

By Senator Jones

40-840-00

1 A bill to be entitled
2 An act relating to postconviction proceedings
3 in capital cases; amending s. 27.702, F.S., as
4 amended; deleting a provision limiting the
5 filing of certain postconviction or collateral
6 actions; amending s. 921.141, F.S.; requiring
7 that a jury recommendation of death be pursuant
8 to a unanimous vote of the jury; providing for
9 a recommendation for a life sentence if the
10 jury vote is less than unanimous; amending s.
11 922.095, F.S., as amended; providing a
12 specified period during which a person
13 convicted and sentenced to death may seek
14 collateral review; amending s. 924.055, F.S.,
15 as amended; revising legislative intent with
16 respect to the filing of postconviction claims;
17 deleting legislative intent with respect to the
18 expenditure of state resources; deleting a
19 requirement that the Attorney General report
20 violations of ch. 2000-3, Laws of Florida, to
21 the President of the Senate and the Speaker of
22 the House of Representatives; amending s.
23 924.056, F.S., as created by ch. 2000-3, Laws
24 of Florida; deleting provisions that deny a
25 defendant legal representation provided by the
26 state in postconviction proceedings if the
27 defendant obstructs the process or requests the
28 removal of counsel; deleting provisions barring
29 postconviction actions unless such actions are
30 commenced within a specified period; repealing
31 s. 924.057, F.S., as created by ch. 2000-3,

1 Laws of Florida, relating to limitations on
2 postconviction cases in which the death
3 sentence was imposed before the effective date
4 of ch. 2000-3, Laws of Florida; amending s.
5 924.058, F.S., as created by ch. 2000-3, Laws
6 of Florida; deleting certain limitations on the
7 number of postconviction actions that may be
8 filed on behalf of a defendant in a capital
9 case; deleting a provision prohibiting a court
10 from considering certain actions; deleting a
11 provision prohibiting certain amendments of an
12 action; amending s. 924.059, F.S., as created
13 by ch. 2000-3, Laws of Florida; deleting
14 limitations on certain appeals or motions for
15 rehearing following a final order granting or
16 denying postconviction relief; repealing s. 10
17 of ch. 2000-3, Laws of Florida; abrogating the
18 repeal of Rule 3.850, Rule 3.851, and Rule
19 3.852, Florida Rules of Criminal Procedure,
20 relating to the granting of a new trial,
21 collateral relief after the death sentence has
22 been imposed, and production of public records
23 in capital postconviction proceedings;
24 providing an effective date.

25
26 Be It Enacted by the Legislature of the State of Florida:

27
28 Section 1. Subsection (1) of section 27.702, Florida
29 Statutes, as amended by section 2 of chapter 2000-3, Laws of
30 Florida, is amended to read:

31

1 27.702 Duties of the capital collateral regional
2 counsel; reports.--

3 (1) The capital collateral regional counsel shall
4 represent each person convicted and sentenced to death in this
5 state for the sole purpose of instituting and prosecuting
6 collateral actions challenging the legality of the judgment
7 and sentence imposed against such person in the state courts,
8 federal courts in this state, the United States Court of
9 Appeals for the Eleventh Circuit, and the United States
10 Supreme Court. ~~The capital collateral regional counsel and the~~
11 ~~attorneys appointed pursuant to s. 27.710 shall file only~~
12 ~~those postconviction or collateral actions authorized by~~
13 ~~statute.~~The three capital collateral regional counsels'
14 offices shall function independently and be separate budget
15 entities, and the regional counsels shall be the office heads
16 for all purposes. The Justice Administrative Commission shall
17 provide administrative support and service to the three
18 offices to the extent requested by the regional counsels. The
19 three regional offices shall not be subject to control,
20 supervision, or direction by the Justice Administrative
21 Commission in any manner, including, but not limited to,
22 personnel, purchasing, transactions involving real or personal
23 property, and budgetary matters.

