

By Senator Argenziano

3-1716-07

1 A bill to be entitled
2 An act relating to the death penalty; providing
3 a short title; amending s. 27.51, F.S.;
4 prohibiting certain public defenders from
5 representing a defendant sentenced to death on
6 direct appeal; requiring the public defender to
7 notify the Supreme Court concerning such
8 appeals; requiring the court to appoint a
9 public defender from another circuit for direct
10 appeals; reenacting s. 27.702(1), F.S.,
11 relating to the duties of the capital
12 collateral regional counsel; reenacting s.
13 27.703, F.S., relating to conflict of interest
14 and substitute counsel; reenacting s.
15 27.709(2), F.S., relating to duties of the
16 Commission on Capital Cases; reenacting s.
17 27.710, F.S., relating to a registry of
18 attorneys applying to represent persons in
19 postconviction capital collateral proceedings;
20 reenacting s. 27.711(3) and (13), F.S.,
21 relating to fees of attorneys appointed as
22 counsel in postconviction capital collateral
23 proceedings; amending s. 27.7081, F.S.,
24 relating to capital postconviction public
25 records production; revising a threshold date
26 to conform; amending s. 119.011, F.S.;
27 redefining the term "active" for purposes of a
28 public-records exemption for criminal
29 investigations; reenacting s. 922.095, F.S.,
30 relating to grounds for a death warrant and
31 limitations of actions; reenacting s. 922.108,

1 F.S., relating to sentencing orders in capital
2 cases; reenacting s. 924.055, F.S., relating to
3 postconviction review in capital cases;
4 amending ss. 924.056 and 924.057, F.S.;
5 revising a threshold date to conform; revising
6 criteria for determining a full pleading of a
7 capital postconviction action; amending ss.
8 924.058 and 924.059, F.S.; revising a threshold
9 date to conform; deleting a provision relating
10 to the revision of certain capital
11 postconviction relief procedures by the Supreme
12 Court; reenacting s. 924.395, F.S., relating to
13 sanctions; providing for the repeal of certain
14 rules of criminal procedure; providing for
15 severability; providing a contingent effective
16 date.

17
18 WHEREAS, it is in the best interest of the
19 administration of justice that a sentence of death ordered by
20 a court of this state be carried out in a manner that is fair,
21 just, and humane and that conforms to constitutional
22 requirements, and

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

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

1 | an offender sentenced to death may pursue postconviction and
2 | collateral review of the judgment and the sentence of death,
3 | and

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

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

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

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

25 |
26 | Be It Enacted by the Legislature of the State of Florida:

27 |
28 | Section 1. This act may be cited as the "Death Penalty
29 | Reform Act."

30 | Section 2. Present subsections (5) and (6) of section
31 | 27.51, Florida Statutes, are redesignated as subsections (6)

1 and (7), respectively, and a new subsection (5) is added to
2 that section, to read:

3 27.51 Duties of public defender.--

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

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

15 27.702 Duties of the capital collateral regional
16 counsel; reports.--

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

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

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

9 27.703 Conflict of interest and substitute counsel.--

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

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

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

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

1 27.709 Commission on Capital Cases.--

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

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

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

22 Section 6. Section 27.710, Florida Statutes, is
23 reenacted to read:

24 27.710 Registry of attorneys applying to represent
25 persons in postconviction capital collateral proceedings;
26 certification of minimum requirements; appointment by trial
27 court.--

28 (1) The executive director of the Commission on
29 Capital Cases shall compile and maintain a statewide registry
30 of attorneys in private practice who have certified that they
31 meet the minimum requirements of s. 27.704(2), who are

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

1 General a current copy of its registry of attorneys who are
2 available for appointment as counsel in postconviction capital
3 collateral proceedings. The registry must be indexed by
4 judicial circuit and must contain the requisite information
5 submitted by the applicants in accordance with this section.

