

By Representatives Crist, Ball, Trovillion, Futch, Merchant, Crady, Feeney, Byrd, Maygarden, Cantens, Kilmer, C. Green, Dockery, Argenziano, Detert, Fiorentino, Murman, Waters, Sembler, Wise, Lynn, Bense, Goodlette, J. Miller, Morroni and Villalobos

1 A bill to be entitled
2 An act relating to the death penalty; creating
3 the "Death Penalty Reform Act of 2000";
4 amending s. 922.10, F.S., relating to the
5 execution of the death sentence; creating s.
6 922.101, F.S.; providing for execution of death
7 sentence by lethal injection if electrocution
8 is not selected; prohibiting a reduction of the
9 death sentence as a result of a determination
10 that a method of execution is unconstitutional;
11 creating s. 922.103, F.S.; providing
12 legislative intent with respect to the
13 interpretation of laws altering a method of
14 execution of the death penalty; creating s.
15 922.104, F.S.; providing a procedure for
16 execution of the death sentence by lethal
17 injection; amending s. 922.105, F.S., relating
18 to execution of the death sentence by lethal
19 injection; amending s. 27.702, F.S.; providing
20 limitation on the filing of postconviction and
21 collateral actions; amending s. 119.19, F.S.;
22 revising provisions relating to capital
23 postconviction public records production;
24 amending s. 922.095, F.S.; revising provisions
25 with respect to grounds for a death warrant;
26 providing a limitation on actions; amending s.
27 924.055, F.S.; revising provisions with respect
28 to postconviction review in capital cases;
29 providing for legislative findings and intent;
30 creating s. 924.056, F.S.; providing for
31 capital postconviction proceedings for which a

1 sentence of death is imposed on or after the
2 effective date of this act; creating s.
3 924.057, F.S.; providing for a limitation on
4 postconviction cases in which the death
5 sentence was imposed before the effective date
6 of this act; creating s. 924.058, F.S.;
7 providing for capital postconviction claims;
8 creating s. 924.059, F.S.; providing for time
9 limitations on judicial review in capital
10 postconviction actions; providing for
11 production of evidence for DNA testing;
12 repealing Rule 3.850, Florida Rules of Criminal
13 Procedure, relating to the grant of a new trial
14 to the extent it is inconsistent with this act;
15 repealing Rule 3.851, Florida Rules of Criminal
16 Procedure, relating to collateral relief after
17 the death sentence has been imposed; repealing
18 Rule 3.852, Florida Rules of Criminal
19 Procedure, relating to capital postconviction
20 public records production; amending s. 27.710,
21 F.S.; providing for the appointment of
22 attorneys to represent persons in collateral
23 actions; amending s. 27.51, F.S.; prohibiting
24 specified public defenders from providing
25 appellate representation for certain persons
26 sentenced to death; amending s. 27.703, F.S.;
27 providing for designation of alternative
28 regional counsel when there is a conflict of
29 interest; revising provisions governing the
30 payment of such counsel; amending s. 27.709,
31 F.S.; requiring the Commission on Capital Cases

1 to compile and analyze case-tracking reports
2 produced by the Supreme Court; amending s.
3 27.711, F.S.; revising provisions governing the
4 payment of assigned counsel; providing for
5 review of the billings of assigned counsel;
6 creating s. 924.395, F.S.; providing for
7 sanctions against inmates and their counsel for
8 certain actions taken in capital postconviction
9 proceedings or appeals therefrom; creating s.
10 922.107, F.S.; exempting policies and
11 procedures for the execution of persons from
12 the Administrative Procedure Act; providing for
13 severability; providing an effective date.

14
15 Be It Enacted by the Legislature of the State of Florida:

16
17 Section 1. This act may be cited as the "Death Penalty
18 Reform Act of 2000."

19 Section 2. Section 922.10, Florida Statutes, is
20 amended to read:

21 922.10 Execution of death sentence;
22 executioner.--Unless otherwise provided by law, a death
23 sentence shall be executed by electrocution. The warden of the
24 state prison shall designate the executioner. Information
25 which, if released, would identify the executioner is
26 confidential and exempt from the provisions of s. 119.07(1)
27 and s. 24(a), Art. I of the State Constitution. The warrant
28 authorizing the execution shall be read to the convicted
29 person immediately before execution.

30 Section 3. Section 922.101, Florida Statutes, is
31 created to read:

1 922.101 Execution of death sentence by lethal
2 injection if death by electrocution is not elected;
3 prohibition against reduction of death sentence as a result of
4 determination that a method of execution is
5 unconstitutional.--

6 (1) With respect to all sentences executed after
7 January 10, 2000, a death sentence shall be executed by
8 electrocution pursuant to s. 922.10 at the election, pursuant
9 to this section, of the person sentenced to death. The
10 election for death by electrocution waived unless it is made
11 in writing and delivered to the warden of the correctional
12 facility within 30 days after the issuance of mandate pursuant
13 to a decision by the Supreme Court of Florida affirming the
14 sentence of death. If the person waives the election of death
15 by electrocution, then the sentence shall be executed by
16 lethal injection pursuant to s. 922.104.

17 (2) If an execution by lethal injection pursuant to
18 this section is barred by any court as a violation of any
19 provision of either the State Constitution or Federal
20 Constitution, then the death sentence shall be carried out
21 pursuant to s. 922.10, s. 922.105 (if applicable), or any
22 other provision of law which may be applicable at the time of
23 the execution.

24 (3) In any case in which the time provided for making
25 an election under subsection (1) shall have expired prior to
26 30 days after the effective date of this act, the person
27 sentenced to death shall make an election within 30 days after
28 the effective date of this act and if not so made such
29 election is waived.

30 (4) If a death warrant is issued before the expiration
31 of the time provided for making the election under subsection

1 (3), the election must be made within 48 hours after a date
2 for execution of the death sentence has been set by the
3 Governor and, if not so made, the election is waived.

4 Section 4. Section 922.103, Florida Statutes, is
5 created to read:

6 922.103 Legislative intent regarding interpretation of
7 laws altering a method of execution of the death penalty.--

8 (1) The provisions of the opinion and all points of
9 law decided by the United States Supreme Court in Malloy v.
10 South Carolina, 237 U.S. 180 (1915), finding that the Ex Post
11 Facto Clause of the United States Constitution is not violated
12 by a legislatively enacted change in the method of execution
13 for a sentence of death validly imposed for previously
14 committed capital crimes, are adopted by the Legislature as
15 the law of this state.

16 (2) A change in the method of execution does not
17 increase the punishment or modify the penalty of death for a
18 capital crime. Any legislative change to the method of
19 execution for a capital crime does not violate s. 10, Art. I,
20 nor s. 9, Art. X of the State Constitution.

