

1 removal of counsel; deleting provisions barring
2 postconviction actions unless such actions are
3 commenced within a specified period; directing
4 the Supreme Court to revise and adopt certain
5 rules of procedure; providing for the denial of
6 certain motions; repealing s. 924.057, F.S., as
7 created by ch. 2000-3, Laws of Florida,
8 relating to limitations on postconviction cases
9 in which the death sentence was imposed before
10 the effective date of ch. 2000-3, Laws of
11 Florida; directing the Supreme Court to revise
12 and adopt rules of procedure with respect to
13 postconviction claims; repealing s. 10 of ch.
14 2000-3, Laws of Florida; abrogating the repeal
15 of Rule 3.850, Rule 3.851, and Rule 3.852,
16 Florida Rules of Criminal Procedure, relating
17 to the granting of a new trial, collateral
18 relief after the death sentence has been
19 imposed, and production of public records in
20 capital postconviction proceedings; repealing
21 s. 27.51(5), F.S., relating to a prohibition on
22 the public defender representing certain
23 persons; providing an effective date.

24
25 WHEREAS, in order to ensure the fair, just, and humane
26 administration of capital punishment, it is necessary for the
27 Legislature to comprehensively address the processes by which
28 an offender is sentenced to death, and pursue postconviction
29 and collateral review of the judgment and the sentence of
30 death, NOW, THEREFORE,

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

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3 Section 1. Short title.--This act may be cited as the
4 "Death Penalty Justice Act of 2000."

5 Section 2. The Florida Supreme Court is directed to
6 review and revise criteria for the primary duties of each
7 judge assigned to the capital case division regarding
8 conducting all hearings on motions connected with the trial of
9 a capital case, all collateral motions and hearings, the trial
10 of a capital case, and such other matters as will expedite
11 ordered finality in capital cases.

12 Section 3. Subsection (1) of section 27.702, Florida
13 Statutes, as amended by section 2 of chapter 2000-3, Laws of
14 Florida, is amended to read:

15 27.702 Duties of the capital collateral regional
16 counsel; reports.--

17 (1) The capital collateral regional counsel shall
18 represent each person convicted and sentenced to death in this
19 state for the sole purpose of instituting and prosecuting
20 collateral actions challenging the legality of the judgment
21 and sentence imposed against such person in the state courts,
22 federal courts in this state, the United States Court of
23 Appeals for the Eleventh Circuit, and the United States
24 Supreme Court. ~~The capital collateral regional counsel and the~~
25 ~~attorneys appointed pursuant to s. 27.710 shall file only~~
26 ~~those postconviction or collateral actions authorized by~~
27 ~~statute.~~The three capital collateral regional counsels'
28 offices shall function independently and be separate budget
29 entities, and the regional counsels shall be the office heads
30 for all purposes. The Justice Administrative Commission shall
31 provide administrative support and service to the three

1 offices to the extent requested by the regional counsels. The
2 three regional offices shall not be subject to control,
3 supervision, or direction by the Justice Administrative
4 Commission in any manner, including, but not limited to,
5 personnel, purchasing, transactions involving real or personal
6 property, and budgetary matters.

7 Section 4. Section 921.141, Florida Statutes, is
8 amended to read:

9 921.141 Sentence of death or life imprisonment for
10 capital felonies; further proceedings to determine sentence.--

11 (1) SEPARATE PROCEEDINGS ON ISSUE OF PENALTY.--Unless
12 the death penalty is unavailable as a possible penalty as a
13 matter of law or the court has made a pretrial determination
14 that the aggravating circumstances in the case are
15 insufficient to justify the imposition of the death penalty,
16 upon conviction or adjudication of guilt of a defendant of a
17 capital felony, the court shall conduct a separate sentencing
18 proceeding to determine whether the defendant should be
19 sentenced to death or life imprisonment as authorized by s.
20 775.082. The proceeding shall be conducted by the trial judge
21 before the trial jury as soon as practicable. If, through
22 impossibility or inability, the trial jury is unable to
23 reconvene for a hearing on the issue of penalty, having
24 determined the guilt of the accused, the trial judge may
25 summon a special juror or jurors as provided in chapter 913 to
26 determine the issue of the imposition of the penalty. If the
27 trial jury has been waived, or if the defendant pleaded
28 guilty, the sentencing proceeding shall be conducted before a
29 jury impaneled for that purpose, unless waived by the
30 defendant. In the proceeding, evidence may be presented as to
31 any matter that the court deems relevant to the nature of the

1 crime and the character of the defendant and shall include
2 matters relating to any of the aggravating or mitigating
3 circumstances enumerated in subsections ~~(6)~~(5) and ~~(7)~~(6).
4 Any such evidence which the court deems to have probative
5 value may be received, regardless of its admissibility under
6 the exclusionary rules of evidence, provided the defendant is
7 accorded a fair opportunity to rebut any hearsay statements.
8 However, this subsection shall not be construed to authorize
9 the introduction of any evidence secured in violation of the
10 Constitution of the United States or the Constitution of the
11 State of Florida. The state and the defendant or the
12 defendant's counsel shall be permitted to present argument for
13 or against sentence of death.

