

1 A bill to be entitled
2 An act relating to the death penalty; providing a popular
3 name; amending s. 27.51, F.S.; prohibiting certain public
4 defenders from representing certain persons sentenced to
5 death; providing for notification of the Florida Supreme
6 Court and appointment by the court of another public
7 defender; reenacting s. 27.702(1), F.S., relating to a
8 duty of the capital collateral regional counsel;
9 reenacting s. 27.703, F.S., relating to conflict of
10 interest and substitute counsel; reenacting s. 27.709(2),
11 F.S., relating to a duty of the Commission on Capital
12 Cases; reenacting s. 27.710, F.S., relating to a registry
13 of attorneys applying to represent persons in
14 postconviction capital collateral proceedings; reenacting
15 s. 27.711(3) and (13), F.S., relating to fees of attorneys
16 appointed as counsel in postconviction capital collateral
17 proceedings; amending s. 119.011, F.S.; revising the
18 definition of "active"; amending s. 119.19, F.S., relating
19 to capital postconviction public records production;
20 revising a threshold date to conform; reenacting s.
21 922.095, F.S., relating to grounds for a death warrant and
22 limitations of actions; reenacting s. 922.108, F.S.,
23 relating to sentencing orders in capital cases; reenacting
24 s. 924.055, F.S., relating to postconviction review in
25 capital cases; amending ss. 924.056 and 924.057, F.S.;
26 revising a threshold date to conform; revising criteria
27 for determining full pleading of a capital postconviction
28 action; amending ss. 924.058 and 924.059, F.S.; revising a

29 threshold date to conform; deleting a provision relating
 30 to Florida Supreme Court rule revision of certain capital
 31 postconviction relief procedures; reenacting s. 924.395,
 32 F.S., relating to sanctions; directing the Florida Supreme
 33 Court to submit to the Legislature implementation rules
 34 proposed by the Judicial Conference; repealing certain
 35 rules of criminal procedure; providing severability;
 36 specifying a contingent criterion for the repeal of
 37 certain rules of criminal procedure; providing a
 38 contingent effective date.

39
 40 WHEREAS, it is in the best interest of the administration
 41 of justice that a sentence of death ordered by a court of this
 42 state be carried out in a manner that is fair, just, and humane
 43 and that conforms to constitutional requirements, and

44 WHEREAS, in order for capital punishment to be fair, just,
 45 and humane for both the family of victims and for offenders,
 46 there must be a prompt and efficient administration of justice
 47 following any sentence of death ordered by the courts of this
 48 state, and

49 WHEREAS, in order to ensure the fair, just, and humane
 50 administration of capital punishment, it is necessary for the
 51 Legislature to comprehensively address both the method by which
 52 an execution is carried out and the processes by which an
 53 offender sentenced to death may pursue postconviction and
 54 collateral review of the judgment and the sentence of death, and

55 WHEREAS, the Death Penalty Reform Act of 2000, chapter
 56 2000-3, Laws of Florida, was designed to accomplish these

HB 1005

2005

57 objectives and was passed by the Legislature and approved by the
 58 Governor of Florida in January of 2000, and

59 WHEREAS, the Death Penalty Reform Act of 2000, chapter
 60 2000-3, Laws of Florida, was declared unconstitutional by the
 61 Florida Supreme Court three months after becoming a law in Allen
 62 v. Butterworth, 756 So.2d 52 Fla. 2000, as being an encroachment
 63 on the court's "exclusive power to 'adopt rules for the practice
 64 and procedure in all courts,'" and

65 WHEREAS, the Constitution of the State of Florida has been
 66 amended to authorize the Legislature to adopt, reject, or amend
 67 court rules of criminal procedure and rules of procedure
 68 governing postconviction proceedings which are proposed by the
 69 judicial conference, and

70 WHEREAS, many provisions of the Death Penalty Reform Act of
 71 2000 which were held unconstitutional may now be reenacted,
 72 while other provisions can be modified, and new provisions added
 73 to accomplish the same purpose, procedure, and objective of the
 74 Death Penalty Reform Act of 2000, NOW, THEREFORE,

75
 76 Be It Enacted by the Legislature of the State of Florida:

77
 78 Section 1. This act may be cited as the "Death Penalty
 79 Reform Act."

80 Section 2. Subsections (5) and (6) of section 27.51,
 81 Florida Statutes, are renumbered as subsections (6) and (7),
 82 respectively, and a new subsection (5) is added to said section,
 83 to read:

84 27.51 Duties of public defender.--

85 (5) When the public defender for a judicial circuit
 86 enumerated in subsection (4) has represented at trial a person
 87 sentenced to death, the public defender shall not represent that
 88 person in any direct appellate proceedings. That public defender
 89 shall notify the Florida Supreme Court within 10 days after
 90 filing a notice of appeal, and the court shall appoint another
 91 public defender enumerated in subsection (4) to represent the
 92 person in any direct appellate proceedings.

93 Section 3. Subsection (1) of section 27.702, Florida
 94 Statutes, is reenacted to read:

95 27.702 Duties of the capital collateral regional counsel;
 96 reports.--

97 (1) The capital collateral regional counsel shall
 98 represent each person convicted and sentenced to death in this
 99 state for the sole purpose of instituting and prosecuting
 100 collateral actions challenging the legality of the judgment and
 101 sentence imposed against such person in the state courts,
 102 federal courts in this state, the United States Court of Appeals
 103 for the Eleventh Circuit, and the United States Supreme Court.
 104 The capital collateral regional counsel and the attorneys
 105 appointed pursuant to s. 27.710 shall file only those
 106 postconviction or collateral actions authorized by statute. The
 107 three capital collateral regional counsels' offices shall
 108 function independently and be separate budget entities, and the
 109 regional counsels shall be the office heads for all purposes.
 110 The Justice Administrative Commission shall provide
 111 administrative support and service to the three offices to the
 112 extent requested by the regional counsels. The three regional

113 offices shall not be subject to control, supervision, or
 114 direction by the Justice Administrative Commission in any
 115 manner, including, but not limited to, personnel, purchasing,
 116 transactions involving real or personal property, and budgetary
 117 matters.

