

1 A bill to be entitled
2 An act relating to the death penalty; providing a short
3 title; amending s. 27.51, F.S.; prohibiting certain public
4 defenders from representing certain persons sentenced to
5 death; providing for notification of the Florida Supreme
6 Court and appointment by the court of another public
7 defender; reenacting s. 27.702(1), F.S., relating to a
8 duty of the capital collateral regional counsel;
9 reenacting s. 27.703, F.S., relating to conflict of
10 interest and substitute counsel; reenacting s. 27.709(2),
11 F.S., relating to a duty of the Commission on Capital
12 Cases; reenacting s. 27.710, F.S., relating to a registry
13 of attorneys applying to represent persons in
14 postconviction capital collateral proceedings; reenacting
15 s. 27.711(3) and (13), F.S., relating to fees of attorneys
16 appointed as counsel in postconviction capital collateral
17 proceedings; amending s. 119.011, F.S.; revising the
18 definition of "active"; reenacting and amending s.
19 27.7081, F.S., relating to capital postconviction public
20 records production; revising a threshold date to conform;
21 reenacting s. 922.095, F.S., relating to grounds for a
22 death warrant and limitations of actions; reenacting s.
23 922.108, F.S., relating to sentencing orders in capital
24 cases; reenacting s. 924.055, F.S., relating to
25 postconviction review in capital cases; reenacting and
26 amending ss. 924.056 and 924.057, F.S.; revising a
27 threshold date to conform; revising criteria for
28 determining full pleading of a capital postconviction

29 | action; reenacting and amending ss. 924.058 and 924.059,
 30 | F.S.; revising a threshold date to conform; deleting a
 31 | provision relating to Florida Supreme Court rule revision
 32 | of certain capital postconviction relief procedures;
 33 | reenacting s. 924.395, F.S., relating to sanctions;
 34 | repealing certain rules of criminal procedure; providing
 35 | severability; providing a contingent effective date.
 36 |

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

41 | WHEREAS, in order for capital punishment to be fair, just,
 42 | and humane for both the families of victims and for offenders,
 43 | there must be a prompt and efficient administration of justice
 44 | following any sentence of death ordered by the courts of this
 45 | state, and

46 | WHEREAS, in order to ensure the fair, just, and humane
 47 | administration of capital punishment, it is necessary for the
 48 | Legislature to comprehensively address both the method by which
 49 | an execution is carried out and the processes by which an
 50 | offender sentenced to death may pursue postconviction and
 51 | collateral review of the judgment and the sentence of death, and

52 | WHEREAS, the Death Penalty Reform Act of 2000, chapter
 53 | 2000-3, Laws of Florida, was designed to accomplish these
 54 | objectives and was passed by the Legislature and approved by the
 55 | Governor in January of 2000, and

56 | WHEREAS, the Death Penalty Reform Act of 2000, chapter

HB 1481

2007

57 2000-3, Laws of Florida, was declared unconstitutional by the
 58 Florida Supreme Court three months after becoming a law in Allen
 59 v. Butterworth, 756 So.2d 52 (Fla. 2000), as being an
 60 encroachment on the court's "exclusive power to 'adopt rules for
 61 the practice and procedure in all courts,'" and

62 WHEREAS, the Constitution of the State of Florida has been
 63 amended to authorize the Legislature to adopt, reject, or amend
 64 court rules of criminal procedure and rules of procedure
 65 governing postconviction proceedings which are proposed by the
 66 judicial conference, and

67 WHEREAS, many provisions of the Death Penalty Reform Act of
 68 2000 which were held unconstitutional may now be reenacted,
 69 while other provisions can be modified, and new provisions added
 70 to accomplish the same purpose, procedure, and objective of the
 71 Death Penalty Reform Act of 2000, NOW, THEREFORE,

72
 73 Be It Enacted by the Legislature of the State of Florida:

74
 75 Section 1. This act may be cited as the "Death Penalty
 76 Reform Act."

