

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 ch. 924, F.S., to conform to changes made
15 by the act; amending s. 79.01, F.S., relating
16 to application and writ of habeas corpus;
17 providing that a judgment of conviction or
18 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 ch. 924, F.S., to
29 conform to changes made by the act; conforming
30 terminology; removing requirements that the
31 Attorney General provide certain notification

1 to the Department of Corrections and that the
2 department deliver certain public records to
3 the capital postconviction records repository;
4 providing for certain notification of
5 compliance by law enforcement agencies to the
6 state attorney in lieu of the Attorney General;
7 removing certain requirements for notification
8 or certification of compliance by the Secretary
9 of Corrections, public defenders or private
10 counsel, state attorneys, the Attorney General,
11 and other persons or agencies; revising
12 guidelines and time limitations relating to
13 certain notification to law enforcement
14 agencies, provision of public records by law
15 enforcement agencies, written demands for
16 public records or additional records by counsel
17 representing defendants, and filing of
18 objections and hearings on demands; conforming
19 terminology; removing provisions relating to
20 pending court motions to conform to changes
21 made by the act; removing provisions relating
22 to filing of affidavits of diligent search of
23 the records repository by defendant's counsel;
24 removing provisions relating to court orders
25 for agency production of additional public
26 records; removing requirement that the trial
27 court resolve disputes arising under s. 119.19,
28 F.S.; revising responsibilities and duties of
29 defendant's counsel, including duties relating
30 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 ch. 924, 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 said 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; amending s. 924.055, F.S., relating
28 to postconviction review in capital cases;
29 providing legislative findings and intent;
30 creating ss. 924.056, 924.057, 924.058, and
31 924.059, F.S.; providing procedures for state

1 postconviction proceedings in capital cases in
2 which the trial court imposes a sentence of
3 death; requiring appointment of the capital
4 collateral regional counsel as postconviction
5 counsel within a specified period after
6 imposition of a death sentence; providing an
7 exception and prohibiting expenditure of state
8 resources if the defendant declines the
9 appointment of postconviction counsel;
10 requiring the defendant to waive
11 attorney-client privilege with trial counsel
12 regarding certain matters; requiring the
13 defendant to instruct his or her trial counsel
14 to assist and cooperate fully with
15 postconviction counsel; providing circumstances
16 under which the defendant is not entitled to
17 further postconviction legal representation
18 provided by the state; requiring the court to
19 order that postconviction counsel be excused
20 from representing the defendant, and
21 prohibiting expenditure of further state
22 resources for postconviction representation of
23 that defendant, under specified circumstances
24 when the defendant has requested removal of
25 counsel; restricting the number of pleadings
26 and appeals that appointed counsel may file to
27 one pleading seeking postconviction relief in
28 state court, one pleading seeking
29 postconviction relief in federal district
30 court, and, if deemed necessary and appropriate
31 under federal law, one appeal in the federal

1 circuit court of appeals; permitting the filing
2 of an appropriate petition in the United States
3 Supreme Court if deemed necessary and
4 permissible under federal law; requiring orders
5 for expedited transcripts and provision of
6 copies to postconviction counsel within a
7 specified period; requiring all postconviction
8 pleadings that challenge the judgment or
9 sentence to be filed in the Florida Supreme
10 Court within a certain time period; providing
11 postconviction procedures applicable to cases
12 in which the trial court imposed a sentence of
13 death before July 1, 1999; revising guidelines
14 and time limitations; requiring filing of the
15 motion for postconviction relief in the trial
16 court, or filing of the claim alleging
17 ineffectiveness of counsel in the Supreme
18 Court, within 180 days after the effective date
19 of the act; prohibiting the filing of any
20 further motion, or amendment to a motion, for
21 postconviction relief after this 180-day
22 period; providing procedures for all
23 postconviction cases; prohibiting the circuit
24 court from entertaining a pleading filed in
25 violation of certain time limitations;
26 providing an exception to permit the defendant
27 one 30-day extension; permitting the Attorney
28 General to file any responsive pleading within
29 60 days after the filing of any postconviction
30 petition; providing for extensions of time;
31 prohibiting the consideration of amendments to

1 a pleading which are filed in violation of the
2 time limitations; providing that factual
3 allegations made by the defendant in any
4 petition and not admitted by the state are
5 deemed denied; prohibiting the expenditure of
6 state resources in preparation or consideration
7 of any pleading, claim, or amendment to a
8 pleading filed in violation of specified
9 provisions; requiring constructive waiver of
10 pleadings filed in violation of such
11 provisions; providing for denial of all
12 postconviction claims in that case by operation
13 of law; providing that the alleged inability of
14 postconviction counsel to provide legal
15 representation or obtain evidence or records
16 may not be a basis for consideration of
17 pleadings filed in violation of the time
18 limitations; prescribing a restriction upon the
19 amount and rate of compensation to which
20 private counsel is entitled if the
21 postconviction claim is denied by operation of
22 law, and prohibiting reappointment of the
23 private counsel in future capital
24 postconviction proceedings under certain
25 circumstances; specifying that a postconviction
26 claim may not be based on any ground that was
27 or could have been raised at trial or, if
28 properly preserved, on direct appeal; requiring
29 denial as a matter of law of such an unbased
30 claim and prohibiting the court from
31 considering it; requiring the defendant to

1 explain with specificity why each claim is
2 based on a ground that was not or could not
3 have been so raised; prohibiting the court from
4 granting relief on a postconviction claim
5 unless the defendant demonstrates clearly and
6 convincingly that but for the alleged
7 collateral error there would have been a
8 different outcome at trial in the penalty
9 phase; requiring the court to apply the rule of
10 harmless error to any capital postconviction
11 pleading; prohibiting any state court from
12 hearing a successive petition for
13 postconviction relief of any type in a capital
14 case; prohibiting the utilization by a state
15 employee, contracting party, or other person
16 receiving state compensation to file a
17 successive postconviction claim in a state or
18 federal court; requiring the Attorney General
19 to notify the Speaker of the House of
20 Representatives, the President of the Senate,
21 and the Commission on the Administration of
22 Justice regarding an attempt by such person
23 receiving state compensation to file a
24 successive postconviction claim in a state or
25 federal court; requiring the providing of
26 certain information to postconviction counsel
27 by the state attorney and the defendant's trial
28 counsel; requiring the circuit court to conduct
29 an evidentiary hearing within a specified
30 period if requested by the defendant; providing
31 that the defendant may call to testify at the