118 Section 4. Section 27.703, Florida Statutes, is reenacted
 119 to read:

120 27.703 Conflict of interest and substitute counsel.--

121 (1) The capital collateral regional counsel shall not
 122 accept an appointment or take any other action that will create
 123 a conflict of interest. If, at any time during the
 124 representation of a person, the capital collateral regional
 125 counsel determines that the continued representation of that
 126 person creates a conflict of interest, the sentencing court
 127 shall, upon application by the regional counsel, designate
 128 another regional counsel and, only if a conflict exists with the
 129 other two counsels, appoint one or more members of The Florida
 130 Bar to represent one or more of such persons.

131 (2) Appointed counsel shall be paid from funds
 132 appropriated to the Chief Financial Officer. The hourly rate may
 133 not exceed \$100. However, all appointments of private counsel
 134 under this section shall be in accordance with ss. 27.710 and
 135 27.711.

136 (3) Prior to employment, counsel appointed pursuant to
 137 this section must have participated in at least five felony jury
 138 trials, five felony appeals, or five capital postconviction
 139 evidentiary hearings, or any combination of at least five of
 140 such proceedings.

141 Section 5. Subsection (2) of section 27.709, Florida
142 Statutes, is reenacted to read:

143 27.709 Commission on Capital Cases.--

144 (2)(a) The commission shall review the administration of
145 justice in capital collateral cases, receive relevant public
146 input, review the operation of the capital collateral regional
147 counsel and private counsel appointed pursuant to ss. 27.710 and
148 27.711, and advise and make recommendations to the Governor,
149 Legislature, and Supreme Court.

150 (b) As part of its duties, the commission shall compile
151 and analyze case-tracking reports produced by the Supreme Court.
152 In analyzing these reports, the commission shall develop
153 statistics to identify trends and changes in case management and
154 case processing, identify and evaluate unproductive points of
155 delay, and generally evaluate the way cases are progressing. The
156 commission shall report these findings to the Legislature by
157 January 1 of each year.

158 (c) In addition, the commission shall receive complaints
159 regarding the practice of any office of regional counsel and
160 private counsel appointed pursuant to ss. 27.710 and 27.711 and
161 shall refer any complaint to The Florida Bar, the State Supreme
162 Court, or the Commission on Ethics, as appropriate.

163 Section 6. Section 27.710, Florida Statutes, is reenacted
164 to read:

165 27.710 Registry of attorneys applying to represent persons
166 in postconviction capital collateral proceedings; certification
167 of minimum requirements; appointment by trial court.--

168 (1) The executive director of the Commission on Capital
169 Cases shall compile and maintain a statewide registry of
170 attorneys in private practice who have certified that they meet
171 the minimum requirements of s. 27.704(2), who are available for
172 appointment by the court under this section to represent persons
173 convicted and sentenced to death in this state in postconviction
174 collateral proceedings, and who have attended within the last
175 year a continuing legal education program of at least 10 hours'
176 duration devoted specifically to the defense of capital cases,
177 if available. Continuing legal education programs meeting the
178 requirements of this rule offered by The Florida Bar or another
179 recognized provider and approved for continuing legal education
180 credit by The Florida Bar shall satisfy this requirement. The
181 failure to comply with this requirement may be cause for removal
182 from the list until the requirement is fulfilled. To ensure that
183 sufficient attorneys are available for appointment by the court,
184 when the number of attorneys on the registry falls below 50, the
185 executive director shall notify the chief judge of each circuit
186 by letter and request the chief judge to promptly submit the
187 names of at least three private attorneys who regularly practice
188 criminal law in that circuit and who appear to meet the minimum
189 requirements to represent persons in postconviction capital
190 collateral proceedings. The executive director shall send an
191 application to each attorney identified by the chief judge so
192 that the attorney may register for appointment as counsel in
193 postconviction capital collateral proceedings. As necessary, the
194 executive director may also advertise in legal publications and
195 other appropriate media for qualified attorneys interested in

196 registering for appointment as counsel in postconviction capital
197 collateral proceedings. Not later than September 1 of each year,
198 and as necessary thereafter, the executive director shall
199 provide to the Chief Justice of the Supreme Court, the chief
200 judge and state attorney in each judicial circuit, and the
201 Attorney General a current copy of its registry of attorneys who
202 are available for appointment as counsel in postconviction
203 capital collateral proceedings. The registry must be indexed by
204 judicial circuit and must contain the requisite information
205 submitted by the applicants in accordance with this section.

206 (2) To be eligible for court appointment as counsel in
207 postconviction capital collateral proceedings, an attorney must
208 certify on an application provided by the executive director
209 that he or she satisfies the minimum requirements for private
210 counsel set forth in s. 27.704(2).

211 (3) An attorney who applies for registration and court
212 appointment as counsel in postconviction capital collateral
213 proceedings must certify that he or she is counsel of record in
214 not more than four such proceedings and, if appointed to
215 represent a person in postconviction capital collateral
216 proceedings, shall continue such representation under the terms
217 and conditions set forth in s. 27.711 until the sentence is
218 reversed, reduced, or carried out or unless permitted to
219 withdraw from representation by the trial court. The court may
220 not permit an attorney to withdraw from representation without a
221 finding of sufficient good cause. The court may impose
222 appropriate sanctions if it finds that an attorney has shown bad
223 faith with respect to continuing to represent a defendant in a

224 postconviction capital collateral proceeding. This section does
 225 not preclude the court from reassigning a case to a capital
 226 collateral regional counsel following discontinuation of
 227 representation if a conflict of interest no longer exists with
 228 respect to the case.