77 Section 2. Subsections (5) and (6) of section 27.51,
 78 Florida Statutes, are renumbered as subsections (6) and (7),
 79 respectively, and a new subsection (5) is added to said section,
 80 to read:

81 27.51 Duties of public defender.--

82 (5) When the public defender for a judicial circuit
 83 enumerated in subsection (4) has represented at trial a person
 84 sentenced to death, the public defender shall not represent that

HB 1481

2007

85 person in any direct appellate proceedings. That public defender
86 shall notify the Supreme Court within 10 days after filing a
87 notice of appeal, and the court shall appoint another public
88 defender enumerated in subsection (4) to represent the person in
89 any direct appellate proceedings.

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

92 27.702 Duties of the capital collateral regional counsel;
93 reports.--

94 (1) The capital collateral regional counsel shall
95 represent each person convicted and sentenced to death in this
96 state for the sole purpose of instituting and prosecuting
97 collateral actions challenging the legality of the judgment and
98 sentence imposed against such person in the state courts,
99 federal courts in this state, the United States Court of Appeals
100 for the Eleventh Circuit, and the United States Supreme Court.
101 The capital collateral regional counsel and the attorneys
102 appointed pursuant to s. 27.710 shall file only those
103 postconviction or collateral actions authorized by statute. The
104 three capital collateral regional counsel's offices shall
105 function independently and be separate budget entities, and the
106 regional counsel shall be the office heads for all purposes. The
107 Justice Administrative Commission shall provide administrative
108 support and service to the three offices to the extent requested
109 by the regional counsel. The three regional offices shall not be
110 subject to control, supervision, or direction by the Justice
111 Administrative Commission in any manner, including, but not

HB 1481

2007

112 limited to, personnel, purchasing, transactions involving real
 113 or personal property, and budgetary matters.

114 Section 4. Section 27.703, Florida Statutes, is reenacted
 115 to read:

116 27.703 Conflict of interest and substitute counsel.--

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

127 (2) Appointed counsel shall be paid from funds
 128 appropriated to the Chief Financial Officer. The hourly rate may
 129 not exceed \$100. However, all appointments of private counsel
 130 under this section shall be in accordance with ss. 27.710 and
 131 27.711.

132 (3) Prior to employment, counsel appointed pursuant to
 133 this section must have participated in at least five felony jury
 134 trials, five felony appeals, or five capital postconviction
 135 evidentiary hearings, or any combination of at least five of
 136 such proceedings.

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

139 27.709 Commission on Capital Cases.--

140 (2) (a) The commission shall review the administration of
 141 justice in capital collateral cases, receive relevant public
 142 input, review the operation of the capital collateral regional
 143 counsel and private counsel appointed pursuant to ss. 27.710 and
 144 27.711, and advise and make recommendations to the Governor,
 145 Legislature, and Supreme Court.

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

154 (c) In addition, the commission shall receive complaints
 155 regarding the practice of any office of regional counsel and
 156 private counsel appointed pursuant to ss. 27.710 and 27.711 and
 157 shall refer any complaint to The Florida Bar, the State Supreme
 158 Court, or the Commission on Ethics, as appropriate.

159 Section 6. Section 27.710, Florida Statutes, is reenacted
 160 to read:

161 27.710 Registry of attorneys applying to represent persons
 162 in postconviction capital collateral proceedings; certification
 163 of minimum requirements; appointment by trial court.--

164 (1) The executive director of the Commission on Capital
 165 Cases shall compile and maintain a statewide registry of
 166 attorneys in private practice who have certified that they meet
 167 the minimum requirements of s. 27.704(2), who are available for

HB 1481

2007

168 appointment by the court under this section to represent persons
169 convicted and sentenced to death in this state in postconviction
170 collateral proceedings, and who have attended within the last
171 year a continuing legal education program of at least 10 hours'
172 duration devoted specifically to the defense of capital cases,
173 if available. Continuing legal education programs meeting the
174 requirements of this rule offered by The Florida Bar or another
175 recognized provider and approved for continuing legal education
176 credit by The Florida Bar shall satisfy this requirement. The
177 failure to comply with this requirement may be cause for removal
178 from the list until the requirement is fulfilled. To ensure that
179 sufficient attorneys are available for appointment by the court,
180 when the number of attorneys on the registry falls below 50, the
181 executive director shall notify the chief judge of each circuit
182 by letter and request the chief judge to promptly submit the
183 names of at least three private attorneys who regularly practice
184 criminal law in that circuit and who appear to meet the minimum
185 requirements to represent persons in postconviction capital
186 collateral proceedings. The executive director shall send an
187 application to each attorney identified by the chief judge so
188 that the attorney may register for appointment as counsel in
189 postconviction capital collateral proceedings. As necessary, the
190 executive director may also advertise in legal publications and
191 other appropriate media for qualified attorneys interested in
192 registering for appointment as counsel in postconviction capital
193 collateral proceedings. Not later than September 1 of each year,
194 and as necessary thereafter, the executive director shall
195 provide to the Chief Justice of the Supreme Court, the chief

