

Bill No. SB 1802

Barcode 701336

CHAMBER ACTION

Senate

House

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The Committee on Criminal Justice (Klein) recommended the following amendment:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause

and insert:

Section 1. Subsection (2) of section 27.709, Florida Statutes, is amended to read:

27.709 Commission on Capital Cases.--

(2) The commission shall:

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

(b) ~~As part of its duties, the commission shall~~ Compile and analyze case-tracking reports produced by the Supreme Court. In analyzing these reports, the commission shall develop statistics to identify trends and changes in

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1 case management and case processing, identify and evaluate  
 2 unproductive points of delay, and generally evaluate the way  
 3 cases are progressing. The commission shall report these  
 4 findings to the Legislature by January 1 of each year.

5 (c) ~~In addition, the commission shall~~ Receive  
 6 complaints regarding the practice of any office of regional  
 7 counsel and private counsel appointed pursuant to ss. 27.710  
 8 and 27.711 and shall refer any complaint to The Florida Bar,  
 9 the State Supreme Court, or the Commission on Ethics, as  
 10 appropriate.

11 (d) Have the authority to sponsor continuing legal  
 12 education training devoted specifically to capital cases.

13 Section 2. Subsections (1), (2), (3), (4), and (5) of  
 14 section 27.710, Florida Statutes, are amended to read:

15 27.710 Registry of attorneys applying to represent  
 16 persons in postconviction capital collateral proceedings;  
 17 certification of minimum requirements; appointment by trial  
 18 court.--

19 (1) The executive director of the Commission on  
 20 Capital Cases shall compile and maintain a statewide registry  
 21 of attorneys in private practice who have certified that they  
 22 meet the minimum requirements of s. 27.704(2), who are  
 23 available for appointment by the court under this section to  
 24 represent persons convicted and sentenced to death in this  
 25 state in postconviction collateral proceedings, and who have  
 26 attended at least 12 hours of continuing legal education  
 27 within the last 2 years ~~year a continuing legal education~~  
 28 ~~program of at least 10 hours' duration~~ devoted specifically to  
 29 the defense of capital cases, if available. Every 2 years,  
 30 attorneys who satisfy the minimum requirements of s. 27.704(2)  
 31 and who are handling a capital case shall be required to

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1 attend at least 12 hours of continuing legal education.  
2 Continuing legal education programs meeting the requirements  
3 of this rule offered by The Florida Bar or another recognized  
4 provider and approved for continuing legal education credit by  
5 The Florida Bar shall satisfy this requirement. The failure to  
6 comply with this requirement may be cause for removal from the  
7 list until the requirement is fulfilled. To ensure that  
8 sufficient attorneys are available for appointment by the  
9 court, when the number of attorneys on the registry falls  
10 below 50, the executive director shall notify the chief judge  
11 of each circuit by letter and request the chief judge to  
12 promptly submit the names of at least three private attorneys  
13 who regularly practice criminal law in that circuit and who  
14 appear to meet the minimum requirements to represent persons  
15 in postconviction capital collateral proceedings. The  
16 executive director shall send an application to each attorney  
17 identified by the chief judge so that the attorney may  
18 register for appointment as counsel in postconviction capital  
19 collateral proceedings. As necessary, the executive director  
20 may also advertise in legal publications and other appropriate  
21 media for qualified attorneys interested in registering for  
22 appointment as counsel in postconviction capital collateral  
23 proceedings. Not later than September 1 of each year, and as  
24 necessary thereafter, the executive director shall provide to  
25 the Chief Justice of the Supreme Court, the chief judge and  
26 state attorney in each judicial circuit, and the Attorney  
27 General a current copy of its registry of attorneys who are  
28 available for appointment as counsel in postconviction capital  
29 collateral proceedings. The registry must be indexed by  
30 judicial circuit and must contain the requisite information  
31 submitted by the applicants in accordance with this section.

