

By Senator Crist

12-1287-05

See HB 1005

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

1 amending ss. 924.056 and 924.057, F.S. ;
2 revising a threshold date to conform; revising
3 criteria for determining full pleading of a
4 capital postconviction action; amending ss.
5 924.058 and 924.059, F.S. ; revising a threshold
6 date to conform; deleting a provision relating
7 to Florida Supreme Court rule revision of
8 certain capital postconviction relief
9 procedures; reenacting s. 924.395, F.S. ,
10 relating to sanctions; directing the Florida
11 Supreme Court to submit to the Legislature
12 implementation rules proposed by the Judicial
13 Conference; repealing certain rules of criminal
14 procedure; providing severability; specifying a
15 contingent criterion for the repeal of certain
16 rules of criminal procedure; providing a
17 contingent effective date.

18
19 WHEREAS, it is in the best interest of the
20 administration of justice that a sentence of death ordered by
21 a court of this state be carried out in a manner that is fair,
22 just, and humane and that conforms to constitutional
23 requirements, and

24 WHEREAS, in order for capital punishment to be fair,
25 just, and humane for both the family of victims and for
26 offenders, there must be a prompt and efficient administration
27 of justice following any sentence of death ordered by the
28 courts of this state, and

29 WHEREAS, in order to ensure the fair, just, and humane
30 administration of capital punishment, it is necessary for the
31 Legislature to comprehensively address both the method by

1 | which an execution is carried out and the processes by which
2 | an offender sentenced to death may pursue postconviction and
3 | collateral review of the judgment and the sentence of death,
4 | and

5 | WHEREAS, the Death Penalty Reform Act of 2000, chapter
6 | 2000-3, Laws of Florida, was designed to accomplish these
7 | objectives and was passed by the Legislature and approved by
8 | the Governor of Florida in January of 2000, and

9 | WHEREAS, the Death Penalty Reform Act of 2000, chapter
10 | 2000-3, Laws of Florida, was declared unconstitutional by the
11 | Florida Supreme Court three months after becoming a law in
12 | Allen v. Butterworth, 756 So.2d 52 Fla. 2000, as being an
13 | encroachment on the court's "exclusive power to 'adopt rules
14 | for the practice and procedure in all courts,'" and

15 | WHEREAS, the Constitution of the State of Florida has
16 | been amended to authorize the Legislature to adopt, reject, or
17 | amend court rules of criminal procedure and rules of procedure
18 | governing postconviction proceedings which are proposed by the
19 | judicial conference, and

20 | WHEREAS, many provisions of the Death Penalty Reform
21 | Act of 2000 which were held unconstitutional may now be
22 | reenacted, while other provisions can be modified, and new
23 | provisions added to accomplish the same purpose, procedure,
24 | and objective of the Death Penalty Reform Act of 2000, NOW,
25 | THEREFORE,

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

28 |
29 | Section 1. This act may be cited as the "Death Penalty
30 | Reform Act."

31 |

1 Section 2. Subsections (5) and (6) of section 27.51,
2 Florida Statutes, are renumbered as subsections (6) and (7),
3 respectively, and a new subsection (5) is added to that
4 section, to read:

5 27.51 Duties of public defender.--

6 (5) When the public defender for a judicial circuit
7 enumerated in subsection (4) has represented at trial a person
8 sentenced to death, the public defender shall not represent
9 that person in any direct appellate proceedings. That public
10 defender shall notify the Florida Supreme Court within 10 days
11 after filing a notice of appeal, and the court shall appoint
12 another public defender enumerated in subsection (4) to
13 represent the person in any direct appellate proceedings.

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

16 27.702 Duties of the capital collateral regional
17 counsel; reports.--

18 (1) The capital collateral regional counsel shall
19 represent each person convicted and sentenced to death in this
20 state for the sole purpose of instituting and prosecuting
21 collateral actions challenging the legality of the judgment
22 and sentence imposed against such person in the state courts,
23 federal courts in this state, the United States Court of
24 Appeals for the Eleventh Circuit, and the United States
25 Supreme Court. The capital collateral regional counsel and the
26 attorneys appointed pursuant to s. 27.710 shall file only
27 those postconviction or collateral actions authorized by
28 statute. The three capital collateral regional counsels'
29 offices shall function independently and be separate budget
30 entities, and the regional counsels shall be the office heads
31 for all purposes. The Justice Administrative Commission shall

1 provide administrative support and service to the three
2 offices to the extent requested by the regional counsels. The
3 three regional offices shall not be subject to control,
4 supervision, or direction by the Justice Administrative
5 Commission in any manner, including, but not limited to,
6 personnel, purchasing, transactions involving real or personal
7 property, and budgetary matters.

8 Section 4. Section 27.703, Florida Statutes, is
9 reenacted to read:

10 27.703 Conflict of interest and substitute counsel.--

11 (1) The capital collateral regional counsel shall not
12 accept an appointment or take any other action that will
13 create a conflict of interest. If, at any time during the
14 representation of a person, the capital collateral regional
15 counsel determines that the continued representation of that
16 person creates a conflict of interest, the sentencing court
17 shall, upon application by the regional counsel, designate
18 another regional counsel and, only if a conflict exists with
19 the other two counsels, appoint one or more members of The
20 Florida Bar to represent one or more of such persons.