1 hearing only those witnesses identified in the
2 postconviction pleading; providing that no
3 expert witness may be called unless approved by
4 the court; requiring the court to issue a final
5 order denying or granting postconviction relief
6 within 30 days after the conclusion of the
7 hearing; requiring the Supreme Court to render
8 a final decision denying or granting any
9 postconviction relief or remanding the case
10 within a specified period; requiring the
11 circuit court to expedite any case so remanded
12 and make all factual findings and conclusions
13 of law within a specified period; requiring the
14 Supreme Court to render a final decision within
15 90 days of the circuit court's order on remand;
16 requiring the Attorney General to provide
17 Supreme Court orders to victim's family;
18 amending s. 27.7091, F.S., relating to
19 legislative recommendations to Supreme Court
20 regarding capital postconviction proceedings,
21 to correct a cross reference; repealing Rule
22 3.850, Florida Rules of Criminal Procedure,
23 relating to grant of new trial, to the extent
24 of inconsistency with the act; providing an
25 effective date.

26
27 Be It Enacted by the Legislature of the State of Florida:

28
29 Section 1. This act may be cited as the "Death Penalty
30 Appeals Reform Act of 1999."

31

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 27.02, 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 chapter 924. 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. No state employee may represent or assist in the
20 representation of a person for a successive postconviction
21 motion.The three capital collateral regional counsels'
22 offices shall function independently and be separate budget
23 entities, and the regional counsels shall be the office heads
24 for all purposes. The Justice Administrative Commission shall
25 provide administrative support and service to the three
26 offices to the extent requested by the regional counsels. The
27 three regional offices shall not be subject to control,
28 supervision, or direction by the Justice Administrative
29 Commission in any manner, including, but not limited to,
30 personnel, purchasing, transactions involving real or personal
31 property, and budgetary matters.

1 (b) For purposes of this section, the term "successive
2 postconviction pleading" means any postconviction pleading or
3 amendment to a pleading in any case in which the death penalty
4 has been imposed after the expiration of the time limits in
5 chapter 924. State resources may be utilized to file one
6 timely postconviction pleading in the state trial court, one
7 timely postconviction pleading in the Florida Supreme Court,
8 one postconviction pleading in the federal district court, one
9 postconviction pleading in the federal circuit court of
10 appeals, if authorized, and one postconviction pleading in the
11 United States Supreme Court. A postconviction pleading is
12 timely if it is filed in accordance with chapter 924.

13 Section 4. Section 27.708, Florida Statutes, 1998
14 Supplement, is amended to read:

15 27.708 Access to prisoners; compliance with the
16 Florida Rules of Criminal Procedure; records requests.--

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

22 (2) The capital collateral regional counsel and
23 contracted private counsel must timely comply with chapter 924
24 ~~all provisions of the Florida Rules of Criminal Procedure~~
25 ~~governing collateral review of capital cases.~~

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

30 Section 5. Section 27.710, Florida Statutes, 1998
31 Supplement, is amended to read:

1 27.710 Registry of attorneys applying to represent
2 persons in postconviction capital collateral proceedings;
3 certification of minimum requirements; appointment by trial
4 court.--

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

1 General a current copy of its registry of attorneys who are
2 available for appointment as counsel in postconviction capital
3 collateral proceedings. The registry must be indexed by
4 judicial circuit and must contain the requisite information
5 submitted by the applicants in accordance with this section.

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

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

29 (4) Each private attorney who is appointed by the
30 court to represent a capital defendant must enter into a
31 contract with the Comptroller. The executive director of the

1 Commission on the Administration of Justice in Capital Cases
2 shall develop the form of the contract, and the Comptroller
3 shall function as contract manager and shall enforce
4 performance of the terms and conditions of the contract. By
5 signing such contract, the attorney certifies that he or she
6 intends to continue the representation under the terms and
7 conditions set forth in the contract until the sentence is
8 reversed, reduced, or carried out or until released by order
9 of the trial court.

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

11 (a) Thirty ~~Ninety-one~~ days have elapsed since the
12 defendant has been sentenced to death and a capital collateral
13 regional counsel is not able to provide representation within
14 the time limitations provided in chapter 924 ~~Supreme Court~~
15 ~~issued a mandate on a direct appeal, or the Supreme Court of~~
16 ~~the United States has denied a petition for certiorari,~~
17 ~~whichever is later; or~~

18 (b) A person under sentence of death who was
19 previously represented by private counsel is currently
20 unrepresented in a postconviction capital collateral
21 proceeding. ~~† or~~

22 ~~(c) The trial court has issued an order finding that a~~
23 ~~year and a day have elapsed since the commencement of the~~
24 ~~period for filing a motion for postconviction relief under s.~~
25 ~~924.055(2), and the defendant's complete original motion for~~
26 ~~postconviction relief has not been filed in the trial court,~~

27
28 the executive director shall immediately notify the trial
29 court that imposed the sentence of death that the court must
30 immediately appoint an attorney, unless the time limitations
31 provided in chapter 924 have expired, selected from the

1 current registry, to represent such person in collateral
2 actions challenging the legality of the judgment and sentence
3 in the appropriate state and federal courts. The court shall
4 have the authority to strike a notice of appearance filed by a
5 Capital Collateral Regional Counsel, if the court finds the
6 notice was not filed in good faith and may so notify the
7 executive director that the client is no longer represented by
8 the Office of Capital Collateral Regional Counsel. In making
9 an assignment, the court shall give priority to attorneys
10 whose experience and abilities in criminal law, especially in
11 capital proceedings, are known by the court to be commensurate
12 with the responsibility of representing a person sentenced to
13 death. The trial court must issue an order of appointment
14 which contains specific findings that the appointed counsel
15 meets the statutory requirements and has the high ethical
16 standards necessary to represent a person sentenced to death.