HB 1481

2007

196 judge and state attorney in each judicial circuit, and the
197 Attorney General a current copy of its registry of attorneys who
198 are available for appointment as counsel in postconviction
199 capital collateral proceedings. The registry must be indexed by
200 judicial circuit and must contain the requisite information
201 submitted by the applicants in accordance with this section.

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

207 (3) An attorney who applies for registration and court
208 appointment as counsel in postconviction capital collateral
209 proceedings must certify that he or she is counsel of record in
210 not more than four such proceedings and, if appointed to
211 represent a person in postconviction capital collateral
212 proceedings, shall continue such representation under the terms
213 and conditions set forth in s. 27.711 until the sentence is
214 reversed, reduced, or carried out or unless permitted to
215 withdraw from representation by the trial court. The court may
216 not permit an attorney to withdraw from representation without a
217 finding of sufficient good cause. The court may impose
218 appropriate sanctions if it finds that an attorney has shown bad
219 faith with respect to continuing to represent a defendant in a
220 postconviction capital collateral proceeding. This section does
221 not preclude the court from reassigning a case to a capital
222 collateral regional counsel following discontinuation of
223 representation if a conflict of interest no longer exists with

224 respect to the case.

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

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

240 (b) Upon notification by the state attorney or the
 241 Attorney General that:

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

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

248
 249 the executive director shall immediately notify the trial court
 250 that imposed the sentence of death that the court must
 251 immediately appoint an attorney, selected from the current

HB 1481

2007

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

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

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

276 27.711 Terms and conditions of appointment of attorneys as
277 counsel in postconviction capital collateral proceedings.--

278 (3) An attorney appointed to represent a capital defendant
279 is entitled to payment of the fees set forth in this section

HB 1481

2007

280 only upon full performance by the attorney of the duties
281 specified in this section and approval of payment by the trial
282 court, and the submission of a payment request by the attorney,
283 subject to the availability of sufficient funding specifically
284 appropriated for this purpose. An attorney may not be
285 compensated under this section for work performed by the
286 attorney before July 1, 2003, while employed by the northern
287 regional office of the capital collateral counsel. The Chief
288 Financial Officer shall notify the executive director and the
289 court if it appears that sufficient funding has not been
290 specifically appropriated for this purpose to pay any fees which
291 may be incurred. The attorney shall maintain appropriate
292 documentation, including a current and detailed hourly
293 accounting of time spent representing the capital defendant. The
294 fee and payment schedule in this section is the exclusive means
295 of compensating a court-appointed attorney who represents a
296 capital defendant. When appropriate, a court-appointed attorney
297 must seek further compensation from the Federal Government, as
298 provided in 18 U.S.C. s. 3006A or other federal law, in habeas
299 corpus litigation in the federal courts.

300 (13) Prior to the filing of a motion for order approving
301 payment of attorney's fees, costs, or related expenses, the
302 assigned counsel shall deliver a copy of his intended billing,
303 together with supporting affidavits and all other necessary
304 documentation, to the Chief Financial Officer's named contract
305 manager. The contract manager shall have 10 business days from
306 receipt to review the billings, affidavit, and documentation for
307 completeness and compliance with contractual and statutory

HB 1481

2007

308 requirements. If the contract manager objects to any portion of
309 the proposed billing, the objection and reasons therefor shall
310 be communicated to the assigned counsel. The assigned counsel
311 may thereafter file his or her motion for order approving
312 payment of attorney's fees, costs, or related expenses together
313 with supporting affidavits and all other necessary
314 documentation. The motion must specify whether the Chief
315 Financial Officer's contract manager objects to any portion of
316 the billing or the sufficiency of documentation and, if so, the
317 reason therefor. A copy of the motion and attachments shall be
318 served on the Chief Financial Officer's contract manager, who
319 shall have standing to file pleadings and appear before the
320 court to contest any motion for order approving payment. The
321 fact that the Chief Financial Officer's contract manager has not
322 objected to any portion of the billing or to the sufficiency of
323 the documentation is not binding on the court, which retains
324 primary authority and responsibility for determining the
325 reasonableness of all billings for fees, costs, and related
326 expenses, subject to statutory limitations.