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

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

29 (4) Each private attorney who is appointed by the
30 court to represent a capital defendant must enter into a
31 contract with the Chief Financial Officer. If the appointed

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

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

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

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

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

22
23 the executive director shall immediately notify the trial
24 court that imposed the sentence of death that the court must
25 immediately appoint an attorney, selected from the current
26 registry, to represent such person in collateral actions
27 challenging the legality of the judgment and sentence in the
28 appropriate state and federal courts. The court shall have the
29 authority to strike a notice of appearance filed by a Capital
30 Collateral Regional Counsel, if the court finds the notice was
31 not filed in good faith and may so notify the executive

1 | director that the client is no longer represented by the
2 | Office of Capital Collateral Regional Counsel. In making an
3 | assignment, the court shall give priority to attorneys whose
4 | experience and abilities in criminal law, especially in
5 | capital proceedings, are known by the court to be commensurate
6 | with the responsibility of representing a person sentenced to
7 | death. The trial court must issue an order of appointment
8 | which contains specific findings that the appointed counsel
9 | meets the statutory requirements and has the high ethical
10 | standards necessary to represent a person sentenced to death.

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

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

19 | 27.711 Terms and conditions of appointment of
20 | attorneys as counsel in postconviction capital collateral
21 | proceedings.--

22 | (3) An attorney appointed to represent a capital
23 | defendant is entitled to payment of the fees set forth in this
24 | section only upon full performance by the attorney of the
25 | duties specified in this section and approval of payment by
26 | the trial court, and the submission of a payment request by
27 | the attorney, subject to the availability of sufficient
28 | funding specifically appropriated for this purpose. An
29 | attorney may not be compensated under this section for work
30 | performed by the attorney before July 1, 2003, while employed
31 | by the northern regional office of the capital collateral

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

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

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

11 Section 8. Paragraph (d) of subsection (7) of section
12 27.7081, Florida Statutes, is amended to read:

13 27.7081 Capital postconviction public records
14 production.--

15 (7)

16 (d) If, on June 1, 2006 ~~October 1, 1998~~, the defendant
17 had a Rule 3.850 motion denied and no Rule 3.850 motion was
18 pending, no additional requests shall be made by capital
19 collateral regional counsel or contracted private counsel
20 until a death warrant is signed by the Governor and an
21 execution is scheduled. Within 10 days of the signing of the
22 death warrant, capital collateral regional counsel or
23 contracted private counsel may request of a person or agency
24 that the defendant has previously requested to produce records
25 any records previously requested to which no objection was
26 raised or sustained, but which the agency has received or
27 produced since the previous request or which for any reason
28 the agency has in its possession and did not produce within 10
29 days of the receipt of the previous notice or such shorter
30 time period ordered by the court to comply with the time for
31 the scheduled execution. The person or agency shall produce

1 the record or shall file in the trial court an affidavit
2 stating that it does not have the requested record or that the
3 record has been produced previously.

4 Section 9. Paragraph (d) of subsection (3) of section
5 119.011, Florida Statutes, is amended to read:

6 119.011 Definitions.--As used in this chapter, the
7 term:

8 (3)

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

11 1. Criminal intelligence information shall be
12 considered "active" as long as it is related to intelligence
13 gathering conducted with a reasonable, good faith belief that
14 it will lead to detection of ongoing or reasonably anticipated
15 criminal activities.

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

21
22 Except as provided in this paragraph ~~In addition~~, criminal
23 intelligence and criminal investigative information shall be
24 considered "active" while such information is directly related
25 to pending prosecutions or appeals. With respect to capital
26 cases in which the defendant has been sentenced to death, upon
27 the imposition of a sentence of death, criminal intelligence
28 and criminal investigative information is no longer considered
29 "active." The word "active" ~~does shall~~ not apply to
30 information in cases ~~that~~ which are barred from prosecution
31

1 | under the provisions of s. 775.15 or other statute of
2 | limitation.

3 | Section 10. Section 922.095, Florida Statutes, is
4 | reenacted to read:

5 | 922.095 Grounds for death warrant; limitations of
6 | actions.--A person who is convicted and sentenced to death
7 | must pursue all possible collateral remedies within the time
8 | limits provided by statute. Failure to seek relief within the
9 | statutory time limits constitutes grounds for issuance of a
10 | death warrant under s. 922.052 or s. 922.14. Any claim not
11 | pursued within the statutory time limits is barred. No claim
12 | filed after the time required by law shall be grounds for a
13 | judicial stay of any warrant.