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

20 (7) Within 30 days of this act becoming a law or
21 within 30 days of the appointment of the capital collateral
22 regional counsel in cases in which a person sentenced to death
23 did not have representation for postconviction motions, each
24 capital collateral regional counsel must certify whether the
25 postconviction motions and representation will be provided
26 within the time limitations provided in chapter 924. If
27 certification is not provided, then the court must appoint
28 private counsel.

29 Section 6. Section 27.711, Florida Statutes, 1998
30 Supplement, is amended to read:

31

1 27.711 Terms and conditions of appointment of
2 attorneys as counsel in postconviction capital collateral
3 proceedings.--

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

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

8 (b) "Executive director" means the executive director
9 of the Commission on the Administration of Justice in Capital
10 Cases.

11 (c) "Postconviction capital collateral proceedings"
12 means one series of collateral litigation involving a ~~of an~~
13 ~~affirmed conviction and~~ sentence of death, excluding direct
14 appeal but including the proceedings in the trial court that
15 imposed the capital sentence, any appellate review of the
16 sentence by the Supreme Court, any certiorari review of the
17 sentence by the United States Supreme Court, and any
18 authorized federal habeas corpus litigation with respect to
19 the sentence. The term does not include repetitive or
20 successive collateral challenges to a conviction and sentence
21 of death which is affirmed by the Supreme Court and
22 undisturbed by any collateral litigation.

23 (2) After appointment by the trial court under s.
24 27.710, the attorney must immediately file a notice of
25 appearance with the trial court indicating acceptance of the
26 appointment to represent the capital defendant throughout all
27 postconviction capital collateral proceedings, including
28 federal habeas corpus proceedings, in accordance with this
29 section or until released by order of the trial court.

30 (3) An attorney appointed to represent a capital
31 defendant is entitled to payment of the fees set forth in this

1 section only upon full performance by the attorney of the
2 duties specified in this section and approval of payment by
3 the trial court, and the submission of a payment request by
4 the attorney, subject to the availability of sufficient
5 funding specifically appropriated for this purpose. The
6 Justice Administrative Commission shall notify the executive
7 director and the court if it appears that sufficient funding
8 has not been specifically appropriated for this purpose to pay
9 any fees which may be incurred. The attorney shall maintain
10 appropriate documentation, including a current and detailed
11 hourly accounting of time spent representing the capital
12 defendant. The fee and payment schedule in this section is the
13 exclusive means of compensating a court-appointed attorney who
14 represents a capital defendant. When appropriate, a
15 court-appointed attorney must seek further compensation from
16 the Federal Government, as provided in 18 U.S.C. s. 3006A or
17 other federal law, in habeas corpus litigation in the federal
18 courts.

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

22 (a) Regardless of the stage of postconviction capital
23 collateral proceedings, the attorney is entitled to \$100 per
24 hour, up to a maximum of \$2,500, upon accepting appointment
25 and filing a notice of appearance. This fee is in the nature
26 of a fee for a retainer agreement.

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

1 the trial court. Payment is only authorized for timely
2 pleadings filed in accordance with chapter 924.

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

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

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

18 (f) At the conclusion of the capital defendant's
19 postconviction capital collateral proceedings in state court,
20 the attorney is entitled to \$100 per hour, up to a maximum of
21 \$2,500, after filing a petition for writ of certiorari in the
22 Supreme Court of the United States.

23 (g) If, at any time, the Supreme Court of the United
24 States accepts for review the capital defendant's collateral
25 challenge of the conviction and sentence of death, the
26 attorney is entitled to \$100 per hour, up to a maximum of
27 \$5,000. This payment shall be full compensation for
28 representing the capital defendant throughout the certiorari
29 proceedings before the United States Supreme Court.

30
31

1 The hours billed by a contracting attorney under this
2 subsection may include time devoted to representation of the
3 defendant by another attorney who is qualified under s. 27.710
4 and who has been designated by the contracting attorney to
5 assist him or her.

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

12 (6) An attorney who represents a capital defendant is
13 entitled to a maximum of \$5,000 for miscellaneous expenses,
14 such as the costs of preparing transcripts, compensating
15 expert witnesses, and copying documents. Upon approval by the
16 trial court, the attorney is entitled to payment by the
17 Comptroller for miscellaneous expenses.

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

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

27 (9) This section does not authorize an attorney who
28 represents a capital defendant to file repetitive or frivolous
29 pleadings that are not supported by law or by the facts of the
30 case. An action taken by an attorney who represents a capital
31 defendant in postconviction capital collateral proceedings may

1 not be the basis for a claim of ineffective assistance of
2 counsel.

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

10 Section 7. Section 79.01, Florida Statutes, is amended
11 to read:

12 79.01 Application and writ.--

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

24 (2) For purposes of this section, there is "lawful
25 authority" to detain a person after a judgment of conviction
26 or sentence which has been affirmed on direct appeal unless:

27 (a) The trial court did not have jurisdiction over the
28 person.

29 (b) The trial court did not have subject matter
30 jurisdiction.

31

1 (c) The trial court exceeded the maximum sentence
2 allowed by statute.

3 Section 8. Section 119.19, Florida Statutes, 1998
4 Supplement, is amended to read:

5 119.19 Capital postconviction public records
6 production.--

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

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

11 (b) If a motion under chapter 924 ~~Rule 3.850 or Rule~~
12 ~~3.851~~ has been filed and a different judge has already been
13 assigned to that motion, the judge who is assigned to rule on
14 that motion.

15 (2) The Secretary of State shall establish and
16 maintain a records repository for the purpose of archiving
17 capital postconviction public records as provided for in this
18 section.

