

By the Committee on Criminal Justice; and Senator Crist

307-2423-03

1 A bill to be entitled
2 An act relating to postconviction capital
3 collateral representation; amending ss. 27.701,
4 27.702, 27.703, F.S.; providing for the middle
5 and southern regional offices of capital
6 collateral counsel to continue to be
7 administered by a regional counsel; providing
8 for private counsel to be appointed to
9 represent persons in the northern region in
10 capital collateral post conviction proceedings;
11 amending s. 27.709, F.S.; requiring the
12 Commission on Capital Cases to review the
13 operation of private counsel; amending ss.
14 27.710 and 27.711, F.S.; revising the criteria
15 under which the chief judge of the circuit is
16 requested to submit names of attorneys who meet
17 the requirements to represent persons in
18 postconviction capital collateral proceedings;
19 providing for appointment of counsel within the
20 northern regional office; providing for
21 compensation of such counsel; requiring the
22 Commission on Capital Cases to conduct a cost
23 and program analysis of the capital collateral
24 regional counsels and registry attorneys and
25 report to the Governor and Legislature;
26 providing an effective date.

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

30 Section 1. Section 27.701, Florida Statutes, is
31 amended to read:

1 27.701 Capital collateral regional counsels.--There
2 are created three regional offices of capital collateral
3 counsel, which shall be located in a northern, middle, and
4 southern region of the state. The northern region shall
5 consist of the First, Second, Third, Fourth, Eighth, and
6 Fourteenth Judicial Circuits; the middle region shall consist
7 of the Fifth, Sixth, Seventh, Ninth, Tenth, Twelfth,
8 Thirteenth, and Eighteenth Judicial Circuits; and the southern
9 region shall consist of the Eleventh, Fifteenth, Sixteenth,
10 Seventeenth, Nineteenth, and Twentieth Judicial Circuits. The
11 middle and southern regional offices ~~Each regional office~~
12 shall be administered by a regional counsel. A regional
13 counsel must be, and must have been for the preceding 5 years,
14 a member in good standing of The Florida Bar or a similar
15 organization in another state. Each capital collateral
16 regional counsel shall be appointed by the Governor, and is
17 subject to confirmation by the Senate. The Supreme Court
18 Judicial Nominating Commission shall recommend to the Governor
19 three qualified candidates for each appointment as regional
20 counsel. The Governor shall appoint a regional counsel for the
21 middle and southern regional offices ~~each region~~ from among
22 the recommendations, or, if it is in the best interest of the
23 fair administration of justice in capital cases, the Governor
24 may reject the nominations and request submission of three new
25 nominees by the Supreme Court Judicial Nominating Commission.
26 Effective October 1, 2003, the capital collateral regional
27 counsel for the middle regional office shall be appointed to a
28 term of 2 years, and to a term of 3 years thereafter. The ~~Each~~
29 capital collateral regional counsel for the southern regional
30 office shall be appointed to a term of 3 years. Vacancies in
31 the office of capital collateral regional counsel shall be

1 filled in the same manner as appointments. A person appointed
2 as a regional counsel may not run for or accept appointment to
3 any state office for 2 years following vacation of office.

4 Section 2. Subsections (1) and (2) of section 27.702,
5 Florida Statutes, are amended to read:

6 27.702 Duties of the capital collateral regional
7 counsel; reports.--

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

29 (2) The capital collateral regional counsel shall
30 represent persons convicted and sentenced to death within the
31 middle and southern regions ~~region~~ in collateral

1 postconviction proceedings, unless a court appoints or permits
2 other counsel to appear as counsel of record. Effective July
3 1, 2003, only private counsel appointed pursuant to ss. 27.710
4 and 27.711 shall represent persons convicted and sentenced to
5 death within the northern region in collateral postconviction
6 proceedings.

7 Section 3. Subsection (1) of section 27.703, Florida
8 Statutes, is amended to read:

9 27.703 Conflict of interest and substitute counsel.--

10 (1) The capital collateral regional counsel shall not
11 accept an appointment or take any other action that will
12 create a conflict of interest. If, at any time during the
13 representation of a person, the capital collateral regional
14 counsel determines that the continued representation of that
15 person creates a conflict of interest, the sentencing court
16 shall, upon application by the regional counsel, designate the
17 other ~~another~~ regional counsel and, only if a conflict exists
18 with the other counsel ~~two counsels~~, appoint one or more
19 members of The Florida Bar to represent one or more of such
20 persons.

21 Section 4. Paragraphs (a) and (c) of subsection (2) of
22 section 27.709, Florida Statutes, are amended to read:

23 27.709 Commission on Capital Cases.--

24 (2)(a) The commission shall review the administration
25 of justice in capital collateral cases, receive relevant
26 public input, review the operation of the capital collateral
27 regional counsel and private counsel appointed pursuant to ss.
28 27.710 and 27.711, and advise and make recommendations to the
29 Governor, Legislature, and Supreme Court.

30 (c) In addition, the commission shall receive
31 complaints regarding the practice of any office of regional

1 counsel and private counsel appointed pursuant to ss. 27.710
2 and 27.711 and shall refer any complaint to The Florida Bar,
3 the State Supreme Court, or the Commission on Ethics, as
4 appropriate.