21 (3) Notwithstanding s. 775.082(2), s. 775.15(1)(a), or
22 s. 790.161(4), or any other provision of law to the contrary,
23 no sentence of death shall be reduced as a result of a
24 determination that a method of execution is declared
25 unconstitutional under the State Constitution or the Federal
26 Constitution. In any case in which an execution method is
27 declared unconstitutional, the death sentence shall remain in
28 force until the sentence can be lawfully executed by any valid
29 method of execution.

30 Section 5. Section 922.104, Florida Statutes, is
31 created to read:

1 922.104 Execution of death sentence by lethal
2 injection.--

3 (1) This section shall govern all cases where a
4 sentence of death is to be executed by lethal injection.

5 (2) Notwithstanding any law to the contrary, a person
6 authorized by state law to prescribe medication and designated
7 by the Department of Corrections may prescribe the drug or
8 drugs necessary to compound a lethal injection.

9 Notwithstanding any law to the contrary, a person authorized
10 by state law to prepare, compound, or dispense medication and
11 designated by the Department of Corrections may prepare,
12 compound, or dispense a lethal injection. For purposes of
13 this section, prescription, preparation, compounding,
14 dispensing, and administration of a lethal injection does not
15 constitute the practice of medicine, nursing, or pharmacy.

16 (3) Nothing contained in this chapter is intended to
17 require any physician, nurse, pharmacist, or employee of the
18 Department of Corrections or any other person to assist in any
19 aspect of an execution which is contrary to the person's moral
20 or ethical beliefs.

21 Section 6. Section 922.105, Florida Statutes, is
22 amended to read:

23 922.105 Execution of death sentence by lethal
24 injection if death by electrocution is declared
25 ~~unconstitutional; prohibition against reduction of death~~
26 ~~sentence as a result of determination that a method of~~
27 ~~execution is unconstitutional.--~~

28 (1) If a death sentence is to ~~shall~~ be executed by
29 electrocution pursuant to s. 922.10, and. ~~If~~ electrocution is
30 held to be unconstitutional by the Florida Supreme Court under
31 the State Constitution, or held to be unconstitutional by the

1 United States Supreme Court under the United States
2 Constitution, or if the United States Supreme Court declines
3 to review any judgment holding electrocution to be
4 unconstitutional under the United States Constitution made by
5 the Florida Supreme Court or the United States Court of
6 Appeals that has jurisdiction over Florida, a person ~~all~~
7 ~~persons~~ sentenced to death for a capital crime shall be
8 executed by lethal injection.

9 ~~(2) The provisions of the opinion and all points of~~
10 ~~law decided by the United States Supreme Court in Malloy v.~~
11 ~~South Carolina, 237 U.S. 180 (1915), finding that the Ex Post~~
12 ~~Facto Clause of the United States Constitution is not violated~~
13 ~~by a legislatively enacted change in the method of execution~~
14 ~~for a sentence of death validly imposed for previously~~
15 ~~committed capital murders, are adopted by the Legislature as~~
16 ~~the law of this state.~~

17 ~~(3) A change in the method of execution does not~~
18 ~~increase the punishment or modify the penalty of death for~~
19 ~~capital murder. Any legislative change to the method of~~
20 ~~execution for the crime of capital murder does not violate s.~~
21 ~~10, Art. I or s. 9, Art. X of the State Constitution.~~

22 ~~(4) Notwithstanding any law to the contrary, a person~~
23 ~~authorized by state law to prescribe medication and designated~~
24 ~~by the Department of Corrections may prescribe the drug or~~
25 ~~drugs necessary to compound a lethal injection.~~

26 ~~Notwithstanding any law to the contrary, a person authorized~~
27 ~~by state law to prepare, compound, or dispense medication and~~
28 ~~designated by the Department of Corrections may prepare,~~
29 ~~compound, or dispense a lethal injection. For purposes of~~
30 ~~this section, prescription, preparation, compounding,~~
31

1 ~~dispensing, and administration of a lethal injection does not~~
2 ~~constitute the practice of medicine, nursing, or pharmacy.~~

3 ~~(5) The policies and procedures of the Department of~~
4 ~~Corrections for execution of persons sentenced to death shall~~
5 ~~be exempt from chapter 120.~~

6 ~~(6) Notwithstanding s. 775.082(2), s. 775.15(1)(a), or~~
7 ~~s. 790.161(4), or any other provision to the contrary, no~~
8 ~~sentence of death shall be reduced as a result of a~~
9 ~~determination that a method of execution is declared~~
10 ~~unconstitutional under the State Constitution or the~~
11 ~~Constitution of the United States. In any case in which an~~
12 ~~execution method is declared unconstitutional, the death~~
13 ~~sentence shall remain in force until the sentence can be~~
14 ~~lawfully executed by any valid method of execution.~~

15 ~~(7) Nothing contained in this chapter is intended to~~
16 ~~require any physician, nurse, pharmacist, or employee of the~~
17 ~~Department of Corrections or any other person to assist in any~~
18 ~~aspect of an execution which is contrary to the person's moral~~
19 ~~or ethical beliefs.~~

20 Section 7. Subsection (1) of section 27.702, Florida
21 Statutes, is amended to read:

22 27.702 Duties of the capital collateral regional
23 counsel; reports.--

24 (1) The capital collateral regional counsel shall
25 represent each person convicted and sentenced to death in this
26 state for the sole purpose of instituting and prosecuting
27 collateral actions challenging the legality of the judgment
28 and sentence imposed against such person in the state courts,
29 federal courts in this state, the United States Court of
30 Appeals for the Eleventh Circuit, and the United States
31 Supreme Court. The capital collateral regional counsel and the

1 attorneys appointed pursuant to s. 27.710 shall file only
2 those postconviction or collateral actions authorized by
3 statute. The capital collateral regional counsel and any
4 state-compensated attorney appointed in place thereof shall
5 not institute or prosecute on behalf of any person more than
6 one postconviction action in the appropriate federal district
7 court if authorized and necessary under federal law, one
8 postconviction action in the appropriate federal appeals court
9 if authorized and necessary under federal law, and one
10 postconviction action in the United States Supreme Court if
11 authorized and necessary under federal law.The three capital
12 collateral regional counsels' offices shall function
13 independently and be separate budget entities, and the
14 regional counsels shall be the office heads for all purposes.
15 The Justice Administrative Commission shall provide
16 administrative support and service to the three offices to the
17 extent requested by the regional counsels. The three regional
18 offices shall not be subject to control, supervision, or
19 direction by the Justice Administrative Commission in any
20 manner, including, but not limited to, personnel, purchasing,
21 transactions involving real or personal property, and
22 budgetary matters.

23 Section 8. Section 119.19, Florida Statutes, is
24 amended to read:

25 119.19 Capital postconviction public records
26 production.--

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

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

31

1 (b) If a motion for postconviction relief in a capital
2 case ~~under Rule 3.850 or Rule 3.851~~ has been filed and a
3 different judge has already been assigned to that motion, the
4 judge who is assigned to rule on that motion.