327 Section 8. Paragraph (d) of subsection (3) of section
328 119.011, Florida Statutes, is amended to read:

329 119.011 Definitions.--As used in this chapter, the term:
330 (3)

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

332 1. Criminal intelligence information shall be considered
333 "active" as long as it is related to intelligence gathering
334 conducted with a reasonable, good faith belief that it will lead
335 to detection of ongoing or reasonably anticipated criminal

HB 1481

2007

336 activities.

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

341
342 Except as provided in this paragraph ~~In addition~~, criminal
343 intelligence and criminal investigative information shall be
344 considered "active" while such information is directly related
345 to pending prosecutions or appeals. With respect to capital
346 cases in which the defendant has been sentenced to death, upon
347 the imposition of the death sentence criminal intelligence and
348 criminal investigative information shall be considered to be not
349 "active." The word "active" shall not apply to information in
350 cases which are barred from prosecution under the provisions of
351 s. 775.15 or other statute of limitation.

352 Section 9. Section 27.7081, Florida Statutes, is reenacted
353 and amended to read:

354 27.7081 Capital postconviction public records
355 production.--

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

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

359 (b) If a motion for postconviction relief in a capital
360 case has been filed and a different judge has already been
361 assigned to that motion, the judge who is assigned to rule on
362 that motion.

363 (2) The Secretary of State shall establish and maintain a

HB 1481

2007

364 records repository for the purpose of archiving capital
365 postconviction public records as provided for in this section.

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

375 (b) Within 60 days after receipt of notification, each law
376 enforcement agency involved in the case and the prosecuting
377 attorney who prosecuted the case shall copy, seal, and deliver
378 to the repository all public records, except for those filed in
379 the trial court, which were produced in the investigation or
380 prosecution of the case or, if the records are confidential or
381 exempt, to the clerk of the court in the county in which the
382 capital case was tried. Each agency shall bear the costs of its
383 own compliance.

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

HB 1481

2007

392 the costs.

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

404 (b) The prosecuting attorney who prosecuted the case shall
405 provide written notification to the Attorney General upon
406 compliance with subsection (3) and shall certify that to the
407 best of his or her knowledge and belief all public records in
408 his or her possession have been copied, indexed, and delivered
409 to the records repository or, if the records are confidential or
410 exempt, to the clerk of the court in the county in which the
411 capital case was tried as required by this section.

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

HB 1481

2007

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

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

446 (6) (a) Any public record under this section which is
447 confidential or exempt from the requirements of s. 119.07(1) and

HB 1481

2007

448 s. 24(a), Art. I of the State Constitution must be separately
449 boxed, without being redacted, and sealed. The box must be
450 delivered to the clerk of court in the county in which the
451 capital case was tried. The outside of the box must clearly
452 identify the public records as exempt, and the seal may not be
453 broken without an order of the trial court. The outside of the
454 box must identify the nature of the public records and the legal
455 basis under which the public records are exempt.

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

460 (7)(a) Within 180 days after a capital collateral regional
461 counsel or private counsel is appointed to represent a defendant
462 sentenced to death, or within 30 days after issuance of the
463 Florida Supreme Court's mandate affirming a death sentence,
464 whichever is later, the regional counsel, private counsel, or
465 other counsel who is a member of The Florida Bar and is
466 authorized by such counsel representing a defendant may send a
467 written demand for additional public records to each person or
468 agency submitting public records under subsection (3) and to
469 each person or agency identified as having information pertinent
470 to the case under subsection (5). Should the written demand
471 include requests for records associated with particular named
472 individuals, the written demand shall also include a brief
473 statement describing each named person's role in the case and
474 relationship to the defendant. Race, sex, and date of birth
475 shall also be included in the demand if the public defender,

HB 1481

2007

476 private counsel, or capital collateral regional counsel has such
477 information. Each person or agency notified under this
478 subsection shall, within 60 days after receipt of the written
479 demand, deliver to the records repository or, if the records are
480 confidential or exempt, to the clerk of the court in the county
481 in which the capital case was tried any additional public
482 records in the possession of the person or agency which pertain
483 to the case and shall certify that to the best of his or her
484 knowledge and belief all additional public records have been
485 delivered or, if no additional public records are found, shall
486 recertify that the public records previously delivered are
487 complete.

