except for those materials which the state attorney has a
6 legal right to withhold from disclosure. The defendant's trial
7 counsel shall provide copies of all appropriate records and
8 documents to postconviction counsel.

9 (f)1. Within 30 days after the filing of the state's
10 responsive pleading, the circuit court shall conduct an
11 evidentiary hearing, if requested by the defendant, regarding
12 those grounds properly alleged in a capital postconviction
13 proceeding as defined in this section, unless the circuit
14 court has ruled that no evidentiary hearing was required
15 before the effective date of this act. Only those witnesses
16 identified by the defendant in the postconviction pleading may
17 be called by the defendant to testify during the evidentiary
18 hearing. An expert witness may not be called to testify unless
19 approved by the court.

20 2. Within 10 days after the conclusion of the
21 evidentiary hearing, the circuit court shall make any
22 necessary factual findings and issue a final order denying or
23 granting postconviction relief to the defendant.

24 (g) Within 90 days after the date the circuit court
25 issues its final order adjudicating all postconviction claims,
26 the Florida Supreme Court shall render a final decision
27 denying or granting any postconviction relief, or remanding
28 the case to the circuit court for further proceedings. Any
29 case remanded to the circuit court shall be expedited by that
30 court, which shall make all factual findings and conclusions
31 of law within 60 days after the date the Supreme Court remands

1 the proceeding. The Supreme Court shall render a final
2 decision within 90 days after receipt of the circuit court's
3 order on remand.

4
5 The Attorney General shall provide a copy of the Supreme
6 Court's orders to the deceased victim's family.

7 (h) A successive petition for postconviction relief in
8 a capital case may not be heard in any state court. State
9 resources may not be utilized by any state employee,
10 contracting party, or other person receiving state
11 compensation to file a successive postconviction claim in a
12 capital case.

13 ~~(1) The Legislature recognizes that unjustified delay~~
14 ~~in postconviction proceedings in capital cases frustrates~~
15 ~~justice and diminishes public confidence in the criminal~~
16 ~~justice system. It is the intent of the Legislature that~~
17 ~~postconviction proceedings in capital cases progress in a fair~~
18 ~~but timely fashion and that, absent extreme circumstances, the~~
19 ~~participants in such proceedings abide by the time limitations~~
20 ~~set forth in this section.~~

21 ~~(2) Within 1 year after the date the Supreme Court~~
22 ~~issues a mandate on a direct appeal or the United States~~
23 ~~Supreme Court denies a petition for certiorari, whichever is~~
24 ~~later, all postconviction motions and petitions that challenge~~
25 ~~the judgment, sentence, or appellate decision must be filed in~~
26 ~~the appropriate court.~~

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

31

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

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

9 Section 13. For the purpose of incorporating the
10 amendment to section 924.055, Florida Statutes, in a reference
11 thereto, section 27.7091, Florida Statutes, is reenacted to
12 read:

13 27.7091 Legislative recommendations to Supreme Court;
14 postconviction proceedings; pro bono service credit.--In the
15 interest of promoting justice and integrity with respect to
16 capital collateral representation, the Legislature recommends
17 that the Supreme Court:

18 (1) Adopt by rule the provisions of s. 924.055, which
19 limit the time for postconviction proceedings in capital
20 cases.

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

25 Section 14. Rule 3.850, Florida Rules of Criminal
26 Procedure, relating to grant of new trial, is repealed to the
27 extent that it is inconsistent with this act. Rule 3.851,
28 Florida Rules of Criminal Procedure, relating to collateral
29 relief after death sentence has been imposed, is repealed.

30 Section 15. This act shall take effect July 1, 1999;
31 however, section 14 shall take effect only if this act is

1 passed by the affirmative vote of two-thirds of the membership
2 of each house of the Legislature.

3
4 *****

5 LEGISLATIVE SUMMARY

6
7 Creates the "Death Penalty Appeals Reform Act of 1999."
8 Removes time limitation upon running for or holding state
9 office by capital collateral regional counsel. Revises
10 provisions relating to duties of the capital collateral
11 regional counsel. Revises guidelines and time limitation
12 for certain notice relating to appointment of counsel to
13 conform to changes made by the act. Provides that a
14 judgment of conviction or sentence which has been
15 affirmed on direct appeal constitutes "lawful authority"
16 to detain a person for purposes of construing specified
17 provisions unless the trial court did not have
18 jurisdiction over the person or subject matter
19 jurisdiction, or unless the trial court exceeded the
20 maximum sentence allowed by statute. Revises provisions
21 relating to capital postconviction public records
22 production. Removes or revises certain requirements or
23 duties with respect to notification or certification of
24 compliance by the Secretary of Corrections, public
25 defenders or private counsel, state attorneys, the
26 Attorney General, and other persons or agencies. Provides
27 for imposition of sanctions. Provides that the execution
28 of a death sentence may be stayed only by the Governor
29 incident to a direct appeal, a postconviction proceeding
30 conducted in accordance with specified provisions, or a
31 habeas corpus proceeding conducted in accordance with
specified provisions.

21 Revises s. 924.055, F.S, relating to postconviction
22 review in capital cases. Provides legislative findings
23 and intent. Provides procedures for state postconviction
24 proceedings in capital cases in which the trial court
25 imposes a sentence of death. Prohibits any state court
26 from hearing a successive petition for postconviction
27 relief of any type in a capital case. Prohibits the
28 utilization by a state employee, contracting party, or
29 other person receiving state compensation of state
30 resources to file a successive postconviction claim.
31 Requires the Attorney General to notify the Speaker of
the House of Representatives, the President of the
Senate, and the Commission on the Administration of
Justice regarding such an attempt to file a successive
postconviction claim. Repeals Rule 3.850, Florida Rules
of Criminal Procedure, relating to grant of new trial, to
the extent that it is inconsistent with the act. Repeals
Rule 3.851, Florida Rules of Criminal Procedure, relating
to collateral relief after death sentence has been
imposed. (See bill for details.)