24 Section 2. Section 921.141, Florida Statutes, is
25 amended to read:

26 921.141 Sentence of death or life imprisonment for
27 capital felonies; further proceedings to determine sentence.--

28 (1) SEPARATE PROCEEDINGS ON ISSUE OF PENALTY.--Unless
29 the death penalty is unavailable as a possible penalty as a
30 matter of law or the court has made a pretrial determination
31 that the aggravating circumstances in the case are

1 insufficient to justify the imposition of the death penalty,
2 upon conviction or adjudication of guilt of a defendant of a
3 capital felony, the court shall conduct a separate sentencing
4 proceeding to determine whether the defendant should be
5 sentenced to death or life imprisonment as authorized by s.
6 775.082. The proceeding shall be conducted by the trial judge
7 before the trial jury as soon as practicable. If, through
8 impossibility or inability, the trial jury is unable to
9 reconvene for a hearing on the issue of penalty, having
10 determined the guilt of the accused, the trial judge may
11 summon a special juror or jurors as provided in chapter 913 to
12 determine the issue of the imposition of the penalty. If the
13 trial jury has been waived, or if the defendant pleaded
14 guilty, the sentencing proceeding shall be conducted before a
15 jury impaneled for that purpose, unless waived by the
16 defendant. In the proceeding, evidence may be presented as to
17 any matter that the court deems relevant to the nature of the
18 crime and the character of the defendant and shall include
19 matters relating to any of the aggravating or mitigating
20 circumstances enumerated in subsections (6)~~(5)~~ and (7)~~(6)~~.
21 Any such evidence which the court deems to have probative
22 value may be received, regardless of its admissibility under
23 the exclusionary rules of evidence, provided the defendant is
24 accorded a fair opportunity to rebut any hearsay statements.
25 However, this subsection shall not be construed to authorize
26 the introduction of any evidence secured in violation of the
27 Constitution of the United States or the Constitution of the
28 State of Florida. The state and the defendant or the
29 defendant's counsel shall be permitted to present argument for
30 or against sentence of death.
31

1 (2) ADVISORY SENTENCE BY THE JURY.--After hearing all
2 the evidence, the jury shall deliberate and render an advisory
3 sentence to the court, based upon the following matters:

4 (a) Whether sufficient aggravating circumstances exist
5 as enumerated in subsection (6)~~(5)~~;

6 (b) Whether sufficient mitigating circumstances exist
7 which outweigh the aggravating circumstances found to exist;
8 and

9 (c) Based on these considerations, whether the
10 defendant should be sentenced to life imprisonment or death.

11 (3) JURY RECOMMENDATION.--A jury recommendation of
12 death must be by a unanimous vote of the members of the jury.
13 If the jury vote for death is less than unanimous, a life
14 recommendation is entered.

15 (4)~~(3)~~ FINDINGS IN SUPPORT OF SENTENCE OF
16 DEATH.--Notwithstanding the recommendation of ~~a majority~~ of
17 the jury, the court, after weighing the aggravating and
18 mitigating circumstances, shall enter a sentence of life
19 imprisonment or death, but if the court imposes a sentence of
20 death, it shall set forth in writing its findings upon which
21 the sentence of death is based as to the facts:

22 (a) That sufficient aggravating circumstances exist as
23 enumerated in subsection (6)~~(5)~~, and

24 (b) That there are insufficient mitigating
25 circumstances to outweigh the aggravating circumstances.

26
27 In each case in which the court imposes the death sentence,
28 the determination of the court shall be supported by specific
29 written findings of fact based upon the circumstances in
30 subsections (6)~~(5)~~ and (7)~~(6)~~ and upon the records of the
31 trial and the sentencing proceedings. If the court does not

1 make the findings requiring the death sentence within 30 days
2 after the rendition of the judgment and sentence, the court
3 shall impose sentence of life imprisonment in accordance with
4 s. 775.082.

5 (5)~~(4)~~ REVIEW OF JUDGMENT AND SENTENCE.--The judgment
6 of conviction and sentence of death shall be subject to
7 automatic review by the Supreme Court of Florida and
8 disposition rendered within 2 years after the filing of a
9 notice of appeal. Such review by the Supreme Court shall have
10 priority over all other cases and shall be heard in accordance
11 with rules promulgated by the Supreme Court.

12 (6)~~(5)~~ AGGRAVATING CIRCUMSTANCES.--Aggravating
13 circumstances shall be limited to the following:

14 (a) The capital felony was committed by a person
15 previously convicted of a felony and under sentence of
16 imprisonment or placed on community control or on felony
17 probation.

18 (b) The defendant was previously convicted of another
19 capital felony or of a felony involving the use or threat of
20 violence to the person.

21 (c) The defendant knowingly created a great risk of
22 death to many persons.