229 (4) Each private attorney who is appointed by the court to
 230 represent a capital defendant must enter into a contract with
 231 the Chief Financial Officer. If the appointed attorney fails to
 232 execute the contract within 30 days after the date the contract
 233 is mailed to the attorney, the executive director of the
 234 Commission on Capital Cases shall notify the trial court. The
 235 Chief Financial Officer shall develop the form of the contract,
 236 function as contract manager, and enforce performance of the
 237 terms and conditions of the contract. By signing such contract,
 238 the attorney certifies that he or she intends to continue the
 239 representation under the terms and conditions set forth in the
 240 contract until the sentence is reversed, reduced, or carried out
 241 or until released by order of the trial court.

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

244 (b) Upon notification by the state attorney or the
 245 Attorney General that:

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

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

252
253 the executive director shall immediately notify the trial court
254 that imposed the sentence of death that the court must
255 immediately appoint an attorney, selected from the current
256 registry, to represent such person in collateral actions
257 challenging the legality of the judgment and sentence in the
258 appropriate state and federal courts. The court shall have the
259 authority to strike a notice of appearance filed by a Capital
260 Collateral Regional Counsel, if the court finds the notice was
261 not filed in good faith and may so notify the executive director
262 that the client is no longer represented by the Office of
263 Capital Collateral Regional Counsel. In making an assignment,
264 the court shall give priority to attorneys whose experience and
265 abilities in criminal law, especially in capital proceedings,
266 are known by the court to be commensurate with the
267 responsibility of representing a person sentenced to death. The
268 trial court must issue an order of appointment which contains
269 specific findings that the appointed counsel meets the statutory
270 requirements and has the high ethical standards necessary to
271 represent a person sentenced to death.

272 (6) More than one attorney may not be appointed and
273 compensated at any one time under s. 27.711 to represent a
274 person in postconviction capital collateral proceedings.
275 However, an attorney appointed under this section may designate
276 another attorney to assist him or her if the designated attorney
277 meets the qualifications of this section.

278 Section 7. Subsections (3) and (13) of section 27.711,
279 Florida Statutes, are reenacted to read:

280 27.711 Terms and conditions of appointment of attorneys as
281 counsel in postconviction capital collateral proceedings.--

282 (3) An attorney appointed to represent a capital defendant
283 is entitled to payment of the fees set forth in this section
284 only upon full performance by the attorney of the duties
285 specified in this section and approval of payment by the trial
286 court, and the submission of a payment request by the attorney,
287 subject to the availability of sufficient funding specifically
288 appropriated for this purpose. An attorney may not be
289 compensated under this section for work performed by the
290 attorney before July 1, 2003, while employed by the northern
291 regional office of the capital collateral counsel. The Chief
292 Financial Officer shall notify the executive director and the
293 court if it appears that sufficient funding has not been
294 specifically appropriated for this purpose to pay any fees which
295 may be incurred. The attorney shall maintain appropriate
296 documentation, including a current and detailed hourly
297 accounting of time spent representing the capital defendant. The
298 fee and payment schedule in this section is the exclusive means
299 of compensating a court-appointed attorney who represents a
300 capital defendant. When appropriate, a court-appointed attorney
301 must seek further compensation from the Federal Government, as
302 provided in 18 U.S.C. s. 3006A or other federal law, in habeas
303 corpus litigation in the federal courts.

304 (13) Prior to the filing of a motion for order approving
305 payment of attorney's fees, costs, or related expenses, the
306 assigned counsel shall deliver a copy of his intended billing,
307 together with supporting affidavits and all other necessary

308 documentation, to the Chief Financial Officer's named contract
 309 manager. The contract manager shall have 10 business days from
 310 receipt to review the billings, affidavit, and documentation for
 311 completeness and compliance with contractual and statutory
 312 requirements. If the contract manager objects to any portion of
 313 the proposed billing, the objection and reasons therefor shall
 314 be communicated to the assigned counsel. The assigned counsel
 315 may thereafter file his or her motion for order approving
 316 payment of attorney's fees, costs, or related expenses together
 317 with supporting affidavits and all other necessary
 318 documentation. The motion must specify whether the Chief
 319 Financial Officer's contract manager objects to any portion of
 320 the billing or the sufficiency of documentation and, if so, the
 321 reason therefor. A copy of the motion and attachments shall be
 322 served on the Chief Financial Officer's contract manager, who
 323 shall have standing to file pleadings and appear before the
 324 court to contest any motion for order approving payment. The
 325 fact that the Chief Financial Officer's contract manager has not
 326 objected to any portion of the billing or to the sufficiency of
 327 the documentation is not binding on the court, which retains
 328 primary authority and responsibility for determining the
 329 reasonableness of all billings for fees, costs, and related
 330 expenses, subject to statutory limitations.

331 Section 8. Paragraph (d) of subsection (3) of section
 332 119.011, Florida Statutes, is amended to read:

333 119.011 Definitions.--As used in this chapter, the term:

334 (3)

335 (d) The word "active" shall have the following meaning:

336 1. Criminal intelligence information shall be considered
 337 "active" as long as it is related to intelligence gathering
 338 conducted with a reasonable, good faith belief that it will lead
 339 to detection of ongoing or reasonably anticipated criminal
 340 activities.

341 2. Criminal investigative information shall be considered
 342 "active" as long as it is related to an ongoing investigation
 343 which is continuing with a reasonable, good faith anticipation
 344 of securing an arrest or prosecution in the foreseeable future.

345
 346 Except as provided in this paragraph ~~In addition~~, criminal
 347 intelligence and criminal investigative information shall be
 348 considered "active" while such information is directly related
 349 to pending prosecutions or appeals. With respect to capital
 350 cases in which the defendant has been sentenced to death, upon
 351 the imposition of the death sentence criminal intelligence and
 352 criminal investigative information shall be considered to be not
 353 "active." The word "active" shall not apply to information in
 354 cases which are barred from prosecution under the provisions of
 355 s. 775.15 or other statute of limitation.

