

CHAMBER ACTION

1 The Justice Council recommends the following:

2  
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to the death penalty; providing a popular  
7 name; amending s. 27.51, F.S.; prohibiting certain public  
8 defenders from representing certain persons sentenced to  
9 death; providing for notification of the Florida Supreme  
10 Court and appointment by the court of another public  
11 defender; reenacting s. 27.702(1), F.S., relating to a  
12 duty of the capital collateral regional counsel;  
13 reenacting s. 27.703, F.S., relating to conflict of  
14 interest and substitute counsel; reenacting s. 27.709(2),  
15 F.S., relating to a duty of the Commission on Capital  
16 Cases; reenacting s. 27.710, F.S., relating to a registry  
17 of attorneys applying to represent persons in  
18 postconviction capital collateral proceedings; reenacting  
19 s. 27.711(3) and (13), F.S., relating to fees of attorneys  
20 appointed as counsel in postconviction capital collateral  
21 proceedings; amending s. 119.011, F.S.; revising the  
22 definition of "active"; amending s. 119.19, F.S., relating  
23 to capital postconviction public records production;

24 | revising a threshold date to conform; reenacting s.  
 25 | 922.095, F.S., relating to grounds for a death warrant and  
 26 | limitations of actions; reenacting s. 922.108, F.S.,  
 27 | relating to sentencing orders in capital cases; reenacting  
 28 | s. 924.055, F.S., relating to postconviction review in  
 29 | capital cases; amending ss. 924.056 and 924.057, F.S.;  
 30 | revising a threshold date to conform; revising criteria  
 31 | for determining full pleading of a capital postconviction  
 32 | action; amending ss. 924.058 and 924.059, F.S.; revising a  
 33 | threshold date to conform; deleting a provision relating  
 34 | to Florida Supreme Court rule revision of certain capital  
 35 | postconviction relief procedures; reenacting s. 924.395,  
 36 | F.S., relating to sanctions; repealing certain rules of  
 37 | criminal procedure; providing severability; specifying a  
 38 | contingent criterion for the repeal of certain rules of  
 39 | criminal procedure; providing a contingent effective date.  
 40 |

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

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

50 | WHEREAS, in order to ensure the fair, just, and humane  
 51 | administration of capital punishment, it is necessary for the

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52 | Legislature to comprehensively address both the method by which  
 53 | an execution is carried out and the processes by which an  
 54 | offender sentenced to death may pursue postconviction and  
 55 | collateral review of the judgment and the sentence of death, and

56 |       WHEREAS, the Death Penalty Reform Act of 2000, chapter  
 57 | 2000-3, Laws of Florida, was designed to accomplish these  
 58 | objectives and was passed by the Legislature and approved by the  
 59 | Governor of Florida in January of 2000, and

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

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

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

76 |  
 77 | Be It Enacted by the Legislature of the State of Florida:  
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79 Section 1. This act may be cited as the "Death Penalty  
80 Reform Act."

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

85 27.51 Duties of public defender.--

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

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

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

98 (1) The capital collateral regional counsel shall  
99 represent each person convicted and sentenced to death in this  
100 state for the sole purpose of instituting and prosecuting  
101 collateral actions challenging the legality of the judgment and  
102 sentence imposed against such person in the state courts,  
103 federal courts in this state, the United States Court of Appeals  
104 for the Eleventh Circuit, and the United States Supreme Court.  
105 The capital collateral regional counsel and the attorneys  
106 appointed pursuant to s. 27.710 shall file only those

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107 | postconviction or collateral actions authorized by statute. The  
 108 | three capital collateral regional counsels' offices shall  
 109 | function independently and be separate budget entities, and the  
 110 | regional counsels shall be the office heads for all purposes.  
 111 | The Justice Administrative Commission shall provide  
 112 | administrative support and service to the three offices to the  
 113 | extent requested by the regional counsels. The three regional  
 114 | offices shall not be subject to control, supervision, or  
 115 | direction by the Justice Administrative Commission in any  
 116 | manner, including, but not limited to, personnel, purchasing,  
 117 | transactions involving real or personal property, and budgetary  
 118 | matters.

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

121 |       27.703 Conflict of interest and substitute counsel.--

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

132 |       (2) Appointed counsel shall be paid from funds  
 133 | appropriated to the Chief Financial Officer. The hourly rate may  
 134 | not exceed \$100. However, all appointments of private counsel

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135 | under this section shall be in accordance with ss. 27.710 and  
136 | 27.711.