23 (d) The capital felony was committed while the
24 defendant was engaged, or was an accomplice, in the commission
25 of, or an attempt to commit, or flight after committing or
26 attempting to commit, any: robbery; sexual battery; aggravated
27 child abuse; abuse of an elderly person or disabled adult
28 resulting in great bodily harm, permanent disability, or
29 permanent disfigurement; arson; burglary; kidnapping; aircraft
30 piracy; or unlawful throwing, placing, or discharging of a
31 destructive device or bomb.

1 (e) The capital felony was committed for the purpose
2 of avoiding or preventing a lawful arrest or effecting an
3 escape from custody.

4 (f) The capital felony was committed for pecuniary
5 gain.

6 (g) The capital felony was committed to disrupt or
7 hinder the lawful exercise of any governmental function or the
8 enforcement of laws.

9 (h) The capital felony was especially heinous,
10 atrocious, or cruel.

11 (i) The capital felony was a homicide and was
12 committed in a cold, calculated, and premeditated manner
13 without any pretense of moral or legal justification.

14 (j) The victim of the capital felony was a law
15 enforcement officer engaged in the performance of his or her
16 official duties.

17 (k) The victim of the capital felony was an elected or
18 appointed public official engaged in the performance of his or
19 her official duties if the motive for the capital felony was
20 related, in whole or in part, to the victim's official
21 capacity.

22 (l) The victim of the capital felony was a person less
23 than 12 years of age.

24 (m) The victim of the capital felony was particularly
25 vulnerable due to advanced age or disability, or because the
26 defendant stood in a position of familial or custodial
27 authority over the victim.

28 (n) The capital felony was committed by a criminal
29 street gang member, as defined in s. 874.03.

30 (7)~~(6)~~ MITIGATING CIRCUMSTANCES.--Mitigating
31 circumstances shall be the following:

1 (a) The defendant has no significant history of prior
2 criminal activity.

3 (b) The capital felony was committed while the
4 defendant was under the influence of extreme mental or
5 emotional disturbance.

6 (c) The victim was a participant in the defendant's
7 conduct or consented to the act.

8 (d) The defendant was an accomplice in the capital
9 felony committed by another person and his or her
10 participation was relatively minor.

11 (e) The defendant acted under extreme duress or under
12 the substantial domination of another person.

13 (f) The capacity of the defendant to appreciate the
14 criminality of his or her conduct or to conform his or her
15 conduct to the requirements of law was substantially impaired.

16 (g) The age of the defendant at the time of the crime.

17 (h) The existence of any other factors in the
18 defendant's background that would mitigate against imposition
19 of the death penalty.

20 (8)~~(7)~~ VICTIM IMPACT EVIDENCE.--Once the prosecution
21 has provided evidence of the existence of one or more
22 aggravating circumstances as described in subsection (6)~~(5)~~,
23 the prosecution may introduce, and subsequently argue, victim
24 impact evidence. Such evidence shall be designed to
25 demonstrate the victim's uniqueness as an individual human
26 being and the resultant loss to the community's members by the
27 victim's death. Characterizations and opinions about the
28 crime, the defendant, and the appropriate sentence shall not
29 be permitted as a part of victim impact evidence.

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1 (9)(8) APPLICABILITY.--This section does not apply to
2 a person convicted or adjudicated guilty of a capital drug
3 trafficking felony under s. 893.135.

4 Section 3. Section 922.095, Florida Statutes, as
5 amended by section 4 of chapter 2000-3, Laws of Florida, is
6 amended to read:

7 922.095 Grounds for death warrant; ~~limitations of~~
8 ~~actions.~~--A person who is convicted and sentenced to death
9 must pursue all possible collateral remedies in state and
10 federal court in a timely manner ~~within the time limits~~
11 ~~provided by statute.~~ If any court refuses to grant relief in a
12 collateral postconviction proceeding, the convicted person has
13 90 days in which to seek further collateral review. Failure to
14 seek further collateral review within the 90-day period ~~relief~~
15 ~~within the statutory time limits~~ constitutes grounds for
16 issuance of a death warrant under s. 922.052 or s. 922.14. ~~Any~~
17 ~~claim not pursued within the statutory time limits is barred.~~
18 ~~No claim filed after the time required by law shall be grounds~~
19 ~~for a judicial stay of any warrant.~~