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

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

19 (b) Whether sufficient mitigating circumstances exist
20 which outweigh the aggravating circumstances found to exist;
21 and

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

24 (3) JURY RECOMMENDATION.--A jury recommendation of
25 death must be by a unanimous vote of the members of the jury.
26 If the jury vote for death is less than unanimous, a life
27 recommendation shall be entered.

28 ~~(4)~~(3) FINDINGS IN SUPPORT OF SENTENCE OF
29 DEATH.--Notwithstanding the recommendation of a majority of
30 the jury, the court, after weighing the aggravating and
31 mitigating circumstances, shall enter a sentence of life

1 imprisonment or death, but if the court imposes a sentence of
2 death, it shall set forth in writing its findings upon which
3 the sentence of death is based as to the facts:

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

6 (b) That there are insufficient mitigating
7 circumstances to outweigh the aggravating circumstances.

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9 In each case in which the court imposes the death sentence,
10 the determination of the court shall be supported by specific
11 written findings of fact based upon the circumstances in
12 subsections (6)~~(5)~~ and (7)~~(6)~~ and upon the records of the
13 trial and the sentencing proceedings. If the court does not
14 make the findings requiring the death sentence within 30 days
15 after the rendition of the judgment and sentence, the court
16 shall impose sentence of life imprisonment in accordance with
17 s. 775.082.

18 (5)~~(4)~~ REVIEW OF JUDGMENT AND SENTENCE.--The judgment
19 of conviction and sentence of death shall be subject to
20 automatic review by the Supreme Court of Florida and
21 disposition rendered within 2 years after the filing of a
22 notice of appeal. Such review by the Supreme Court shall have
23 priority over all other cases and shall be heard in accordance
24 with rules promulgated by the Supreme Court.

25 (6)~~(5)~~ AGGRAVATING CIRCUMSTANCES.--Aggravating
26 circumstances shall be limited to the following:

27 (a) The capital felony was committed by a person
28 previously convicted of a felony and under sentence of
29 imprisonment or placed on community control or on felony
30 probation.

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- 1 (b) The defendant was previously convicted of another
2 capital felony or of a felony involving the use or threat of
3 violence to the person.
- 4 (c) The defendant knowingly created a great risk of
5 death to many persons.
- 6 (d) The capital felony was committed while the
7 defendant was engaged, or was an accomplice, in the commission
8 of, or an attempt to commit, or flight after committing or
9 attempting to commit, any: robbery; sexual battery; aggravated
10 child abuse; abuse of an elderly person or disabled adult
11 resulting in great bodily harm, permanent disability, or
12 permanent disfigurement; arson; burglary; kidnapping; aircraft
13 piracy; or unlawful throwing, placing, or discharging of a
14 destructive device or bomb.
- 15 (e) The capital felony was committed for the purpose
16 of avoiding or preventing a lawful arrest or effecting an
17 escape from custody.
- 18 (f) The capital felony was committed for pecuniary
19 gain.
- 20 (g) The capital felony was committed to disrupt or
21 hinder the lawful exercise of any governmental function or the
22 enforcement of laws.
- 23 (h) The capital felony was especially heinous,
24 atrocious, or cruel.
- 25 (i) The capital felony was a homicide and was
26 committed in a cold, calculated, and premeditated manner
27 without any pretense of moral or legal justification.
- 28 (j) The victim of the capital felony was a law
29 enforcement officer engaged in the performance of his or her
30 official duties.
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1 (k) The victim of the capital felony was an elected or
2 appointed public official engaged in the performance of his or
3 her official duties if the motive for the capital felony was
4 related, in whole or in part, to the victim's official
5 capacity.

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

8 (m) The victim of the capital felony was particularly
9 vulnerable due to advanced age or disability, or because the
10 defendant stood in a position of familial or custodial
11 authority over the victim.

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

14 (7)~~(6)~~ MITIGATING CIRCUMSTANCES.--Mitigating
15 circumstances shall be the following:

16 (a) The defendant has no significant history of prior
17 criminal activity.