5 (2) The Secretary of State shall establish and
6 maintain a records repository for the purpose of archiving
7 capital postconviction public records as provided for in this
8 section.

9 (3)(a) Upon imposition of a death sentence, or upon
10 the effective date of this act, with respect to any case in
11 which a death sentence has been imposed but the mandate has
12 not yet been issued in an appeal affirming the sentence,
13 ~~issuance of the Florida Supreme Court's mandate, the Attorney~~
14 ~~General shall promptly provide written notification to the~~
15 ~~state attorney who prosecuted the case that a death sentence~~
16 ~~has been affirmed. Upon receipt of such notification, the~~
17 prosecuting state attorney shall promptly provide written
18 notification to each law enforcement agency involved in the
19 case and to the Department of Corrections.

20 (b) Within 45 ~~90~~ days after receipt of notification,
21 each law enforcement agency involved in the case and the
22 prosecuting state attorney who prosecuted the case shall copy,
23 seal, and deliver to the repository all public records, except
24 for those filed in the trial court, which were produced in the
25 investigation or prosecution of the case. Each agency shall
26 bear the costs of its own compliance.

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

31

1 ~~(c)(b)~~ Within 45 ~~90~~ days after notification, the
2 Department of Corrections shall copy, seal, and deliver to the
3 repository all public records determined by the department to
4 be relevant to the subject matter of a cognizable capital
5 postconviction claim of the person sentenced to death
6 ~~proceeding under Rule 3.850 or Rule 3.851~~ and where such
7 production would not be unduly burdensome for the department.
8 The department shall bear the costs.

9 ~~(4)(5)~~(a) The chief law enforcement officer of each
10 law enforcement agency that was involved in the case, whether
11 through an investigation, arrest, prosecution, or
12 incarceration, shall notify the Attorney General upon
13 compliance with subsection (3) and shall certify that to the
14 best of his or her knowledge and belief all public records in
15 possession of the agency or in possession of any employee of
16 the agency have been copied, indexed, and delivered to the
17 records repository as required by subsection (3).

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

25 (c) The Secretary of Corrections shall provide written
26 notification to the Attorney General upon compliance with
27 paragraph (3)(c)~~subsection (4)~~ and shall certify that to the
28 best of his or her knowledge and belief all public records in
29 the department's possession have been copied, indexed, and
30 delivered to the records repository as required by paragraph
31 ~~(3)(c)(4)(b)~~.

1 (5)~~(6)~~(a) Within 45 ~~90~~ days after issuance of the
2 Florida Supreme Court's mandate affirming a death sentence,
3 both the public defender or private counsel for the defendant
4 and the prosecuting ~~state~~ attorney involved in the case shall
5 provide written notification to the Attorney General of the
6 name and address of any person or agency in addition to those
7 persons and agencies listed in subsection ~~subsections~~ (3) and
8 ~~(4)~~ which may have information pertinent to the case unless
9 previously provided to the capital collateral regional counsel
10 or postconviction private counsel. The Attorney General shall
11 promptly provide written notification to each identified
12 person or agency after receiving the information from the
13 public defender, private counsel for the defendant, or
14 prosecuting ~~state~~ attorney and shall request that all public
15 records in the possession of the person or agency which
16 pertain to the case be copied, sealed, and delivered to the
17 records repository.

18 (b) Within 30 ~~90~~ days after receiving a request for
19 public records under paragraph (a), the person or agency shall
20 provide written notification to the Attorney General of
21 compliance with this subsection and shall certify that to the
22 best of his or her knowledge and belief all public records
23 requested have been copied, indexed, and delivered to the
24 records repository.

25 (6)~~(7)~~(a) Any ~~public record delivered to the records~~
26 ~~repository~~ under this section which is confidential or exempt
27 from the requirements of s. 119.07(1) and s. 24(a), Art. I of
28 the State Constitution must be separately boxed, without being
29 redacted, and sealed. The box must be delivered to the clerk
30 of court in the county in which the capital case was tried.
31 The outside of the box must clearly identify the public

1 records as exempt, and the seal may not be broken without an
2 order of the trial court. The outside of the box must identify
3 the nature of the public records and the legal basis under
4 which the public records are exempt.

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

14 ~~(7)(8)~~(a) Within 180 ~~90~~ days after a capital
15 collateral regional counsel or private counsel is appointed to
16 represent a defendant sentenced to death, or within 30 days
17 after issuance of the Florida Supreme Court's mandate
18 affirming a death sentence, whichever is later, the regional
19 counsel, private counsel, or other counsel who is a member of
20 The Florida Bar and is authorized by such counsel representing
21 a defendant may ~~shall~~ send a written demand for additional
22 public records to each person or agency submitting public
23 records under subsection ~~subsections~~ (3) ~~and (4)~~ and to each
24 person or agency identified as having information pertinent to
25 the case under subsection ~~(5)(6)~~. Each person or agency
26 notified under this subsection shall, within 30 ~~90~~ days after
27 receipt of the written demand, deliver to the records
28 repository any additional public records in the possession of
29 the person or agency which pertain to the case and shall
30 certify that to the best of his or her knowledge and belief
31 all additional public records have been delivered to the

1 ~~Attorney General~~ or, if no additional public records are
2 found, shall recertify that the public records previously
3 delivered are complete.

4 (b) Within 25 ~~60~~ days after receiving the written
5 demand, the agency or person may file an objection in the
6 trial court alleging that the request is overly broad or
7 unduly burdensome. Within 30 days after the filing of an
8 objection, the trial court shall hold a hearing and order an
9 agency or person to produce additional public records if it
10 finds each of the following:

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

13 2. The regional or private counsel's written demand
14 identifies, with specificity, those additional public records
15 that are not at the repository.

16 3. The additional public records sought are relevant
17 to the subject matter of a cognizable capital postconviction
18 claim proceeding under Rule 3.850 or Rule 3.851 or appear
19 reasonably calculated to lead to the discovery of admissible
20 evidence in prosecuting such claim.

21 4. The additional public records request is not
22 overbroad or unduly burdensome.