5 Section 5. Subsections (1) and (5) of section 27.710,
6 Florida Statutes, are amended to read:

7 27.710 Registry of attorneys applying to represent
8 persons in postconviction capital collateral proceedings;
9 certification of minimum requirements; appointment by trial
10 court.--

11 (1) The executive director of the Commission on
12 Capital Cases shall compile and maintain a statewide registry
13 of attorneys in private practice who have certified that they
14 meet the minimum requirements of s. 27.704(2), who are
15 available for appointment by the court under this section to
16 represent persons convicted and sentenced to death in this
17 state in postconviction collateral proceedings, and who have
18 attended within the last year a continuing legal education
19 program of at least 10 hours' duration devoted specifically to
20 the defense of capital cases, if available. Continuing legal
21 education programs meeting the requirements of this rule
22 offered by The Florida Bar or another recognized provider and
23 approved for continuing legal education credit by The Florida
24 Bar shall satisfy this requirement. The failure to comply with
25 this requirement may be cause for removal from the list until
26 the requirement is fulfilled. To ensure that sufficient
27 attorneys are available for appointment by the court, when the
28 number of attorneys on the registry falls below 75 ~~50~~, the
29 executive director shall notify the chief judge of each
30 circuit by letter and request the chief judge to promptly
31 submit the names of at least three private attorneys who

1 regularly practice criminal law in that circuit and who appear
2 to meet the minimum requirements to represent persons in
3 postconviction capital collateral proceedings. The executive
4 director shall send an application to each attorney identified
5 by the chief judge so that the attorney may register for
6 appointment as counsel in postconviction capital collateral
7 proceedings. As necessary, the executive director may also
8 advertise in legal publications and other appropriate media
9 for qualified attorneys interested in registering for
10 appointment as counsel in postconviction capital collateral
11 proceedings. Not later than September 1 of each year, and as
12 necessary thereafter, the executive director shall provide to
13 the Chief Justice of the Supreme Court, the chief judge and
14 state attorney in each judicial circuit, and the Attorney
15 General a current copy of its registry of attorneys who are
16 available for appointment as counsel in postconviction capital
17 collateral proceedings. The registry must be indexed by
18 judicial circuit and must contain the requisite information
19 submitted by the applicants in accordance with this section.

20 (5)(a) Upon the motion of the capital collateral
21 regional counsel to withdraw pursuant to s. 924.056(1)(a) and
22 for all cases assigned to the northern regional office of the
23 capital collateral counsel as of July 1, 2003, except those
24 cases in which the crime occurred geographically outside the
25 northern region, which shall be divided between the middle and
26 southern regions, based on the location of the crime and
27 taking into account any potential ethical conflict; or

28 (b) Upon notification by the state attorney or the
29 Attorney General that:

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

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

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

27 Section 6. Subsections (3) and (9) of section 27.711,
28 Florida Statutes, are amended to read:

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

1 (3) An attorney appointed to represent a capital
2 defendant is entitled to payment of the fees set forth in this
3 section only upon full performance by the attorney of the
4 duties specified in this section and approval of payment by
5 the trial court, and the submission of a payment request by
6 the attorney, subject to the availability of sufficient
7 funding specifically appropriated for this purpose. An
8 attorney may not be compensated under this section for work
9 performed by the attorney prior to July 1, 2003, while
10 employed by the northern regional office of the capital
11 collateral counsel.The Comptroller shall notify the executive
12 director and the court if it appears that sufficient funding
13 has not been specifically appropriated for this purpose to pay
14 any fees which may be incurred. The attorney shall maintain
15 appropriate documentation, including a current and detailed
16 hourly accounting of time spent representing the capital
17 defendant. The fee and payment schedule in this section is the
18 exclusive means of compensating a court-appointed attorney who
19 represents a capital defendant. When appropriate, a
20 court-appointed attorney must seek further compensation from
21 the Federal Government, as provided in 18 U.S.C. s. 3006A or
22 other federal law, in habeas corpus litigation in the federal
23 courts.

24 (9) An attorney may not represent more than five
25 ~~capital~~ defendants in capital postconviction litigation at any
26 one time.

27 Section 7. The Commission on Capital Cases shall
28 conduct a 3-year cost and program analysis of the capital
29 collateral regional counsels and registry attorneys, including
30 an analysis and comparison of the capital collateral regional
31 counsels since 1997. The commission shall submit a report to

1 the Governor, the President of the Senate, and the Speaker of
2 the House of Representatives by December 31, 2006.

3 Section 8. This act shall take effect July 1, 2003.

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5 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
6 COMMITTEE SUBSTITUTE FOR
7 Senate Bill 1228

8 This bill amends a shell bill to do the following:

- 9 - Eliminates the northern region of the Capital Collateral
10 Regional Counsels (CCRC's); the middle and southern
11 regions remain intact.
12 - As of July 1, 2003, the cases currently assigned to the
13 northern region where the underlying crime occurred
14 outside the northern region, may be reassigned to the
15 middle and southern regions, if no conflict exists; in
16 all other existing cases, and any new cases, private
17 registry counsel will represent the defendant.
18 - The terms to which the middle and southern regional
19 counsel shall be appointed are staggered.
20 - The bill contains a provision that would prevent a CCRC
21 attorney who worked on a case in the northern regional
22 office and subsequently took that case over, as a
23 registry attorney, from being compensated as a registry
24 attorney for work performed while on the state payroll.
25 - The Commission on Capital Cases shall review the
26 operation of the registry attorneys, as it currently does
27 the regional counsels.
28 - The number of attorneys that must be maintained on the
29 registry of private counsel available and qualified for
30 appointment to capital postconviction litigation is
31 elevated from 50 to 75.
- The Commission on Capital Cases is directed to conduct a
3-year cost and program analysis of the CCRC's and
registry attorneys, to include a historical perspective.