488 (b) Within 25 days after receiving the written demand, the
489 agency or person may file an objection in the trial court
490 alleging that the request is overly broad or unduly burdensome.
491 Within 30 days after the filing of an objection, the trial court
492 shall hold a hearing and order an agency or person to produce
493 additional public records if it finds each of the following:

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

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

499 3. The additional public records sought are relevant to
500 the subject matter of a capital postconviction relief or appear
501 reasonably calculated to lead to the discovery of admissible
502 evidence in prosecuting such claim.

503 4. The additional public records request is not overbroad

504 or unduly burdensome.

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

509 (d) If, on June 1, 2006 ~~October 1, 1998~~, the defendant had
 510 a Rule 3.850 motion denied and no Rule 3.850 motion was pending,
 511 no additional requests shall be made by capital collateral
 512 regional counsel or contracted private counsel until a death
 513 warrant is signed by the Governor and an execution is scheduled.
 514 Within 10 days of the signing of the death warrant, capital
 515 collateral regional counsel or contracted private counsel may
 516 request of a person or agency that the defendant has previously
 517 requested to produce records any records previously requested to
 518 which no objection was raised or sustained, but which the agency
 519 has received or produced since the previous request or which for
 520 any reason the agency has in its possession and did not produce
 521 within 10 days of the receipt of the previous notice or such
 522 shorter time period ordered by the court to comply with the time
 523 for the scheduled execution. The person or agency shall produce
 524 the record or shall file in the trial court an affidavit stating
 525 that it does not have the requested record or that the record
 526 has been produced previously.

527 (8)(a) After production of additional public records or
 528 recertification as provided in subsection (7), the regional
 529 counsel or the private counsel is prohibited from making any
 530 further public records requests under this chapter. An agency is
 531 not required to produce additional public records except by

HB 1481

2007

532 court order as provided in this subsection.

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

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

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

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

554 3. The additional public records sought are relevant to
555 the subject matter of a claim for capital postconviction relief
556 or appear reasonably calculated to lead to the discovery of
557 admissible evidence in prosecuting such claim.

558 4. The additional public records request is not overbroad
559 or unduly burdensome.

HB 1481

2007

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

564 (10) The trial court shall resolve any dispute that arises
565 under this section, unless the appellate court has exclusive
566 jurisdiction.

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

573 (12) Sixty days after a capital sentence is carried out,
574 60 days after a defendant is released from incarceration
575 following the granting of a pardon or reversal of the sentence,
576 or 60 days after the defendant has been resentenced to a term of
577 years, the Attorney General shall provide written notification
578 to the Secretary of State, who may then destroy the records held
579 by the records repository which pertain to that case.

580 (13) This section pertains only to the production of
581 records for capital postconviction defendants and does not
582 change or alter any time limitations provided by law governing
583 capital postconviction claims and actions. Furthermore, this
584 section does not affect, expand, or limit the production of
585 public records for any purposes other than use in a capital
586 postconviction proceeding. Nothing in this section constitutes
587 grounds to expand the time limitations or allow any pleading in

HB 1481

2007

588 violation of chapter 924 or to stay an execution or death
589 warrant.

590 Section 10. Section 922.095, Florida Statutes, is
591 reenacted to read:

592 922.095 Grounds for death warrant; limitations of
593 actions.--A person who is convicted and sentenced to death must
594 pursue all possible collateral remedies within the time limits
595 provided by statute. Failure to seek relief within the statutory
596 time limits constitutes grounds for issuance of a death warrant
597 under s. 922.052 or s. 922.14. Any claim not pursued within the
598 statutory time limits is barred. No claim filed after the time
599 required by law shall be grounds for a judicial stay of any
600 warrant.