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

28 ~~(c)(d) If, on the date that this statute becomes~~
29 ~~effective, a defendant is represented by appointed capital~~
30 ~~collateral regional counsel or private counsel, and he or she~~
31 ~~has initiated the public records request process, counsel~~

1 ~~shall file within 90 days of the effective date of this~~
2 ~~statute, a written demand for any additional records that have~~
3 ~~not previously been the subject of a notice to produce. An~~
4 ~~agency may file an objection to such additional demand, and~~
5 ~~the trial court shall hold a hearing as provided by paragraph~~
6 ~~(b). This statute shall not be a basis for renewing requests~~
7 ~~that have been initiated previously or for relitigating issues~~
8 ~~pertaining to production of public records upon which a court~~
9 ~~has ruled prior to the effective date of the statute, or for~~
10 ~~stopping an execution which has been scheduled based upon a~~
11 ~~warrant executed by the Governor prior to the effective date~~
12 ~~of the statute.~~

13 (d)~~(e)~~ If, on October 1, 1998 ~~the date that this~~
14 ~~statute becomes effective~~, the defendant ~~has~~ had a Rule 3.850
15 motion denied and no Rule 3.850 motion was ~~is~~ pending, no
16 additional requests shall be made by capital collateral
17 regional counsel or contracted private counsel until a death
18 warrant is signed by the Governor and an execution is
19 scheduled. Within 10 days of the signing of the death warrant,
20 capital collateral regional counsel or contracted private
21 counsel may request of a person or agency that the defendant
22 has previously requested to produce records any records
23 previously requested to which no objection was raised or
24 sustained, but which the agency has received or produced since
25 the previous request or which for any reason the agency has in
26 its possession and did not produce within 10 days of the
27 receipt of the previous notice or such shorter time period
28 ordered by the court to comply with the time for the scheduled
29 execution. The person or agency shall produce the record or
30 shall file in the trial court an affidavit stating that it
31

1 does not have the requested record or that the record has been
2 produced previously.

3 (8)~~(9)~~(a) After production of additional public
4 records or recertification as provided in subsection~~(7)~~~~(8)~~,
5 the regional counsel or the private counsel is prohibited from
6 making any further public records requests under this chapter.
7 An agency is not required to produce additional public records
8 except by court order as provided in this subsection.

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

23 (c) Within 15 ~~30~~ days after the filing of an
24 affidavit, the trial court shall order an agency to produce
25 additional public records only if it finds each of the
26 following:

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

29 2. The regional or private counsel's affidavit
30 identifies, with specificity, those additional public records
31 that are not at the repository.

1 3. The additional public records sought are relevant
2 to the subject matter of a cognizable claim for capital
3 postconviction relief ~~proceeding under Rule 3.850 or Rule~~
4 ~~3.851~~ or appear reasonably calculated to lead to the discovery
5 of admissible evidence in prosecuting such claim.

6 4. The additional public records request is not
7 overbroad or unduly burdensome.

8 ~~(9)(10)~~ The Secretary of State ~~capital collateral~~
9 ~~regional counsel or private counsel~~ shall provide the
10 personnel, supplies, and any necessary equipment used by the
11 capital collateral regional counsel or private counsel to copy
12 records held at the records repository.

13 ~~(10)(11)~~ The trial court shall resolve any dispute
14 that arises under this section, unless the appellate court has
15 exclusive jurisdiction.

16 ~~(11)(12)~~ The capital collateral regional counsel or
17 private counsel shall not solicit another person to make a
18 request for public records on behalf of the regional counsel
19 or private counsel. The trial court shall impose appropriate
20 sanctions against any regional counsel or private counsel
21 found in violation of this subsection.

22 ~~(12)(13)~~ Sixty days after a capital sentence is
23 carried out, 60 days after a defendant is released from
24 incarceration following the granting of a pardon or reversal
25 of the sentence, or 60 days after the defendant has been
26 resentenced to a term of years, the Attorney General shall
27 provide written notification to the Secretary of State, who
28 may then destroy the records held by the records repository
29 which pertain to that case.

30 ~~(13)(14)~~ This section pertains only to the production
31 of records for capital postconviction defendants and does not

1 change or alter any time limitations provided by law governing
2 capital postconviction claims and actions periods specified in
3 Rule 3.850 or Rule 3.851, Florida Rules of Criminal Procedure.
4 Furthermore, this section does not affect, expand, or limit
5 the production of public records for any purposes other than
6 use in a capital postconviction proceeding held pursuant to
7 Rule 3.850 or Rule 3.851, Florida Rules of Criminal Procedure.
8 Nothing in this section constitutes grounds to expand the time
9 limitations or allow any pleading in violation of chapter 924
10 or to stay an execution or death warrant.

11 Section 9. Section 922.095, Florida Statutes, is
12 amended to read:

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

26 Section 10. Section 924.055, Florida Statutes, is
27 amended to read:

28 (Substantial rewording of section. See
29 s. 924.055, F.S., for present text.)

30 924.055 Postconviction review in capital cases;
31 legislative findings and intent.--

1 (1) It is the intent of the Legislature to reduce
2 delays in capital cases and to ensure that all appeals and
3 postconviction actions in capital cases are resolved within 5
4 years after the date a sentence of death is imposed in the
5 circuit court. All capital postconviction actions must be
6 filed as early as possible after the imposition of a sentence
7 of death, which may be during a direct appeal of the
8 conviction and sentence. A person sentenced to death must file
9 any postconviction legal action in compliance with all time
10 limitations in this chapter. No person sentenced to death may
11 file more than one postconviction action in a sentencing
12 court, one appeal therefrom to the Florida Supreme Court, and
13 one original postconviction action in the Florida Supreme
14 Court.

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

26 Section 11. Section 924.056, Florida Statutes, is
27 created to read:

28 924.056 Capital postconviction proceedings for which
29 sentence of death is imposed on or after the effective date of
30 this act.--

31

1 (1) In every capital case in which the trial court
2 imposes a sentence of death on or after the effective date of
3 this act, this section shall govern all postconviction
4 proceedings in state court.

5 (a) Within 15 days after imposing a sentence of death,
6 the sentencing court shall appoint the appropriate office of
7 the capital collateral regional counsel or private
8 postconviction counsel, unless the defendant fails or declines
9 to accept postconviction legal representation in which case
10 the state shall not provide postconviction legal
11 representation. Within 30 days after the appointment, the
12 capital collateral regional counsel shall file a notice of
13 appearance in the trial court or a motion to withdraw based on
14 a conflict of interest or other legal ground. The court shall
15 appoint private counsel pursuant to part IV of chapter 27 in
16 any case in which the capital collateral regional counsel
17 files a motion to withdraw, or otherwise informs the court
18 that the capital collateral regional counsel cannot comply
19 with the provisions of chapter 924, or in which the court
20 determines that the agency cannot comply with chapter 924 or
21 other applicable laws.

