

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1005
SPONSOR(S): Kravitz
TIED BILLS: HJR 1007

Death Penalty

IDEN./SIM. BILLS: SB 1972

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee		Kramer	Kramer
2) Justice Appropriations Committee			
3) Justice Council			
4) _____			
5) _____			

SUMMARY ANALYSIS

During a special session in January of 2000, the Legislature passed the Death Penalty Reform Act (DPRA) which advanced the start of the state postconviction process in capital cases by requiring the appointment of counsel while the case is on direct appeal. This is known as a "dual track" or "parallel track" process. The bill created statutory time limitations on the filing of postconviction actions and limited the filing of successive postconviction claims.

In April of 2000, the Florida Supreme Court struck down the DPRA and held that it was an "unconstitutional encroachment on the Court's exclusive power to 'adopt rules for the practice and procedure in all courts.'"

HJR 1007, which is tied to this bill, would amend the Florida constitution to create a judicial conference to propose rules of practice and procedure governing violations of criminal law and postconviction proceedings. The conference will make recommendations to the Florida Supreme Court who will then submit proposed rules to the legislature. The legislature will be authorized to adopt, reject or amend proposed rules by general law. The joint resolution also provides that notwithstanding any other provision of the constitution, a court may not require or authorize collateral or postconviction review of a criminal judgment or sentence except as authorized by general law or a rule of procedure approved in accordance with the constitution.

This bill, which is contingent on the voter's approval of HJR 1007 by the voters of the state in the General Election of 2006, reenacts the provisions of the Death Penalty Reform Act which were struck down by the court.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government: The bill limits successive capital postconviction motions and establishes time limitations for the filing of postconviction motions. The bill also creates a "dual track" process which will result in postconviction proceedings taking place at the same time as a direct appeal is pending.

B. EFFECT OF PROPOSED CHANGES:

Overview of Postconviction Proceedings in Capital Cases: A defendant who is convicted of a crime in which the death penalty is imposed receives a direct appeal of his or her sentence and conviction to the Florida Supreme Court.¹ At this stage, a capital defendant is represented by the public defender's office, if the defendant is indigent, or by a private attorney. 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. If the Florida Supreme Court affirms the capital defendant's conviction and sentence, a defendant can appeal that decision to the United States Supreme Court by filing a petition for writ of certiorari. If the Supreme Court refuses to hear the defendant's appeal, a defendant is entitled to begin state postconviction proceedings.

State postconviction proceedings are controlled by Florida Rules of Criminal Procedure 3.850, 3.851 and 3.852. 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. Postconviction proceedings usually involve claims that the defendant's trial counsel was ineffective, claims of newly discovered evidence or claims that the prosecution failed to disclose exculpatory evidence. 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.

After state postconviction proceedings have been completed, a capital defendant is entitled to file a petition for writ of habeas corpus in federal court. The federal court reviews whether the conviction or sentence violates federal law. Federal habeas is limited to consideration of claims previously asserted on direct appeal or in state postconviction proceedings. The most common issue raised is whether the defendant's trial counsel was ineffective.

Finally, once the Governor signs a death warrant, a defendant will typically file a second Rule 3.850 motion and a second federal habeas petition along with motions to stay the execution.

In the middle and southern regions of Florida, the Capital Collateral Regional Counsel provide postconviction representation to indigent capital defendants. In the northern region of the state, representation is provided by private attorneys appointed by the court.² The Commission on Capital Cases (a legislative commission housed within the Office of Legislative Services) maintains a state registry of private attorneys who are qualified to provide capital postconviction representation.

¹ Art. V, Section 3(b)(1).

² See s. 27.710, F.S.

Death Penalty Reform Act of 2000: During a special session in January of 2000, the legislature passed the Death Penalty Reform Act (DPRA).³ The DPRA made a number of statutory changes to the postconviction process.