356 Section 9. Section 119.19, Florida Statutes, is amended to
 357 read:

358 119.19 Capital postconviction public records production.--

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

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

362 (b) If a motion for postconviction relief in a capital
 363 case has been filed and a different judge has already been

364 assigned to that motion, the judge who is assigned to rule on
365 that motion.

366 (2) The Secretary of State shall establish and maintain a
367 records repository for the purpose of archiving capital
368 postconviction public records as provided for in this section.

369 (3)(a) Upon imposition of a death sentence or upon the
370 effective date of this act with respect to any case in which a
371 death sentence has been imposed but the mandate has not yet been
372 issued in an appeal affirming the sentence, the prosecuting
373 attorney shall promptly provide written notification to each law
374 enforcement agency involved in the case and to the Department of
375 Corrections. If available, the written notification must include
376 the defendant's date of birth, sex, race, and police-case
377 numbers included in the prosecuting attorney's case file.

378 (b) Within 60 days after receipt of notification, each law
379 enforcement agency involved in the case and the prosecuting
380 attorney who prosecuted the case shall copy, seal, and deliver
381 to the repository all public records, except for those filed in
382 the trial court, which were produced in the investigation or
383 prosecution of the case or, if the records are confidential or
384 exempt, to the clerk of the court in the county in which the
385 capital case was tried. Each agency shall bear the costs of its
386 own compliance.

387 (c) Within 60 days after notification, the Department of
388 Corrections shall copy, seal, and deliver to the repository or,
389 if the records are confidential or exempt, to the clerk of the
390 court in the county in which the capital case was tried all
391 public records determined by the department to be relevant to

392 the subject matter of a capital postconviction claim of the
393 person sentenced to death and where such production would not be
394 unduly burdensome for the department. The department shall bear
395 the costs.

396 (4)(a) The chief law enforcement officer of each law
397 enforcement agency that was involved in the case, whether
398 through an investigation, arrest, prosecution, or incarceration,
399 shall notify the Attorney General upon compliance with
400 subsection (3) and shall certify that to the best of his or her
401 knowledge and belief all public records in possession of the
402 agency or in possession of any employee of the agency have been
403 copied, indexed, and delivered to the records repository or, if
404 the records are confidential or exempt, to the clerk of the
405 court in the county in which the capital case was tried as
406 required by this section.

407 (b) The prosecuting attorney who prosecuted the case shall
408 provide written notification to the Attorney General upon
409 compliance with subsection (3) and shall certify that to the
410 best of his or her knowledge and belief all public records in
411 his or her possession have been copied, indexed, and delivered
412 to the records repository or, if the records are confidential or
413 exempt, to the clerk of the court in the county in which the
414 capital case was tried as required by this section.

415 (c) The Secretary of Corrections shall provide written
416 notification to the Attorney General upon compliance with
417 paragraph (3)(c) and shall certify that to the best of his or
418 her knowledge and belief all public records in the department's
419 possession have been copied, indexed, and delivered to the

420 records repository or, if the records are confidential or
421 exempt, to the clerk of the court in the county in which the
422 capital case was tried as required by this section.

423 (5)(a) Within 60 days after the imposition of a death
424 sentence or upon the effective date of this act with respect to
425 any case in which a death sentence has been imposed but the
426 mandate has not yet been issued in an appeal affirming the
427 sentence, both the public defender or private counsel for the
428 defendant and the prosecuting attorney involved in the case
429 shall provide written notification to the Attorney General of
430 the name and address of any person or agency in addition to
431 those persons and agencies listed in subsection (3) which may
432 have information pertinent to the case unless previously
433 provided to the capital collateral regional counsel or
434 postconviction private counsel. The Attorney General shall
435 promptly provide written notification to each identified person
436 or agency after receiving the information from the public
437 defender, private counsel for the defendant, or prosecuting
438 attorney and shall request that all public records in the
439 possession of the person or agency which pertain to the case be
440 copied, sealed, and delivered to the records repository.

441 (b) Within 60 days after receiving a request for public
442 records under paragraph (a), the person or agency shall provide
443 written notification to the Attorney General of compliance with
444 this subsection and shall certify that to the best of his or her
445 knowledge and belief all public records requested have been
446 copied, indexed, and delivered to the records repository or, if

447 the records are confidential or exempt, to the clerk of the
448 court in the county in which the capital case was tried.

449 (6)(a) Any public record under this section which is
450 confidential or exempt from the requirements of s. 119.07(1) and
451 s. 24(a), Art. I of the State Constitution must be separately
452 boxed, without being redacted, and sealed. The box must be
453 delivered to the clerk of court in the county in which the
454 capital case was tried. The outside of the box must clearly
455 identify the public records as exempt, and the seal may not be
456 broken without an order of the trial court. The outside of the
457 box must identify the nature of the public records and the legal
458 basis under which the public records are exempt.

459 (b) Such a box may be opened only for an inspection by the
460 trial court in camera and only after notice giving the agency
461 the option to have a representative present at the unsealing by
462 the court.

463 (7)(a) Within 180 days after a capital collateral regional
464 counsel or private counsel is appointed to represent a defendant
465 sentenced to death, or within 30 days after issuance of the
466 Florida Supreme Court's mandate affirming a death sentence,
467 whichever is later, the regional counsel, private counsel, or
468 other counsel who is a member of The Florida Bar and is
469 authorized by such counsel representing a defendant may send a
470 written demand for additional public records to each person or
471 agency submitting public records under subsection (3) and to
472 each person or agency identified as having information pertinent
473 to the case under subsection (5). Should the written demand
474 include requests for records associated with particular named

475 individuals, the written demand shall also include a brief
476 statement describing each named person's role in the case and
477 relationship to the defendant. Race, sex, and date of birth
478 shall also be included in the demand if the public defender,
479 private counsel, or capital collateral regional counsel has such
480 information. Each person or agency notified under this
481 subsection shall, within 60 days after receipt of the written
482 demand, deliver to the records repository or, if the records are
483 confidential or exempt, to the clerk of the court in the county
484 in which the capital case was tried any additional public
485 records in the possession of the person or agency which pertain
486 to the case and shall certify that to the best of his or her
487 knowledge and belief all additional public records have been
488 delivered or, if no additional public records are found, shall
489 recertify that the public records previously delivered are
490 complete.