22 (b) The defendant who accepts the appointment of
23 postconviction counsel must cooperate with and assist
24 postconviction counsel. If the defendant obstructs the efforts
25 of postconviction counsel, or if the sentencing court finds
26 the defendant is not cooperating with postconviction counsel,
27 the defendant shall not be entitled to any further
28 postconviction legal representation provided by the state.
29 Each attorney participating in a capital case on behalf of a
30 defendant must provide all information pertaining to the
31 capital case which the attorney obtained during the

1 representation of that defendant to that defendant's capital
2 postconviction counsel. Postconviction counsel must maintain
3 the confidentiality of any confidential information received
4 from any attorney for that defendant and is subject to the
5 same penalties as the providing attorney for violating
6 confidentiality. If the defendant requests that any attorney
7 appointed under this subsection be removed or replaced, the
8 court shall notify the defendant that no further state
9 resources may be expended for postconviction representation
10 for that defendant, unless the defendant withdraws the request
11 to remove or replace postconviction counsel. If the defendant
12 does not immediately withdraw his or her request, then any
13 appointed attorney must be removed from the case and no
14 further state resources may be expended for the defendant's
15 postconviction representation. The prosecuting attorney and
16 the defendant's trial counsel shall provide capital
17 postconviction counsel with copies of all pretrial and trial
18 discovery and all contents of the prosecuting attorney's file,
19 except for information that the prosecuting attorney has a
20 legal right under state and federal law to withhold from
21 disclosure.

22 (2) The court reporter shall provide a copy of the
23 trial transcript to the capital postconviction attorney and
24 the state attorney and Attorney General within 30 days after
25 the sentencing court appoints postconviction counsel.

26 (3)(a) Capital postconviction legal counsel shall file
27 a fully pled postconviction action in the sentencing court
28 within 180 days after the filing of the appellant's initial
29 brief in the Florida Supreme Court direct appeal of the
30 defendant's capital conviction and sentence. The fully pled
31 postconviction action must raise all meritorious claims that

1 the defendant's judgment or sentence was entered in violation
2 of the Constitution or laws of the United States or the
3 Constitution or the laws of the state, including any claim of
4 ineffective assistance of trial counsel, allegations of
5 innocence, or that the state withheld evidence favorable to
6 the defendant. No claim may be considered in such action which
7 could have or should have been raised before trial, at trial,
8 or if preserved on direct appeal. A capital postconviction
9 action is not fully pled unless it satisfies the requirements
10 of s. 924.058.

11 (b) No claim of ineffective assistance of
12 postconviction counsel may be raised in a state court.

13 (c) The pendency of public records requests or
14 litigation, or the pendency of other litigation, or the
15 failure of postconviction counsel to timely prosecute a case,
16 shall not constitute cause for the court to grant any request
17 for an extension of time or other delay. No appeal may be
18 taken from a court's ruling denying such a request for an
19 extension of time or other delay.

20 (d) No further time shall be allowed for the filing of
21 the fully pled postconviction action, and any action not filed
22 in compliance with this section shall not be considered in any
23 state court. No amendment of a defendant's capital
24 postconviction action shall be allowed by the court after the
25 expiration of the time periods provided by statute for the
26 filing of capital postconviction claims.

27 (4) Capital postconviction counsel shall file a fully
28 pled postconviction action in the Florida Supreme Court
29 raising any claim of ineffective assistance of direct appeal
30 counsel within 45 days after mandate issues affirming the
31 death sentence in direct appeal.

1 Section 12. Section 924.057, Florida Statutes, is
2 created to read:

3 924.057 Limitation on postconviction cases in which
4 the death sentence was imposed before the effective date of
5 this act.--In every capital case in which the trial court
6 imposed a sentence of death before the effective date of this
7 act, capital postconviction counsel may file a fully pled
8 postconviction action in the sentencing court no later than
9 January 8, 2001, unless a postconviction action is pending on
10 the effective date of this act. The fully pled postconviction
11 action must raise all allowable claims that the defendant's
12 judgment or sentence was entered in violation of the
13 constitution or laws of the United States or the State of
14 Florida, including any claim of ineffective assistance of
15 trial counsel, allegations of innocence, or that the state
16 withheld evidence favorable to the defendant. The fully pled
17 postconviction action shall not raise any claim that could
18 have or should have been raised before trial, at trial, or if
19 preserved on direct appeal. No claim of ineffective assistance
20 of postconviction counsel may be raised in a state court. This
21 section does not expand any right or time period allowed in
22 any postconviction action pending on the effective date of
23 this act.

24 Section 13. Section 924.058, Florida Statutes, is
25 created to read:

26 924.058 Capital postconviction claims.--

27 (1) On behalf of a person sentenced to death there
28 shall not be filed more than one capital postconviction action
29 in the sentencing court, one appeal therefrom in the Florida
30 Supreme Court, and one original capital postconviction action
31 alleging the ineffectiveness of direct appeal counsel in the

1 Florida Supreme Court. No person receiving state compensation
2 to represent or assist a person sentenced to death in a
3 capital postconviction proceeding may violate this section.
4 Violation by a person receiving state compensation constitutes
5 a breach of the employment agreement, whether expressed or
6 implied.
7 (2) The defendant's postconviction action shall be
8 filed under oath and shall be fully pled to include:
9 (a) The judgment or sentence under attack and the
10 court which rendered the same;
11 (b) A statement of each issue raised on appeal and the
12 disposition thereof;
13 (c) Whether a previous postconviction action has been
14 filed and, if so, the disposition of all previous claims raised
15 in postconviction litigation; if a previous action or actions
16 have been filed, the reason or reasons the claim or claims in
17 the present motion were not raised in the former action or
18 actions;
19 (d) The nature of the relief sought;
20 (e) A fully detailed allegation of the factual basis
21 for any claim of legal or constitutional error asserted,
22 including the attachment of any document supporting the claim,
23 the name and address of any witness, the attachment of
24 affidavits of the witnesses or a proffer of the testimony; and
25 (f) A concise memorandum of applicable case law as to
26 each claim asserted.
27 (3) Any capital postconviction action that does not
28 comply with any requirement in this section or other
29 applicable provision in law shall not be considered in any
30 state court. No amendment of a defendant's capital
31 postconviction action shall be allowed by the court after the

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

3 (4) The prosecuting attorney or Attorney General shall
4 be allowed to file one response to any capital postconviction
5 action within 60 days after receipt of the defendant's fully
6 pled capital postconviction action. The sentencing court may
7 grant the prosecuting attorney or Attorney General an
8 extension of time upon a showing of good cause.

9 Section 14. Section 924.059, Florida Statutes, is
10 created to read:

11 924.059 Time limitations and judicial review in
12 capital postconviction actions; motion for production of
13 evidence for polymerase chain reaction DNA sample testing.--

14 (1) No amendment of a defendant's capital
15 postconviction action shall be allowed by the court after the
16 expiration of the time periods provided by statute for the
17 filing of capital postconviction claims.

18 (2) Within 30 days after the state files its answer,
19 the sentencing court shall conduct a hearing to determine if
20 an evidentiary hearing is required, if a hearing has been
21 requested by the defendant. Within 30 days thereafter, the
22 court shall rule whether an evidentiary hearing is required
23 and, if so, shall schedule an evidentiary hearing to be held
24 within 90 days. If the court determines that the defendant's
25 capital postconviction action is legally insufficient or the
26 action, files, and records in the case show that the defendant
27 is not entitled to relief, the court shall, within 45 days
28 thereafter, deny the action, setting forth a detailed
29 rationale therefore, and attaching or referencing such
30 portions of the record as are necessary to allow for
31 meaningful appellate review.