18 (b) The capital felony was committed while the
19 defendant was under the influence of extreme mental or
20 emotional disturbance.

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

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

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

28 (f) The capacity of the defendant to appreciate the
29 criminality of his or her conduct or to conform his or her
30 conduct to the requirements of law was substantially impaired.

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

1 (h) The existence of any other factors in the
2 defendant's background that would mitigate against imposition
3 of the death penalty.

4 ~~(8)(7)~~ VICTIM IMPACT EVIDENCE.--Once the prosecution
5 has provided evidence of the existence of one or more
6 aggravating circumstances as described in subsection~~(6)(5)~~,
7 the prosecution may introduce, and subsequently argue, victim
8 impact evidence. Such evidence shall be designed to
9 demonstrate the victim's uniqueness as an individual human
10 being and the resultant loss to the community's members by the
11 victim's death. Characterizations and opinions about the
12 crime, the defendant, and the appropriate sentence shall not
13 be permitted as a part of victim impact evidence.

14 ~~(9)(8)~~ APPLICABILITY.--This section does not apply to
15 a person convicted or adjudicated guilty of a capital drug
16 trafficking felony under s. 893.135.

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

20 922.095 Grounds for death warrant~~; limitations of~~
21 ~~actions~~.--A person who is convicted and sentenced to death
22 must pursue all possible collateral remedies in state and
23 federal court in a timely manner ~~within the time limits~~
24 ~~provided by statute. If any court refuses to grant relief in a~~
25 collateral postconviction proceeding, the convicted person has
26 90 days in which to seek further collateral review. Failure to
27 seek further collateral review within the 90-day period ~~relief~~
28 ~~within the statutory time limits~~ constitutes grounds for
29 issuance of a death warrant under s. 922.052 or s. 922.14. ~~Any~~
30 ~~claim not pursued within the statutory time limits is barred.~~

1 ~~No claim filed after the time required by law shall be grounds~~
2 ~~for a judicial stay of any warrant.~~

3 Section 6. Section 924.055, Florida Statutes, as
4 amended by section 5 of chapter 2000-3, Laws of Florida, is
5 amended to read:

6 924.055 Postconviction review in capital cases;
7 legislative findings and intent.--

8 (1) It is the intent of the Legislature to reduce
9 delays in capital cases and to ensure that all appeals and
10 postconviction actions in capital cases are resolved within 5
11 years after the date a sentence of death is imposed in the
12 circuit court. All capital postconviction actions must be
13 filed as early as possible after the imposition of a sentence
14 of death which may be during a direct appeal of the conviction
15 and sentence. ~~A person sentenced to death or that person's~~
16 ~~capital postconviction counsel must file any postconviction~~
17 ~~legal action in compliance with the statutes of limitation~~
18 ~~established in s. 924.056 and elsewhere in this chapter.~~
19 ~~Except as expressly allowed by s. 924.056(5), a person~~
20 ~~sentenced to death or that person's capital postconviction~~
21 ~~counsel may not file more than one postconviction action in a~~
22 ~~sentencing court and one appeal therefrom to the Florida~~
23 ~~Supreme Court, unless authorized by law.~~

24 (2) ~~It is the further intent of the Legislature that~~
25 ~~no state resources be expended in violation of this act. In~~
26 ~~the event that any state employee or party contracting with~~
27 ~~the state violates the provisions of this act, the Attorney~~
28 ~~General shall deliver to the Speaker of the House of~~
29 ~~Representatives and the President of the Senate a copy of any~~
30 ~~court pleading or order that describes or adjudicates a~~
31 ~~violation.~~

1 Section 7. Section 924.056, Florida Statutes, as
2 created by section 6 of chapter 2000-3, Laws of Florida, is
3 amended to read:

4 924.056 Commencement of capital postconviction actions
5 for which sentence of death is imposed on or after the
6 effective date of chapter 2000-3, Laws of Florida ~~this act~~;
7 ~~limitations on actions.~~--

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

12 (a) The Supreme Court shall revise and adopt rules of
13 procedure related to time limitations on all proceedings and
14 actions related to postconviction proceedings. ~~Within 15 days~~
15 ~~after imposing a sentence of death, the sentencing court shall~~
16 ~~appoint the appropriate office of the capital collateral~~
17 ~~regional counsel or private postconviction counsel, unless the~~
18 ~~defendant declines to accept postconviction legal~~
19 ~~representation in which case the state shall not provide~~
20 ~~postconviction legal representation. Within 30 days after the~~
21 ~~appointment, the capital collateral regional counsel shall~~
22 ~~file a notice of appearance in the trial court or a motion to~~
23 ~~withdraw based on a conflict of interest or for good cause.~~
24 ~~The court shall appoint private counsel pursuant to part IV of~~
25 ~~chapter 27 in any case in which the capital collateral~~
26 ~~regional counsel files a motion to withdraw, or otherwise~~
27 ~~informs the court that the capital collateral regional counsel~~
28 ~~cannot comply with the provisions of chapter 924 or in which~~
29 ~~the court determines that the agency cannot comply with~~
30 ~~chapter 924 or other applicable laws.~~