491 (b) Within 25 days after receiving the written demand, the
492 agency or person may file an objection in the trial court
493 alleging that the request is overly broad or unduly burdensome.
494 Within 30 days after the filing of an objection, the trial court
495 shall hold a hearing and order an agency or person to produce
496 additional public records if it finds each of the following:

- 497 1. The regional counsel or private counsel has made a
498 timely and diligent search as provided in this section.
- 499 2. The regional or private counsel's written demand
500 identifies, with specificity, those additional public records
501 that are not at the repository.

502 3. The additional public records sought are relevant to
503 the subject matter of a capital postconviction relief or appear
504 reasonably calculated to lead to the discovery of admissible
505 evidence in prosecuting such claim.

506 4. The additional public records request is not overbroad
507 or unduly burdensome.

508 (c) This statute shall not be a basis for renewing
509 requests that have been initiated previously or for relitigating
510 issues pertaining to production of public records upon which a
511 court has ruled.

512 (d) If, on June 1, 2006 ~~October 1, 1998~~, the defendant had
513 a Rule 3.850 motion denied and no Rule 3.850 motion was pending,
514 no additional requests shall be made by capital collateral
515 regional counsel or contracted private counsel until a death
516 warrant is signed by the Governor and an execution is scheduled.
517 Within 10 days of the signing of the death warrant, capital
518 collateral regional counsel or contracted private counsel may
519 request of a person or agency that the defendant has previously
520 requested to produce records any records previously requested to
521 which no objection was raised or sustained, but which the agency
522 has received or produced since the previous request or which for
523 any reason the agency has in its possession and did not produce
524 within 10 days of the receipt of the previous notice or such
525 shorter time period ordered by the court to comply with the time
526 for the scheduled execution. The person or agency shall produce
527 the record or shall file in the trial court an affidavit stating
528 that it does not have the requested record or that the record
529 has been produced previously.

530 (8)(a) After production of additional public records or
531 recertification as provided in subsection (7), the regional
532 counsel or the private counsel is prohibited from making any
533 further public records requests under this chapter. An agency is
534 not required to produce additional public records except by
535 court order as provided in this subsection.

536 (b) In order to obtain additional public records beyond
537 those provided under subsection (7), the regional counsel,
538 private counsel, or other counsel who is a member of The Florida
539 Bar and is authorized by the regional counsel or private counsel
540 shall file an affidavit in the trial court which attests that he
541 or she has made a timely and diligent search of the records
542 repository and specifically identifies those additional public
543 records that are not at the repository and are relevant to the
544 subject matter of a capital postconviction claim or are
545 reasonably calculated to lead to the discovery of admissible
546 evidence in the prosecution of such claim. The affiant shall
547 provide a copy of the affidavit to all affected agencies upon
548 the filing of such affidavit in the trial court.

549 (c) Within 15 days after the filing of an affidavit, the
550 trial court shall order an agency to produce additional public
551 records only if it finds each of the following:

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

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

557 3. The additional public records sought are relevant to
 558 the subject matter of a claim for capital postconviction relief
 559 or appear reasonably calculated to lead to the discovery of
 560 admissible evidence in prosecuting such claim.

561 4. The additional public records request is not overbroad
 562 or unduly burdensome.

563 (9) The Secretary of State shall provide the personnel,
 564 supplies, and any necessary equipment used by the capital
 565 collateral regional counsel or private counsel to copy records
 566 held at the records repository.

567 (10) The trial court shall resolve any dispute that arises
 568 under this section, unless the appellate court has exclusive
 569 jurisdiction.

570 (11) The capital collateral regional counsel or private
 571 counsel shall not solicit another person to make a request for
 572 public records on behalf of the regional counsel or private
 573 counsel. The trial court shall impose appropriate sanctions
 574 against any regional counsel or private counsel found in
 575 violation of this subsection.

576 (12) Sixty days after a capital sentence is carried out,
 577 60 days after a defendant is released from incarceration
 578 following the granting of a pardon or reversal of the sentence,
 579 or 60 days after the defendant has been resentenced to a term of
 580 years, the Attorney General shall provide written notification
 581 to the Secretary of State, who may then destroy the records held
 582 by the records repository which pertain to that case.

583 (13) This section pertains only to the production of
 584 records for capital postconviction defendants and does not

585 change or alter any time limitations provided by law governing
586 capital postconviction claims and actions. Furthermore, this
587 section does not affect, expand, or limit the production of
588 public records for any purposes other than use in a capital
589 postconviction proceeding. Nothing in this section constitutes
590 grounds to expand the time limitations or allow any pleading in
591 violation of chapter 924 or to stay an execution or death
592 warrant.

593 Section 10. Section 922.095, Florida Statutes, is
594 reenacted to read:

595 922.095 Grounds for death warrant; limitations of
596 actions.--A person who is convicted and sentenced to death must
597 pursue all possible collateral remedies within the time limits
598 provided by statute. Failure to seek relief within the statutory
599 time limits constitutes grounds for issuance of a death warrant
600 under s. 922.052 or s. 922.14. Any claim not pursued within the
601 statutory time limits is barred. No claim filed after the time
602 required by law shall be grounds for a judicial stay of any
603 warrant.

604 Section 11. Section 922.108, Florida Statutes, is
605 reenacted to read:

606 922.108 Sentencing orders in capital cases.--The sentence
607 of death must not specify any particular method of execution.
608 The wording or form of the sentencing order shall not be grounds
609 for reversal of any sentence.