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1 (2) To be eligible for court appointment as counsel in  
2 postconviction capital collateral proceedings, an attorney  
3 must certify on an application provided by the executive  
4 director that he or she:

5 (a) Is familiar with the production of evidence and  
6 use of expert witnesses, including psychiatric and forensic  
7 evidence;

8 (b) Has demonstrated proficiency necessary for  
9 representation in capital cases, including the investigation  
10 and presentation of mitigation evidence; and

11 (c) Satisfies the minimum requirements for private  
12 counsel set forth in subsection (1) and has 5 years'  
13 experience in felony criminal law practice, which must have  
14 included serving as lead or co-counsel in:

15 1. Nine state or federal criminal jury trials tried to  
16 completion, of which two were capital and three must have been  
17 murder trials or one murder trial and five felony trials or  
18 one postconviction evidentiary hearing and five felony trials;  
19 or

20 2. One capital appeal and no fewer than three felony  
21 appeals, of which one was murder; or six felony appeals, of  
22 which two were murder; or one capital postconviction  
23 evidentiary hearing and three felony appeals.

24 (d) Satisfaction of the minimum requirements must be  
25 proven by written notification to the commission. The  
26 certification requirement shall be satisfied upon the  
27 submission of the application by electronic mail without a  
28 signature.

29 (e) If the trial court determines that exceptional  
30 circumstances require appointment of counsel not meeting the  
31 requirements of this section, the trial court may appoint that

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1 person and shall enter an order specifying, in writing, the  
 2 exceptional circumstances requiring deviation from this  
 3 section and the court's explicit determination that counsel  
 4 chosen will provide competent representation in accordance  
 5 with the policy concerns of this section ~~s. 27.704(2).~~

6 (3) An attorney ~~who applies for registration and court~~  
 7 ~~appointment as counsel in postconviction capital collateral~~  
 8 ~~proceedings must certify that he or she is counsel of record~~  
 9 ~~in not more than four such proceedings and, if appointed to~~  
 10 represent a person in postconviction capital collateral  
 11 proceedings, shall continue such representation under the  
 12 terms and conditions set forth in s. 27.711 until the sentence  
 13 is reversed, reduced, or carried out or unless permitted to  
 14 withdraw from representation by the trial court. The court may  
 15 not permit an attorney to withdraw from representation without  
 16 a finding of sufficient good cause. The court may impose  
 17 appropriate sanctions if it finds that an attorney has shown  
 18 bad faith with respect to continuing to represent a defendant  
 19 in a postconviction capital collateral proceeding. This  
 20 section does not preclude the court from reassigning a case to  
 21 a capital collateral regional counsel following  
 22 discontinuation of representation if a conflict of interest no  
 23 longer exists with respect to the case.

24 (4) Each private attorney who is appointed by the  
 25 court to represent a capital defendant must enter into a  
 26 contract with the Chief Financial Officer. If the appointed  
 27 attorney fails to execute the contract within 30 days after  
 28 the date the contract is mailed to the attorney, the executive  
 29 director of the Commission on Capital Cases shall notify the  
 30 trial court. The Chief Financial Officer shall develop the  
 31 form of the contract, function as contract manager, and

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1 enforce performance of the terms and conditions of the  
 2 contract. By signing such contract, the attorney certifies  
 3 that he or she intends to continue the representation under  
 4 the terms and conditions set forth in the contract until the  
 5 sentence is reversed, reduced, or carried out or until  
 6 released by order of the trial court. Additionally, the  
 7 attorney shall agree to submit quarterly reports to the  
 8 Commission on Capital Cases in a consistent format designated  
 9 by the commission. If the appointed attorney fails to submit a  
 10 quarterly report within 30 days following the end of the  
 11 quarter, the executive director shall notify the trial court  
 12 and the attorney.

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

15 (b) Upon notification by the state attorney or the  
 16 Attorney General that:

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

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

23  
 24 the executive director shall immediately notify the trial  
 25 court that imposed the sentence of death that the court must  
 26 immediately appoint an attorney, selected from the current  
 27 registry, to represent such person in collateral actions  
 28 challenging the legality of the judgment and sentence in the  
 29 appropriate state and federal courts. If the appointed  
 30 attorney does not wish to continue representation at the  
 31 federal level, the appointed attorney shall make reasonable

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1 efforts to assist the client in finding replacement counsel  
2 who meets the federal requirements to represent a capital  
3 defendant in federal proceedings. The court shall have the  
4 authority to strike a notice of appearance filed by a Capital  
5 Collateral Regional Counsel, if the court finds the notice was  
6 not filed in good faith and may so notify the executive  
7 director that the client is no longer represented by the  
8 Office of Capital Collateral Regional Counsel. In making an  
9 assignment, the court shall give priority to attorneys whose  
10 experience and abilities in criminal law, especially in  
11 capital proceedings, are known by the court to be commensurate  
12 with the responsibility of representing a person sentenced to  
13 death. The trial court must issue an order of appointment  
14 which contains specific findings that the appointed counsel  
15 meets the statutory requirements and has the high ethical  
16 standards necessary to represent a person sentenced to death.