601 Section 11. Section 922.108, Florida Statutes, is
602 reenacted to read:

603 922.108 Sentencing orders in capital cases.--The sentence
604 of death must not specify any particular method of execution.
605 The wording or form of the sentencing order shall not be grounds
606 for reversal of any sentence.

607 Section 12. Section 924.055, Florida Statutes, is
608 reenacted to read:

609 924.055 Postconviction review in capital cases;
610 legislative findings and intent.--

611 (1) It is the intent of the Legislature to reduce delays
612 in capital cases and to ensure that all appeals and
613 postconviction actions in capital cases are resolved within 5
614 years after the date a sentence of death is imposed in the
615 circuit court. All capital postconviction actions must be filed

HB 1481

2007

616 as early as possible after the imposition of a sentence of death
617 which may be during a direct appeal of the conviction and
618 sentence. A person sentenced to death or that person's capital
619 postconviction counsel must file any postconviction legal action
620 in compliance with the statutes of limitation established in s.
621 924.056 and elsewhere in this chapter. Except as expressly
622 allowed by s. 924.056(5), a person sentenced to death or that
623 person's capital postconviction counsel may not file more than
624 one postconviction action in a sentencing court and one appeal
625 therefrom to the Florida Supreme Court, unless authorized by
626 law.

627 (2) It is the further intent of the Legislature that no
628 state resources be expended in violation of this act. In the
629 event that any state employee or party contracting with the
630 state violates the provisions of this act, the Attorney General
631 shall deliver to the Speaker of the House of Representatives and
632 the President of the Senate a copy of any court pleading or
633 order that describes or adjudicates a violation.

634 Section 13. Section 924.056, Florida Statutes, is
635 reenacted and amended to read:

636 924.056 Commencement of capital postconviction actions for
637 which sentence of death is imposed on or after July 1, 2009
638 ~~January 14, 2000~~; limitations on actions.--

639 (1) In every capital case in which the trial court imposes
640 a sentence of death on or after July 1, 2009 ~~the effective date~~
641 ~~of this act~~, this section shall govern all postconviction
642 proceedings in state court.

643 (a) Within 15 days after imposing a sentence of death, the

HB 1481

2007

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

659 (b) The defendant who accepts the appointment of
660 postconviction counsel must cooperate with and assist
661 postconviction counsel. If the sentencing court finds the
662 defendant is obstructing the postconviction process, the
663 defendant shall not be entitled to any further postconviction
664 legal representation provided by the state. Each attorney
665 participating in a capital case on behalf of a defendant must
666 provide all information pertaining to the capital case which the
667 attorney obtained during the representation of that defendant to
668 that defendant's capital postconviction counsel. Postconviction
669 counsel must maintain the confidentiality of any confidential
670 information received from any attorney for that defendant and is
671 subject to the same penalties as the providing attorney for

HB 1481

2007

672 violating confidentiality. If the defendant requests without
673 good cause that any attorney appointed under this subsection be
674 removed or replaced, the court shall notify the defendant that
675 no further state resources may be expended for postconviction
676 representation for that defendant, unless the defendant
677 withdraws the request to remove or replace postconviction
678 counsel. If the defendant does not immediately withdraw his or
679 her request, then any appointed attorney must be removed from
680 the case and no further state resources may be expended for the
681 defendant's postconviction representation. The prosecuting
682 attorney and the defendant's trial counsel shall provide the
683 defendant or, if represented, the defendant's capital
684 postconviction counsel with copies of all pretrial and trial
685 discovery and all contents of the prosecuting attorney's file,
686 except for information that the prosecuting attorney has a legal
687 right under state or federal law to withhold from disclosure.