19 (3)(a) Upon the imposition of a death sentence
20 ~~issuance of the Florida Supreme Court's mandate, the Attorney~~
21 ~~General shall promptly provide written notification to the~~
22 ~~state attorney who prosecuted the case that a death sentence~~
23 ~~has been affirmed. Upon receipt of such notification, the~~
24 ~~state attorney shall promptly provide written notification to~~
25 ~~each law enforcement agency involved in the case.~~

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

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

5 ~~(b) Within 90 days after notification, the Department~~
6 ~~of Corrections shall copy, seal, and deliver to the repository~~
7 ~~all public records determined by the department to be relevant~~
8 ~~to the subject matter of a proceeding under Rule 3.850 or Rule~~
9 ~~3.851 and where such production would not be unduly burdensome~~
10 ~~for the department. The department shall bear the costs.~~

11 (4)(5)(a) The chief law enforcement officer of each
12 law enforcement agency that was involved in the case, whether
13 through an investigation, arrest, prosecution, or
14 incarceration, shall notify the state attorney ~~Attorney~~
15 ~~General~~ upon compliance with subsection (3) and shall certify
16 that to the best of his or her knowledge and belief all public
17 records in possession of the agency or in possession of any
18 employee of the agency have been copied, indexed, and
19 delivered to the records repository as required by subsection
20 (3).

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

27 ~~(c) The Secretary of Corrections shall provide written~~
28 ~~notification to the Attorney General upon compliance with~~
29 ~~subsection (4) and shall certify that to the best of his or~~
30 ~~her knowledge and belief all public records in the~~
31 ~~department's possession have been copied, indexed, and~~

1 ~~delivered to the records repository as required by paragraph~~
2 ~~(4)(b).~~

3 ~~(6)(a) Within 90 days after issuance of the Florida~~
4 ~~Supreme Court's mandate affirming a death sentence, both the~~
5 ~~public defender or private counsel for the defendant and the~~
6 ~~state attorney involved in the case shall provide written~~
7 ~~notification to the Attorney General of the name and address~~
8 ~~of any person or agency in addition to those persons and~~
9 ~~agencies listed in subsections (3) and (4) which may have~~
10 ~~information pertinent to the case unless previously provided~~
11 ~~to the capital collateral regional counsel or postconviction~~
12 ~~private counsel. The Attorney General shall promptly provide~~
13 ~~written notification to each identified person or agency after~~
14 ~~receiving the information from the public defender, private~~
15 ~~counsel for the defendant, or state attorney and shall request~~
16 ~~that all public records in the possession of the person or~~
17 ~~agency which pertain to the case be copied, sealed, and~~
18 ~~delivered to the records repository.~~

19 ~~(b) Within 90 days after receiving a request for~~
20 ~~public records under paragraph (a), the person or agency shall~~
21 ~~provide written notification to the Attorney General of~~
22 ~~compliance with this subsection and shall certify that to the~~
23 ~~best of his or her knowledge and belief all public records~~
24 ~~requested have been copied, indexed, and delivered to the~~
25 ~~records repository.~~

26 (5)~~(7)~~(a) Any public record delivered to the records
27 repository under this section which is confidential or exempt
28 from the requirements of s. 119.07(1) and s. 24(a), Art. I of
29 the State Constitution must be separately boxed, without being
30 redacted, and sealed. The outside of the box must clearly
31 identify the public records as exempt, and the seal may not be

1 broken without an order of the trial court. The outside of the
2 box must identify the nature of the public records and the
3 legal basis under which the public records are exempt.

4 (b) Upon the entry of an appropriate court order,
5 sealed boxes subject to an inspection by the trial court shall
6 be shipped to the respective clerk of court. Such a box may be
7 opened only for an inspection by the trial court in camera and
8 only with a representative of the agency present at the
9 unsealing by the court. The moving party shall bear all costs
10 associated with the transportation and inspection of such
11 records by the trial court.

12 (6)~~(8)~~(a) Within 30 ~~90~~ days after ~~a capital collateral~~
13 ~~regional counsel or private~~ counsel is appointed to represent
14 a defendant sentenced to death, such ~~the regional~~ counsel,
15 ~~private counsel, or other counsel who is a member of The~~
16 ~~Florida Bar and is authorized by such counsel representing a~~
17 ~~defendant~~ shall send a written demand for additional public
18 records to each person or agency submitting public records
19 under subsection ~~subsections~~ (3) and ~~(4)~~ and to each person or
20 ~~agency identified as having information pertinent to the case~~
21 ~~under subsection (6)~~. Each person or agency notified under
22 this subsection shall, within 30 ~~90~~ days after receipt of the
23 written demand, deliver to the records repository any
24 additional public records in the possession of the person or
25 agency which pertain to the case and shall certify that to the
26 best of his or her knowledge and belief all additional public
27 records have been delivered ~~to the Attorney General~~ or, if no
28 additional public records are found, shall recertify that the
29 public records previously delivered are complete.

30 (b) Within 30 ~~60~~ days after receiving the written
31 demand, the agency or person may file an objection in the

1 trial court. Within 10 ~~30~~ days after the filing of an
2 objection, the trial court shall hold a hearing and order an
3 agency or person to produce additional public records if it
4 finds each of the following:

5 1. The defendant's ~~regional counsel or private~~ counsel
6 has made a timely and diligent search as provided in this
7 section.

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

11 3. The additional public records sought are relevant
12 to the subject matter of a proceeding under chapter 924 Rule
13 ~~3.850 or Rule 3.851~~ or appear reasonably calculated to lead to
14 the discovery of admissible evidence.

15 4. The additional public records request is not
16 overbroad or unduly burdensome.