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

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

144 |       27.709 Commission on Capital Cases.--

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

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

159 |       (c) In addition, the commission shall receive complaints  
160 | regarding the practice of any office of regional counsel and  
161 | private counsel appointed pursuant to ss. 27.710 and 27.711 and

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162 shall refer any complaint to The Florida Bar, the State Supreme  
163 Court, or the Commission on Ethics, as appropriate.

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

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

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

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190 requirements to represent persons in postconviction capital  
191 collateral proceedings. The executive director shall send an  
192 application to each attorney identified by the chief judge so  
193 that the attorney may register for appointment as counsel in  
194 postconviction capital collateral proceedings. As necessary, the  
195 executive director may also advertise in legal publications and  
196 other appropriate media for qualified attorneys interested in  
197 registering for appointment as counsel in postconviction capital  
198 collateral proceedings. Not later than September 1 of each year,  
199 and as necessary thereafter, the executive director shall  
200 provide to the Chief Justice of the Supreme Court, the chief  
201 judge and state attorney in each judicial circuit, and the  
202 Attorney General a current copy of its registry of attorneys who  
203 are available for appointment as counsel in postconviction  
204 capital collateral proceedings. The registry must be indexed by  
205 judicial circuit and must contain the requisite information  
206 submitted by the applicants in accordance with this section.

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

212 (3) An attorney who applies for registration and court  
213 appointment as counsel in postconviction capital collateral  
214 proceedings must certify that he or she is counsel of record in  
215 not more than four such proceedings and, if appointed to  
216 represent a person in postconviction capital collateral  
217 proceedings, shall continue such representation under the terms



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218 and conditions set forth in s. 27.711 until the sentence is  
219 reversed, reduced, or carried out or unless permitted to  
220 withdraw from representation by the trial court. The court may  
221 not permit an attorney to withdraw from representation without a  
222 finding of sufficient good cause. The court may impose  
223 appropriate sanctions if it finds that an attorney has shown bad  
224 faith with respect to continuing to represent a defendant in a  
225 postconviction capital collateral proceeding. This section does  
226 not preclude the court from reassigning a case to a capital  
227 collateral regional counsel following discontinuation of  
228 representation if a conflict of interest no longer exists with  
229 respect to the case.

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

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

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

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

250 2. A person under sentence of death who was previously  
 251 represented by private counsel is currently unrepresented in a  
 252 postconviction capital collateral proceeding,  
 253

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

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

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

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

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

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301 capital defendant. When appropriate, a court-appointed attorney  
302 must seek further compensation from the Federal Government, as  
303 provided in 18 U.S.C. s. 3006A or other federal law, in habeas  
304 corpus litigation in the federal courts.

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

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329 primary authority and responsibility for determining the  
330 reasonableness of all billings for fees, costs, and related  
331 expenses, subject to statutory limitations.

332 Section 8. Paragraph (d) of subsection (3) of section  
333 119.011, Florida Statutes, is amended to read:

334 119.011 Definitions.--As used in this chapter, the term:  
335 (3)

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

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

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

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

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

359 119.19 Capital postconviction public records production.--

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

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

363 (b) If a motion for postconviction relief in a capital  
364 case has been filed and a different judge has already been  
365 assigned to that motion, the judge who is assigned to rule on  
366 that motion.

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

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

379 (b) Within 60 days after receipt of notification, each law  
380 enforcement agency involved in the case and the prosecuting  
381 attorney who prosecuted the case shall copy, seal, and deliver  
382 to the repository all public records, except for those filed in  
383 the trial court, which were produced in the investigation or  
384 prosecution of the case or, if the records are confidential or

385 exempt, to the clerk of the court in the county in which the  
386 capital case was tried. Each agency shall bear the costs of its  
387 own compliance.

388 (c) Within 60 days after notification, the Department of  
389 Corrections shall copy, seal, and deliver to the repository or,  
390 if the records are confidential or exempt, to the clerk of the  
391 court in the county in which the capital case was tried all  
392 public records determined by the department to be relevant to  
393 the subject matter of a capital postconviction claim of the  
394 person sentenced to death and where such production would not be  
395 unduly burdensome for the department. The department shall bear  
396 the costs.

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

408 (b) The prosecuting attorney who prosecuted the case shall  
409 provide written notification to the Attorney General upon  
410 compliance with subsection (3) and shall certify that to the  
411 best of his or her knowledge and belief all public records in  
412 his or her possession have been copied, indexed, and delivered

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413 | to the records repository or, if the records are confidential or  
 414 | exempt, to the clerk of the court in the county in which the  
 415 | capital case was tried as required by this section.