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

694 (3) (a) With respect to all capital postconviction actions
695 commenced after July 1, 2009 ~~the effective date of this act~~, a
696 capital postconviction action is not commenced until the
697 defendant or the defendant's postconviction counsel files a
698 fully pled postconviction action in the sentencing court or, as
699 provided in subsection (4), the Florida Supreme Court. For the

HB 1481

2007

700 purposes of this subsection, a fully pled capital postconviction
701 action is one which complies with s. 924.058(2) or any
702 superseding rule adopted by the Florida Supreme Court. Except as
703 provided by subsection (4) or subsection (5), all capital
704 postconviction actions shall be barred unless they are commenced
705 within 180 days after the filing of the appellant's initial
706 brief in the Florida Supreme Court on direct appeal of the
707 defendant's capital conviction and sentence. The fully pled
708 postconviction action must raise all cognizable claims that the
709 defendant's judgment or sentence was entered in violation of the
710 Constitution or laws of the United States or the Constitution or
711 the laws of the state, including any claim of ineffective
712 assistance of trial counsel, allegations of innocence, or that
713 the state withheld evidence favorable to the defendant. No claim
714 may be considered in such action which could have or should have
715 been raised before trial, at trial, or if preserved on direct
716 appeal. For the purposes of this subsection, a capital
717 postconviction action is not fully pled unless it satisfies the
718 requirements of s. 924.058(2) ~~or any superseding rule of court.~~

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

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

HB 1481

2007

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

734 (4) All capital postconviction actions raising any claim
735 of ineffective assistance of direct appeal counsel are barred
736 unless they are commenced in conformity with this subsection.
737 The defendant or the defendant's capital postconviction counsel
738 shall file an action in the Florida Supreme Court raising any
739 claim of ineffective assistance of direct appeal counsel within
740 45 days after mandate issues affirming the death sentence in the
741 direct appeal.

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

HB 1481

2007

756 diligence prior to filing the earlier postconviction motion. The
757 time period allowed for filing a successive collateral
758 postconviction action shall not be grounds for a stay.

759 Section 14. Section 924.057, Florida Statutes, is
760 reenacted and amended to read:

761 924.057 Limitation on postconviction cases in which the
762 death sentence was imposed before July 1, 2009 ~~January 14,~~
763 ~~2000.~~--This section shall govern all capital postconviction
764 actions in cases in which the trial court imposed the sentence
765 of death before July 1, 2009 ~~the effective date of this act.~~

766 (1) Nothing in this act shall expand any right or time
767 period allowed for the prosecution of capital postconviction
768 claims in any case in which a postconviction action was
769 commenced or should have been commenced prior to the effective
770 date of this act.

771 (2) Except as provided in s. 924.056(5), in every case in
772 which mandate has issued in the Florida Supreme Court concluding
773 at least one capital postconviction action in the state court
774 system, a successive capital postconviction action shall be
775 barred on July 1, 2009 ~~the effective date of this act~~, unless
776 the rules or law in effect immediately prior to July 1, 2009 ~~the~~
777 ~~effective date of this act~~ permitted the successive
778 postconviction action, in which case the action shall be barred
779 on the date provided in subsection (4).

780 (3) All capital postconviction actions pending on the
781 effective date of this act shall be barred, and shall be
782 dismissed with prejudice, unless fully pled in substantial
783 compliance with s. 924.058, or with any pending ~~superseding~~

784 order ~~or rule~~, on or before:

785 (a) The time in which the action would be barred by this
 786 section if the action had not begun prior to July 1, 2009 ~~the~~
 787 ~~effective date of this act~~, or

788 (b) Any earlier date provided by the rules or law, or
 789 court order, in effect immediately prior to July 1, 2009 ~~the~~
 790 ~~effective date of this act~~.

791 (4) In every capital case in which the trial court imposed
 792 the sentence of death before July 1, 2009 ~~the effective date of~~
 793 ~~this act~~, a capital postconviction action shall be barred unless
 794 it is commenced on or before July 1, 2010 ~~January 8, 2001~~, or
 795 any earlier date provided by the rule or law in effect
 796 immediately prior to July 1, 2009 ~~the effective date of this~~
 797 ~~act~~.

798 Section 15. Section 924.058, Florida Statutes, is
 799 reenacted and amended to read:

800 924.058 Capital postconviction claims.--This section shall
 801 regulate the procedures in actions for capital postconviction
 802 relief commencing after July 1, 2009 ~~the effective date of this~~
 803 ~~act unless and until such procedures are revised by rule or~~
 804 ~~rules adopted by the Florida Supreme Court which specifically~~
 805 ~~reference this section~~.

