

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 842

SPONSOR: Criminal Justice Committee and Senator Campbell

SUBJECT: Capital Case Staff Attorney Program

DATE: March 20, 2001      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Favorable/CS
2.	_____	_____	JU	_____
3.	_____	_____	APJ	_____
4.	_____	_____	AP	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

This bill creates a program (The Capital Case Staff Attorney Program) which would provide circuit judges throughout the state who preside over capital cases in which the death penalty is sought with legal assistance and expertise in the form of staff attorneys who would fulfill various needs as assigned. The bill provides for supervision, assignments, and training and requires the Florida Supreme Court to integrate performance reporting of the Program into its performance measures and accountability reports for the trial courts.

This bill creates the following sections of the Florida Statutes: 43.201, 43.202, 43.203, 43.204, 43.205, 43.206, 43.207, 43.208 and 43.209.

**II. Present Situation:**

The trial court for death penalty cases in Florida is the Circuit court. When these cases result in a guilty verdict and the imposition of the death penalty, the appeal process begins in the Florida Supreme Court.

Matters which are raised on direct appeal include evidentiary rulings made by the trial court during the course of the defendant's trial, and other matters objected to during the course of the trial such as the jury instructions, prosecutorial misconduct, and procedural rulings made by the trial court. The Legislature codified the "contemporaneous objection" rule, a procedural bar that prevented defendants from raising issues on appeal which had not been objected to at the trial level. The rule allowed trial court judges to consider rulings carefully, perhaps correcting potential mistakes at the trial level.

Section 924.051(3), F.S., was enacted as part of the Criminal Appeal Reform Act of 1996 and reads as follows: “(3) An appeal may not be taken from a judgment or order of a trial court unless prejudicial error is alleged and is properly preserved or, if not properly preserved, would constitute fundamental error. A judgment or sentence may be reversed on appeal only when an appellate court determines after a review of the complete record that prejudicial error occurred and was properly preserved in the trial court or, if not properly preserved, would constitute fundamental error.”

Once the direct appeal process is completed, the collateral appeal process begins. State collateral postconviction proceedings are controlled by Rules 3.850, 3.851 and 3.852, Fla. R.Crim.P. Unlike a direct appeal, which challenges the legal errors apparent from the trial transcripts or record on appeal, a collateral postconviction proceeding is designed to raise claims which are "collateral" to what transpired in the trial court. Consequently, such postconviction proceedings usually involve the three categories of claims mentioned previously: ineffective assistance of trial counsel; Brady violations, i.e., a due process denial from the prosecution's suppression of material, exculpatory evidence; and newly discovered evidence, for example, post-trial recantation by a principal witness.

Since the consideration of these claims often require new fact finding, collateral postconviction motions are filed in the trial court which sentenced the defendant to death. Appeals from the grant or denial of postconviction relief are to the Florida Supreme Court.

Because errors made or claimed to have been made in the trial court ultimately have a direct impact on the Florida Supreme Court, during the 2000-2001 interim, the Supreme Court Workload Study Commission examined the error rate, and related issues, in death penalty cases. The Commission recommended that the court request from the Legislature, sufficient law clerk staff at the trial court level to address the quality of decisions in death penalty cases. (*see* 2001 Final Report of the Supreme Court Workload Study Commission, page 10, adopted February 23, 2001.)

The following tables of dispositions of death penalty cases reviewed by the Florida Supreme Court from 1990 – 1999 indicate that on direct appeal about 50 percent were reversed, remanded, or the sentences were reduced.

<b>TYPE OF DISPOSITION</b>	<b>NUMBER OF DISPOSITIONS</b>	<b>PERCENT</b>
Acquitted	3	.8%
Affirmed	170	47.4%
Deceased	7	1.9%
Dismissed Miscellaneous	1	.3%
Reduced to Life	70	19.4%
Remand for Trial	44	12.3%
Remanded for Resentencing	61	17.0%
Reversed	1	.3%
Transferred	2	.6%
<b>TOTAL</b>	<b>359</b>	<b>100.0%</b>

When all appeals, direct and collateral, from the same period of time are examined, the same trend exists; about 50 percent were affirmed or the appeal was denied.

TYPE OF DISPOSITION	NUMBER OF DISPOSITIONS	PERCENT
Affirmed or Denied	379	49.7%
Affirmed in Part/Reversed in Part	2	.3%
Reversed, Remanded, or Granted	307	40.2%
Dismissed/Transferred	75	9.8%
<b>TOTAL</b>	<b>763</b>	<b>100.0%</b>

The members of the commission expressed concern that there may currently be insufficient law clerk support for the trial judges assigned to death penalty cases. By providing clerks who could specialize in the complex legal issues related to these cases, the error rate in death penalty cases could be further reduced. (*Id.* at page 10)

It has been estimated that approximately 196 cases in which the death penalty will be sought will go to trial this year. Five cases have already been tried.

**III. Effect of Proposed Changes:**

The bill creates The Capital Case Staff Attorney Program in the circuit courts of the state to provide legal assistance and expertise to the circuit judges who preside over capital cases in which the death penalty is sought. The sum of \$1,600,000 is appropriated from the General Revenue Fund to the State Courts System, Circuit Courts Budget Entity, by the bill, for both costs and operating expenses during the 2001-2002 fiscal year.

Each of the twenty judicial circuits will be allocated at least one staff attorney. The Supreme Court shall develop and administer an allocation formula to assign additional attorneys to the circuits based on the volume of capital case litigation and the availability of other court resources. The total number of staff attorney positions provided for by the bill is twenty-five.

The chief judge of the circuit within which the staff attorney will be employed shall hire the attorney. The attorneys in the program must be members of the Florida Bar and have at least one year of professional experience as an attorney. Supervision of the attorney will be the responsibility of the chief judge or such other circuit judge as designated by the presiding judge. As the need arises, the bill provides for staff attorneys to be temporarily assigned to another circuit by the chief judge of the circuit by which they are employed.

Supervision includes determining which cases the attorney will be assigned to work on. Factors to be considered include the experience of the trial judge trying the cases, the anticipated length of trial, and any other factors the chief judge deems appropriate for consideration.

The staff attorneys will have the following responsibilities:

- attending pre-trial and postconviction proceedings;
- advising assigned judges on issues of fact, law, and procedure in pre-trial, trial, sentencing, and postconviction proceedings and in any other matter relating to a capital case;
- providing research and drafting assistance when requested;
- providing advice regarding case management;
- developing a “capital-case bench book” containing current and relevant capital case court decisions from state and federal appellate courts;
- providing any other assistance regarding a case when requested by the assigned judge; and
- assisting in additional criminal matters of the circuit court when not needed for capital litigation.

Training for staff attorneys will be provided by the Supreme Court or its designee. Costs and expenses shall be paid by the state through appropriations to the State Courts System.

The bill provides a July 1, 2001 effective date.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Economic Impact and Fiscal Note:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

None.

##### **C. Government Sector Impact:**

The bill states “[t]he sum of \$1,600,000 is appropriated from the General Revenue Fund to the State Courts System, Circuit Courts Budget Entity for costs and expenses of the Capital Case Staff Attorney Program”. As of March 13, 2001, the budget proposal for the Senate

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Appropriations Subcommittee on Public Safety and Judiciary does not specifically include funding for this bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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