Legislative intent: Section 924.055, F.S., was amended⁴ to provide that it was the Legislature's intent to "reduce delays in capital cases and to ensure that all appeals and postconviction actions in capital cases are resolved within 5 years after the date a sentence of death is imposed in the circuit court." The section also provided the following legislative intent:

- all postconviction actions should be filed as early as possible after imposition of the death sentence, and that all such actions be filed in compliance with time limitations in ch. 924, F.S.
- no death-sentenced person or that person's capital postconviction counsel should file more than one postconviction action in a sentencing court and one appeal therefrom to the Florida Supreme Court
- no state resources be expended in violation of the act
- the Attorney General must deliver to the Speaker of the House of Representatives and the President of the Senate a copy of any court pleading or order that describes or adjudicates a violation of the act by any state employee or party contracting with the state

Appointment of counsel/actions of defendant: Prior to the DPRA, a postconviction attorney was not appointed until a defendant's direct appeal was completed. The DPRA provided for appointment of a defendant's postconviction lawyer shortly after the death sentence is imposed, while the case is still on direct appeal.⁵ This is known as a "dual-track" system. Section 924.056, F.S., was created to provide that within *15 days after imposing a death sentence, a trial court is required to appoint postconviction counsel* unless the defendant declines a postconviction lawyer.⁶ Within 30 days after appointment, the attorney is required to file a notice of appearance, or move to withdraw if necessary. Private counsel must be provided upon motion of the capital collateral regional counsel to withdraw. Pursuant to 27.710, F.S., as amended by the bill,⁷ the court must appoint private postconviction counsel if 30 days has elapsed since the appointment of the capital collateral regional counsel and no notice of appearance has been filed or a defendant previously represented by private counsel is currently unrepresented.⁸ Other provisions contained in section 924.056, F.S. are described as follows:

- A defendant who accepts the appointment of postconviction counsel must cooperate with and assist postconviction counsel. If the sentencing court finds that the defendant is obstructing the process, the defendant is not entitled to any further postconviction legal representation provided by the state.
- Each attorney participating in a capital case on behalf of the defendant must provide all information on the case the attorney obtained during the attorney's representation of the defendant to the defendant's capital postconviction counsel, who must maintain the confidentiality of that information and is subject to the same penalties as the providing attorney for violating confidentiality.
- If the defendant requests, without good cause, the removal or replacement of his or her appointed postconviction counsel, the court must notify the defendant that no further state resources will be expended on the defendant's postconviction representation, unless the request is withdrawn; if the request is not immediately withdrawn, counsel will be removed from

³ Chapter 2000-3, Laws of Florida (CS/HB 1-A, Second Engrossed)

⁴ See s.5, chapter 2000-3, Laws of Florida

⁵ See s. 6, chapter 2000-3, Laws of Florida

⁶ s. 924.056(1)(a), F.S.

⁷ See s.11, chapter 2000-3, Laws of Florida

⁸ Id.

the case and no further state resources will be expended on the defendant's postconviction representation.⁹

- The prosecuting attorney and the defendant's trial counsel must provide the defendant or, if represented, defendant's capital postconviction counsel, with copies of all pretrial and trial discovery and all contents of the prosecuting attorney's file, except for information that the prosecuting attorney has a legal right under state or federal law to withhold from disclosure.¹⁰
- The clerk of the court must provide a copy of the record on appeal to the capital postconviction counsel and the state attorney and Attorney General within 60 days after the sentencing court appoints postconviction counsel. However, the court may grant an extension of up to 30 days when extraordinary circumstances exist.¹¹

Postconviction motions –limitations and contents: Section 924.056, F.S. as amended by the act also provided the following relating to limitations on postconviction actions:

- With respect to all capital postconviction actions commenced after the effective date of the act, a capital postconviction action is not commenced until the defendant or the defendant's postconviction action in the sentencing court or, in cases alleging ineffective assistance of direct appeal counsel in the Florida Supreme Court. The defendant or defendant's capital postconviction counsel must file a fully pled postconviction action *within 180 days after the filing of the appellant's initial brief in the direct appeal.*¹²

Under this act, the collateral attack would commence almost contemporaneously with the direct appeal, in contrast to the previous process in which the collateral attack did not commence until after federal proceedings relating to and following the issuance of the mandate in the direct appeal have run their course.

- The fully pled postconviction action must include all cognizable claims that the defendant's judgment or sentence was entered in violation of the State or Federal Constitution or in violation of state or federal law, including any claim of ineffective assistance of trial counsel, allegations of innocence, or any claim that the state withheld evidence favorable to the defendant.¹³
- No claim may be considered in a capital postconviction action which could or should have been raised before trial, at trial or, if preserved, on direct appeal.¹⁴
- No claim of ineffective assistance of capital postconviction counsel may be raised in a state court.¹⁵
- The pendency of public records requests or litigation, or the pendency of other litigation, or the failure of the defendant or defendant's capital postconviction counsel to timely prosecute a case, shall not constitute cause for the court to grant any request for an extension of time. Further, no appeal may be taken from the denial of such extension.¹⁶
- The time for commencement of the postconviction action may not be tolled for any reason or cause. All claims outside time limitations are barred.¹⁷

⁹ s. 924.056(1)(b), F.S.