806 (1) The defendant or the defendant's capital
 807 postconviction counsel shall not file more than one capital
 808 postconviction action in the sentencing court, one appeal
 809 therefrom in the Florida Supreme Court, and one original capital
 810 postconviction action alleging the ineffectiveness of direct
 811 appeal counsel in the Florida Supreme Court, except as expressly

HB 1481

2007

812 allowed by s. 924.056(5).

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

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

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

819 (c) Whether a previous postconviction action has been
820 filed and, if so, the disposition of all previous claims raised
821 in postconviction litigation; if a previous action or actions
822 have been filed, the reason or reasons the claim or claims in
823 the present motion were not raised in the former action or
824 actions;

825 (d) The nature of the relief sought;

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

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

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

HB 1481

2007

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

844 Section 16. Section 924.059, Florida Statutes, is
845 reenacted and amended to read:

846 924.059 Time limitations and judicial review in capital
847 postconviction actions.--This section shall regulate the
848 procedures in actions for capital postconviction relief
849 commencing after July 1, 2009 ~~the effective date of this act~~
850 ~~unless and until such procedures are revised by rule or rules~~
851 ~~adopted by the Florida Supreme Court which specifically~~
852 ~~reference this section.~~

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

857 (2) Within 30 days after the state files its answer, the
858 sentencing court shall conduct a hearing to determine if an
859 evidentiary hearing is required, if a hearing has been requested
860 by the defendant or the defendant's capital postconviction
861 counsel. Within 30 days thereafter, the court shall rule whether
862 an evidentiary hearing is required and, if so, shall schedule an
863 evidentiary hearing to be held within 90 days. If the court
864 determines that the defendant's capital postconviction action is
865 legally insufficient or the action, files, and records in the
866 case show that the defendant is not entitled to relief, the
867 court shall, within 45 days thereafter, deny the action, setting

868 | forth a detailed rationale therefore, and attaching or
869 | referencing such portions of the record as are necessary to
870 | allow for meaningful appellate review.

871 | (3) Within 10 days after the order scheduling an
872 | evidentiary hearing, the defendant or the defendant's capital
873 | postconviction counsel shall disclose the names and addresses of
874 | any potential witnesses not previously disclosed, with their
875 | affidavits or a proffer of their testimony. Upon receipt of the
876 | defendant's disclosure, the state shall have 10 days within
877 | which to provide reciprocal disclosure. If the defendant intends
878 | to offer expert testimony of his or her mental status, the state
879 | shall be entitled to have the defendant examined by an expert of
880 | its choosing. All of the defendant's mental status claims shall
881 | be deemed denied as a matter of law if the defendant fails to
882 | cooperate with the state's expert. Reports provided by expert
883 | witnesses shall be disclosed by opposing counsel upon receipt.

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

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

HB 1481

2007

896 (6) If the sentencing court has denied the capital
897 postconviction action without an evidentiary hearing, the appeal
898 to the Florida Supreme Court will be expeditiously resolved in a
899 summary fashion. On appeal, the case shall be initially reviewed
900 for a determination whether the sentencing court correctly
901 resolved the defendant's claims without an evidentiary hearing.
902 If the Florida Supreme Court determines an evidentiary hearing
903 should have been held, the decision to remand for an evidentiary
904 hearing may be made by an order without an opinion. Jurisdiction
905 shall be relinquished to the trial court for a specified period,
906 which must be scheduled within 30 days and must be concluded
907 within 90 days, for the purpose of conducting an evidentiary
908 hearing on any issue identified by the Florida Supreme Court's
909 order. Thereafter, the record shall be supplemented with the
910 hearing transcript.

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

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

923 Section 17. Section 924.395, Florida Statutes, is

924 reenacted to read:

925 924.395 Sanctions.--

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

931 (a) Abused a petition for extraordinary relief,
 932 postconviction motion, or appeal therefrom;

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

936 (c) Improperly withheld evidence or testimony; or

937 (d) Adversely affected the orderly administration of
 938 justice.

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

942 (a) Dismissal of a pleading;

943 (b) Disciplinary sanctions;

944 (c) A fine; and

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

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

HB 1481

2007

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

958 Section 20. This act shall take effect on the effective
959 date of House Joint Resolution 1479, proposing an amendment to
960 Section 2 of Article V of the State Constitution, or a similar
961 constitutional amendment, relating to rules of court procedure
962 and practice.