21 (2) Appointed counsel shall be paid from funds
22 appropriated to the Chief Financial Officer. The hourly rate
23 may not exceed \$100. However, all appointments of private
24 counsel under this section shall be in accordance with ss.
25 27.710 and 27.711.

26 (3) Prior to employment, counsel appointed pursuant to
27 this section must have participated in at least five felony
28 jury trials, five felony appeals, or five capital
29 postconviction evidentiary hearings, or any combination of at
30 least five of such proceedings.

31

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

3 27.709 Commission on Capital Cases.--

4 (2)(a) The commission shall review the administration
5 of justice in capital collateral cases, receive relevant
6 public input, review the operation of the capital collateral
7 regional counsel and private counsel appointed pursuant to ss.
8 27.710 and 27.711, and advise and make recommendations to the
9 Governor, Legislature, and Supreme Court.

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

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

24 Section 6. Section 27.710, Florida Statutes, is
25 reenacted 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 within the last year a continuing legal education
7 program of at least 10 hours' duration devoted specifically to
8 the defense of capital cases, if available. Continuing legal
9 education programs meeting the requirements of this rule
10 offered by The Florida Bar or another recognized provider and
11 approved for continuing legal education credit by The Florida
12 Bar shall satisfy this requirement. The failure to comply with
13 this requirement may be cause for removal from the list until
14 the requirement is fulfilled. To ensure that sufficient
15 attorneys are available for appointment by the court, when the
16 number of attorneys on the registry falls below 50, the
17 executive director shall notify the chief judge of each
18 circuit by letter and request the chief judge to promptly
19 submit the names of at least three private attorneys who
20 regularly practice criminal law in that circuit and who appear
21 to meet the minimum requirements to represent persons in
22 postconviction capital collateral proceedings. The executive
23 director shall send an application to each attorney identified
24 by the chief judge so that the attorney may register for
25 appointment as counsel in postconviction capital collateral
26 proceedings. As necessary, the executive director may also
27 advertise in legal publications and other appropriate media
28 for qualified attorneys interested in registering for
29 appointment as counsel in postconviction capital collateral
30 proceedings. Not later than September 1 of each year, and as
31 necessary thereafter, the executive director shall provide to

1 | the Chief Justice of the Supreme Court, the chief judge and
2 | state attorney in each judicial circuit, and the Attorney
3 | General a current copy of its registry of attorneys who are
4 | available for appointment as counsel in postconviction capital
5 | collateral proceedings. The registry must be indexed by
6 | judicial circuit and must contain the requisite information
7 | submitted by the applicants in accordance with this section.

8 | (2) To be eligible for court appointment as counsel in
9 | postconviction capital collateral proceedings, an attorney
10 | must certify on an application provided by the executive
11 | director that he or she satisfies the minimum requirements for
12 | private counsel set forth in s. 27.704(2).

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

31 |

1 (4) Each private attorney who is appointed by the
2 court to represent a capital defendant must enter into a
3 contract with the Chief Financial Officer. If the appointed
4 attorney fails to execute the contract within 30 days after
5 the date the contract is mailed to the attorney, the executive
6 director of the Commission on Capital Cases shall notify the
7 trial court. The Chief Financial Officer shall develop the
8 form of the contract, function as contract manager, and
9 enforce performance of the terms and conditions of the
10 contract. By signing such contract, the attorney certifies
11 that he or she intends to continue the representation under
12 the terms and conditions set forth in the contract until the
13 sentence is reversed, reduced, or carried out or until
14 released by order of the trial court.

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

17 (b) Upon notification by the state attorney or the
18 Attorney General that:

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

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

25
26 the executive director shall immediately notify the trial
27 court that imposed the sentence of death that the court must
28 immediately appoint an attorney, selected from the current
29 registry, to represent such person in collateral actions
30 challenging the legality of the judgment and sentence in the
31 appropriate state and federal courts. The court shall have the

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

14 (6) More than one attorney may not be appointed and
15 compensated at any one time under s. 27.711 to represent a
16 person in postconviction capital collateral proceedings.
17 However, an attorney appointed under this section may
18 designate another attorney to assist him or her if the
19 designated attorney meets the qualifications of this section.

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

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

25 (3) An attorney appointed to represent a capital
26 defendant is entitled to payment of the fees set forth in this
27 section only upon full performance by the attorney of the
28 duties specified in this section and approval of payment by
29 the trial court, and the submission of a payment request by
30 the attorney, subject to the availability of sufficient
31 funding specifically appropriated for this purpose. An

1 attorney may not be compensated under this section for work
2 performed by the attorney before July 1, 2003, while employed
3 by the northern regional office of the capital collateral
4 counsel. The Chief Financial Officer shall notify the
5 executive director and the court if it appears that sufficient
6 funding has not been specifically appropriated for this
7 purpose to pay any fees which may be incurred. The attorney
8 shall maintain appropriate documentation, including a current
9 and detailed hourly accounting of time spent representing the
10 capital defendant. The fee and payment schedule in this
11 section is the exclusive means of compensating a
12 court-appointed attorney who represents a capital defendant.
13 When appropriate, a court-appointed attorney must seek further
14 compensation from the Federal Government, as provided in 18
15 U.S.C. s. 3006A or other federal law, in habeas corpus
16 litigation in the federal courts.