¹⁰ Id.

¹¹ s. 924.056(2), F.S.

¹² s. 924.056(3)(a), F.S.

¹³ Id.

¹⁴ Id.

¹⁵ s. 924.056(3)(b), F.S.

¹⁶ s. 924.056(3)(c), F.S.

¹⁷ s. 924.056(3)(d), F.S.

- The defendant or defendant's capital postconviction counsel must file a fully pled postconviction action in the Florida Supreme Court *raising any claim of ineffective assistance of direct appeal counsel within 45 days after mandate issues affirming the death sentence on direct appeal.*¹⁸

Successive motions: Section 924.056(5), F.S., created by the act, provided that regardless of when a sentence is imposed, all successive capital postconviction actions are barred unless commenced by filing a fully pled postconviction action within 90 days after the facts giving rise to the cause of action were discovered or should have been discovered with the exercise of due diligence. Such claim shall be barred unless the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable fact finder would have found the defendant guilty of the underlying offense. Additionally, the facts underlying this claim must have been unknown to the defendant or his or her attorney and must be such that they could not have been ascertained by the exercise of due diligence prior to filing the earlier postconviction motion. The time period allowed for filing a successive collateral postconviction action shall not be grounds for a stay.¹⁹

Capital postconviction claims/state's response: Section 924.058, F.S., which was created by the act,²⁰ generally related to the contents of the postconviction motion and the state's response and provided the following:

- Except as provided in statute, the defendant or defendant's postconviction counsel shall not file more than one capital postconviction in the sentencing court, one appeal therefrom in the Florida Supreme Court, and one original capital postconviction action in the Florida Supreme Court in which a claim is raised that direct appeal counsel was ineffective.²¹
- The defendant's postconviction action must be filed under oath and "fully pled." The section includes specific information which must be included in order for the action to constitute a "fully pled" action.²²
- Any postconviction action that does not comply with these requirements shall not be considered in any state court. No amendment of the postconviction action shall be allowed after the expiration of statutory time limitations for the commencement of capital postconviction actions.²³
- The prosecuting attorney or Attorney General is authorized to file one response to any capital postconviction action within 60 days after receipt of the defendant's fully pled capital postconviction action.²⁴

Evidentiary hearing, court order and appeal: Section 924.059, F.S., which was created by the DPRA²⁵ related to proceedings after the postconviction motion and answer were filed and provided the following:

- No amendment of a defendant's capital postconviction action shall be allowed by the court after the expiration of the time periods provided by statute for the filing of capital postconviction claims.²⁶

¹⁸ s. 924.056(4), F.S.

¹⁹ s. 924.056(5), F.S.

²⁰ See s.8, chapter 2000-3, Laws of Fla.

²¹ s. 924.058(1), F.S.

²² s. 924.058(2)(a)-(f), F.S.

²³ s. 924.058(3), F.S.

²⁴ s. 924.058(4), F.S.

²⁵ See s 9, chapter 2000-3, Laws of Fla.

²⁶ s. 924.059(1), F.S.

