

By the Committee on Criminal Justice; and Senator Campbell

591-2026-05

1                                   A bill to be entitled  
2           An act relating to capital collateral  
3           representation; amending s. 27.709, F.S.;  
4           authorizing the Commission on Capital Cases to  
5           sponsor certain continuing legal education  
6           classes; amending s. 27.710, F.S.; revising  
7           provisions relating to continuing legal  
8           education requirements for attorneys on the  
9           registry of attorneys applying to represent  
10          persons in postconviction capital collateral  
11          proceedings; providing for minimum  
12          qualification of attorneys on the registry;  
13          providing for notification to the court when  
14          appointed attorneys fail to submit specified  
15          reports; requiring an appointed attorney who  
16          does not wish to continue representation at the  
17          federal level to make reasonable efforts to  
18          assist the client in finding replacement  
19          counsel; amending s. 27.711, F.S.; providing  
20          for payment of attorneys after a final hearing,  
21          rather than after a final order; providing for  
22          additional payments to attorneys; increasing  
23          the maximum number of inmates which may be  
24          represented by a capital collateral attorney;  
25          providing an effective date.

26  
27 Be It Enacted by the Legislature of the State of Florida:  
28

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

31           27.709 Commission on Capital Cases.--

1           (2) The commission shall:

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

8           (b) ~~As part of its duties, the commission shall~~  
9 Compile and analyze case-tracking reports produced by the  
10 Supreme Court. In analyzing these reports, the commission  
11 shall develop statistics to identify trends and changes in  
12 case management and case processing, identify and evaluate  
13 unproductive points of delay, and generally evaluate the way  
14 cases are progressing. The commission shall report these  
15 findings to the Legislature by January 1 of each year.

16           (c) ~~In addition, the commission shall~~ Receive  
17 complaints regarding the practice of any office of regional  
18 counsel and private counsel appointed pursuant to ss. 27.710  
19 and 27.711 and shall refer any complaint to The Florida Bar,  
20 the State Supreme Court, or the Commission on Ethics, as  
21 appropriate.

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

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

26           27.710 Registry of attorneys applying to represent  
27 persons in postconviction capital collateral proceedings;  
28 certification of minimum requirements; appointment by trial  
29 court.--

30           (1) The executive director of the Commission on  
31 Capital Cases shall compile and maintain a statewide registry

1 | of attorneys in private practice who have certified that they  
2 | meet the minimum requirements of s. 27.704(2), who are  
3 | available for appointment by the court under this section to  
4 | represent persons convicted and sentenced to death in this  
5 | state in postconviction collateral proceedings, and who have  
6 | attended at least 12 hours of continuing legal education  
7 | within the last 2 years ~~year a continuing legal education~~  
8 | ~~program of at least 10 hours' duration~~ devoted specifically to  
9 | the defense of capital cases, if available. Every 2 years,  
10 | attorneys who satisfy the minimum requirements of s. 27.704(2)  
11 | and who are handling a capital case shall be required to  
12 | attend at least 12 hours of continuing legal education.  
13 | Continuing legal education programs meeting the requirements  
14 | of this rule offered by The Florida Bar or another recognized  
15 | provider and approved for continuing legal education credit by  
16 | The Florida Bar shall satisfy this requirement. The failure to  
17 | comply with this requirement may be cause for removal from the  
18 | list until the requirement is fulfilled. To ensure that  
19 | sufficient attorneys are available for appointment by the  
20 | court, when the number of attorneys on the registry falls  
21 | below 50, the executive director shall notify the chief judge  
22 | of each circuit by letter and request the chief judge to  
23 | promptly submit the names of at least three private attorneys  
24 | who regularly practice criminal law in that circuit and who  
25 | appear to meet the minimum requirements to represent persons  
26 | in postconviction capital collateral proceedings. The  
27 | executive director shall send an application to each attorney  
28 | identified by the chief judge so that the attorney may  
29 | register for appointment as counsel in postconviction capital  
30 | collateral proceedings. As necessary, the executive director  
31 | may also advertise in legal publications and other appropriate

1 | media for qualified attorneys interested in registering for  
2 | appointment as counsel in postconviction capital collateral  
3 | proceedings. Not later than September 1 of each year, and as  
4 | necessary thereafter, the executive director shall provide to  
5 | the Chief Justice of the Supreme Court, the chief judge and  
6 | state attorney in each judicial circuit, and the Attorney  
7 | General a current copy of its registry of attorneys who are  
8 | available for appointment as counsel in postconviction capital  
9 | collateral proceedings. The registry must be indexed by  
10 | judicial circuit and must contain the requisite information  
11 | submitted by the applicants in accordance with this section.

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

16 |       (a) Is familiar with the production of evidence and  
17 | use of expert witnesses, including psychiatric and forensic  
18 | evidence;

19 |       (b) Has demonstrated proficiency necessary for  
20 | representation in capital cases, including the investigation  
21 | and presentation of mitigation evidence; and

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

26 |       1. Nine state or federal criminal jury trials tried to  
27 | completion, of which two were capital and three must have been  
28 | murder trials or one murder trial and five felony trials or  
29 | one postconviction evidentiary hearing and five felony trials;  
30 | or

31 |

1           2. One capital appeal and no fewer than three felony  
2 appeals, of which one was murder; or six felony appeals, of  
3 which two were murder; or one capital postconviction  
4 evidentiary hearing and three felony appeals.

5           (d) Satisfaction of the minimum requirements must be  
6 proven by written notification to the commission. The  
7 certification requirement shall be satisfied upon the  
8 submission of the application by electronic mail without a  
9 signature.