17 Section 3. Paragraphs (c) and (g) of subsection (4)  
18 and subsections (7) and (9) of section 27.711, Florida  
19 Statutes, are amended, and paragraph (i) is added to  
20 subsection (4) of that section, to read:

21 27.711 Terms and conditions of appointment of  
22 attorneys as counsel in postconviction capital collateral  
23 proceedings.--

24 (4) Upon approval by the trial court, an attorney  
25 appointed to represent a capital defendant under s. 27.710 is  
26 entitled to payment of the following fees by the Chief  
27 Financial Officer:

28 (c) The attorney is entitled to \$100 per hour, up to a  
29 maximum of \$20,000, after the final hearing on ~~trial court~~  
30 ~~issues a final order granting or denying~~ the capital  
31 defendant's motion for postconviction relief.

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1 (g) At the conclusion of the capital defendant's  
 2 postconviction capital collateral proceedings in state court,  
 3 the attorney is entitled to \$100 per hour, up to a maximum of  
 4 \$2,500, after filing a petition for writ of habeas corpus  
 5 pursuant to 28 U.S.C. s. 2254 certiorari in the Supreme Court  
 6 of the United States.

7 (i) The attorney is entitled to \$100 per hour, up to a  
 8 maximum of \$10,000, as a supplement to attorney's fees in  
 9 paragraphs (a)-(h), for good cause shown and if approved by  
 10 the court, if those paragraphs do not provide adequate  
 11 compensation due to extraordinary circumstances.

12  
 13 The hours billed by a contracting attorney under this  
 14 subsection may include time devoted to representation of the  
 15 defendant by another attorney who is qualified under s. 27.710  
 16 and who has been designated by the contracting attorney to  
 17 assist him or her.

18 (7) Each registry An attorney handling at least one  
 19 capital case, regardless of the total number of capital  
 20 defendants he or she is representing, who is actively  
 21 representing a capital defendant is entitled to a maximum of  
 22 \$1,000 within 2 fiscal years \$500 per fiscal year for tuition  
 23 and expenses for continuing legal education that pertains to  
 24 the representation of capital defendants in this state. Upon  
 25 approval by the trial court, the attorney is entitled to  
 26 payment by the Chief Financial Officer for expenses for such  
 27 tuition and continuing legal education.

28 (9) An attorney may not represent more than 10 inmates  
 29 five defendants in capital postconviction litigation at any  
 30 one time.

31 Section 4. This act shall take effect July 1, 2005.



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1 ===== T I T L E    A M E N D M E N T =====

2 And the title is amended as follows:

3           Delete everything before the enacting clause

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5 and insert:

6                       A bill to be entitled

7           An act relating to capital collateral

8           representation; amending s. 27.709, F.S.;

9           authorizing the Commission on Capital Cases to  
10          sponsor certain continuing legal education

11          classes; amending s. 27.710, F.S.; revising

12          provisions relating to continuing legal

13          education requirements for attorneys on the

14          registry of attorneys applying to represent

15          persons in postconviction capital collateral

16          proceedings; providing for minimum

17          qualification of attorneys on the registry;

18          providing for notification to the court when

19          appointed attorneys fail to submit specified

20          reports; requiring an appointed attorney who

21          does not wish to continue representation at the

22          federal level to make reasonable efforts to

23          assist the client in finding replacement

24          counsel; amending s. 27.711, F.S.; providing

25          for payment of attorneys after a final hearing,

26          rather than after a final order; providing for

27          additional payments to attorneys; increasing

28          the maximum number of inmates which may be

29          represented by a capital collateral attorney;

30          providing an effective date.

31