- Within 30 days following the receipt of the state’s answer, the sentencing court must conduct a hearing to determine whether an evidentiary hearing is required, if a hearing has been requested by the defendant or defendant’s capital postconviction counsel. Within 30 days thereafter, the court must rule on whether an evidentiary hearing is required, and if so, schedule such hearing to be held within 90 days. If the court determines that the postconviction action is legally insufficient or that the defendant is not entitled to relief, the court must, within 45 days thereafter, deny such action with the order to include the rationale for the denial and the supporting record.²⁷
- Within 10 days of the order scheduling an evidentiary hearing, the defendant or defendant’s capital postconviction counsel must disclose names and addresses of potential witness not previously disclosed and their affidavits or a proffer of their testimony. The state has 10 days following defendant’s disclosure to make a reciprocal disclosure.²⁸
- The state is entitled to have the defendant examined by its mental expert if the defense raises mental status issues. All of the defendant’s mental status claims will be denied as a matter of law if the defendant fails to cooperate with the state’s expert. All reports provided by expert witnesses must be disclosed by opposing counsel upon receipt.²⁹
- Following the evidentiary hearing, the court must order a transcription of the hearing which must be filed within 30 days following the hearing. Within 30 days of receipt of the transcript, the court must issue its final order granting or denying postconviction relief, making detailed findings of fact and conclusions of law with respect to any allegations asserted.³⁰
- An appeal may be taken to the Florida Supreme Court within 15 days from the entry of a final order on a capital postconviction action. Interlocutory appeals and motions for rehearing are prohibited. The clerk of the court must promptly serve all parties with a copy of the final order.³¹
- If the sentencing court has denied the capital postconviction action without an evidentiary hearing, the appeal to the Florida Supreme Court will be expeditiously resolved in a “summary fashion.” The Court must initially review the appeal to determine whether the sentencing court correctly resolved the defendant’s claims without an evidentiary hearing; if the Court determines that an evidentiary hearing should have been held, it may remand by order without opinion and shall relinquish jurisdiction to the sentencing court for a specified period not to exceed 90 days to conduct the hearing, with the record thereafter supplemented with the hearing transcript.³²
- The Florida Supreme Court must render a final decision granting or denying postconviction relief within 180 days after the Court receives the record on appeal. The Governor may proceed to issue a warrant for execution if an appeal from a denial of postconviction relief is denied.³³
- A capital postconviction action filed in violation of the time limits provided by statute is barred, and all claims raised therein, are waived. A state court shall not consider any capital postconviction action in violation of s. 924.056, or s. 924.057, F.S. The Attorney General must deliver to the Governor, the President of the Senate, and the Speaker of the House of Representatives a copy of any pleading or order that alleges or adjudicates any violation of this provision.³⁴

²⁷ s. 924.059(2), F.S.

²⁸ s. 924.059(3), F.S.

²⁹ Id.

³⁰ s. 924.059(4), F.S.

³¹ s. 924.059(5), F.S.

³² s. 924.059(6), F.S.

³³ s. 924.059(7), F.S.

³⁴ s. 924.059(8), F.S.

Public records repository: The Secretary of State's office maintains a records repository for the purpose of archiving capital postconviction records. The state attorney, local law enforcement agencies, and the Department of Corrections are required to submit to the repository all relevant public records produced in a death penalty case. Other agencies are to submit records to the repository when they have public records relevant to the case. The records repository is intended to collect all relevant records while the case is "fresh" in everyone's mind and store them in a centralized location. The DPRA amended section 119.19, F.S.,³⁵ to:

- Advance the public records production process to begin upon imposition of the death sentence, rather than upon issuance of the mandate on direct appeal.
- Compress existing time frames for agency responses to public records requests (most of the prior provisions requiring agency responses in 90 days were amended to require responses in 60 days).
- Require affected agencies to send public records claimed to be confidential or exempt directly to the Clerks of Court instead of to the records repository, the intended effect of which is to save the time and effort of requesting that the sealed records be shipped to the trial court for an in camera inspection, a procedure that happens with some frequency.
- Require that a written demand for public records include requests for records associated with particular named individuals, and also brief statement of information relevant to the person's identity and relationship to the defendant.
- Transfer the responsibilities of providing the personnel, supplies, and necessary equipment to copy records held at the records repository from the CCRC's or private counsel to the Secretary of State

Limitations on capital postconviction actions that can be filed: Section 27.702, F.S., was amended³⁶ to provide that the CCRC and private attorneys may file only those postconviction or collateral actions authorized by statute.

Time limitations and their effect on issuance of the death warrant: Section 922.095, F.S., was amended³⁷ to provide that a person convicted and sentenced to death must pursue all possible collateral remedies within the time limits provided by statute. Failure to seek relief within the statutory time limits constitutes grounds for issuance of the death warrant. Any claim not pursued within the statutory time limits is barred, and no claim filed after the statutory time limits constitutes grounds for judicial stay of any death warrant.

Limitations and other requirements governing capital postconviction actions in which the death sentence was imposed before the effective date of the act: Section 924.057, F.S., was created³⁸ to govern all capital postconviction actions in cases in which the trial court imposed the sentence before the effective date of the act.