416 |         (c) The Secretary of Corrections shall provide written  
 417 | notification to the Attorney General upon compliance with  
 418 | paragraph (3)(c) and shall certify that to the best of his or  
 419 | her knowledge and belief all public records in the department's  
 420 | possession have been copied, indexed, and delivered to the  
 421 | records repository or, if the records are confidential or  
 422 | exempt, to the clerk of the court in the county in which the  
 423 | capital case was tried as required by this section.

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



440 possession of the person or agency which pertain to the case be  
441 copied, sealed, and delivered to the records repository.

442 (b) Within 60 days after receiving a request for public  
443 records under paragraph (a), the person or agency shall provide  
444 written notification to the Attorney General of compliance with  
445 this subsection and shall certify that to the best of his or her  
446 knowledge and belief all public records requested have been  
447 copied, indexed, and delivered to the records repository or, if  
448 the records are confidential or exempt, to the clerk of the  
449 court in the county in which the capital case was tried.

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

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

464 (7)(a) Within 180 days after a capital collateral regional  
465 counsel or private counsel is appointed to represent a defendant  
466 sentenced to death, or within 30 days after issuance of the  
467 Florida Supreme Court's mandate affirming a death sentence,

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468 | whichever is later, the regional counsel, private counsel, or  
469 | other counsel who is a member of The Florida Bar and is  
470 | authorized by such counsel representing a defendant may send a  
471 | written demand for additional public records to each person or  
472 | agency submitting public records under subsection (3) and to  
473 | each person or agency identified as having information pertinent  
474 | to the case under subsection (5). Should the written demand  
475 | include requests for records associated with particular named  
476 | individuals, the written demand shall also include a brief  
477 | statement describing each named person's role in the case and  
478 | relationship to the defendant. Race, sex, and date of birth  
479 | shall also be included in the demand if the public defender,  
480 | private counsel, or capital collateral regional counsel has such  
481 | information. Each person or agency notified under this  
482 | subsection shall, within 60 days after receipt of the written  
483 | demand, deliver to the records repository or, if the records are  
484 | confidential or exempt, to the clerk of the court in the county  
485 | in which the capital case was tried any additional public  
486 | records in the possession of the person or agency which pertain  
487 | to the case and shall certify that to the best of his or her  
488 | knowledge and belief all additional public records have been  
489 | delivered or, if no additional public records are found, shall  
490 | recertify that the public records previously delivered are  
491 | complete.

492 |       (b) Within 25 days after receiving the written demand, the  
493 | agency or person may file an objection in the trial court  
494 | alleging that the request is overly broad or unduly burdensome.  
495 | Within 30 days after the filing of an objection, the trial court

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496 shall hold a hearing and order an agency or person to produce  
497 additional public records if it finds each of the following:

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

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

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

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

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

513 (d) If, on June 1, 2006 ~~October 1, 1998~~, the defendant had  
514 a Rule 3.850 motion denied and no Rule 3.850 motion was pending,  
515 no additional requests shall be made by capital collateral  
516 regional counsel or contracted private counsel until a death  
517 warrant is signed by the Governor and an execution is scheduled.  
518 Within 10 days of the signing of the death warrant, capital  
519 collateral regional counsel or contracted private counsel may  
520 request of a person or agency that the defendant has previously  
521 requested to produce records any records previously requested to  
522 which no objection was raised or sustained, but which the agency  
523 has received or produced since the previous request or which for

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524 any reason the agency has in its possession and did not produce  
525 within 10 days of the receipt of the previous notice or such  
526 shorter time period ordered by the court to comply with the time  
527 for the scheduled execution. The person or agency shall produce  
528 the record or shall file in the trial court an affidavit stating  
529 that it does not have the requested record or that the record  
530 has been produced previously.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

631 (2) It is the further intent of the Legislature that no  
632 state resources be expended in violation of this act. In the

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633 | event that any state employee or party contracting with the  
 634 | state violates the provisions of this act, the Attorney General  
 635 | shall deliver to the Speaker of the House of Representatives and  
 636 | the President of the Senate a copy of any court pleading or  
 637 | order that describes or adjudicates a violation.

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

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

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

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



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661 determines that the agency cannot comply with chapter 924 or  
662 other applicable laws.