17 (13) Prior to the filing of a motion for order
18 approving payment of attorney's fees, costs, or related
19 expenses, the assigned counsel shall deliver a copy of his
20 intended billing, together with supporting affidavits and all
21 other necessary documentation, to the Chief Financial
22 Officer's named contract manager. The contract manager shall
23 have 10 business days from receipt to review the billings,
24 affidavit, and documentation for completeness and compliance
25 with contractual and statutory requirements. If the contract
26 manager objects to any portion of the proposed billing, the
27 objection and reasons therefor shall be communicated to the
28 assigned counsel. The assigned counsel may thereafter file his
29 or her motion for order approving payment of attorney's fees,
30 costs, or related expenses together with supporting affidavits
31 and all other necessary documentation. The motion must specify

1 | whether the Chief Financial Officer's contract manager objects
2 | to any portion of the billing or the sufficiency of
3 | documentation and, if so, the reason therefor. A copy of the
4 | motion and attachments shall be served on the Chief Financial
5 | Officer's contract manager, who shall have standing to file
6 | pleadings and appear before the court to contest any motion
7 | for order approving payment. The fact that the Chief Financial
8 | Officer's contract manager has not objected to any portion of
9 | the billing or to the sufficiency of the documentation is not
10 | binding on the court, which retains primary authority and
11 | responsibility for determining the reasonableness of all
12 | billings for fees, costs, and related expenses, subject to
13 | statutory limitations.

14 | Section 8. Paragraph (d) of subsection (3) of section
15 | 119.011, Florida Statutes, is amended to read:

16 | 119.011 Definitions.--As used in this chapter, the
17 | term:

18 | (3)

19 | (d) The word "active" shall have the following
20 | meaning:

21 | 1. Criminal intelligence information shall be
22 | considered "active" as long as it is related to intelligence
23 | gathering conducted with a reasonable, good faith belief that
24 | it will lead to detection of ongoing or reasonably anticipated
25 | criminal activities.

26 | 2. Criminal investigative information shall be
27 | considered "active" as long as it is related to an ongoing
28 | investigation which is continuing with a reasonable, good
29 | faith anticipation of securing an arrest or prosecution in the
30 | foreseeable future.

31 |

1 Except as provided in this paragraph ~~In addition~~, criminal
2 intelligence and criminal investigative information shall be
3 considered "active" while such information is directly related
4 to pending prosecutions or appeals. With respect to capital
5 cases in which the defendant has been sentenced to death, upon
6 the imposition of the death sentence criminal intelligence and
7 criminal investigative information shall be considered to be
8 not "active." The word "active" shall not apply to
9 information in cases which are barred from prosecution under
10 the provisions of s. 775.15 or other statute of limitation.

11 Section 9. Section 119.19, Florida Statutes, is
12 amended to read:

13 119.19 Capital postconviction public records
14 production.--

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

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

19 (b) If a motion for postconviction relief in a capital
20 case has been filed and a different judge has already been
21 assigned to that motion, the judge who is assigned to rule on
22 that motion.

23 (2) The Secretary of State shall establish and
24 maintain a records repository for the purpose of archiving
25 capital postconviction public records as provided for in this
26 section.

27 (3)(a) Upon imposition of a death sentence or upon the
28 effective date of this act with respect to any case in which a
29 death sentence has been imposed but the mandate has not yet
30 been issued in an appeal affirming the sentence, the
31 prosecuting attorney shall promptly provide written

1 notification to each law enforcement agency involved in the
2 case and to the Department of Corrections. If available, the
3 written notification must include the defendant's date of
4 birth, sex, race, and police-case numbers included in the
5 prosecuting attorney's case file.

6 (b) Within 60 days after receipt of notification, each
7 law enforcement agency involved in the case and the
8 prosecuting attorney who prosecuted the case shall copy, seal,
9 and deliver to the repository all public records, except for
10 those filed in the trial court, which were produced in the
11 investigation or prosecution of the case or, if the records
12 are confidential or exempt, to the clerk of the court in the
13 county in which the capital case was tried. Each agency shall
14 bear the costs of its own compliance.

15 (c) Within 60 days after notification, the Department
16 of Corrections shall copy, seal, and deliver to the repository
17 or, if the records are confidential or exempt, to the clerk of
18 the court in the county in which the capital case was tried
19 all public records determined by the department to be relevant
20 to the subject matter of a capital postconviction claim of the
21 person sentenced to death and where such production would not
22 be unduly burdensome for the department. The department shall
23 bear the costs.