Repeal of procedural rules: The act provided that Florida Rules of Criminal Procedure 3.850 was repealed to the extent that the rule was inconsistent with the act and Rules 3.851 and 3.852 were repealed in their entirety.³⁹

³⁵ See s. 3, chapter 2000-3, Laws of Florida

³⁶ See s.2, chapter 2000-3, Laws of Fla.

³⁷ See s.4, chapter 2000-3, Laws of Fla.

³⁸ See s.7, chapter 2000-3, Laws of Fla.

³⁹ See s.10, chapter 2000-3, Laws of Fla.

Appropriation of attorney registry fees: Section 27.703, F.S., was amended⁴⁰ to provide that the appropriation for attorney registry fees goes directly to the Comptroller, the agency that performs the contract management functions, rather than the prior practice where the Justice Administrative Commission receives this appropriation and then passes it on to the Comptroller, thereby creating an unnecessary layer in the payment process.

Conflict of interest involving appellate public defender: Section 27.51, F.S., was amended⁴¹ to provide for reassignment of an appellate public defender when the appellate public defender served as defendant's trial counsel. This provision was designed to avoid a conflict of interest in representing a defendant on direct appeal contemporaneous with a collateral postconviction claim that the Public Defender's office handling the appeal was ineffective at trial.

Conflict of interest involving Capital Collateral Regional Counsel: Section 27.703, F.S., was amended⁴² to prohibit a CCRC from accepting an appointment or taking any other action that will create a conflict of interest. In addition, the section was amended to allow for withdraw of counsel in any case where there exists a conflict of interest and not just in cases where counsel represents codefendant.

Case tracking: Section 27.709, F.S. was amended⁴³ to require the Commission on Capital Cases to compile and analyze case-tracking reports produced by the Supreme Court. The Commission was to analyze these reports to identify trends and changes in case management/processing, identify and evaluate "unproductive points of delay," and generally evaluate case progress through the judicial system. The Commission was required to report its findings to the Legislature by January 1 of each year.

Registry attorneys' report of billings: The bill amended section 27.711, F.S.⁴⁴ to require private attorneys to provide billing documentation to the Comptroller prior to submission to the court. The Comptroller has standing to object to payment.

Sanctions for abusive or dilatory practices: The bill created section 924.395, F.S.,⁴⁵ provide a statement of legislative policy in which the courts were strongly encouraged through their inherent powers and pursuant to the newly created section, to impose sanctions against any person within the court's jurisdiction who is found by a court to have engaged in abusive or dilatory practices in collateral postconviction proceedings. This section described a number of abusive or dilatory practices and sanctions available to the courts through their inherent powers.

Repeal of current statutory time limits for filing a motion for postconviction relief: The bill repealed time limitations⁴⁶ for the filing of a motion for postconviction relief contained in section 924.051 because these time limits conflict with time limits provided in the legislation.

Supreme court study: The bill provided legislative findings⁴⁷ that a centralized case management of capital postconviction actions has the potential to reduce delays and should be considered and suggested that the Florida Supreme Court study the feasibility of a requirement that all capital postconviction actions be filed in the Supreme Court, rather than in the circuit court. The circuit courts would act as fact finders, submitting to the Supreme Court findings of fact and conclusions of law in those actions which the Supreme Court has remanded to the circuit courts for evidentiary hearings.

⁴⁰ See s.13, chapter 2000-3, Laws of Fla.

⁴¹ See s.12, chapter 2000-3, Laws of Fla.

⁴² See s. 13, chapter 2000-3, Laws of Fla.

⁴³ See s. 15, chapter 2000-3, Laws of Florida

⁴⁴ See s. 16, chapter 2000-3, Laws of Florida

⁴⁵ See s.17, Chapter 2000-3, Laws of Florida

⁴⁶ See s.10, Chapter 2000-3, Laws of Florida

⁴⁷ See s.20, Chapter 2000-3, Laws of Florida

Florida Constitution

Article V, Section 2 of the Florida Constitution, authorizes the Supreme Court to “adopt rules of practice and procedure in all courts . . .” The same section of the constitution authorizes the Legislature to repeal court rules of procedure with a 2/3 vote of the membership of both houses. Unlike the federal constitution, the Florida constitution includes a specific provision pertaining to the separation of powers among the three branches of government. Article II, Section 3 of the Florida Constitution provides: “The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.”