1 (3) Within 10 days after the order scheduling an
2 evidentiary hearing, the defendant shall disclose the names
3 and addresses of any potential witnesses not previously
4 disclosed, with their affidavits or a proffer of their
5 testimony. Upon receipt of the defendant's disclosure, the
6 state shall have 10 days within which to provide reciprocal
7 disclosure. If the defendant intends to offer expert testimony
8 of his or her mental status, the state shall be entitled to
9 have the defendant examined by an expert of its choosing. All
10 of the defendant's mental status claims shall be deemed denied
11 as a matter of law if the defendant fails to cooperate with
12 the state's expert. Reports provided by expert witnesses shall
13 be disclosed by opposing counsel upon receipt.

14 (4) Following the evidentiary hearing, the court shall
15 order the transcription of the proceeding which shall be filed
16 within 30 days. Within 30 days after receipt of the
17 transcript, the sentencing court shall issue a final order
18 granting or denying postconviction relief, making detailed
19 findings of fact and conclusions of law with respect to any
20 allegation asserted.

21 (5) An appeal may be taken to the Supreme Court of
22 Florida within 15 days from the entry of a final order on a
23 capital postconviction action. No interlocutory appeal shall
24 be permitted. No motion for rehearing shall be permitted. The
25 clerk of the court shall promptly serve upon all parties a
26 copy of the final order.

27 (6) If the sentencing court has denied the capital
28 postconviction action without an evidentiary hearing, the
29 appeal to the Florida Supreme Court will be expeditiously
30 resolved in a summary fashion. On appeal the case shall be
31 initially reviewed for a determination whether the sentencing

1 court correctly resolved the defendant's claims without an
2 evidentiary hearing. If the Florida Supreme Court determines
3 an evidentiary hearing should have been held, the decision to
4 remand for an evidentiary hearing may be made by an order
5 without an opinion. Jurisdiction shall be relinquished to the
6 trial court for a specified period not to exceed 30 days for
7 the purpose of conducting an evidentiary hearing on any issue
8 identified by the Florida Supreme Court's order. Thereafter,
9 the record shall be supplemented with the hearing transcript.

10 (7) Within 180 days after the Florida Supreme Court
11 receives the record on appeal, the Florida Supreme Court shall
12 render a final decision granting or denying postconviction
13 relief. If an appeal from a denial of an action for
14 postconviction relief is denied, the Governor may proceed to
15 issue a warrant for execution.

16 (8) A capital postconviction action filed in violation
17 of the time limitations provided by statute is barred, and all
18 claims raised therein are waived. A state court shall not
19 consider any capital postconviction action filed in violation
20 of s. 924.056 or s. 924.057. The Attorney General shall notify
21 the Governor, the President of the Senate, and the Speaker of
22 the House of Representatives of any violation of this
23 provision.

24 (9) The Attorney General shall provide a copy of all
25 court orders granting or denying relief in the case to the
26 deceased victim's family, the Governor, the President of the
27 Senate and the Speaker of the House of Representatives, and
28 the Commission on Capital Cases.

29 (10)(a) A defendant may make a motion in the trial
30 court that entered the judgment and sentence for the
31 performance of forensic DNA testing using the Polymerase Chain

1 Reaction (PCR) method in a case no later than June 1, 2001, on
2 evidence that was secured in relation to the trial that
3 resulted in the defendant's conviction, but which was not
4 subject to PCR testing because PCR technology was not
5 available at the time of trial. The defendant must serve
6 notice of the motion on the state and the victim of the crime
7 or the victim's family or legal representative. No hearing
8 shall proceed unless the state and the victim or victim's
9 representatives are present.

10 (b) In order for the trial court to grant the motion,
11 the defendant must:

12 1. Present a prima facie case that:

13 a. Identity was the issue at trial that resulted in
14 the defendant's conviction, as demonstrated in the trial
15 transcript produced by the defendant; and

16 b. The evidence to be tested has been subject to a
17 chain of custody sufficient to establish that it has not been
18 substituted, tampered with, altered, replaced, or changed in
19 any fashion;

20 2. Agree to submit himself or herself to DNA testing
21 using the PCR method. The results of such testing may be used
22 against the defendant at any further proceeding, including a
23 retrial, resentencing, or unrelated criminal proceeding; and

24 3. Demonstrate by clear and convincing evidence that
25 the testing is highly likely to demonstrate that the results
26 would have been admissible at trial and that, had the test
27 results been introduced at trial, no reasonable jury or court
28 could have found the defendant guilty beyond a reasonable
29 doubt.

30 (c) The trial court has the discretion to deny the
31 motion if it finds that the requested testing would produce

1 only cumulative or irrelevant information. The trial court
2 shall deny the motion if the required testing would not
3 conclusively demonstrate that the evidence would probably
4 produce an acquittal at a new trial.

5 (d) The defendant shall bear the costs for the
6 production of any evidence, unless the court finds that the
7 defendant has made a prima facie showing as required in
8 subparagraph (b)1. and that the defendant is indigent.

9 (e) In the event the trial court grants the motion and
10 makes a finding that the defendant is entitled to a new trial,
11 it shall enter a written order making findings of fact that
12 shall be subject to interlocutory appellate review. If the
13 reviewing court finds that the defendant is entitled to a new
14 trial, it shall order the case to be expedited if the state
15 agrees to an expedited schedule. If the state contends that it
16 cannot relocate essential witnesses or does not agree to an
17 expedited new trial date, the reviewing court shall remand the
18 proceeding to the trial court to schedule a new trial. The
19 case shall not be subject to discharge based on an alleged
20 violation of the right to a speedy trial.

21 Section 15. Rule 3.850, Florida Rules of Criminal
22 Procedure, relating to the grant of a new trial, is repealed
23 to the extent that it is inconsistent with this act. Rule
24 3.851, Florida Rules of Criminal Procedure as amended January
25 15, 1998, relating to collateral relief after death sentence
26 has been imposed, is repealed. Rule 3.852, Florida Rules of
27 Criminal Procedure, relating to capital postconviction public
28 records production, is repealed.

29 Section 16. Subsections (4) and (5) of section 27.710,
30 Florida Statutes, are amended, present subsection (6) of that
31

1 section is redesignated as subsection (7), and a new
2 subsection (6) is added to that section, to read:

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

7 (4) Each private attorney who is appointed by the
8 court to represent a capital defendant must enter into a
9 contract with the Comptroller. If the appointed attorney fails
10 to execute the contract within 30 days after the date the
11 contract is mailed to the attorney, the executive director of
12 the Commission on Capital Cases shall notify the trial court.
13 ~~The Comptroller executive director of the Commission on~~
14 ~~Capital Cases~~ shall develop the form of the contract, ~~and the~~
15 ~~Comptroller shall~~ function as contract manager, ~~and shall~~
16 enforce performance of the terms and conditions of the
17 contract. By signing such contract, the attorney certifies
18 that he or she intends to continue the representation under
19 the terms and conditions set forth in the contract until the
20 sentence is reversed, reduced, or carried out or until
21 released by order of the trial court.