20 Section 4. Section 924.055, Florida Statutes, as
21 amended by section 5 of chapter 2000-3, Laws of Florida, is
22 amended to read:

23 924.055 Postconviction review in capital cases;
24 legislative findings and intent.--

25 (1) It is the intent of the Legislature to reduce
26 delays in capital cases and to ensure that all appeals and
27 postconviction actions in capital cases are resolved within 5
28 years after the date a sentence of death is imposed in the
29 circuit court. All capital postconviction actions must be
30 filed as early as possible after the imposition of a sentence
31 of death which may be during a direct appeal of the conviction

1 and sentence. ~~A person sentenced to death or that person's~~
2 ~~capital postconviction counsel must file any postconviction~~
3 ~~legal action in compliance with the statutes of limitation~~
4 ~~established in s. 924.056 and elsewhere in this chapter.~~
5 ~~Except as expressly allowed by s. 924.056(5), a person~~
6 ~~sentenced to death or that person's capital postconviction~~
7 ~~counsel may not file more than one postconviction action in a~~
8 ~~sentencing court and one appeal therefrom to the Florida~~
9 ~~Supreme Court, unless authorized by law.~~

10 ~~(2) It is the further intent of the Legislature that~~
11 ~~no state resources be expended in violation of this act. In~~
12 ~~the event that any state employee or party contracting with~~
13 ~~the state violates the provisions of this act, the Attorney~~
14 ~~General shall deliver to the Speaker of the House of~~
15 ~~Representatives and the President of the Senate a copy of any~~
16 ~~court pleading or order that describes or adjudicates a~~
17 ~~violation.~~

18 Section 5. Section 924.056, Florida Statutes, as
19 created by section 6 of chapter 2000-3, Laws of Florida, is
20 amended to read:

21 924.056 Commencement of capital postconviction actions
22 for which sentence of death is imposed on or after the
23 effective date of chapter 2000-3, Laws of Florida ~~this act~~;
24 ~~limitations on actions.--~~

25 (1) In every capital case in which the trial court
26 imposes a sentence of death on or after the effective date of
27 chapter 2000-3, Laws of Florida ~~this act~~, this section shall
28 govern all postconviction proceedings in state court.

29 (a) Within 15 days after imposing a sentence of death,
30 the sentencing court shall appoint the appropriate office of
31 the capital collateral regional counsel or private

1 postconviction counsel, unless the defendant declines to
2 accept postconviction legal representation in which case the
3 state shall not provide postconviction legal representation.
4 Within 30 days after the appointment, the capital collateral
5 regional counsel shall file a notice of appearance in the
6 trial court or a motion to withdraw based on a conflict of
7 interest or for good cause. The court shall appoint private
8 counsel pursuant to part IV of chapter 27 in any case in which
9 the capital collateral regional counsel files a motion to
10 withdraw, or otherwise informs the court that the capital
11 collateral regional counsel cannot comply with the provisions
12 of chapter 924 or in which the court determines that the
13 agency cannot comply with chapter 924 or other applicable
14 laws.

15 (b) ~~The defendant who accepts the appointment of~~
16 ~~postconviction counsel must cooperate with and assist~~
17 ~~postconviction counsel. If the sentencing court finds the~~
18 ~~defendant is obstructing the postconviction process, the~~
19 ~~defendant shall not be entitled to any further postconviction~~
20 ~~legal representation provided by the state.~~Each attorney
21 participating in a capital case on behalf of a defendant must
22 provide all information pertaining to the capital case which
23 the attorney obtained during the representation of that
24 defendant to that defendant's capital postconviction counsel.
25 Postconviction counsel must maintain the confidentiality of
26 any confidential information received from any attorney for
27 that defendant and is subject to the same penalties as the
28 providing attorney for violating confidentiality. ~~If the~~
29 ~~defendant requests without good cause that any attorney~~
30 ~~appointed under this subsection be removed or replaced, the~~
31 ~~court shall notify the defendant that no further state~~

1 ~~resources may be expended for postconviction representation~~
2 ~~for that defendant, unless the defendant withdraws the request~~
3 ~~to remove or replace postconviction counsel. If the defendant~~
4 ~~does not immediately withdraw his or her request, then any~~
5 ~~appointed attorney must be removed from the case and no~~
6 ~~further state resources may be expended for the defendant's~~
7 ~~postconviction representation.~~The prosecuting attorney and
8 the defendant's trial counsel shall provide the defendant or,
9 if represented, the defendant's capital postconviction counsel
10 with copies of all pretrial and trial discovery and all
11 contents of the prosecuting attorney's file, except for
12 information that the prosecuting attorney has a legal right
13 under state or federal law to withhold from disclosure.