663 (b) The defendant who accepts the appointment of  
664 postconviction counsel must cooperate with and assist  
665 postconviction counsel. If the sentencing court finds the  
666 defendant is obstructing the postconviction process, the  
667 defendant shall not be entitled to any further postconviction  
668 legal representation provided by the state. Each attorney  
669 participating in a capital case on behalf of a defendant must  
670 provide all information pertaining to the capital case which the  
671 attorney obtained during the representation of that defendant to  
672 that defendant's capital postconviction counsel. Postconviction  
673 counsel must maintain the confidentiality of any confidential  
674 information received from any attorney for that defendant and is  
675 subject to the same penalties as the providing attorney for  
676 violating confidentiality. If the defendant requests without  
677 good cause that any attorney appointed under this subsection be  
678 removed or replaced, the court shall notify the defendant that  
679 no further state resources may be expended for postconviction  
680 representation for that defendant, unless the defendant  
681 withdraws the request to remove or replace postconviction  
682 counsel. If the defendant does not immediately withdraw his or  
683 her request, then any appointed attorney must be removed from  
684 the case and no further state resources may be expended for the  
685 defendant's postconviction representation. The prosecuting  
686 attorney and the defendant's trial counsel shall provide the  
687 defendant or, if represented, the defendant's capital  
688 postconviction counsel with copies of all pretrial and trial

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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689 | discovery and all contents of the prosecuting attorney's file,  
690 | except for information that the prosecuting attorney has a legal  
691 | right under state or federal law to withhold from disclosure.

692 |         (2) The clerk of the court shall provide a copy of the  
693 | record on appeal to the capital postconviction attorney and the  
694 | state attorney and Attorney General within 60 days after the  
695 | sentencing court appoints postconviction counsel. However, the  
696 | court may grant an extension of up to 30 days when extraordinary  
697 | circumstances exist.

698 |         (3)(a) With respect to all capital postconviction actions  
699 | commenced after the effective date of this act, a capital  
700 | postconviction action is not commenced until the defendant or  
701 | the defendant's postconviction counsel files a fully pled  
702 | postconviction action in the sentencing court or, as provided in  
703 | subsection (4), the Florida Supreme Court. For the purposes of  
704 | this subsection, a fully pled capital postconviction action is  
705 | one which complies with s. 924.058(2) or any superseding rule  
706 | adopted by the Florida Supreme Court. Except as provided by  
707 | subsection (4) or subsection (5), all capital postconviction  
708 | actions shall be barred unless they are commenced within 180  
709 | days after the filing of the appellant's initial brief in the  
710 | Florida Supreme Court on direct appeal of the defendant's  
711 | capital conviction and sentence. The fully pled postconviction  
712 | action must raise all cognizable claims that the defendant's  
713 | judgment or sentence was entered in violation of the  
714 | Constitution or laws of the United States or the Constitution or  
715 | the laws of the state, including any claim of ineffective  
716 | assistance of trial counsel, allegations of innocence, or that

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717 the state withheld evidence favorable to the defendant. No claim  
 718 may be considered in such action which could have or should have  
 719 been raised before trial, at trial, or if preserved on direct  
 720 appeal. For the purposes of this subsection, a capital  
 721 postconviction action is not fully pled unless it satisfies the  
 722 requirements of s. 924.058(2) ~~or any superseding rule of court.~~

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

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

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

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

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744 45 days after mandate issues affirming the death sentence in the  
745 direct appeal.

746 (5) Regardless of when a sentence is imposed, all  
747 successive capital postconviction actions are barred unless  
748 commenced by filing a fully pled postconviction action within 90  
749 days after the facts giving rise to the cause of action were  
750 discovered or should have been discovered with the exercise of  
751 due diligence. Such claim shall be barred pursuant to subsection  
752 (3) or s. 924.057 unless the facts underlying the claim, if  
753 proven and viewed in light of the evidence as a whole, would be  
754 sufficient to establish by clear and convincing evidence that,  
755 but for constitutional error, no reasonable fact finder would  
756 have found the defendant guilty of the underlying offense.  
757 Additionally, the facts underlying this claim must have been  
758 unknown to the defendant or his or her attorney and must be such  
759 that they could not have been ascertained by the exercise of due  
760 diligence prior to filing the earlier postconviction motion. The  
761 time period allowed for filing a successive collateral  
762 postconviction action shall not be grounds for a stay.