10           (e) If the trial court determines that exceptional  
11 circumstances require appointment of counsel not meeting the  
12 requirements of this section, the trial court may appoint that  
13 person and shall enter an order specifying, in writing, the  
14 exceptional circumstances requiring deviation from this  
15 section and the court's explicit determination that counsel  
16 chosen will provide competent representation in accordance  
17 with the policy concerns of this section s. 27.704(2).

18           (3) An attorney ~~who applies for registration and court~~  
19 ~~appointment as counsel in postconviction capital collateral~~  
20 ~~proceedings must certify that he or she is counsel of record~~  
21 ~~in not more than four such proceedings and, if appointed to~~  
22 represent a person in postconviction capital collateral  
23 proceedings, shall continue such representation under the  
24 terms and conditions set forth in s. 27.711 until the sentence  
25 is reversed, reduced, or carried out or unless permitted to  
26 withdraw from representation by the trial court. The court may  
27 not permit an attorney to withdraw from representation without  
28 a finding of sufficient good cause. The court may impose  
29 appropriate sanctions if it finds that an attorney has shown  
30 bad faith with respect to continuing to represent a defendant  
31 in a postconviction capital collateral proceeding. This

1 section does not preclude the court from reassigning a case to  
2 a capital collateral regional counsel following  
3 discontinuation of representation if a conflict of interest no  
4 longer exists with respect to the case.

5 (4) Each private attorney who is appointed by the  
6 court to represent a capital defendant must enter into a  
7 contract with the Chief Financial Officer. If the appointed  
8 attorney fails to execute the contract within 30 days after  
9 the date the contract is mailed to the attorney, the executive  
10 director of the Commission on Capital Cases shall notify the  
11 trial court. The Chief Financial Officer shall develop the  
12 form of the contract, function as contract manager, and  
13 enforce performance of the terms and conditions of the  
14 contract. By signing such contract, the attorney certifies  
15 that he or she intends to continue the representation under  
16 the terms and conditions set forth in the contract until the  
17 sentence is reversed, reduced, or carried out or until  
18 released by order of the trial court. Additionally, the  
19 attorney shall agree to submit quarterly reports to the  
20 Commission on Capital Cases in a consistent format designated  
21 by the commission. If the appointed attorney fails to submit a  
22 quarterly report within 30 days following the end of the  
23 quarter, the executive director shall notify the trial court  
24 and the attorney.

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

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

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

1           2. A person under sentence of death who was previously  
2 represented by private counsel is currently unrepresented in a  
3 postconviction capital collateral proceeding,  
4  
5 the executive director shall immediately notify the trial  
6 court that imposed the sentence of death that the court must  
7 immediately appoint an attorney, selected from the current  
8 registry, to represent such person in collateral actions  
9 challenging the legality of the judgment and sentence in the  
10 appropriate state and federal courts. If the appointed  
11 attorney does not wish to continue representation at the  
12 federal level, the appointed attorney shall make reasonable  
13 efforts to assist the client in finding replacement counsel  
14 who meets the federal requirements to represent a capital  
15 defendant in federal proceedings. The court shall have the  
16 authority to strike a notice of appearance filed by a Capital  
17 Collateral Regional Counsel, if the court finds the notice was  
18 not filed in good faith and may so notify the executive  
19 director that the client is no longer represented by the  
20 Office of Capital Collateral Regional Counsel. In making an  
21 assignment, the court shall give priority to attorneys whose  
22 experience and abilities in criminal law, especially in  
23 capital proceedings, are known by the court to be commensurate  
24 with the responsibility of representing a person sentenced to  
25 death. The trial court must issue an order of appointment  
26 which contains specific findings that the appointed counsel  
27 meets the statutory requirements and has the high ethical  
28 standards necessary to represent a person sentenced to death.  
29           Section 3. Paragraphs (c) and (g) of subsection (4)  
30 and subsections (7) and (9) of section 27.711, Florida  
31

1 Statutes, are amended, and paragraph (i) is added to  
2 subsection (4) of that section, to read:

3 27.711 Terms and conditions of appointment of  
4 attorneys as counsel in postconviction capital collateral  
5 proceedings.--

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

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

14 (g) At the conclusion of the capital defendant's  
15 postconviction capital collateral proceedings in state court,  
16 the attorney is entitled to \$100 per hour, up to a maximum of  
17 \$2,500, after filing a petition for writ of habeas corpus  
18 pursuant to 28 U.S.C. s. 2254 ~~certiorari in the Supreme Court~~  
19 ~~of the United States.~~

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

25  
26 The hours billed by a contracting attorney under this  
27 subsection may include time devoted to representation of the  
28 defendant by another attorney who is qualified under s. 27.710  
29 and who has been designated by the contracting attorney to  
30 assist him or her.

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1           (7) Each registry An attorney handling at least one  
2 capital case, regardless of the total number of capital  
3 defendants he or she is representing, who is actively  
4 ~~representing a capital defendant~~ is entitled to a maximum of  
5 \$1,000 within 2 fiscal years~~\$500 per fiscal year~~ for tuition  
6 and expenses for continuing legal education that pertains to  
7 the representation of capital defendants in this state. Upon  
8 approval by the trial court, the attorney is entitled to  
9 payment by the Chief Financial Officer for expenses for such  
10 tuition and continuing legal education.

11           (9) An attorney may not represent more than 10 inmates  
12 ~~five defendants~~ in capital postconviction litigation at any  
13 one time.

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

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16                           STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
17                                           COMMITTEE SUBSTITUTE FOR  
18                                           Senate Bill 1802

- 19 - The CS raises the requirements for court appointed  
20 attorneys in capital postconviction litigation.  
21 - It provides for additional payment to registry counsel of  
22 up to \$10,000, for good cause, in extraordinary  
23 circumstances.  
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