17 ~~(c) The Attorney General and state attorney shall~~
18 ~~provide notification as provided in subsections (3) and (4) on~~
19 ~~cases where the mandate has issued on the date that this~~
20 ~~statute becomes effective, but where initial requests for~~
21 ~~public records have not been made.~~

22 (c)(d) If, on the date that this statute becomes
23 effective, a defendant is represented by appointed capital
24 collateral regional counsel or private counsel, and he or she
25 has initiated the public records request process, counsel
26 shall file within 30 ~~90~~ days of the effective date of this
27 statute, a written demand for any additional records that have
28 not previously been the subject of a notice to produce. An
29 agency may file an objection to such additional demand, and
30 the trial court shall hold a hearing as provided by paragraph
31 (b). This statute shall not be a basis for renewing requests

1 that have been initiated previously or for relitigating issues
2 pertaining to production of public records upon which a court
3 has ruled prior to the effective date of the statute, or for
4 stopping an execution which has been scheduled based upon a
5 warrant executed by the Governor prior to the effective date
6 of the statute.

7 ~~(e) If, on the date that this statute becomes~~
8 ~~effective, the defendant has had a Rule 3.850 motion denied~~
9 ~~and no Rule 3.850 motion is pending, no additional requests~~
10 ~~shall be made by capital collateral regional counsel or~~
11 ~~contracted private counsel until a death warrant is signed by~~
12 ~~the Governor and an execution is scheduled. Within 10 days of~~
13 ~~the signing of the death warrant, capital collateral regional~~
14 ~~counsel or contracted private counsel may request of a person~~
15 ~~or agency that the defendant has previously requested to~~
16 ~~produce records any records previously requested to which no~~
17 ~~objection was raised or sustained, but which the agency has~~
18 ~~received or produced since the previous request or which for~~
19 ~~any reason the agency has in its possession and did not~~
20 ~~produce within 10 days of the receipt of the previous notice~~
21 ~~or such shorter time period ordered by the court to comply~~
22 ~~with the time for the scheduled execution. The person or~~
23 ~~agency shall produce the record or shall file in the trial~~
24 ~~court an affidavit stating that it does not have the requested~~
25 ~~record or that the record has been produced previously.~~

26 (7)(9)(a) After production of additional public
27 records or recertification as provided in subsection (8),The
28 defendant's regional counsel or the private counsel is
29 prohibited from making any further public records requests
30 except as authorized under this chapter. An agency is not
31

1 required to produce additional public records except by court
2 order as provided in this subsection.

3 ~~(b) In order to obtain additional public records~~
4 ~~beyond those provided under subsection (8), the regional~~
5 ~~counsel, private counsel, or other counsel who is a member of~~
6 ~~The Florida Bar and is authorized by the regional counsel or~~
7 ~~private counsel shall file an affidavit in the trial court~~
8 ~~which attests that he or she has made a timely and diligent~~
9 ~~search of the records repository and specifically identifies~~
10 ~~those additional public records that are not at the repository~~
11 ~~and are relevant to the subject matter of a proceeding under~~
12 ~~Rule 3.850 or Rule 3.851 or are reasonably calculated to lead~~
13 ~~to the discovery of admissible evidence. The affiant shall~~
14 ~~provide a copy of the affidavit to all affected agencies upon~~
15 ~~the filing of such affidavit in the trial court.~~

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

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

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

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

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

30 (8)(10) ~~The defendant's capital collateral regional~~
31 ~~counsel or private counsel shall provide the personnel,~~

1 supplies, and any necessary equipment ~~used by the capital~~
2 ~~collateral regional counsel or private counsel~~ to copy records
3 held at the records repository.

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

7 ~~(9)(12)~~ The defendant's ~~capital collateral regional~~
8 ~~counsel or private~~ counsel shall not solicit another person to
9 make a request for public records ~~on behalf of the regional~~
10 ~~counsel or private counsel~~. The trial court shall impose
11 appropriate sanctions against any regional counsel or private
12 counsel found in violation of this subsection.

13 ~~(10)(13)~~ Sixty days after a capital sentence is
14 carried out, 60 days after a defendant is released from
15 incarceration following the granting of a pardon or reversal
16 of the sentence, or 60 days after the defendant has been
17 resentenced to a term of years, the Attorney General shall
18 provide written notification to the Secretary of State, who
19 may then destroy the records held by the records repository
20 which pertain to that case.

21 ~~(11)(14)~~ This section pertains only to the production
22 of records for capital postconviction defendants and does not
23 change or alter any time periods specified in chapter 924 Rule
24 ~~3.850 or Rule 3.851, Florida Rules of Criminal Procedure.~~
25 Furthermore, this section does not ~~affect, expand, or limit~~
26 the production of public records for any purposes other than
27 use in a proceeding held pursuant to chapter 924 Rule 3.850 or
28 ~~Rule 3.851, Florida Rules of Criminal Procedure.~~ Nothing in
29 this section shall constitute grounds to expand the time
30 limitations in chapter 924.

31

1 Section 9. Section 922.06, Florida Statutes, is
2 amended to read:

3 922.06 Stay of execution of death sentence.--

4 (1) The execution of a death sentence may be stayed
5 only by the Governor or incident to a direct ~~an~~ appeal, a
6 postconviction proceeding conducted in accordance with chapter
7 924, or a habeas corpus proceeding conducted in accordance
8 with chapter 79.

9 (2)(a) If execution of the death sentence is stayed by
10 the Governor, and the Governor subsequently lifts or dissolves
11 the stay, the Governor shall immediately notify the Attorney
12 General that the stay has been lifted or dissolved. Within 10
13 days after such notification, the Governor must set the new
14 date for execution of the death sentence.

15 (b) If execution of the death sentence is stayed
16 incident to a legal proceeding described in this section ~~an~~
17 appeal, upon certification by the Attorney General that the
18 stay has been lifted or dissolved, within 10 days after such
19 certification, the Governor must set the new date for
20 execution of the death sentence.

21
22 When the new date for execution of the death sentence is set
23 by the Governor under this subsection, the Attorney General
24 shall notify the inmate's counsel of record of the date and
25 time of execution of the death sentence.