610 Section 12. Section 924.055, Florida Statutes, is
611 reenacted to read:

612 924.055 Postconviction review in capital cases;
613 legislative findings and intent.--

614 (1) It is the intent of the Legislature to reduce delays
615 in capital cases and to ensure that all appeals and
616 postconviction actions in capital cases are resolved within 5
617 years after the date a sentence of death is imposed in the
618 circuit court. All capital postconviction actions must be filed
619 as early as possible after the imposition of a sentence of death
620 which may be during a direct appeal of the conviction and
621 sentence. A person sentenced to death or that person's capital
622 postconviction counsel must file any postconviction legal action
623 in compliance with the statutes of limitation established in s.
624 924.056 and elsewhere in this chapter. Except as expressly
625 allowed by s. 924.056(5), a person sentenced to death or that
626 person's capital postconviction counsel may not file more than
627 one postconviction action in a sentencing court and one appeal
628 therefrom to the Florida Supreme Court, unless authorized by
629 law.

630 (2) It is the further intent of the Legislature that no
631 state resources be expended in violation of this act. In the
632 event that any state employee or party contracting with the
633 state violates the provisions of this act, the Attorney General
634 shall deliver to the Speaker of the House of Representatives and
635 the President of the Senate a copy of any court pleading or
636 order that describes or adjudicates a violation.

637 Section 13. Section 924.056, Florida Statutes, is amended
638 to read:

639 924.056 Commencement of capital postconviction actions for
 640 which sentence of death is imposed on or after July 1, 2007
 641 ~~January 14, 2000~~; limitations on actions.--

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

646 (a) Within 15 days after imposing a sentence of death, the
 647 sentencing court shall appoint the appropriate office of the
 648 capital collateral regional counsel or private postconviction
 649 counsel, unless the defendant declines to accept postconviction
 650 legal representation in which case the state shall not provide
 651 postconviction legal representation. Within 30 days after the
 652 appointment, the capital collateral regional counsel shall file
 653 a notice of appearance in the trial court or a motion to
 654 withdraw based on a conflict of interest or for good cause. The
 655 court shall appoint private counsel pursuant to part IV of
 656 chapter 27 in any case in which the capital collateral regional
 657 counsel files a motion to withdraw, or otherwise informs the
 658 court that the capital collateral regional counsel cannot comply
 659 with the provisions of chapter 924 or in which the court
 660 determines that the agency cannot comply with chapter 924 or
 661 other applicable laws.

662 (b) The defendant who accepts the appointment of
 663 postconviction counsel must cooperate with and assist
 664 postconviction counsel. If the sentencing court finds the
 665 defendant is obstructing the postconviction process, the
 666 defendant shall not be entitled to any further postconviction

667 legal representation provided by the state. Each attorney
668 participating in a capital case on behalf of a defendant must
669 provide all information pertaining to the capital case which the
670 attorney obtained during the representation of that defendant to
671 that defendant's capital postconviction counsel. Postconviction
672 counsel must maintain the confidentiality of any confidential
673 information received from any attorney for that defendant and is
674 subject to the same penalties as the providing attorney for
675 violating confidentiality. If the defendant requests without
676 good cause that any attorney appointed under this subsection be
677 removed or replaced, the court shall notify the defendant that
678 no further state resources may be expended for postconviction
679 representation for that defendant, unless the defendant
680 withdraws the request to remove or replace postconviction
681 counsel. If the defendant does not immediately withdraw his or
682 her request, then any appointed attorney must be removed from
683 the case and no further state resources may be expended for the
684 defendant's postconviction representation. The prosecuting
685 attorney and the defendant's trial counsel shall provide the
686 defendant or, if represented, the defendant's capital
687 postconviction counsel with copies of all pretrial and trial
688 discovery and all contents of the prosecuting attorney's file,
689 except for information that the prosecuting attorney has a legal
690 right under state or federal law to withhold from disclosure.

691 (2) The clerk of the court shall provide a copy of the
692 record on appeal to the capital postconviction attorney and the
693 state attorney and Attorney General within 60 days after the
694 sentencing court appoints postconviction counsel. However, the

695 court may grant an extension of up to 30 days when extraordinary
696 circumstances exist.

697 (3)(a) With respect to all capital postconviction actions
698 commenced after the effective date of this act, a capital
699 postconviction action is not commenced until the defendant or
700 the defendant's postconviction counsel files a fully pled
701 postconviction action in the sentencing court or, as provided in
702 subsection (4), the Florida Supreme Court. For the purposes of
703 this subsection, a fully pled capital postconviction action is
704 one which complies with s. 924.058(2) or any superseding rule
705 adopted by the Florida Supreme Court. Except as provided by
706 subsection (4) or subsection (5), all capital postconviction
707 actions shall be barred unless they are commenced within 180
708 days after the filing of the appellant's initial brief in the
709 Florida Supreme Court on direct appeal of the defendant's
710 capital conviction and sentence. The fully pled postconviction
711 action must raise all cognizable claims that the defendant's
712 judgment or sentence was entered in violation of the
713 Constitution or laws of the United States or the Constitution or
714 the laws of the state, including any claim of ineffective
715 assistance of trial counsel, allegations of innocence, or that
716 the state withheld evidence favorable to the defendant. No claim
717 may be considered in such action which could have or should have
718 been raised before trial, at trial, or if preserved on direct
719 appeal. For the purposes of this subsection, a capital
720 postconviction action is not fully pled unless it satisfies the
721 requirements of s. 924.058(2) ~~or any superseding rule of court.~~

722 (b) No claim of ineffective assistance of collateral
723 postconviction counsel may be raised in a state court.

724 (c) The pendency of public records requests or litigation,
725 or the pendency of other litigation, or the failure of the
726 defendant or the defendant's postconviction counsel to timely
727 prosecute a case shall not constitute cause for the court to
728 grant any request for an extension of time or other delay. No
729 appeal may be taken from a court's ruling denying such a request
730 for an extension of time or other delay.

731 (d) The time for commencement of the postconviction action
732 may not be tolled for any reason or cause. All claims raised by
733 amendment of a defendant's capital postconviction action are
734 barred if the claims are raised outside the time limitations
735 provided by statute for the filing of capital postconviction
736 actions.