14 (2) The clerk of the court shall provide a copy of the
15 record on appeal to the capital postconviction attorney and
16 the state attorney and Attorney General within 60 days after
17 the sentencing court appoints postconviction counsel. However,
18 the court may grant an extension of up to 30 days when
19 extraordinary circumstances exist.

20 (3)(a) With respect to all capital postconviction
21 actions commenced after the effective date of this act, a
22 capital postconviction action is not commenced until the
23 defendant or the defendant's postconviction counsel files a
24 fully pled postconviction action in the sentencing court or,
25 as provided in subsection (4), the Florida Supreme Court. For
26 the purposes of this subsection, a fully pled capital
27 postconviction action is one which complies with s. 924.058(1)
28 ~~s. 924.058(2)~~ or any superseding rule adopted by the Florida
29 Supreme Court. ~~Except as provided by subsection (4) or~~
30 ~~subsection (5), all capital postconviction actions shall be~~
31 ~~barred unless they are commenced within 180 days after the~~

1 ~~filing of the appellant's initial brief in the Florida Supreme~~
2 ~~Court on direct appeal of the defendant's capital conviction~~
3 ~~and sentence. The fully pled postconviction action must raise~~
4 ~~all cognizable claims that the defendant's judgment or~~
5 ~~sentence was entered in violation of the Constitution or laws~~
6 ~~of the United States or the Constitution or the laws of the~~
7 ~~state, including any claim of ineffective assistance of trial~~
8 ~~counsel, allegations of innocence, or that the state withheld~~
9 ~~evidence favorable to the defendant. No claim may be~~
10 ~~considered in such action which could have or should have been~~
11 ~~raised before trial, at trial, or if preserved on direct~~
12 ~~appeal. For the purposes of this subsection, a capital~~
13 ~~postconviction action is not fully pled unless it satisfies~~
14 ~~the requirements of s. 924.058(2) or any superseding rule of~~
15 ~~court.~~

16 ~~(b) No claim of ineffective assistance of collateral~~
17 ~~postconviction counsel may be raised in a state court.~~

18 ~~(b)(c)~~ The pendency of public records requests or
19 litigation, or the pendency of other litigation, or the
20 failure of the defendant or the defendant's postconviction
21 counsel to timely prosecute a case shall not constitute cause
22 for the court to grant any request for an extension of time or
23 other delay. No appeal may be taken from a court's ruling
24 denying such a request for an extension of time or other
25 delay.

26 ~~(d) The time for commencement, of the postconviction~~
27 ~~action, may not be tolled for any reason or cause. All claims~~
28 ~~raised by amendment of a defendant's capital postconviction~~
29 ~~action are barred if the claims are raised outside the time~~
30 ~~limitations provided by statute for the filing of capital~~
31 ~~postconviction actions.~~

1 (4) All capital postconviction actions raising any
2 claim of ineffective assistance of direct appeal counsel are
3 barred unless they are commenced in conformity with this
4 subsection. The defendant or the defendant's capital
5 postconviction counsel shall file an action in the Florida
6 Supreme Court raising any claim of ineffective assistance of
7 direct appeal counsel within 45 days after mandate issues
8 affirming the death sentence in the direct appeal.

9 ~~(5) Regardless of when a sentence is imposed, all
10 successive capital postconviction actions are barred unless
11 commenced by filing a fully pled postconviction action within
12 90 days after the facts giving rise to the cause of action
13 were discovered or should have been discovered with the
14 exercise of due diligence. Such claim shall be barred pursuant
15 to subsection (3) or s. 924.057 unless the facts underlying
16 the claim, if proven and viewed in light of the evidence as a
17 whole, would be sufficient to establish by clear and
18 convincing evidence that, but for constitutional error, no
19 reasonable fact finder would have found the defendant guilty
20 of the underlying offense. Additionally, the facts underlying
21 this claim must have been unknown to the defendant or his or
22 her attorney and must be such that they could not have been
23 ascertained by the exercise of due diligence prior to filing
24 the earlier postconviction motion. The time period allowed for
25 filing a successive collateral postconviction action shall not
26 be grounds for a stay.~~

27 Section 6. Section 924.057, Florida Statutes, as
28 created by section 7 of chapter 2000-3, Laws of Florida, is
29 repealed.