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

30 922.052 Issuance of warrant of execution.--

31

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

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

7 924.051 Terms and conditions of appeals and collateral
8 review in criminal cases.--

9 (1) As used in this section:

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

12 (b) "Preserved" means that an issue, legal argument,
13 or objection to evidence was timely raised before, and ruled
14 on by, the trial court, and that the issue, legal argument, or
15 objection to evidence was sufficiently precise that it fairly
16 apprised the trial court of the relief sought and the grounds
17 therefor.

18 (2) The right to direct appeal and the provisions for
19 collateral review created in this chapter may only be
20 implemented in strict accordance with the terms and conditions
21 of this section.

22 (3) An appeal may not be taken from a judgment or
23 order of a trial court unless a prejudicial error is alleged
24 and is properly preserved or, if not properly preserved, would
25 constitute fundamental error. A judgment or sentence may be
26 reversed on appeal only when an appellate court determines
27 after a review of the complete record that prejudicial error
28 occurred and was properly preserved in the trial court or, if
29 not properly preserved, would constitute fundamental error.

30 (4) If a defendant pleads nolo contendere without
31 expressly reserving the right to appeal a legally dispositive

1 issue, or if a defendant pleads guilty without expressly
2 reserving the right to appeal a legally dispositive issue, the
3 defendant may not appeal the judgment or sentence.

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

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

12 (a)1. The facts upon which the claim is predicated
13 were unknown to the petitioner or his or her attorney and
14 could not have been ascertained by the exercise of due
15 diligence;

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

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

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

26 ~~1. A motion for collateral or other postconviction~~
27 ~~relief may not be considered if the motion is filed more than~~
28 ~~1 year after the judgment and sentence became final, unless~~
29 ~~the facts upon which the claim is predicated were unknown to~~
30 ~~the petitioner or his or her attorney and could not have been~~
31 ~~ascertained by the exercise of due diligence, or the~~

1 ~~fundamental constitutional right asserted was not established~~
2 ~~within the period provided for in this subsection and has been~~
3 ~~held to apply retroactively.~~

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

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

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

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

24 Section 12. Section 924.055, Florida Statutes, is
25 amended to read:

26 924.055 Postconviction review in capital cases;
27 legislative findings and intent ~~Time limitations for~~
28 ~~postconviction proceedings in capital cases.--~~

29 (1) The Legislature finds that postconviction delays
30 in state court in capital cases have increased without
31 justification, despite the state's substantial efforts and

1 allocations of resources since 1987 to provide postconviction
2 legal representation to indigent prisoners sentenced to death.
3 The Legislature further finds that previous legislation
4 enacted in 1996 requiring the state courts to resolve capital
5 postconviction litigation in a timely fashion has failed to
6 reduce delays in capital cases.

7 (2) The Legislature finds that, because of multiple
8 filings in postconviction capital proceedings, the average
9 convicted murderer sentenced to death and executed since 1994
10 has been allowed to initiate 10 separate proceedings in state
11 and federal courts. These proceedings have delayed the
12 execution of death sentences an average of over 13 years since
13 1994. The vast majority of these proceedings are
14 postconviction motions. The Legislature finds that these
15 delays have allowed persons sentenced to death to abuse
16 judicial postconviction proceedings, resulting in unwarranted
17 delays that diminish respect for the rule of law and the
18 importance of the criminal trial and appellate process. These
19 delays further traumatize victims' families and deny justice
20 to the people of this state.

21 (3) The Legislature finds that the United States
22 Constitution does not limit the states' authority to restrict
23 postconviction legal remedies in capital cases, nor does it
24 require the state to expend resources to provide
25 postconviction legal representation to convicted murderers
26 sentenced to death. The Legislature recognizes that in Murray
27 v. Giarratano, 492 U.S. 1,10 (1989), Chief Justice Rehnquist
28 stated that: "State collateral proceedings are not
29 constitutionally required as an adjunct to the state criminal
30 proceedings and serve a different and more limited purpose
31 than either the trial or appeal." The Legislature further

1 recognizes that, in that same case, at 492 U.S. 1,13, Justice
2 O'Connor stated that: "A postconviction proceeding is not part
3 of the criminal process itself, but is instead a civil action
4 designed to overturn a presumptively valid criminal judgment"
5 and "Nothing in the Constitution requires the states to
6 provide such proceedings."

7 (4) The Legislature finds that it is the criminal
8 trial and direct appeal, and not the state postconviction
9 proceedings, that are and should be the primary focus in all
10 capital criminal cases in this state. The Legislature finds
11 that state postconviction proceedings are civil in nature and
12 a matter of substantive law subject to limitations provided by
13 general law.

14 (5) It is the intent of the Legislature to eliminate
15 the abuse of postconviction judicial proceedings and the
16 unwarranted delays in capital cases. The Legislature finds
17 that, in order to restore finality to capital cases, any
18 postconviction action in a capital case must be resolved
19 within 1 year after the Florida Supreme Court upholds a death
20 sentence. The Legislature further intends that no more than
21 one postconviction action may be filed in any capital case,
22 and that repetitive postconviction pleadings are not required
23 under the United States Constitution and cause undue delay.

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

30 (7) The Legislature finds that all postconviction
31 remedies in capital cases must be filed in strict conformity

1 with the time limits provided in this act, and that the courts
2 of this state must resolve these cases in conformity with
3 these time limitations. It is the intent of the Legislature
4 that the time limitations and prohibitions on successive
5 capital postconviction proceedings provided in this section be
6 strictly enforced. No court shall delay capital postconviction
7 proceedings for any reason not authorized in this act. The
8 Legislature finds that the right to demand public records,
9 does not include the right to delay state capital
10 postconviction proceedings. Public records requests shall not
11 provide a basis to extend any of the time limitations provided
12 in this chapter.

13 (8) It is the further intent of the Legislature that
14 no state resources be expended in violation of this act. In
15 the event that any state employee or party contracting with
16 the state willfully and substantially violates the provisions
17 of this act, the Attorney General shall notify the Speaker of
18 the House of Representatives, the President of the Senate, and
19 the Commission on the Administration of Justice. In addition,
20 the Legislature authorizes the Attorney General to file a writ
21 of prohibition in the Florida Supreme Court when there is a
22 violation of the time limitations or the prohibition against
23 successive capital postconviction proceedings provided in this
24 act.