24 (4)(a) The chief law enforcement officer of each law
25 enforcement agency that was involved in the case, whether
26 through an investigation, arrest, prosecution, or
27 incarceration, shall notify the Attorney General upon
28 compliance with subsection (3) and shall certify that to the
29 best of his or her knowledge and belief all public records in
30 possession of the agency or in possession of any employee of
31 the agency have been copied, indexed, and delivered to the

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

4 (b) The prosecuting attorney who prosecuted the case
5 shall provide written notification to the Attorney General
6 upon compliance with subsection (3) and shall certify that to
7 the best of his or her knowledge and belief all public records
8 in his or her possession have been copied, indexed, and
9 delivered to the records repository or, if the records are
10 confidential or exempt, to the clerk of the court in the
11 county in which the capital case was tried as required by this
12 section.

13 (c) The Secretary of Corrections shall provide written
14 notification to the Attorney General upon compliance with
15 paragraph (3)(c) and shall certify that to the best of his or
16 her knowledge and belief all public records in the
17 department's possession have been copied, indexed, and
18 delivered to the records repository or, if the records are
19 confidential or exempt, to the clerk of the court in the
20 county in which the capital case was tried as required by this
21 section.

22 (5)(a) Within 60 days after the imposition of a death
23 sentence or upon the effective date of this act with respect
24 to any case in which a death sentence has been imposed but the
25 mandate has not yet been issued in an appeal affirming the
26 sentence, both the public defender or private counsel for the
27 defendant and the prosecuting attorney involved in the case
28 shall provide written notification to the Attorney General of
29 the name and address of any person or agency in addition to
30 those persons and agencies listed in subsection (3) which may
31 have information pertinent to the case unless previously

1 provided to the capital collateral regional counsel or
2 postconviction private counsel. The Attorney General shall
3 promptly provide written notification to each identified
4 person or agency after receiving the information from the
5 public defender, private counsel for the defendant, or
6 prosecuting attorney and shall request that all public records
7 in the possession of the person or agency which pertain to the
8 case be copied, sealed, and delivered to the records
9 repository.

10 (b) Within 60 days after receiving a request for
11 public records under paragraph (a), the person or agency shall
12 provide written notification to the Attorney General of
13 compliance with this subsection and shall certify that to the
14 best of his or her knowledge and belief all public records
15 requested have been copied, indexed, and delivered to the
16 records repository or, if the records are confidential or
17 exempt, to the clerk of the court in the county in which the
18 capital case was tried.

19 (6)(a) Any public record under this section which is
20 confidential or exempt from the requirements of s. 119.07(1)
21 and s. 24(a), Art. I of the State Constitution must be
22 separately boxed, without being redacted, and sealed. The box
23 must be delivered to the clerk of court in the county in which
24 the capital case was tried. The outside of the box must
25 clearly identify the public records as exempt, and the seal
26 may not be broken without an order of the trial court. The
27 outside of the box must identify the nature of the public
28 records and the legal basis under which the public records are
29 exempt.

30 (b) Such a box may be opened only for an inspection by
31 the trial court in camera and only after notice giving the

1 agency the option to have a representative present at the
2 unsealing by the court.

3 (7)(a) Within 180 days after a capital collateral
4 regional counsel or private counsel is appointed to represent
5 a defendant sentenced to death, or within 30 days after
6 issuance of the Florida Supreme Court's mandate affirming a
7 death sentence, whichever is later, the regional counsel,
8 private counsel, or other counsel who is a member of The
9 Florida Bar and is authorized by such counsel representing a
10 defendant may send a written demand for additional public
11 records to each person or agency submitting public records
12 under subsection (3) and to each person or agency identified
13 as having information pertinent to the case under subsection
14 (5). Should the written demand include requests for records
15 associated with particular named individuals, the written
16 demand shall also include a brief statement describing each
17 named person's role in the case and relationship to the
18 defendant. Race, sex, and date of birth shall also be included
19 in the demand if the public defender, private counsel, or
20 capital collateral regional counsel has such information. Each
21 person or agency notified under this subsection shall, within
22 60 days after receipt of the written demand, deliver to the
23 records repository or, if the records are confidential or
24 exempt, to the clerk of the court in the county in which the
25 capital case was tried any additional public records in the
26 possession of the person or agency which pertain to the case
27 and shall certify that to the best of his or her knowledge and
28 belief all additional public records have been delivered or,
29 if no additional public records are found, shall recertify
30 that the public records previously delivered are complete.

31

1 (b) Within 25 days after receiving the written demand,
2 the agency or person may file an objection in the trial court
3 alleging that the request is overly broad or unduly
4 burdensome. Within 30 days after the filing of an objection,
5 the trial court shall hold a hearing and order an agency or
6 person to produce additional public records if it finds each
7 of the following:

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

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

13 3. The additional public records sought are relevant
14 to the subject matter of a capital postconviction relief or
15 appear reasonably calculated to lead to the discovery of
16 admissible evidence in prosecuting such claim.

17 4. The additional public records request is not
18 overbroad or unduly burdensome.

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

23 (d) If, on June 1, 2006 ~~October 1, 1998~~, the defendant
24 had a Rule 3.850 motion denied and no Rule 3.850 motion was
25 pending, no additional requests shall be made by capital
26 collateral regional counsel or contracted private counsel
27 until a death warrant is signed by the Governor and an
28 execution is scheduled. Within 10 days of the signing of the
29 death warrant, capital collateral regional counsel or
30 contracted private counsel may request of a person or agency
31 that the defendant has previously requested to produce records

1 any records previously requested to which no objection was
2 raised or sustained, but which the agency has received or
3 produced since the previous request or which for any reason
4 the agency has in its possession and did not produce within 10
5 days of the receipt of the previous notice or such shorter
6 time period ordered by the court to comply with the time for
7 the scheduled execution. The person or agency shall produce
8 the record or shall file in the trial court an affidavit
9 stating that it does not have the requested record or that the
10 record has been produced previously.

11 (8)(a) After production of additional public records
12 or recertification as provided in subsection (7), the regional
13 counsel or the private counsel is prohibited from making any
14 further public records requests under this chapter. An agency
15 is not required to produce additional public records except by
16 court order as provided in this subsection.

17 (b) In order to obtain additional public records
18 beyond those provided under subsection (7), the regional
19 counsel, private counsel, or other counsel who is a member of
20 The Florida Bar and is authorized by the regional counsel or
21 private counsel shall file an affidavit in the trial court
22 which attests that he or she has made a timely and diligent
23 search of the records repository and specifically identifies
24 those additional public records that are not at the repository
25 and are relevant to the subject matter of a capital
26 postconviction claim or are reasonably calculated to lead to
27 the discovery of admissible evidence in the prosecution of
28 such claim. The affiant shall provide a copy of the affidavit
29 to all affected agencies upon the filing of such affidavit in
30 the trial court.

31

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

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

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

9 3. The additional public records sought are relevant
10 to the subject matter of a claim for capital postconviction
11 relief or appear reasonably calculated to lead to the
12 discovery of admissible evidence in prosecuting such claim.

13 4. The additional public records request is not
14 overbroad or unduly burdensome.

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

19 (10) The trial court shall resolve any dispute that
20 arises under this section, unless the appellate court has
21 exclusive jurisdiction.

22 (11) The capital collateral regional counsel or
23 private counsel shall not solicit another person to make a
24 request for public records on behalf of the regional counsel
25 or private counsel. The trial court shall impose appropriate
26 sanctions against any regional counsel or private counsel
27 found in violation of this subsection.

28 (12) Sixty days after a capital sentence is carried
29 out, 60 days after a defendant is released from incarceration
30 following the granting of a pardon or reversal of the
31 sentence, or 60 days after the defendant has been resentenced

1 to a term of years, the Attorney General shall provide written
2 notification to the Secretary of State, who may then destroy
3 the records held by the records repository which pertain to
4 that case.

5 (13) This section pertains only to the production of
6 records for capital postconviction defendants and does not
7 change or alter any time limitations provided by law governing
8 capital postconviction claims and actions. Furthermore, this
9 section does not affect, expand, or limit the production of
10 public records for any purposes other than use in a capital
11 postconviction proceeding. Nothing in this section constitutes
12 grounds to expand the time limitations or allow any pleading
13 in violation of chapter 924 or to stay an execution or death
14 warrant.

15 Section 10. Section 922.095, Florida Statutes, is
16 reenacted to read:

17 922.095 Grounds for death warrant; limitations of
18 actions.--A person who is convicted and sentenced to death
19 must pursue all possible collateral remedies within the time
20 limits provided by statute. Failure to seek relief within the
21 statutory time limits constitutes grounds for issuance of a
22 death warrant under s. 922.052 or s. 922.14. Any claim not
23 pursued within the statutory time limits is barred. No claim
24 filed after the time required by law shall be grounds for a
25 judicial stay of any warrant.

26 Section 11. Section 922.108, Florida Statutes, is
27 reenacted to read:

28 922.108 Sentencing orders in capital cases.--The
29 sentence of death must not specify any particular method of
30 execution. The wording or form of the sentencing order shall
31 not be grounds for reversal of any sentence.

1 Section 12. Section 924.055, Florida Statutes, is
2 reenacted to read:

3 924.055 Postconviction review in capital cases;
4 legislative findings and intent.--

5 (1) It is the intent of the Legislature to reduce
6 delays in capital cases and to ensure that all appeals and
7 postconviction actions in capital cases are resolved within 5
8 years after the date a sentence of death is imposed in the
9 circuit court. All capital postconviction actions must be
10 filed as early as possible after the imposition of a sentence
11 of death which may be during a direct appeal of the conviction
12 and sentence. A person sentenced to death or that person's
13 capital postconviction counsel must file any postconviction
14 legal action in compliance with the statutes of limitation
15 established in s. 924.056 and elsewhere in this chapter.
16 Except as expressly allowed by s. 924.056(5), a person
17 sentenced to death or that person's capital postconviction
18 counsel may not file more than one postconviction action in a
19 sentencing court and one appeal therefrom to the Florida
20 Supreme Court, unless authorized by law.

21 (2) It is the further intent of the Legislature that
22 no state resources be expended in violation of this act. In
23 the event that any state employee or party contracting with
24 the state violates the provisions of this act, the Attorney
25 General shall deliver to the Speaker of the House of
26 Representatives and the President of the Senate a copy of any
27 court pleading or order that describes or adjudicates a
28 violation.

29 Section 13. Section 924.056, Florida Statutes, is
30 amended to read:

31

1 924.056 Commencement of capital postconviction actions
2 for which sentence of death is imposed on or after July 1,
3 2007 ~~January 14, 2000~~; limitations on actions.--

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

8 (a) Within 15 days after imposing a sentence of death,
9 the sentencing court shall appoint the appropriate office of
10 the capital collateral regional counsel or private
11 postconviction counsel, unless the defendant declines to
12 accept postconviction legal representation in which case the
13 state shall not provide postconviction legal representation.
14 Within 30 days after the appointment, the capital collateral
15 regional counsel shall file a notice of appearance in the
16 trial court or a motion to withdraw based on a conflict of
17 interest or for good cause. The court shall appoint private
18 counsel pursuant to part IV of chapter 27 in any case in which
19 the capital collateral regional counsel files a motion to
20 withdraw, or otherwise informs the court that the capital
21 collateral regional counsel cannot comply with the provisions
22 of chapter 924 or in which the court determines that the
23 agency cannot comply with chapter 924 or other applicable
24 laws.

25 (b) The defendant who accepts the appointment of
26 postconviction counsel must cooperate with and assist
27 postconviction counsel. If the sentencing court finds the
28 defendant is obstructing the postconviction process, the
29 defendant shall not be entitled to any further postconviction
30 legal representation provided by the state. Each attorney
31 participating in a capital case on behalf of a defendant must

1 provide all information pertaining to the capital case which
2 the attorney obtained during the representation of that
3 defendant to that defendant's capital postconviction counsel.
4 Postconviction counsel must maintain the confidentiality of
5 any confidential information received from any attorney for
6 that defendant and is subject to the same penalties as the
7 providing attorney for violating confidentiality. If the
8 defendant requests without good cause that any attorney
9 appointed under this subsection be removed or replaced, the
10 court shall notify the defendant that no further state
11 resources may be expended for postconviction representation
12 for that defendant, unless the defendant withdraws the request
13 to remove or replace postconviction counsel. If the defendant
14 does not immediately withdraw his or her request, then any
15 appointed attorney must be removed from the case and no
16 further state resources may be expended for the defendant's
17 postconviction representation. The prosecuting attorney and
18 the defendant's trial counsel shall provide the defendant or,
19 if represented, the defendant's capital postconviction counsel
20 with copies of all pretrial and trial discovery and all
21 contents of the prosecuting attorney's file, except for
22 information that the prosecuting attorney has a legal right
23 under state or federal law to withhold from disclosure.

24 (2) The clerk of the court shall provide a copy of the
25 record on appeal to the capital postconviction attorney and
26 the state attorney and Attorney General within 60 days after
27 the sentencing court appoints postconviction counsel. However,
28 the court may grant an extension of up to 30 days when
29 extraordinary circumstances exist.

30 (3)(a) With respect to all capital postconviction
31 actions commenced after the effective date of this act, a

1 capital postconviction action is not commenced until the
2 defendant or the defendant's postconviction counsel files a
3 fully pled postconviction action in the sentencing court or,
4 as provided in subsection (4), the Florida Supreme Court. For
5 the purposes of this subsection, a fully pled capital
6 postconviction action is one which complies with s. 924.058(2)
7 or any superseding rule adopted by the Florida Supreme Court.
8 Except as provided by subsection (4) or subsection (5), all
9 capital postconviction actions shall be barred unless they are
10 commenced within 180 days after the filing of the appellant's
11 initial brief in the Florida Supreme Court on direct appeal of
12 the defendant's capital conviction and sentence. The fully
13 pled postconviction action must raise all cognizable claims
14 that the defendant's judgment or sentence was entered in
15 violation of the Constitution or laws of the United States or
16 the Constitution or the laws of the state, including any claim
17 of ineffective assistance of trial counsel, allegations of
18 innocence, or that the state withheld evidence favorable to
19 the defendant. No claim may be considered in such action which
20 could have or should have been raised before trial, at trial,
21 or if preserved on direct appeal. For the purposes of this
22 subsection, a capital postconviction action is not fully pled
23 unless it satisfies the requirements of s. 924.058(2) ~~or any~~
24 ~~superseding rule of court.~~

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

27 (c) The pendency of public records requests or
28 litigation, or the pendency of other litigation, or the
29 failure of the defendant or the defendant's postconviction
30 counsel to timely prosecute a case shall not constitute cause
31 for the court to grant any request for an extension of time or

1 other delay. No appeal may be taken from a court's ruling
2 denying such a request for an extension of time or other
3 delay.

4 (d) The time for commencement of the postconviction
5 action may not be tolled for any reason or cause. All claims
6 raised by amendment of a defendant's capital postconviction
7 action are barred if the claims are raised outside the time
8 limitations provided by statute for the filing of capital
9 postconviction actions.

10 (4) All capital postconviction actions raising any
11 claim of ineffective assistance of direct appeal counsel are
12 barred unless they are commenced in conformity with this
13 subsection. The defendant or the defendant's capital
14 postconviction counsel shall file an action in the Florida
15 Supreme Court raising any claim of ineffective assistance of
16 direct appeal counsel within 45 days after mandate issues
17 affirming the death sentence in the direct appeal.

18 (5) Regardless of when a sentence is imposed, all
19 successive capital postconviction actions are barred unless
20 commenced by filing a fully pled postconviction action within
21 90 days after the facts giving rise to the cause of action
22 were discovered or should have been discovered with the
23 exercise of due diligence. Such claim shall be barred pursuant
24 to subsection (3) or s. 924.057 unless the facts underlying
25 the claim, if proven and viewed in light of the evidence as a
26 whole, would be sufficient to establish by clear and
27 convincing evidence that, but for constitutional error, no
28 reasonable fact finder would have found the defendant guilty
29 of the underlying offense. Additionally, the facts underlying
30 this claim must have been unknown to the defendant or his or
31 her attorney and must be such that they could not have been

1 | ascertained by the exercise of due diligence prior to filing
2 | the earlier postconviction motion. The time period allowed for
3 | filing a successive collateral postconviction action shall not
4 | be grounds for a stay.

5 | Section 14. Section 924.057, Florida Statutes, is
6 | amended to read:

7 | 924.057 Limitation on postconviction cases in which
8 | the death sentence was imposed before July 1, 2007 ~~January 14,~~
9 | ~~2000~~.--This section shall govern all capital postconviction
10 | actions in cases in which the trial court imposed the sentence
11 | of death before the effective date of this act.

12 | (1) Nothing in this act shall expand any right or time
13 | period allowed for the prosecution of capital postconviction
14 | claims in any case in which a postconviction action was
15 | commenced or should have been commenced prior to the effective
16 | date of this act.

17 | (2) Except as provided in s. 924.056(5), in every case
18 | in which mandate has issued in the Florida Supreme Court
19 | concluding at least one capital postconviction action in the
20 | state court system, a successive capital postconviction action
21 | shall be barred on the effective date of this act, unless the
22 | rules or law in effect immediately prior to the effective date
23 | of this act permitted the successive postconviction action, in
24 | which case the action shall be barred on the date provided in
25 | subsection (4).

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

31 |

1 (a) The time in which the action would be barred by
2 this section if the action had not begun prior to the
3 effective date of this act, or

4 (b) Any earlier date provided by the rules or law, or
5 court order, in effect immediately prior to the effective date
6 of this act.

7 (4) In every capital case in which the trial court
8 imposed the sentence of death before the effective date of
9 this act, a capital postconviction action shall be barred
10 unless it is commenced on or before July 1, 2008 ~~January 8,~~
11 ~~2001~~, or any earlier date provided by the rule or law in
12 effect immediately prior to July 1, 2007 ~~the effective date of~~
13 ~~this act~~.

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

16 924.058 Capital postconviction claims.--This section
17 shall regulate the procedures in actions for capital
18 postconviction relief commencing after July 1, 2007 ~~the~~
19 ~~effective date of this act unless and until such procedures~~
20 ~~are revised by rule or rules adopted by the Florida Supreme~~
21 ~~Court which specifically reference this section.~~

22 (1) The defendant or the defendant's capital
23 postconviction counsel shall not file more than one capital
24 postconviction action in the sentencing court, one appeal
25 therefrom in the Florida Supreme Court, and one original
26 capital postconviction action alleging the ineffectiveness of
27 direct appeal counsel in the Florida Supreme Court, except as
28 expressly allowed by s. 924.056(5).

29 (2) The defendant's postconviction action shall be
30 filed under oath and shall be fully pled to include:
31

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

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

5 (c) Whether a previous postconviction action has been
6 filed and, if so, the disposition of all previous claims
7 raised in postconviction litigation; if a previous action or
8 actions have been filed, the reason or reasons the claim or
9 claims in the present motion were not raised in the former
10 action or actions;

11 (d) The nature of the relief sought;

12 (e) A fully detailed allegation of the factual basis
13 for any claim of legal or constitutional error asserted,
14 including the attachment of any document supporting the claim,
15 the name and address of any witness, the attachment of
16 affidavits of the witnesses or a proffer of the testimony; and

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

19 (3) Any capital postconviction action that does not
20 comply with any requirement in this section or other
21 applicable provision in law shall not be considered in any
22 state court. No amendment of a defendant's capital
23 postconviction action shall be allowed by the court after the
24 expiration of the time limitation provided by statute for the
25 commencement of capital postconviction actions.