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1 (b) The defendant who accepts the appointment of
2 postconviction counsel must cooperate with and assist, within
3 his or her ability, such postconviction counsel. If the
4 sentencing court finds the defendant is knowingly and
5 intentionally obstructing the postconviction process, the
6 defendant shall not be entitled to any further postconviction
7 legal representation provided by the state. Each attorney
8 participating in a capital case on behalf of a defendant must
9 provide all information pertaining to the capital case which
10 the attorney obtained during the representation of that
11 defendant to that defendant's capital postconviction counsel.
12 Postconviction counsel must maintain the confidentiality of
13 any confidential information received from any attorney for
14 that defendant and is subject to the same penalties as the
15 providing attorney for violating confidentiality. ~~if the~~
16 ~~defendant requests without good cause that any attorney~~
17 ~~appointed under this subsection be removed or replaced, the~~
18 ~~court shall notify the defendant that no further state~~
19 ~~resources may be expended for postconviction representation~~
20 ~~for that defendant, unless the defendant withdraws the request~~
21 ~~to remove or replace postconviction counsel. If the defendant~~
22 ~~does not immediately withdraw his or her request, then any~~
23 ~~appointed attorney must be removed from the case and no~~
24 ~~further state resources may be expended for the defendant's~~
25 ~~postconviction representation.~~The prosecuting attorney and
26 the defendant's trial counsel shall provide the defendant or,
27 if represented, the defendant's capital postconviction counsel
28 with copies of all pretrial and trial discovery and all
29 contents of the prosecuting attorney's file, except for
30 information that the prosecuting attorney has a legal right
31 under state or federal law to withhold from disclosure.

1 (2) The clerk of the court shall provide a copy of the
2 record on appeal to the capital postconviction attorney and
3 the state attorney and Attorney General within 60 days after
4 the sentencing court appoints postconviction counsel. However,
5 the court may grant an extension of up to 30 days when
6 extraordinary circumstances exist.

7 (3)~~(a)~~ With respect to all capital postconviction
8 actions commenced after the effective date of this act, a
9 capital postconviction action is not commenced until the
10 defendant or the defendant's postconviction counsel files a
11 ~~fully pled~~ postconviction action in the sentencing court or,
12 as provided in subsection (4), the Florida Supreme Court. For
13 the purposes of this subsection, a ~~fully pled~~ capital
14 postconviction action is one which complies with s. 924.058(1)
15 ~~s. 924.058(2)~~ or any superseding rule adopted by the Florida
16 Supreme Court. ~~Except as provided by subsection (4) or~~
17 ~~subsection (5), all capital postconviction actions shall be~~
18 ~~barred unless they are commenced within 180 days after the~~
19 ~~filing of the appellant's initial brief in the Florida Supreme~~
20 ~~Court on direct appeal of the defendant's capital conviction~~
21 ~~and sentence. The fully pled postconviction action must raise~~
22 ~~all cognizable claims that the defendant's judgment or~~
23 ~~sentence was entered in violation of the Constitution or laws~~
24 ~~of the United States or the Constitution or the laws of the~~
25 ~~state, including any claim of ineffective assistance of trial~~
26 ~~counsel, allegations of innocence, or that the state withheld~~
27 ~~evidence favorable to the defendant. No claim may be~~
28 ~~considered in such action which could have or should have been~~
29 ~~raised before trial, at trial, or if preserved on direct~~
30 ~~appeal. For the purposes of this subsection, a capital~~
31 ~~postconviction action is not fully pled unless it satisfies~~

1 ~~the requirements of s. 924.058(2) or any superseding rule of~~
2 ~~court.~~

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

5 ~~(c) The pendency of public records requests or~~
6 ~~litigation, or the pendency of other litigation, or the~~
7 ~~failure of the defendant or the defendant's postconviction~~
8 ~~counsel to timely prosecute a case shall not constitute cause~~
9 ~~for the court to grant any request for an extension of time or~~
10 ~~other delay. No appeal may be taken from a court's ruling~~
11 ~~denying such a request for an extension of time or other~~
12 ~~delay.~~

13 ~~(d) The time for commencement, of the postconviction~~
14 ~~action, may not be tolled for any reason or cause. All claims~~
15 ~~raised by amendment of a defendant's capital postconviction~~
16 ~~action are barred if the claims are raised outside the time~~
17 ~~limitations provided by statute for the filing of capital~~
18 ~~postconviction actions.~~

19 (4) All capital postconviction actions raising any
20 claim of ineffective assistance of direct appeal counsel are
21 barred unless they are commenced in conformity with this
22 subsection. The defendant or the defendant's capital
23 postconviction counsel shall file an action in the Florida
24 Supreme Court raising any claim of ineffective assistance of
25 direct appeal counsel within 45 days after mandate issues
26 affirming the death sentence in the direct appeal.