1 Section 7. Section 924.058, Florida Statutes, as
2 created by section 8 of chapter 2000-3, Laws of Florida, is
3 amended to read:

4 924.058 Capital postconviction claims.--This section
5 shall regulate the procedures in actions for capital
6 postconviction relief commencing after the effective date of
7 chapter 2000-3, Laws of Florida,~~this act~~ unless and until
8 such procedures are revised by rule or rules adopted by the
9 Florida Supreme Court which specifically reference this
10 section.

11 ~~(1) The defendant or the defendant's capital~~
12 ~~postconviction counsel shall not file more than one capital~~
13 ~~postconviction action in the sentencing court, one appeal~~
14 ~~therefrom in the Florida Supreme Court, and one original~~
15 ~~capital postconviction action alleging the ineffectiveness of~~
16 ~~direct appeal counsel in the Florida Supreme Court, except as~~
17 ~~expressly allowed by s. 924.056(5).~~

18 (1)~~(2)~~ The defendant's postconviction action shall be
19 filed under oath and shall be fully pled to include:

20 (a) The judgment or sentence under attack and the
21 court which rendered the same;

22 (b) A statement of each issue raised on appeal and the
23 disposition thereof;

24 (c) Whether a previous postconviction action has been
25 filed and, if so, the disposition of all previous claims raised
26 in postconviction litigation; if a previous action or actions
27 have been filed, the reason or reasons the claim or claims in
28 the present motion were not raised in the former action or
29 actions;

30 (d) The nature of the relief sought;

31

1 (e) A fully detailed allegation of the factual basis
2 for any claim of legal or constitutional error asserted,
3 including the attachment of any document supporting the claim,
4 the name and address of any witness, the attachment of
5 affidavits of the witnesses or a proffer of the testimony; and

6 (f) A concise memorandum of applicable case law as to
7 each claim asserted.

8 ~~(3) Any capital postconviction action that does not~~
9 ~~comply with any requirement in this section or other~~
10 ~~applicable provision in law shall not be considered in any~~
11 ~~state court. No amendment of a defendant's capital~~
12 ~~postconviction action shall be allowed by the court after the~~
13 ~~expiration of the time limitation provided by statute for the~~
14 ~~commencement of capital postconviction actions.~~

15 (2)~~(4)~~ The prosecuting attorney or Attorney General
16 shall be allowed to file one response to any capital
17 postconviction action within 60 days after receipt of the
18 defendant's fully pled capital postconviction action.

19 Section 8. Section 924.059, Florida Statutes, as
20 created by section 9 of chapter 2000-3, Laws of Florida, is
21 amended to read:

22 924.059 Time limitations and judicial review in
23 capital postconviction actions.--This section shall regulate
24 the procedures in actions for capital postconviction relief
25 commencing after the effective date of chapter 2000-3, Laws of
26 Florida,~~this act~~ unless and until such procedures are revised
27 by rule or rules adopted by the Florida Supreme Court which
28 specifically reference this section.

29 ~~(1) No amendment of a defendant's capital~~
30 ~~postconviction action shall be allowed by the court after the~~
31

1 ~~expiration of the time periods provided by statute for the~~
2 ~~filing of capital postconviction claims.~~

3 (1)~~(2)~~ Within 30 days after the state files its
4 answer, the sentencing court shall conduct a hearing to
5 determine if an evidentiary hearing is required, if a hearing
6 has been requested by the defendant or the defendant's capital
7 postconviction counsel. Within 30 days thereafter, the court
8 shall rule whether an evidentiary hearing is required and, if
9 so, shall schedule an evidentiary hearing to be held within 90
10 days. If the court determines that the defendant's capital
11 postconviction action is legally insufficient or the action,
12 files, and records in the case show that the defendant is not
13 entitled to relief, the court shall, within 45 days
14 thereafter, deny the action, setting forth a detailed
15 rationale therefore, and attaching or referencing such
16 portions of the record as are necessary to allow for
17 meaningful appellate review.