22 (5)(a) Upon the motion of the capital collateral
23 regional counsel to withdraw pursuant to s. 924.056(1)(a); or

24 (b) Upon notification by the state attorney or the
25 Attorney General that:

26 1. Thirty days have elapsed since appointment of the
27 capital collateral regional counsel and no entry of appearance
28 has been filed pursuant to s. 924.056; or

29 ~~(a) Ninety one days have elapsed since the Supreme~~
30 ~~Court issued a mandate on a direct appeal, or the Supreme~~

31

1 ~~Court of the United States has denied a petition for~~
2 ~~certiorari, whichever is later;~~

3 2.(b) A person under sentence of death who was
4 previously represented by private counsel is currently
5 unrepresented in a postconviction capital collateral
6 proceeding, ~~+~~ or

7 ~~(c) The trial court has issued an order finding that a~~
8 ~~year and a day have elapsed since the commencement of the~~
9 ~~period for filing a motion for postconviction relief under s.~~
10 ~~924.055(2), and the defendant's complete original motion for~~
11 ~~postconviction relief has not been filed in the trial court,~~

12
13 the executive director shall immediately notify the trial
14 court that imposed the sentence of death that the court must
15 immediately appoint an attorney, selected from the current
16 registry, to represent such person in collateral actions
17 challenging the legality of the judgment and sentence in the
18 appropriate state and federal courts. The court shall have the
19 authority to strike a notice of appearance filed by a Capital
20 Collateral Regional Counsel, if the court finds the notice was
21 not filed in good faith and may so notify the executive
22 director that the client is no longer represented by the
23 Office of Capital Collateral Regional Counsel. In making an
24 assignment, the court shall give priority to attorneys whose
25 experience and abilities in criminal law, especially in
26 capital proceedings, are known by the court to be commensurate
27 with the responsibility of representing a person sentenced to
28 death. The trial court must issue an order of appointment
29 which contains specific findings that the appointed counsel
30 meets the statutory requirements and has the high ethical
31 standards necessary to represent a person sentenced to death.

1 (6) Upon notification by a capital collateral regional
2 counsel that a case should be referred to the registry, the
3 executive director shall immediately notify the trial court
4 that imposed the sentence of death that the court must
5 immediately appoint an attorney as provided in subsection (5).

6 Section 17. Section 27.51, Florida Statutes, is
7 amended to read:

8 27.51 Duties of public defender.--

9 (1) The public defender shall represent, without
10 additional compensation, any person who is determined by the
11 court to be indigent as provided in s. 27.52 and who is:

12 (a) Under arrest for, or is charged with, a felony;

13 (b) Under arrest for, or is charged with, a
14 misdemeanor, a violation of chapter 316 which is punishable by
15 imprisonment, criminal contempt, or a violation of a municipal
16 or county ordinance in the county court, unless the court,
17 prior to trial, files in the cause an order of no imprisonment
18 which states that the defendant will not be imprisoned if he
19 or she is convicted;

20 (c) Alleged to be a delinquent child pursuant to a
21 petition filed before a circuit court; or

22 (d) Sought by petition filed in such court to be
23 involuntarily placed as a mentally ill person or sexually
24 violent predator or involuntarily admitted to residential
25 services as a person with developmental disabilities. However,
26 a public defender does not have the authority to represent any
27 person who is a plaintiff in a civil action brought under the
28 Florida Rules of Civil Procedure, the Federal Rules of Civil
29 Procedure, or the federal statutes, or who is a petitioner in
30 an administrative proceeding challenging a rule under chapter
31 120, unless specifically authorized by statute.

1 (2) The court may not appoint the public defender to
2 represent, even on a temporary basis, any person who is not
3 indigent. The court, however, may appoint private counsel in
4 capital cases as provided in s. 925.035.

5 (3) Each public defender shall serve on a full-time
6 basis and is prohibited from engaging in the private practice
7 of law while holding office. Assistant public defenders shall
8 give priority and preference to their duties as assistant
9 public defenders and shall not otherwise engage in the
10 practice of criminal law.

11 (4) The public defender for a judicial circuit
12 enumerated in this subsection shall, after the record on
13 appeal is transmitted to the appellate court by the office of
14 the public defender which handled the trial and if requested
15 by any public defender within the indicated appellate
16 district, handle all felony appeals to the state and federal
17 courts required of the official making such request:

18 (a) Public defender of the second judicial circuit, on
19 behalf of any public defender within the district comprising
20 the First District Court of Appeal.

21 (b) Public defender of the tenth judicial circuit, on
22 behalf of any public defender within the district comprising
23 the Second District Court of Appeal.

24 (c) Public defender of the eleventh judicial circuit,
25 on behalf of any public defender within the district
26 comprising the Third District Court of Appeal.

27 (d) Public defender of the fifteenth judicial circuit,
28 on behalf of any public defender within the district
29 comprising the Fourth District Court of Appeal.

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1 (e) Public defender of the seventh judicial circuit,
2 on behalf of any public defender within the district
3 comprising the Fifth District Court of Appeal.

4 (5) When the public defender for a judicial circuit
5 enumerated in subsection (4) has represented at trial a person
6 sentenced to death, the public defender shall not represent
7 that person in any direct appellate proceedings. That public
8 defender shall notify the Florida Supreme Court within 10 days
9 after filing a notice of appeal, and the Court shall appoint
10 another public defender enumerated in subsection (4) to
11 represent the person in any direct appellate proceedings.

12 ~~(6)~~~~(5)~~(a) When direct appellate proceedings prosecuted
13 by a public defender on behalf of an accused and challenging a
14 judgment of conviction and sentence of death terminate in an
15 affirmance of such conviction and sentence, whether by the
16 Florida Supreme Court or by the United States Supreme Court or
17 by expiration of any deadline for filing such appeal in a
18 state or federal court, the public defender shall notify the
19 accused of his or her rights pursuant to Rule 3.850, Florida
20 Rules of Criminal Procedure, including any time limits
21 pertinent thereto, and shall advise such person that
22 representation in any collateral proceedings is the
23 responsibility of the capital collateral representative. The
24 public defender shall then forward all original files on the
25 matter to the capital collateral representative, retaining
26 such copies for his or her files as may be desired. However,
27 the trial court shall retain the power to appoint the public
28 defender or other attorney not employed by the capital
29 collateral representative to represent such person in
30 proceedings for relief by executive clemency pursuant to s.
31 925.035.