Allen v. Butterworth: On April 14, 2000, the Florida Supreme Court struck down the provisions of the Death Penalty Reform Act based on a separation of powers claim.⁴⁸ The Court held that that the “DPRA is an unconstitutional encroachment on the Court’s exclusive power to ‘adopt rules for the practice and procedure in all courts’”.⁴⁹ The Court held that the provisions of the DPRA were “procedural” (rather than substantive) and ruled that because the constitution gives the court the authority to adopt rules of practice and procedure, the Legislature was not permitted to act in this area. The court rejected the state’s argument that the deadlines for filing postconviction motions in the DPRA were statutes of limitations which are substantive. The court stated that Florida Rule of Criminal Procedure 3.850 is a “procedural vehicle for the collateral remedy otherwise available by a writ of habeas corpus”⁵⁰ and further held that “[d]ue to the constitutional and quasi-criminal nature of habeas proceedings and the fact that such proceedings are the primary avenue through which convicted defendants are able to challenge the validity of a conviction and sentence, we hold that article V, section 2(a) of the Florida Constitution grants this Court the exclusive authority to set deadlines for postconviction motions.”⁵¹

The court also rejected the state’s argument that because Congress can set statutes of limitation on the filing of habeas corpus petitions in federal court, the Florida Legislature should also have that authority. The Court noted that the United States Constitution grants Congress “limited original jurisdiction” while appellate jurisdiction is established by Congress. Further, Congress has the authority to regulate writs of habeas corpus.⁵² The Court contrasted this with the Florida Constitution which establishes the jurisdiction of Florida courts and explicitly grants the courts of the state the authority to issue writs of habeas corpus. Further, Congress has the “authority to regulate matters of practice and procedure in the federal courts” while the Florida Constitution grants the Supreme Court the authority to adopt rules of procedure. The Court concluded that the separation of powers argument raised in the case “would never be an issue in the federal system.”⁵³

Provisions of HJR 1007: This bill is tied with HJR 1007. HJR 1007 would amend the Florida constitution to make the process of adopting rules of practice and procedure relating to violations of criminal law, violations of criminal law by juveniles and postconviction proceedings, similar to the process used to create rules of practice and procedure for the federal courts. The joint resolution would not alter the Supreme Court’s authority to authority to adopt rules of practice and procedure in other areas of the law.

The joint resolution would also create a judicial conference to propose rules of procedure governing violations of criminal law, violations of criminal law and postconviction proceedings. Rules proposed by the judicial conference would be submitted to the Supreme Court for consideration. The Supreme Court would then submit proposed rules to the legislature by November 30 of the year preceding the effective date of the proposed rule. The legislature may adopt, reject or amend proposed rules by

⁴⁸ Allen v. Butterworth, 756 So.2d 52, 59 (Fla. 2000).

⁴⁹ Id. at 54.

⁵⁰ Id. at 61. (citations omitted)

⁵¹ Id. at 62.

⁵² Id. at 63

⁵³ Id.

general law. If the legislature does not act by the end of the next legislative session, the proposed rule shall be deemed approved.

The joint resolution also provides that a court may not require or authorize collateral or postconviction judicial review of a criminal judgment or sentence except as provided by general law or rule of procedure adopted in accordance with the amendment. It also provides that rules of practice and procedure may not be inconsistent with general law and shall not abridge, enlarge, or modify any substantive right.

If this joint resolution is passed by a 3/5 vote of both houses of the legislature, it will be submitted to the voters in the next general election in November of 2006.

Provisions of HB 1005: This bill reenacts the sections of statute that were created or amended by the DRPA and were later struck down by the Florida Supreme Court. The bill does not reenact the sections of the original bill which were not struck down by the Court.

Public records: Section 119.07(6)(b) exempts active criminal intelligence and investigative information from disclosure as a public record. Criminal intelligence and criminal investigative information is considered "active while such information is directly related to pending prosecutions or appeals."⁵⁴ In other words, the information remains exempt until the direct appeal becomes final. In the Allen case, the court noted that in order for the dual track system to work properly, the public records exemptions must expire upon imposition of the death sentence so that the postconviction counsel has the opportunity to use the records in the investigation. The bill amends section 119.011, F.S. to provide that with respect to capital cases in which the defendant has been sentenced to death, upon the imposition of the death sentence criminal intelligence and criminal investigative information shall be considered to be not "active".