18 (2)~~(3)~~ Within 10 days after the order scheduling an
19 evidentiary hearing, the defendant or the defendant's capital
20 postconviction counsel shall disclose the names and addresses
21 of any potential witnesses not previously disclosed, with
22 their affidavits or a proffer of their testimony. Upon receipt
23 of the defendant's disclosure, the state shall have 10 days
24 within which to provide reciprocal disclosure. If the
25 defendant intends to offer expert testimony of his or her
26 mental status, the state shall be entitled to have the
27 defendant examined by an expert of its choosing. All of the
28 defendant's mental status claims shall be deemed denied as a
29 matter of law if the defendant fails to cooperate with the
30 state's expert. Reports provided by expert witnesses shall be
31 disclosed by opposing counsel upon receipt.

1 (3)~~(4)~~ Following the evidentiary hearing, the court
2 shall order the transcription of the proceeding which shall be
3 filed within 30 days. Within 30 days after receipt of the
4 transcript, the sentencing court shall issue a final order
5 granting or denying postconviction relief, making detailed
6 findings of fact and conclusions of law with respect to any
7 allegation asserted.

8 ~~(5) An appeal may be taken to the Supreme Court of~~
9 ~~Florida within 15 days from the entry of a final order on a~~
10 ~~capital postconviction action. No interlocutory appeal shall~~
11 ~~be permitted. No motion for rehearing shall be permitted. The~~
12 ~~clerk of the court shall promptly serve upon all parties a~~
13 ~~copy of the final order.~~

14 (4)~~(6)~~ If the sentencing court has denied the capital
15 postconviction action without an evidentiary hearing, the
16 appeal to the Florida Supreme Court will be expeditiously
17 resolved in a summary fashion. On appeal the case shall be
18 initially reviewed for a determination whether the sentencing
19 court correctly resolved the defendant's claims without an
20 evidentiary hearing. If the Florida Supreme Court determines
21 an evidentiary hearing should have been held, the decision to
22 remand for an evidentiary hearing may be made by an order
23 without an opinion. Jurisdiction shall be relinquished to the
24 trial court for a specified period, which must be scheduled
25 within 30 days and must be concluded within 90 days, for the
26 purpose of conducting an evidentiary hearing on any issue
27 identified by the Florida Supreme Court's order. Thereafter,
28 the record shall be supplemented with the hearing transcript.

29 (5)~~(7)~~ The Florida Supreme Court shall render its
30 decision within 180 days after receipt of the record on
31 appeal. If a denial of an action for postconviction relief is

1 affirmed, the Governor may proceed to issue a warrant for
2 execution.

3 ~~(8) A capital postconviction action filed in violation~~
4 ~~of the time limitations provided by statute is barred, and all~~
5 ~~claims raised therein are waived. A state court shall not~~
6 ~~consider any capital postconviction action filed in violation~~
7 ~~of s. 924.056 or s. 924.057. The Attorney General shall~~
8 ~~deliver to the Governor, the President of the Senate, and the~~
9 ~~Speaker of the House of Representatives a copy of any pleading~~
10 ~~or order that alleges or adjudicates any violation of this~~
11 ~~provision.~~

12 Section 9. Section 10 of chapter 2000-3, Laws of
13 Florida, is repealed.

14 Section 10. Subsection (5) of section 27.51, Florida
15 Statutes, as amended by section 12 of chapter 2000-3, Laws of
16 Florida, is repealed.

17 Section 11. This act shall take effect upon becoming a
18 law.

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21 SENATE SUMMARY

22 Deletes various limitations on the filing of motions and
23 collateral actions in capital cases. Requires that a jury
24 recommendation of death be made by a unanimous vote of
25 the jury. Provides for a recommendation for a life
26 sentence if the jury vote is less than unanimous.
27 Provides for further collateral review of certain cases
28 in which a court has refused to grant relief. Deletes
29 provisions that deny a defendant in a capital case legal
30 representation if the defendant obstructs the process or
31 requests the removal of counsel. Deletes limitations on
the number of postconviction actions that may be filed on
behalf of a defendant. Abrogates the repeal of Rule
3.850, Rule 3.851, and Rule 3.852, Florida Rules of
Criminal Procedure, which relate to new trials in capital
cases, collateral relief after the death sentence has
been imposed, and the production of public records in
capital postconviction proceedings. (See bill for
details.)