737 (4) All capital postconviction actions raising any claim
738 of ineffective assistance of direct appeal counsel are barred
739 unless they are commenced in conformity with this subsection.
740 The defendant or the defendant's capital postconviction counsel
741 shall file an action in the Florida Supreme Court raising any
742 claim of ineffective assistance of direct appeal counsel within
743 45 days after mandate issues affirming the death sentence in the
744 direct appeal.

745 (5) Regardless of when a sentence is imposed, all
746 successive capital postconviction actions are barred unless
747 commenced by filing a fully pled postconviction action within 90
748 days after the facts giving rise to the cause of action were
749 discovered or should have been discovered with the exercise of

750 due diligence. Such claim shall be barred pursuant to subsection
 751 (3) or s. 924.057 unless the facts underlying the claim, if
 752 proven and viewed in light of the evidence as a whole, would be
 753 sufficient to establish by clear and convincing evidence that,
 754 but for constitutional error, no reasonable fact finder would
 755 have found the defendant guilty of the underlying offense.
 756 Additionally, the facts underlying this claim must have been
 757 unknown to the defendant or his or her attorney and must be such
 758 that they could not have been ascertained by the exercise of due
 759 diligence prior to filing the earlier postconviction motion. The
 760 time period allowed for filing a successive collateral
 761 postconviction action shall not be grounds for a stay.

762 Section 14. Section 924.057, Florida Statutes, is amended
 763 to read:

764 924.057 Limitation on postconviction cases in which the
 765 death sentence was imposed before July 1, 2007 ~~January 14,~~
 766 ~~2000~~.--This section shall govern all capital postconviction
 767 actions in cases in which the trial court imposed the sentence
 768 of death before the effective date of this act.

769 (1) Nothing in this act shall expand any right or time
 770 period allowed for the prosecution of capital postconviction
 771 claims in any case in which a postconviction action was
 772 commenced or should have been commenced prior to the effective
 773 date of this act.

774 (2) Except as provided in s. 924.056(5), in every case in
 775 which mandate has issued in the Florida Supreme Court concluding
 776 at least one capital postconviction action in the state court
 777 system, a successive capital postconviction action shall be

778 | barred on the effective date of this act, unless the rules or
 779 | law in effect immediately prior to the effective date of this
 780 | act permitted the successive postconviction action, in which
 781 | case the action shall be barred on the date provided in
 782 | subsection (4).

783 | (3) All capital postconviction actions pending on the
 784 | effective date of this act shall be barred, and shall be
 785 | dismissed with prejudice, unless fully pled in substantial
 786 | compliance with s. 924.058, or with any pending ~~superseding~~
 787 | order ~~or~~ rule, on or before:

788 | (a) The time in which the action would be barred by this
 789 | section if the action had not begun prior to the effective date
 790 | of this act, or

791 | (b) Any earlier date provided by the rules or law, or
 792 | court order, in effect immediately prior to the effective date
 793 | of this act.

794 | (4) In every capital case in which the trial court imposed
 795 | the sentence of death before the effective date of this act, a
 796 | capital postconviction action shall be barred unless it is
 797 | commenced on or before July 1, 2008 ~~January 8, 2001~~, or any
 798 | earlier date provided by the rule or law in effect immediately
 799 | prior to July 1, 2007 ~~the effective date of this act~~.

800 | Section 15. Section 924.058, Florida Statutes, is amended
 801 | to read:

802 | 924.058 Capital postconviction claims.--This section shall
 803 | regulate the procedures in actions for capital postconviction
 804 | relief commencing after July 1, 2007 ~~the effective date of this~~
 805 | ~~act unless and until such procedures are revised by rule or~~

806 ~~rules adopted by the Florida Supreme Court which specifically~~
 807 ~~reference this section.~~

808 (1) The defendant or the defendant's capital
 809 postconviction counsel shall not file more than one capital
 810 postconviction action in the sentencing court, one appeal
 811 therefrom in the Florida Supreme Court, and one original capital
 812 postconviction action alleging the ineffectiveness of direct
 813 appeal counsel in the Florida Supreme Court, except as expressly
 814 allowed by s. 924.056(5).

815 (2) The defendant's postconviction action shall be filed
 816 under oath and shall be fully pled to include:

817 (a) The judgment or sentence under attack and the court
 818 which rendered the same;

819 (b) A statement of each issue raised on appeal and the
 820 disposition thereof;

821 (c) Whether a previous postconviction action has been
 822 filed and, if so, the disposition of all previous claims raised
 823 in postconviction litigation; if a previous action or actions
 824 have been filed, the reason or reasons the claim or claims in
 825 the present motion were not raised in the former action or
 826 actions;

827 (d) The nature of the relief sought;

828 (e) A fully detailed allegation of the factual basis for
 829 any claim of legal or constitutional error asserted, including
 830 the attachment of any document supporting the claim, the name
 831 and address of any witness, the attachment of affidavits of the
 832 witnesses or a proffer of the testimony; and

833 (f) A concise memorandum of applicable case law as to each
 834 claim asserted.

835 (3) Any capital postconviction action that does not comply
 836 with any requirement in this section or other applicable
 837 provision in law shall not be considered in any state court. No
 838 amendment of a defendant's capital postconviction action shall
 839 be allowed by the court after the expiration of the time
 840 limitation provided by statute for the commencement of capital
 841 postconviction actions.

842 (4) The prosecuting attorney or Attorney General shall be
 843 allowed to file one response to any capital postconviction
 844 action within 60 days after receipt of the defendant's fully
 845 pled capital postconviction action.