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

30 Section 16. Section 924.059, Florida Statutes, is
31 amended to read:

1 924.059 Time limitations and judicial review in
2 capital postconviction actions.--This section shall regulate
3 the procedures in actions for capital postconviction relief
4 commencing after July 1, 2007 ~~the effective date of this act~~
5 ~~unless and until such procedures are revised by rule or rules~~
6 ~~adopted by the Florida Supreme Court which specifically~~
7 ~~reference this section.~~

8 (1) No amendment of a defendant's capital
9 postconviction action shall be allowed by the court after the
10 expiration of the time periods provided by statute for the
11 filing of capital postconviction claims.

12 (2) Within 30 days after the state files its answer,
13 the sentencing court shall conduct a hearing to determine if
14 an evidentiary hearing is required, if a hearing has been
15 requested by the defendant or the defendant's capital
16 postconviction counsel. Within 30 days thereafter, the court
17 shall rule whether an evidentiary hearing is required and, if
18 so, shall schedule an evidentiary hearing to be held within 90
19 days. If the court determines that the defendant's capital
20 postconviction action is legally insufficient or the action,
21 files, and records in the case show that the defendant is not
22 entitled to relief, the court shall, within 45 days
23 thereafter, deny the action, setting forth a detailed
24 rationale therefore, and attaching or referencing such
25 portions of the record as are necessary to allow for
26 meaningful appellate review.

27 (3) Within 10 days after the order scheduling an
28 evidentiary hearing, the defendant or the defendant's capital
29 postconviction counsel shall disclose the names and addresses
30 of any potential witnesses not previously disclosed, with
31 their affidavits or a proffer of their testimony. Upon receipt

1 of the defendant's disclosure, the state shall have 10 days
2 within which to provide reciprocal disclosure. If the
3 defendant intends to offer expert testimony of his or her
4 mental status, the state shall be entitled to have the
5 defendant examined by an expert of its choosing. All of the
6 defendant's mental status claims shall be deemed denied as a
7 matter of law if the defendant fails to cooperate with the
8 state's expert. Reports provided by expert witnesses shall be
9 disclosed by opposing counsel upon receipt.

10 (4) Following the evidentiary hearing, the court shall
11 order the transcription of the proceeding which shall be filed
12 within 30 days. Within 30 days after receipt of the
13 transcript, the sentencing court shall issue a final order
14 granting or denying postconviction relief, making detailed
15 findings of fact and conclusions of law with respect to any
16 allegation asserted.

17 (5) An appeal may be taken to the Supreme Court of
18 Florida within 15 days from the entry of a final order on a
19 capital postconviction action. No interlocutory appeal shall
20 be permitted. No motion for rehearing shall be permitted. The
21 clerk of the court shall promptly serve upon all parties a
22 copy of the final order.

23 (6) If the sentencing court has denied the capital
24 postconviction action without an evidentiary hearing, the
25 appeal to the Florida Supreme Court will be expeditiously
26 resolved in a summary fashion. On appeal, the case shall be
27 initially reviewed for a determination whether the sentencing
28 court correctly resolved the defendant's claims without an
29 evidentiary hearing. If the Florida Supreme Court determines
30 an evidentiary hearing should have been held, the decision to
31 remand for an evidentiary hearing may be made by an order

1 without an opinion. Jurisdiction shall be relinquished to the
2 trial court for a specified period, which must be scheduled
3 within 30 days and must be concluded within 90 days, for the
4 purpose of conducting an evidentiary hearing on any issue
5 identified by the Florida Supreme Court's order. Thereafter,
6 the record shall be supplemented with the hearing transcript.

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

12 (8) A capital postconviction action filed in violation
13 of the time limitations provided by statute is barred, and all
14 claims raised therein are waived. A state court shall not
15 consider any capital postconviction action filed in violation
16 of s. 924.056 or s. 924.057. The Attorney General shall
17 deliver to the Governor, the President of the Senate, and the
18 Speaker of the House of Representatives a copy of any pleading
19 or order that alleges or adjudicates any violation of this
20 provision.

21 Section 17. Section 924.395, Florida Statutes, is
22 reenacted to read:

23 924.395 Sanctions.--

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

29 (a) Abused a petition for extraordinary relief,
30 postconviction motion, or appeal therefrom;

31

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

4 (c) Improperly withheld evidence or testimony; or

5 (d) Adversely affected the orderly administration of
6 justice.

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

10 (a) Dismissal of a pleading;

11 (b) Disciplinary sanctions;

12 (c) A fine; and

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

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

19 Section 19. Rule 3.850, Florida Rules of Criminal
20 Procedure, is repealed to the extent inconsistent with this
21 act. Rule 3.851, Florida Rules of Criminal Procedure is
22 repealed to the extent inconsistent with this act. Rule 3.852,
23 Florida Rules of Criminal Procedure, is repealed.

24 Section 20. If any provision of this act or the
25 application thereof to any person or circumstance is held
26 invalid, the invalidity does not affect other provisions or
27 applications of the act which can be given effect without the
28 invalid provision or application, and to this end the
29 provisions of this act are declared severable.

30 Section 21. This act shall take effect July 1, 2007,
31 contingent upon voter approval of SJR _____ in the General

1 Election of 2006, but section 19 shall take effect only if
2 this act is passed by the affirmative vote of two-thirds of
3 the membership of each house of the Legislature.
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