25 ~~(1) The Legislature recognizes that unjustified delay~~
26 ~~in postconviction proceedings in capital cases frustrates~~
27 ~~justice and diminishes public confidence in the criminal~~
28 ~~justice system. It is the intent of the Legislature that~~
29 ~~postconviction proceedings in capital cases progress in a fair~~
30 ~~but timely fashion and that, absent extreme circumstances, the~~
31

1 ~~participants in such proceedings abide by the time limitations~~
2 ~~set forth in this section.~~

3 ~~(2) Within 1 year after the date the Supreme Court~~
4 ~~issues a mandate on a direct appeal or the United States~~
5 ~~Supreme Court denies a petition for certiorari, whichever is~~
6 ~~later, all postconviction motions and petitions that challenge~~
7 ~~the judgment, sentence, or appellate decision must be filed in~~
8 ~~the appropriate court.~~

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

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

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

21 Section 13. Section 924.056, Florida Statutes, is
22 created to read:

23 924.056 Postconviction proceedings for which sentence
24 of death was imposed on or after July 1, 1999.--

25 (1) In every capital case in which the trial court
26 imposes a sentence of death on or after July 1, 1999, the
27 following procedures shall apply in all postconviction
28 proceedings in state court:

29 (a) Within 15 days after imposing a sentence of death,
30 the court shall appoint as postconviction counsel the office
31 of the capital collateral regional counsel, unless the

1 defendant affirmatively states that he or she refuses to
2 accept postconviction legal representation. If the defendant
3 declines the appointment of postconviction counsel, no further
4 state resources shall be expended for such purposes. In the
5 event that the office of the capital collateral regional
6 counsel informs the court that it is unable to represent the
7 defendant, or declines to accept the appointment by the trial
8 court, the court shall appoint private counsel as
9 postconviction counsel. The state attorney or Attorney General
10 shall notify the Speaker of the House of Representatives, the
11 President of the Senate, and the Commission on the
12 Administration of Justice whenever the office of the capital
13 collateral regional counsel is not appointed as postconviction
14 counsel in a capital case.

15 (b) The defendant must waive the attorney-client
16 privilege with the defendant's trial counsel regarding any
17 matter which the postconviction counsel determines he or she
18 must investigate. The defendant must instruct his or her trial
19 counsel to cooperate with and assist postconviction counsel.
20 If the defendant declines or fails to waive the
21 attorney-client privilege or obstructs the efforts of
22 postconviction counsel, or if the sentencing court finds the
23 defendant is not cooperating with postconviction counsel, the
24 defendant shall not be entitled to any further postconviction
25 legal representation provided by the state in postconviction
26 proceedings. If the defendant requests that any attorney
27 appointed under this subsection be removed or replaced, the
28 court shall warn the defendant that no further state resources
29 may be expended for postconviction representation for that
30 defendant, unless the defendant withdraws the request to
31 remove or replace postconviction counsel. If the defendant

1 does not withdraw his or her request immediately, then any
2 state-provided attorney must be removed and no further state
3 resources may be expended for the defendant's postconviction
4 representation.

5 (c) The counsel appointed to represent the defendant
6 in capital postconviction proceedings is authorized to file
7 one pleading seeking postconviction relief in state court,
8 including one appeal to the Florida Supreme Court, one
9 pleading seeking postconviction relief in the appropriate
10 federal district court, and one appeal, if deemed necessary
11 and appropriate under federal law, in the federal circuit
12 court of appeals having jurisdiction over the case. If deemed
13 necessary and permissible under federal law, postconviction
14 counsel may file one appropriate petition in the United States
15 Supreme Court. Postconviction counsel provided by the state
16 shall not be authorized to expend or utilize state resources
17 to file any further postconviction pleadings in any court.

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

25 (2) Within 6 months after the filing of the initial
26 brief by the appellant in the Supreme Court, all
27 postconviction pleadings that challenge the judgment or death
28 sentence must be filed in the sentencing court, including any
29 allegations that the defendant's trial counsel was
30 ineffective, that the state withheld evidence in violation of
31 the United States Constitution, or that newly discovered

1 evidence demonstrates that no rational fact finder could have
2 found the defendant guilty beyond a reasonable doubt. Any
3 postconviction motion challenging the effectiveness of the
4 defendant's counsel on direct appeal must be filed within this
5 time period as well.

6 Section 14. Section 924.057, Florida Statutes, is
7 created to read:

8 924.057 Postconviction procedure for cases where the
9 death sentence was imposed before July 1, 1999.--In every
10 capital case in which the trial court imposed a sentence of
11 death before July 1, 1999, the motion for postconviction
12 relief, if any, must be filed in the trial court or, if the
13 claim alleges the ineffectiveness of direct appeal counsel in
14 the Supreme Court, within 180 days after the effective date of
15 this act. No further motion, or amendment to a motion, for
16 postconviction relief may be filed after this 180-day period
17 following the effective date of this act.

18 Section 15. Section 924.058, Florida Statutes, is
19 created to read:

20 924.058 Procedure for all capital postconviction
21 cases.--

22 (1) A claim or demand regarding public records or
23 other matters does not constitute legal cause for a court to
24 consider any postconviction pleading filed in violation of
25 this chapter.

26 (2)(a) The circuit court shall not entertain any
27 pleading filed in violation of s. 924.057 or s. 924.056(2),
28 except that the court may grant the defendant one 30-day
29 extension of time based on good cause shown. The state
30 attorney or Attorney General shall be permitted to file any
31 responsive pleading within 60 days after the filing of any

1 postconviction motion. Matters alleged by the defendant and
2 not admitted by the state shall be deemed denied. The court
3 may grant the state attorney or Attorney General a 30-day
4 extension of time based on good cause shown.

5 (b) State resources may not be expended and state
6 employees may not assist in preparation or in consideration of
7 any pleading, claim, or amendment to any capital
8 postconviction pleading filed in violation of s. 924.056(2) or
9 s. 924.057, except that the Attorney General may appear to
10 inform the court that the court may not consider any
11 postconviction motion or amended motion filed in violation of
12 this act. A postconviction pleading filed by the defendant in
13 violation of the time limitations provided in s. 924.056(2) or
14 s. 924.057 shall be considered waived, and all postconviction
15 claims in that case shall be deemed denied by operation of
16 law. The alleged inability of postconviction counsel to
17 provide legal representation to a defendant, or to obtain any
18 evidence or records, shall not be a basis for a court to
19 consider a pleading filed in violation of the time limitations
20 provided in s. 924.056(2) or s. 926.057. If private counsel
21 has represented the postconviction defendant and the claim is
22 denied by operation of law, the private counsel shall be
23 entitled only to compensation for services rendered at a rate
24 of \$100 per hour, not to exceed the statutory maximum amounts
25 provided in s. 27.711. Any private counsel who represents a
26 defendant whose claim is denied by operation of law for
27 failure to comply with these time limitations may not be
28 appointed to represent any defendant in any future capital
29 postconviction proceeding in state court.

30 (c) Any failure by a defendant to file the motion
31 within the time limitations provided by s. 924.056(2) or s.

1 924.057 constitutes a waiver of all postconviction claims, and
2 all such claims shall be deemed denied by operation of law. A
3 claim by a defendant or defendant's postconviction counsel
4 that the postconviction counsel is unable to meet this time
5 limitation does not constitute legal cause for a court to
6 allow a motion, pleading, amendment, or other postconviction
7 pleading to be filed in violation of s. 924.056(2) or s.
8 924.057.

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

18 (4) Relief may not be granted based on any
19 postconviction claim unless the defendant demonstrates by
20 clear and convincing evidence that but for the alleged
21 collateral error the outcome of the trial or the penalty phase
22 would have been different. The court shall apply the rule of
23 harmless error to any postconviction pleading filed in a
24 capital case.

25 (a) A successive petition for postconviction relief in
26 a capital case may not be heard in any state court. State
27 resources may not be utilized by any state employee,
28 contracting party, or other person receiving state
29 compensation to file a successive postconviction claim or an
30 amendment to a postconviction claim filed in violation of the
31 time limits provided in s. 924.056(2) or s. 924.057.

1 (b) The Attorney General shall notify the Speaker of
2 the House of Representatives, the President of the Senate, and
3 the Commission on the Administration of Justice regarding any
4 attempt by a state employee, contracting party, or other
5 person receiving state compensation to file a successive
6 postconviction claim in a capital case. A private counsel or
7 other person filing a successive postconviction pleading in a
8 capital case shall be prohibited from receiving any state
9 compensation in any future postconviction legal proceeding.

10 (c) Within 30 days after the effective date of this
11 act or within 15 days after the appointment of counsel for
12 cases in which the death sentence is imposed after July 1,
13 1999, the state attorney, if he or she has not already
14 provided such information to postconviction counsel, shall
15 provide postconviction counsel with copies of all pretrial and
16 trial discovery provided to the defendant's trial counsel and
17 all contents of the state attorney's file containing
18 information regarding the capital criminal charges against the
19 defendant, except for those materials which the state attorney
20 has a legal right to withhold from disclosure. The defendant's
21 trial counsel shall provide copies of all appropriate records
22 and documents to postconviction counsel.

23 Section 16. Section 924.059, Florida Statutes, is
24 created to read:

25 924.059 Time limitations for court decisions in
26 postconviction cases in which the death penalty has been
27 imposed.--

28 (1)(a) Within 30 days after the filing of the state's
29 responsive pleading, the circuit court shall conduct an
30 evidentiary hearing, if requested by the defendant, regarding
31 those grounds properly alleged in a capital postconviction

1 proceeding as defined in this section, unless the circuit
2 court has ruled that no evidentiary hearing was required
3 before the effective date of this act. Only those witnesses
4 identified by the defendant in the postconviction pleading may
5 be called by the defendant to testify during the evidentiary
6 hearing. An expert witness may not be called to testify unless
7 approved by the court.

8 (b) Within 30 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 (2) Within 90 days after the date the circuit court
13 issues its final order adjudicating all postconviction claims
14 and the Florida Supreme Court receives the record, the Florida
15 Supreme Court shall render a final decision denying or
16 granting any postconviction relief, or remanding the case to
17 the circuit court for further proceedings. Any case remanded
18 to the circuit court shall be expedited by that court, which
19 shall make all factual findings and conclusions of law within
20 60 days after the date the Supreme Court remands the
21 proceeding. The Supreme Court shall render a final decision
22 within 90 days after receipt of the circuit court's order on
23 remand.

24
25 The Attorney General shall provide a copy of the Supreme
26 Court's orders to the deceased victim's family.

27 Section 17. Subsection (1) of section 27.7091, Florida
28 Statutes, is amended to read:

29 27.7091 Legislative recommendations to Supreme Court;
30 postconviction proceedings; pro bono service credit.--In the
31 interest of promoting justice and integrity with respect to

1 capital collateral representation, the Legislature recommends
2 that the Supreme Court:

3 (1) Adopt by rule the provisions of chapter 924 ~~§-~~
4 ~~924.055~~, which limit the time for postconviction proceedings
5 in capital cases.

6 Section 18. Rule 3.850, Florida Rules of Criminal
7 Procedure, relating to the grant of a new trial, is repealed
8 to the extent that it is inconsistent with this act. Rule
9 3.851, Florida Rules of Criminal Procedure, relating to
10 collateral relief after death sentence has been imposed, is
11 repealed.

12 Section 19. This act shall take effect July 1, 1999;
13 section 18 shall take effect on that date only if this act is
14 passed by the affirmative vote of two-thirds of the membership
15 of each house of the Legislature.

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