Proposed rules: The bill directs the Supreme Court to submit to the President of the Senate and the Speaker of the House of Representatives by March 1, 2007, rules proposed by the Judicial Conference for the implementation of this act.

Other provisions: The bill modifies some specific dates which were in the original bill in order to conform them to the new effective date of the bill. As in the original DPRA, the bill repeals Florida Rules of Criminal Procedure 3.850 and 3.851 to the extent that they are inconsistent with this act. The bill repeals Rule 3.852. The bill would take effect July 1, 2007, contingent on voter approval of HJR 1007 in the general election of 2006.

C. SECTION DIRECTORY:

Section 1. Provides that act may be cited as the "Death Penalty Reform Act".

Section 2. Amends s. 27.51, F.S. to provide that public defender may not represent defendant in certain circumstances.

Section 3. Reenacts s. 27.702(1), F.S.

Section 4. Reenacts s. 27.703, F.S.

Section 5. Reenacts s. 27.709(2), F.S.

Section 6. Reenacts s. 27.710, F.S.

Section 7. Reenacts s. 27.711(3), (13), F.S.

⁵⁴ s. 119.011(3)(d), F.S.

Section 8. Amends s. 119.011(3)(d), F.S. to provide that criminal intelligence and criminal investigative information shall not be considered active in certain circumstances.

Section 9. Amends s. 119.19, F.S. to modify date contained in section.

Section 10. Reenacts s. 922.095, F.S.

Section 11. Reenacts s. 922.108, F.S.

Section 12. Reenacts s. 924.055, F.S.

Section 13. Amends s. 924.056, F.S. to change reference from January 14, 2000 to July 1, 2007; deletes reference to a capital postconviction motion not being fully pled unless it satisfies the requirements of any superseding rule of court.

Section 14. Amends s. 924.057, F.S. to modify references to specific dates; deletes reference to superseding rule.

Section 15. Amends s. 924.058, F.S. to modify references to specific dates; deletes reference to rules adopted by Florida Supreme Court.

Section 16. Amends s. 924.059, F.S. to modify references to specific dates; deletes reference to rules adopted by Florida Supreme Court.

Section 17. Reenacts s. 924.395, F.S.

Section 18. Requires supreme court to submit to the legislature rules proposed by the judicial conference for the implementation of this act.

Section 19. Repeals Rule 3.850 and 3.851, Florida Rules of Criminal Procedure to the extent inconsistent with this act; repeals Rule 3.852.

Section 20. Provides severability clause.

Section 21. Provides that act shall take effect July 1, 2007, contingent upon voter approval of HJR 1007 in the General Election of 2006; provides that repeal of rules of procedure shall take effect only if act is passed by affirmative vote of 2/3 membership of each house of Legislature.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The primary fiscal impact of the bill results from incurring costs at the beginning of the appeals process that otherwise would not materialize until several years after imposition of the original sentence. This bill would require a court to appoint a postconviction attorney while a capital case is still in the direct appeal stage. As a result, if a capital defendant is indigent, the state will be required to pay for the defendant to be represented by two different attorneys in parallel proceedings. In cases in which the case is reversed on direct appeal, the postconviction proceedings would be rendered moot. Strict enforcement of the time limitations, the requirement that motions be fully pled, and the limitation on successive motions could have a positive fiscal impact. To the extent that the provisions of the bill cause capital cases to be resolved more quickly, there could be a savings to the state in litigation costs and even in incarceration costs.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

See above.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

As discussed above, in Allen v. Butterworth, the Florida Supreme Court struck down the DPRA based on a finding that the legislature had unconstitutionally encroached on the Court's exclusive power to adopt rules for the practice and procedure in all courts. The passage of this bill is contingent on the passage of HJR 1007 by the legislature and its approval by the voters in the 2006 General Election. HJR 10007 amends the Florida constitution to give the legislature the authority to approve rule of practice and procedure governing criminal and postconviction proceedings.

In the Allen opinion, the court also stated the following:

Further, although our holding is based on a separation of powers claim, we find that some sections of the DPRA also violate due process and equal protection. The successive motion standard of the DPRA prohibits otherwise meritorious claims from being raised in violation of due process. Additionally, the successive motion standard applies only to capital prisoners in violation of the principles of equal protection.

Other than this conclusory statement, the court provided no further analysis for its comments relating to due process and equal protection.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES