

## CHAMBER ACTION

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1 The Criminal Justice Committee 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 Commission on Capital Cases;  
7 amending s. 27.7001, F.S.; providing legislative findings;  
8 amending s. 27.709, F.S.; authorizing the Commission on  
9 Capital Cases to sponsor continuing legal education  
10 programs devoted specifically to capital cases; amending  
11 s. 27.710, F.S.; specifying criteria that a private  
12 attorney must satisfy in order to be eligible to be  
13 appointed as counsel in a postconviction capital  
14 collateral proceeding; providing that a judge may appoint  
15 an attorney who does not meet the appointment criteria if  
16 exceptional circumstances exist; providing that an  
17 attorney may be removed from the capital collateral  
18 registry if the attorney does not meet the criteria;  
19 directing the executive director of the commission to  
20 remove an attorney from the registry if the attorney fails  
21 to timely file an executed contract; requiring a private  
22 attorney appointed by a court to represent a capital  
23 defendant to submit a report each quarter to the

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24 commission; requiring that the executive director remove  
25 an attorney from the registry if the attorney does not  
26 submit the report within a specified time; requiring that  
27 an attorney make reasonable efforts to assist the person  
28 under a sentence of death in finding an attorney under  
29 certain circumstances; amending s. 27.711, F.S.; requiring  
30 that costs incurred during pro bono representation of a  
31 capital defendant be paid to the attorney; providing that  
32 an attorney who is listed on the registry and representing  
33 at least one capital defendant is entitled to tuition and  
34 expenses for continuing legal education courses; providing  
35 that an attorney may represent no more than seven inmates  
36 in capital postconviction cases at any one time; requiring  
37 that, if a trial court judge intends to award attorney's  
38 fees in excess of those set by law, the judge must include  
39 written findings of fact specifically stating the  
40 extraordinary nature of the expenditures of the time,  
41 energy, and talents of the attorney in the case which are  
42 not ordinarily expended in other capital collateral cases;  
43 providing an effective date.

44  
45 Be It Enacted by the Legislature of the State of Florida:

46  
47 Section 1. Section 27.7001, Florida Statutes, is amended  
48 to read:

49 27.7001 Legislative intent and findings.--It is the intent  
50 of the Legislature to create part IV of this chapter, consisting  
51 of ss. 27.7001-27.711, inclusive, to provide for the collateral

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52 representation of any person convicted and sentenced to death in  
 53 this state, so that collateral legal proceedings to challenge  
 54 any Florida capital conviction and sentence may be commenced in  
 55 a timely manner and so as to assure the people of this state  
 56 that the judgments of its courts may be regarded with the  
 57 finality to which they are entitled in the interests of justice.  
 58 It is the further intent of the Legislature that collateral  
 59 representation shall not include representation during retrials,  
 60 resentencings, proceedings commenced under chapter 940, or civil  
 61 litigation. The Legislature further finds that not all capital  
 62 collateral cases are extraordinary or unusual.

63 Section 2. Paragraph (d) is added to subsection (2) of  
 64 section 27.709, Florida Statutes, to read:

65 27.709 Commission on Capital Cases.--

66 (2)

67 (d) The commission may sponsor programs of continuing  
 68 legal education which are devoted specifically to capital cases  
 69 and shall undertake any project recommended or approved by the  
 70 commission members.

71 Section 3. Section 27.710, Florida Statutes, is amended to  
 72 read:

73 27.710 Registry of attorneys applying to represent persons  
 74 in postconviction capital collateral proceedings; certification  
 75 of minimum requirements; appointment by trial court.--

76 (1) The executive director of the Commission on Capital  
 77 Cases shall compile and maintain a statewide registry of  
 78 attorneys in private practice who have certified that they meet  
 79 the ~~minimum~~ requirements of this section and s. 27.704(2), who

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80 are available for appointment by the court under this section to  
81 represent persons convicted and sentenced to death in this state  
82 in postconviction collateral proceedings, ~~and who have attended~~  
83 ~~within the last year a continuing legal education program of at~~  
84 ~~least 10 hours' duration devoted specifically to the defense of~~  
85 ~~capital cases, if available. Continuing legal education programs~~  
86 ~~meeting the requirements of this rule offered by The Florida Bar~~  
87 ~~or another recognized provider and approved for continuing legal~~  
88 ~~education credit by The Florida Bar shall satisfy this~~  
89 ~~requirement. The failure to comply with this requirement may be~~  
90 ~~cause for removal from the list until the requirement is~~  
91 fulfilled. To ensure that sufficient attorneys are available for  
92 appointment by the court, when the number of attorneys on the  
93 registry falls below 50, the executive director shall notify the  
94 chief judge of each circuit by letter and request the chief  
95 judge to promptly submit the names of at least three private  
96 attorneys who regularly practice criminal law in that circuit  
97 and who appear to meet the minimum requirements to represent  
98 persons in postconviction capital collateral proceedings. The  
99 executive director shall send an application to each attorney  
100 identified by the chief judge so that the attorney may register  
101 for appointment as counsel in postconviction capital collateral  
102 proceedings. As necessary, the executive director may also  
103 advertise in legal publications and other appropriate media for  
104 qualified attorneys interested in registering for appointment as  
105 counsel in postconviction capital collateral proceedings. Not  
106 later than September 1 of each year, and as necessary  
107 thereafter, the executive director shall provide to the Chief

108 Justice of the Supreme Court, the chief judge and state attorney  
 109 in each judicial circuit, and the Attorney General a current  
 110 copy of its registry of attorneys who are available for  
 111 appointment as counsel in postconviction capital collateral  
 112 proceedings. The registry must be indexed by judicial circuit  
 113 and must contain the requisite information submitted by the  
 114 applicants in accordance with this section.

115 (2) (a) To be eligible for court appointment as counsel in  
 116 postconviction capital collateral proceedings, an attorney must  
 117 certify on an application provided by the executive director  
 118 that he or she is a member in good standing of The Florida Bar  
 119 and:

120 1. Is an active practitioner who has at least 5 years'  
 121 experience in the practice of criminal law, is familiar with the  
 122 production of evidence and the use of expert witnesses,  
 123 including psychiatric and forensic evidence, and has  
 124 demonstrated the proficiency necessary for representation in  
 125 capital cases, including the investigation and presentation of  
 126 mitigation evidence;

127 2. Has attended a minimum of 12 hours of continuing legal  
 128 education programs within the previous 2 years which were  
 129 devoted to the defense of capital cases and offered by The  
 130 Florida Bar or another recognized provider of continuing legal  
 131 education courses; and

132 3.a. Has tried at least nine state or federal jury trials  
 133 to completion, two of which must have been capital cases and:

134 (I) Three of which must have been murder trials;

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135 (II) One of which must have been a murder trial and five  
136 of which must have been other felony trials; or

137 (III) One of which must have included a postconviction  
138 evidentiary hearing and five of which must have been other  
139 felony trials; or

140 b. Has appealed one capital conviction and appealed:

141 (I) At least three felony convictions, one of which must  
142 have been a murder;

143 (II) At least three felony convictions and participated in  
144 one capital postconviction evidentiary hearing; or

145 (III) At least six felony convictions, two of which must  
146 have been murders.

147 (b) If the trial court finds that exceptional  
148 circumstances exist requiring appointment of an attorney who  
149 does not meet the criteria set forth in paragraph (a), the trial  
150 court shall enter a written order specifying the exceptional  
151 circumstances requiring appointment of the attorney and explicit  
152 findings that the attorney chosen will provide competent  
153 representation in accordance with the intent of this section.

154 (c) A failure to comply with any criterion set forth in  
155 paragraph (a) may be cause to remove the attorney from the  
156 registry until the criterion is satisfied.

157 (d) Satisfaction of the criterion may be proven by  
158 submitting a written certification to the commission. The  
159 certification is complete upon submission of the application by  
160 electronic mail without a signature ~~satisfies the minimum~~  
161 ~~requirements for private counsel set forth in s. 27.704(2).~~

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162           (3) An attorney ~~who applies for registration and court~~  
163 ~~appointment as counsel in postconviction capital collateral~~  
164 ~~proceedings must certify that he or she is counsel of record in~~  
165 ~~not more than four such proceedings and, if appointed to~~  
166 represent a person in postconviction capital collateral  
167 proceedings, shall continue the ~~such~~ representation under the  
168 terms and conditions set forth in s. 27.711 until the sentence  
169 is reversed, reduced, or carried out or unless permitted to  
170 withdraw from representation by the trial court. The court may  
171 not permit an attorney to withdraw from representation without a  
172 finding of sufficient good cause. The court may impose  
173 appropriate sanctions if it finds that an attorney has shown bad  
174 faith with respect to continuing to represent a defendant in a  
175 postconviction capital collateral proceeding. This section does  
176 not preclude the court from reassigning a case to a capital  
177 collateral regional counsel following discontinuation of  
178 representation if a conflict of interest no longer exists with  
179 respect to the case.

180           (4) (a) Each private attorney who is appointed by the court  
181 to represent a capital defendant must enter into a contract with  
182 the Chief Financial Officer. If the appointed attorney fails to  
183 execute the contract within 30 days after the date the contract  
184 is mailed to the attorney, the executive director of the  
185 Commission on Capital Cases shall notify the trial court and  
186 shall remove the attorney from the registry list. The Chief  
187 Financial Officer shall develop the form of the contract,  
188 function as contract manager, and enforce performance of the  
189 terms and conditions of the contract. By signing such contract,

190 the attorney certifies that he or she intends to continue the  
 191 representation under the terms and conditions set forth in the  
 192 contract until the sentence is reversed, reduced, or carried out  
 193 or until released by order of the trial court.

194 (b) Each private attorney appointed by a court to  
 195 represent a capital defendant shall submit a report each quarter  
 196 to the commission in the format designated by the commission. If  
 197 the attorney does not submit the report within 30 days after the  
 198 end of the quarter, the executive director shall remove the  
 199 attorney from the registry and the court may impose a fine or  
 200 remove the attorney from the case.

201 (5) (a) Upon the motion of the capital collateral regional  
 202 counsel to withdraw under ~~pursuant to~~ s. 924.056(1) (a); or

203 (b) Upon notification by the state attorney or the  
 204 Attorney General that:

205 1. Thirty days have elapsed since appointment of the  
 206 capital collateral regional counsel and no entry of appearance  
 207 has been filed under ~~pursuant to~~ s. 924.056; or

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

211  
 212 the executive director shall immediately notify the trial court  
 213 that imposed the sentence of death that the court must  
 214 immediately appoint an attorney, selected from the current  
 215 registry, to represent the ~~such~~ person in collateral actions  
 216 challenging the legality of the judgment and sentence in the  
 217 appropriate state and federal courts. If the attorney appointed



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218 to represent a person under a sentence of death does not wish to  
219 continue representing the person in federal proceedings, the  
220 attorney must make reasonable efforts to assist the person in  
221 finding an attorney who meets the federal criteria to represent  
222 the person in any federal proceedings. The court shall have the  
223 authority to strike a notice of appearance filed by a Capital  
224 Collateral Regional Counsel, if the court finds the notice was  
225 not filed in good faith and may so notify the executive director  
226 that the client is no longer represented by the Office of  
227 Capital Collateral Regional Counsel. In making an assignment,  
228 the court shall give priority to attorneys whose experience and  
229 abilities in criminal law, especially in capital proceedings,  
230 are known by the court to be commensurate with the  
231 responsibility of representing a person sentenced to death. The  
232 trial court must issue an order of appointment which contains  
233 specific findings that the appointed counsel meets the statutory  
234 requirements and has the high ethical standards necessary to  
235 represent a person sentenced to death.

236 (6) More than one attorney may not be appointed and  
237 compensated at any one time under s. 27.711 to represent a  
238 person in postconviction capital collateral proceedings.  
239 However, an attorney appointed under this section may designate  
240 another attorney to assist him or her if the designated attorney  
241 meets the qualifications of this section.

242 Section 4. Subsections (3), (4), (7), and (9) of section  
243 27.711, Florida Statutes, are amended, and subsection (15) is  
244 added to that section, to read:

245 27.711 Terms and conditions of appointment of attorneys as  
246 counsel in postconviction capital collateral proceedings.--

247 (3) An attorney appointed to represent a capital defendant  
248 is entitled to payment of the fees set forth in this section  
249 only upon full performance by the attorney of the duties  
250 specified in this section and approval of payment by the trial  
251 court, and the submission of a payment request by the attorney,  
252 subject to the availability of sufficient funding specifically  
253 appropriated for this purpose. An attorney may not be  
254 compensated under this section for work performed by the  
255 attorney before July 1, 2003, while employed by the northern  
256 regional office of the capital collateral counsel. The Chief  
257 Financial Officer shall notify the executive director and the  
258 court if it appears that sufficient funding has not been  
259 specifically appropriated for this purpose to pay any fees which  
260 may be incurred. The attorney shall maintain appropriate  
261 documentation, including a current and detailed hourly  
262 accounting of time spent representing the capital defendant. The  
263 fee and payment schedule in this section is the exclusive means  
264 of compensating a court-appointed attorney who represents a  
265 capital defendant. When appropriate, a court-appointed attorney  
266 must seek further compensation from the Federal Government, as  
267 provided in 18 U.S.C. s. 3006A or other federal law, in habeas  
268 corpus litigation in the federal courts. An attorney appointed  
269 under s. 27.710, or appointed by the court to replace a capital  
270 collateral regional counsel staff attorney or capital collateral  
271 regional counsel contract attorney, who incurs costs for  
272 representing capital defendants on a pro bono basis shall be

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273 paid from registry funds by the Chief Financial Officer. These  
274 payments must be approved by the trial court before payment.

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

279 (a) Regardless of the stage of postconviction capital  
280 collateral proceedings, the attorney is entitled to \$100 per  
281 hour, up to a maximum of \$2,500, after accepting appointment and  
282 filing a notice of appearance.

283 (b) The attorney is entitled to \$100 per hour, up to a  
284 maximum of \$20,000, after timely filing in the trial court the  
285 capital defendant's complete original motion for postconviction  
286 relief under the Florida Rules of Criminal Procedure. The motion  
287 must raise all issues to be addressed by the trial court.  
288 However, an attorney is entitled to fees under this paragraph if  
289 the court schedules a hearing on a matter that makes the filing  
290 of the original motion for postconviction relief unnecessary or  
291 if the court otherwise disposes of the case.

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

296 (d) The attorney is entitled to \$100 per hour, up to a  
297 maximum of \$20,000, after timely filing in the Supreme Court the  
298 capital defendant's brief or briefs that address the trial  
299 court's final order granting or denying the capital defendant's

300 motion for postconviction relief and the state petition for writ  
301 of habeas corpus.

302 (e) The attorney is entitled to \$100 per hour, up to a  
303 maximum of \$10,000, after the trial court issues an order,  
304 following pursuant to a remand from the Supreme Court, which  
305 directs the trial court to hold further proceedings on the  
306 capital defendant's motion for postconviction relief.

307 (f) The attorney is entitled to \$100 per hour, up to a  
308 maximum of \$4,000, after the appeal of the trial court's denial  
309 of the capital defendant's motion for postconviction relief and  
310 the capital defendant's state petition for writ of habeas corpus  
311 become final in the Supreme Court.

312 (g) At the conclusion of the capital defendant's  
313 postconviction capital collateral proceedings in state court,  
314 the attorney is entitled to \$100 per hour, up to a maximum of  
315 \$2,500, for the preparation of the initial federal pleading  
316 ~~after filing a petition for writ of certiorari in the Supreme~~  
317 ~~Court of the United States.~~

318 (h) If, at any time, a death warrant is issued, the  
319 attorney is entitled to \$100 per hour, up to a maximum of  
320 \$5,000. This payment shall be full compensation for attorney's  
321 fees and costs for representing the capital defendant throughout  
322 the proceedings before the state courts of Florida.

323  
324 The hours billed by a contracting attorney under this subsection  
325 may include time devoted to representation of the defendant by  
326 another attorney who is qualified under s. 27.710 and who has

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327 | been designated by the contracting attorney to assist him or  
328 | her.

329 |       (7) Each registry ~~An~~ attorney who is representing at least  
330 | one capital defendant ~~actively representing a capital defendant~~  
331 | is entitled to a maximum of \$500 per fiscal year for tuition and  
332 | expenses for continuing legal education that pertains to the  
333 | representation of capital defendants, regardless of the total  
334 | number of capital defendants the attorney is representing. Upon  
335 | approval by the trial court, the attorney is entitled to payment  
336 | by the Chief Financial Officer for expenses for such tuition and  
337 | continuing legal education.

338 |       (9) An attorney may not represent more than seven inmates  
339 | ~~five defendants~~ in capital postconviction litigation at any one  
340 | time. The seven-inmate-representation limit includes capital  
341 | postconviction cases proceeding under contract with the capital  
342 | collateral regional counsel, inmates represented pro bono, and  
343 | inmates privately retaining the attorney. An attorney may not be  
344 | appointed to additional capital postconviction cases until the  
345 | attorney's representation total falls below the seven-case  
346 | limit.

347 |       (15) If a trial court judge intends to award attorney fees  
348 | in excess of those outlined in this section, the judge must  
349 | include written findings of fact that specifically state the  
350 | extraordinary nature of the expenditures of the time, energy,  
351 | and talents of the attorney in the case which are not ordinarily  
352 | expended in other capital collateral cases.

353 |       Section 5. This act shall take effect July 1, 2006.