1 (b) It is the intent of the Legislature that any
2 public defender representing an inmate in any collateral
3 proceedings in any court on June 24, 1985, shall continue
4 representation of that inmate in all postconviction
5 proceedings unless relieved of responsibility from further
6 representation by the court.

7 ~~(7)(6)~~ A sum shall be appropriated to the public
8 defender of each judicial circuit enumerated in subsection (4)
9 for the employment of assistant public defenders and clerical
10 employees and the payment of expenses incurred in cases on
11 appeal.

12 Section 18. Subsections (1) and (2) of section 27.703,
13 Florida Statutes, are amended to read:

14 27.703 Conflict of interest and substitute counsel.--

15 (1) The capital collateral regional counsel shall not
16 accept an appointment or take any other action that will
17 create a conflict of interest.If, at any time during the
18 representation of a person ~~two or more persons~~, the capital
19 collateral regional counsel determines that the continued
20 representation of that person creates a interests of those
21 ~~persons are so adverse or hostile that they cannot all be~~
22 ~~counseled by the regional counsel or his or her staff without~~
23 conflict of interest, the sentencing court shall, upon
24 application by the regional counsel, designate another
25 regional counsel and, only if a conflict exists with the other
26 two counsels, appoint one or more members of The Florida Bar
27 to represent one or more of such persons.

28 (2) Appointed counsel shall be paid from funds
29 appropriated to the Comptroller ~~Justice Administrative~~
30 ~~Commission~~. The hourly rate may not exceed \$100. However,
31 effective July 1, 1999, all appointments of private counsel

1 under this section shall be in accordance with ss. 27.710 and
2 27.711.

3 Section 19. Subsection (2) of section 27.709, Florida
4 Statutes, is amended to read:

5 27.709 Commission on Capital Cases.--

6 (2)(a) The commission shall review the administration
7 of justice in capital collateral cases, receive relevant
8 public input, review the operation of the capital collateral
9 regional counsel, and advise and make recommendations to the
10 Governor, Legislature, and Supreme Court.

11 (b) As part of its duties, the commission shall
12 compile and analyze case-tracking reports produced by the
13 Supreme Court. In analyzing these reports, the commission
14 shall develop statistics to identify trends and changes in
15 case management and case processing, identify and evaluate
16 unproductive points of delay, and generally evaluate the way
17 cases are progressing. The commission shall report these
18 findings to the Legislature by January 1 of each year.

19 (c) In addition, the commission shall receive
20 complaints regarding the practice of any office of regional
21 counsel and shall refer any complaint to The Florida Bar, the
22 State Supreme Court, or the Commission on Ethics, as
23 appropriate.

24 Section 20. Subsection (3) of section 27.711, Florida
25 Statutes, is amended, and subsection (13) is added to that
26 section, to read:

27 27.711 Terms and conditions of appointment of
28 attorneys as counsel in postconviction capital collateral
29 proceedings.--

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

19 (13) Prior to the filing of a motion for order
20 approving payment of attorney's fees, costs, or related
21 expenses, the assigned counsel shall deliver a copy of his or
22 her intended billing, together with supporting affidavits and
23 all other necessary documentation, to the Comptroller's named
24 contract manager. The contract manager shall have 10 business
25 days from receipt to review the billings, affidavit, and
26 documentation for completeness and compliance with contractual
27 and statutory requirements. If the contract manager objects to
28 any portion of the proposed billing, the objection and reasons
29 therefor shall be communicated to the assigned counsel. The
30 assigned counsel may thereafter file his or her motion for
31 order approving payment of attorney's fees, costs, or related

1 expenses together with supporting affidavits and all other
2 necessary documentation. The motion must specify whether the
3 Comptroller's contract manager objects to any portion of the
4 billing or the sufficiency of documentation and, if so, the
5 reason therefor. A copy of the motion and attachments shall be
6 served on the Comptroller's contract manager, who shall have
7 standing to file pleadings and appear before the court to
8 contest any motion for order approving payment. The fact that
9 the Comptroller's contract manager has not objected to any
10 portion of the billing or to the sufficiency of the
11 documentation is not binding on the court, which retains
12 primary authority and responsibility for determining the
13 reasonableness of all billings for fees, costs, and related
14 expenses, subject to statutory limitations.

15 Section 21. Section 924.395, Florida Statutes, is
16 created to read:

17 924.395 Sanctions against inmates and inmates'
18 counsel.--

19 (1) The Legislature strongly encourages the courts,
20 through their inherent powers and pursuant to this section, to
21 impose sanctions against an inmate or the inmate's counsel, or
22 both, who are found by a court, in a capital postconviction
23 proceeding or appeal therefrom, to have:

24 (a) Abused a petition for extraordinary relief,
25 postconviction motion, or appeal therefrom;

26 (b) Raised a claim that a court has found to be
27 frivolous or procedurally barred or that should have been
28 raised on the direct appeal; or

29 (c) Adversely affected the orderly administration of
30 justice.

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1 (2) Sanctions the court may and should consider, when
2 applicable and appropriate in a case, include, but are not
3 limited to:

4 (a) Dismissal of a petition, postconviction motion, or
5 appeal;

6 (b) Disciplinary sanctions against the inmate's
7 counsel;

8 (c) A fine imposed on the inmate or the inmate's
9 counsel, or both; and

10 (d) Any other sanction that is available to the court
11 under its inherent powers.

12 Section 22. Section 922.107, Florida Statutes, is
13 created to read:

14 922.107 Policies and procedures for the execution of
15 persons; exemption from the Administrative Procedure Act.--The
16 policies and procedures of the Department of Corrections for
17 the execution of persons sentenced to death are exempt from
18 chapter 120.

19 Section 23. If any provision of this act or the
20 application thereof to any person or circumstance is held
21 invalid, the invalidity does not affect other provisions or
22 applications of the act which can be given effect without the
23 invalid provision or application, and to this end the
24 provisions of this act are declared severable.

25 Section 24. This act shall take effect upon becoming a
26 law, but section 15 shall take effect only if this act is
27 passed by the affirmative vote of two-thirds of the membership
28 of each house of the Legislature.

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HOUSE SUMMARY

Creates the "Death Penalty Reform Act of 2000." Revises provisions of law relating to criminal postconviction proceedings to restrict postconviction proceedings in capital cases where the death sentence is provided. Provides procedures for execution by lethal injection. Revises provisions governing capital postconviction public records production. Repeals Florida Rules of Criminal Procedure which are inconsistent with this act. Prohibits certain public defenders from handling specified appeals. Provides for the designation of alternative regional counsel in cases involving a conflict of interest. Requires the Commission on Capital Cases to compile and analyze case-tracking reports produced by the Supreme Court. Provides for review of the billings of assigned counsel. Provides for sanctions against inmates and their counsel for certain actions taken in capital postconviction proceedings. Exempts policies and procedures of the Department of Corrections for the execution of persons from the Administrative Procedure Act. See bill for details.