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

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

770 (1) Nothing in this act shall expand any right or time  
771 period allowed for the prosecution of capital postconviction

772 | claims in any case in which a postconviction action was  
 773 | commenced or should have been commenced prior to the effective  
 774 | date of this act.

775 |         (2) Except as provided in s. 924.056(5), in every case in  
 776 | which mandate has issued in the Florida Supreme Court concluding  
 777 | at least one capital postconviction action in the state court  
 778 | system, a successive capital postconviction action shall be  
 779 | barred on the effective date of this act, unless the rules or  
 780 | law in effect immediately prior to the effective date of this  
 781 | act permitted the successive postconviction action, in which  
 782 | case the action shall be barred on the date provided in  
 783 | subsection (4).

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

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

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

795 |         (4) In every capital case in which the trial court imposed  
 796 | the sentence of death before the effective date of this act, a  
 797 | capital postconviction action shall be barred unless it is  
 798 | commenced on or before July 1, 2008 ~~January 8, 2001~~, or any

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799 earlier date provided by the rule or law in effect immediately  
800 prior to July 1, 2007 ~~the effective date of this act.~~

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

803 924.058 Capital postconviction claims.--This section shall  
804 regulate the procedures in actions for capital postconviction  
805 relief commencing after July 1, 2007 ~~the effective date of this~~  
806 ~~act unless and until such procedures are revised by rule or~~  
807 ~~rules adopted by the Florida Supreme Court which specifically~~  
808 ~~reference this section.~~

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

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

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

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

822 (c) Whether a previous postconviction action has been  
823 filed and, if so, the disposition of all previous claims raised  
824 in postconviction litigation; if a previous action or actions  
825 have been filed, the reason or reasons the claim or claims in

826 | the present motion were not raised in the former action or  
827 | actions;

828 |         (d) The nature of the relief sought;

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

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

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

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

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

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

854 ~~adopted by the Florida Supreme Court which specifically~~  
855 ~~reference this section.~~

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

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

874 (3) Within 10 days after the order scheduling an  
875 evidentiary hearing, the defendant or the defendant's capital  
876 postconviction counsel shall disclose the names and addresses of  
877 any potential witnesses not previously disclosed, with their  
878 affidavits or a proffer of their testimony. Upon receipt of the  
879 defendant's disclosure, the state shall have 10 days within  
880 which to provide reciprocal disclosure. If the defendant intends  
881 to offer expert testimony of his or her mental status, the state



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882 | shall be entitled to have the defendant examined by an expert of  
 883 | its choosing. All of the defendant's mental status claims shall  
 884 | be deemed denied as a matter of law if the defendant fails to  
 885 | cooperate with the state's expert. Reports provided by expert  
 886 | witnesses shall be disclosed by opposing counsel upon receipt.

887 |       (4) Following the evidentiary hearing, the court shall  
 888 | order the transcription of the proceeding which shall be filed  
 889 | within 30 days. Within 30 days after receipt of the transcript,  
 890 | the sentencing court shall issue a final order granting or  
 891 | denying postconviction relief, making detailed findings of fact  
 892 | and conclusions of law with respect to any allegation asserted.

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

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

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910 within 90 days, for the purpose of conducting an evidentiary  
911 hearing on any issue identified by the Florida Supreme Court's  
912 order. Thereafter, the record shall be supplemented with the  
913 hearing transcript.

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

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

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

928 924.395 Sanctions.--

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

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

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

939 (c) Improperly withheld evidence or testimony; or

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

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

945 (a) Dismissal of a pleading;

946 (b) Disciplinary sanctions;

947 (c) A fine; and

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

950 Section 18. Rule 3.850, Florida Rules of Criminal  
951 Procedure, is repealed to the extent inconsistent with this act.  
952 Rule 3.851, Florida Rules of Criminal Procedure is repealed to  
953 the extent inconsistent with this act. Rule 3.852, Florida Rules  
954 of Criminal Procedure, is repealed.

955 Section 19. If any provision of this act or the  
956 application thereof to any person or circumstance is held  
957 invalid, the invalidity does not affect other provisions or  
958 applications of the act which can be given effect without the  
959 invalid provision or application, and to this end the provisions  
960 of this act are declared severable.

961 Section 20. This act shall take effect July 1, 2007,  
962 contingent upon voter approval of HJR 1007 in the General  
963 Election of 2006, but section 18 shall take effect only if this

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964 | act is passed by the affirmative vote of two-thirds of the  
965 | membership of each house of the Legislature.