846 Section 16. Section 924.059, Florida Statutes, is amended
 847 to read:

848 924.059 Time limitations and judicial review in capital
 849 postconviction actions.--This section shall regulate the
 850 procedures in actions for capital postconviction relief
 851 commencing after July 1, 2007 ~~the effective date of this act~~
 852 ~~unless and until such procedures are revised by rule or rules~~
 853 ~~adopted by the Florida Supreme Court which specifically~~
 854 ~~reference this section.~~

855 (1) No amendment of a defendant's capital postconviction
 856 action shall be allowed by the court after the expiration of the
 857 time periods provided by statute for the filing of capital
 858 postconviction claims.

859 (2) Within 30 days after the state files its answer, the
 860 sentencing court shall conduct a hearing to determine if an

861 evidentiary hearing is required, if a hearing has been requested
862 by the defendant or the defendant's capital postconviction
863 counsel. Within 30 days thereafter, the court shall rule whether
864 an evidentiary hearing is required and, if so, shall schedule an
865 evidentiary hearing to be held within 90 days. If the court
866 determines that the defendant's capital postconviction action is
867 legally insufficient or the action, files, and records in the
868 case show that the defendant is not entitled to relief, the
869 court shall, within 45 days thereafter, deny the action, setting
870 forth a detailed rationale therefore, and attaching or
871 referencing such portions of the record as are necessary to
872 allow for meaningful appellate review.

873 (3) Within 10 days after the order scheduling an
874 evidentiary hearing, the defendant or the defendant's capital
875 postconviction counsel shall disclose the names and addresses of
876 any potential witnesses not previously disclosed, with their
877 affidavits or a proffer of their testimony. Upon receipt of the
878 defendant's disclosure, the state shall have 10 days within
879 which to provide reciprocal disclosure. If the defendant intends
880 to offer expert testimony of his or her mental status, the state
881 shall be entitled to have the defendant examined by an expert of
882 its choosing. All of the defendant's mental status claims shall
883 be deemed denied as a matter of law if the defendant fails to
884 cooperate with the state's expert. Reports provided by expert
885 witnesses shall be disclosed by opposing counsel upon receipt.

886 (4) Following the evidentiary hearing, the court shall
887 order the transcription of the proceeding which shall be filed
888 within 30 days. Within 30 days after receipt of the transcript,

889 the sentencing court shall issue a final order granting or
 890 denying postconviction relief, making detailed findings of fact
 891 and conclusions of law with respect to any allegation asserted.

892 (5) An appeal may be taken to the Supreme Court of Florida
 893 within 15 days from the entry of a final order on a capital
 894 postconviction action. No interlocutory appeal shall be
 895 permitted. No motion for rehearing shall be permitted. The clerk
 896 of the court shall promptly serve upon all parties a copy of the
 897 final order.

898 (6) If the sentencing court has denied the capital
 899 postconviction action without an evidentiary hearing, the appeal
 900 to the Florida Supreme Court will be expeditiously resolved in a
 901 summary fashion. On appeal, the case shall be initially reviewed
 902 for a determination whether the sentencing court correctly
 903 resolved the defendant's claims without an evidentiary hearing.
 904 If the Florida Supreme Court determines an evidentiary hearing
 905 should have been held, the decision to remand for an evidentiary
 906 hearing may be made by an order without an opinion. Jurisdiction
 907 shall be relinquished to the trial court for a specified period,
 908 which must be scheduled within 30 days and must be concluded
 909 within 90 days, for the purpose of conducting an evidentiary
 910 hearing on any issue identified by the Florida Supreme Court's
 911 order. Thereafter, the record shall be supplemented with the
 912 hearing transcript.

913 (7) The Florida Supreme Court shall render its decision
 914 within 180 days after receipt of the record on appeal. If a
 915 denial of an action for postconviction relief is affirmed, the
 916 Governor may proceed to issue a warrant for execution.

917 (8) A capital postconviction action filed in violation of
 918 the time limitations provided by statute is barred, and all
 919 claims raised therein are waived. A state court shall not
 920 consider any capital postconviction action filed in violation of
 921 s. 924.056 or s. 924.057. The Attorney General shall deliver to
 922 the Governor, the President of the Senate, and the Speaker of
 923 the House of Representatives a copy of any pleading or order
 924 that alleges or adjudicates any violation of this provision.

925 Section 17. Section 924.395, Florida Statutes, is
 926 reenacted to read:

927 924.395 Sanctions.--

928 (1) The Legislature strongly encourages the courts,
 929 through their inherent powers and pursuant to this section, to
 930 impose sanctions against any person within the court's
 931 jurisdiction who is found by a court, in a capital
 932 postconviction proceeding or appeal therefrom, to have:

933 (a) Abused a petition for extraordinary relief,
 934 postconviction motion, or appeal therefrom;

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

938 (c) Improperly withheld evidence or testimony; or

939 (d) Adversely affected the orderly administration of
 940 justice.

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

944 (a) Dismissal of a pleading;

- 945 (b) Disciplinary sanctions;
- 946 (c) A fine; and
- 947 (d) Any other sanction that is available to the court
- 948 under its inherent powers.

949 Section 18. The Supreme Court is directed to submit to the
 950 President of the Senate and the Speaker of the House of
 951 Representatives by March 1, 2007, rules proposed by the Judicial
 952 Conference for the implementation of this act.

953 Section 19. Rule 3.850, Florida Rules of Criminal
 954 Procedure, is repealed to the extent inconsistent with this act.
 955 Rule 3.851, Florida Rules of Criminal Procedure is repealed to
 956 the extent inconsistent with this act. Rule 3.852, Florida Rules
 957 of Criminal Procedure, is repealed.

958 Section 20. If any provision of this act or the
 959 application thereof to any person or circumstance is held
 960 invalid, the invalidity does not affect other provisions or
 961 applications of the act which can be given effect without the
 962 invalid provision or application, and to this end the provisions
 963 of this act are declared severable.

964 Section 21. This act shall take effect July 1, 2007,
 965 contingent upon voter approval of HJR _____ in the General
 966 Election of 2006, but section 19 shall take effect only if this
 967 act is passed by the affirmative vote of two-thirds of the
 968 membership of each house of the Legislature.