27 (5) A second or successive motion shall be denied if
28 the judge finds that it fails to allege new or different
29 grounds for relief and the prior determination was on the
30 merits or, if new and different grounds are alleged, the court
31 finds that the failure of the movant or the attorney to assert

1 those grounds in a prior motion constitutes an abuse of the
2 procedure governed by these rules. The facts underlying any
3 second or successive motion must have been unknown to the
4 movant or the attorney and must not have been ascertainable
5 through the exercise of due diligence, or the fundamental
6 constitutional right asserted in the second or successive
7 motion has been newly announced and has been held to apply
8 retroactively. In a second or successive motion, the movant
9 or the attorney must allege that the facts underlying the
10 claim, if proven and viewed in light of the evidence as a
11 whole, is of such a nature that it would probably result in an
12 acquittal on retrial due to the defendant's innocence of the
13 underlying offense; that the facts underlying the claim, if
14 proven and viewed in light of the evidence as a whole, are of
15 such a nature that they would probably result in the
16 imposition of a different sentence; or that the fundamental
17 fairness of the original proceedings has been so compromised
18 in light of the newly asserted facts that the ends of justice
19 require that a new trial or sentencing proceeding be ordered.
20 The time period for filing a second or successive motion shall
21 be 90 days from the discovery of the new or different grounds
22 as alleged in the motion, or from the announcement of a newly
23 announced fundamental constitutional right that has been held
24 to apply retroactively.~~Regardless of when a sentence is~~
25 ~~imposed, all successive capital postconviction actions are~~
26 ~~barred unless commenced by filing a fully pled postconviction~~
27 ~~action within 90 days after the facts giving rise to the cause~~
28 ~~of action were discovered or should have been discovered with~~
29 ~~the exercise of due diligence. Such claim shall be barred~~
30 ~~pursuant to subsection (3) or s. 924.057 unless the facts~~
31 ~~underlying the claim, if proven and viewed in light of the~~

1 ~~evidence as a whole, would be sufficient to establish by clear~~
2 ~~and convincing evidence that, but for constitutional error, no~~
3 ~~reasonable fact finder would have found the defendant guilty~~
4 ~~of the underlying offense. Additionally, the facts underlying~~
5 ~~this claim must have been unknown to the defendant or his or~~
6 ~~her attorney and must be such that they could not have been~~
7 ~~ascertained by the exercise of due diligence prior to filing~~
8 ~~the earlier postconviction motion. The time period allowed for~~
9 ~~filing a successive collateral postconviction action shall not~~
10 ~~be grounds for a stay.~~

11 Section 8. Section 924.057, Florida Statutes, as
12 created by section 7 of chapter 2000-3, Laws of Florida, is
13 repealed.

14 Section 9. Capital postconviction claims.--The Supreme
15 Court shall revise and adopt rules of procedure in conformity
16 with the provisions of this act related to procedures
17 regulating postconviction relief.

18 Section 10. Section 10 of chapter 2000-3, Laws of
19 Florida, is repealed.

20 Section 11. Subsection (5) of section 27.51, Florida
21 Statutes, as amended by section 12 of chapter 2000-3, Laws of
22 Florida, is repealed.

23 Section 12. This act shall take effect upon becoming a
24 law.

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HOUSE SUMMARY

Creates the Death Penalty Justice Act of 2000. Directs the Supreme Court to revise and adopt described rules with respect to capital cases. Deletes various limitations on the filing of motions and collateral actions in capital cases. Requires that a jury recommendation of death be made by a unanimous vote of the jury. Provides for a recommendation for a life sentence if the jury vote is less than unanimous. Provides for further collateral review of certain cases in which a court has refused to grant relief. Deletes provisions that deny a defendant in a capital case legal representation if the defendant requests the removal of counsel. 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.

ADDITIONAL SPONSORS

Greenstein, Bloom, Bush, Lawson, Jacobs, Chestnut, Frankel, Stafford and Lee