14 | Section 11. Section 922.108, Florida Statutes, is
15 | reenacted to read:

16 | 922.108 Sentencing orders in capital cases.--The
17 | sentence of death must not specify any particular method of
18 | execution. The wording or form of the sentencing order shall
19 | not be grounds for reversal of any sentence.

20 | Section 12. Section 924.055, Florida Statutes, is
21 | reenacted to read:

22 | 924.055 Postconviction review in capital cases;
23 | legislative findings and intent.--

24 | (1) It is the intent of the Legislature to reduce
25 | delays in capital cases and to ensure that all appeals and
26 | postconviction actions in capital cases are resolved within 5
27 | years after the date a sentence of death is imposed in the
28 | circuit court. All capital postconviction actions must be
29 | filed as early as possible after the imposition of a sentence
30 | of death which may be during a direct appeal of the conviction
31 | and sentence. A person sentenced to death or that person's

1 capital postconviction counsel must file any postconviction
2 legal action in compliance with the statutes of limitation
3 established in s. 924.056 and elsewhere in this chapter.
4 Except as expressly allowed by s. 924.056(5), a person
5 sentenced to death or that person's capital postconviction
6 counsel may not file more than one postconviction action in a
7 sentencing court and one appeal therefrom to the Florida
8 Supreme Court, unless authorized by law.

9 (2) It is the further intent of the Legislature that
10 no state resources be expended in violation of this act. In
11 the event that any state employee or party contracting with
12 the state violates the provisions of this act, the Attorney
13 General shall deliver to the Speaker of the House of
14 Representatives and the President of the Senate a copy of any
15 court pleading or order that describes or adjudicates a
16 violation.

17 Section 13. Section 924.056, Florida Statutes, is
18 amended to read:

19 924.056 Commencement of capital postconviction actions
20 for which sentence of death is imposed on or after July 1,
21 2009 ~~January 14, 2000~~; limitations on actions.--

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

26 (a) Within 15 days after imposing a sentence of death,
27 the sentencing court shall appoint the appropriate office of
28 the capital collateral regional counsel or private
29 postconviction counsel, unless the defendant declines to
30 accept postconviction legal representation in which case the
31 state shall not provide postconviction legal representation.

1 Within 30 days after the appointment, the capital collateral
2 regional counsel shall file a notice of appearance in the
3 trial court or a motion to withdraw based on a conflict of
4 interest or for good cause. The court shall appoint private
5 counsel pursuant to part IV of chapter 27 in any case in which
6 the capital collateral regional counsel files a motion to
7 withdraw, or otherwise informs the court that the capital
8 collateral regional counsel cannot comply with the provisions
9 of chapter 924 or in which the court determines that the
10 agency cannot comply with chapter 924 or other applicable
11 laws.

12 (b) The defendant who accepts the appointment of
13 postconviction counsel must cooperate with and assist
14 postconviction counsel. If the sentencing court finds the
15 defendant is obstructing the postconviction process, the
16 defendant shall not be entitled to any further postconviction
17 legal representation provided by the state. Each attorney
18 participating in a capital case on behalf of a defendant must
19 provide all information pertaining to the capital case which
20 the attorney obtained during the representation of that
21 defendant to that defendant's capital postconviction counsel.
22 Postconviction counsel must maintain the confidentiality of
23 any confidential information received from any attorney for
24 that defendant and is subject to the same penalties as the
25 providing attorney for violating confidentiality. If the
26 defendant requests without good cause that any attorney
27 appointed under this subsection be removed or replaced, the
28 court shall notify the defendant that no further state
29 resources may be expended for postconviction representation
30 for that defendant, unless the defendant withdraws the request
31 to remove or replace postconviction counsel. If the defendant

1 | does not immediately withdraw his or her request, then any
2 | appointed attorney must be removed from the case and no
3 | further state resources may be expended for the defendant's
4 | postconviction representation. The prosecuting attorney and
5 | the defendant's trial counsel shall provide the defendant or,
6 | if represented, the defendant's capital postconviction counsel
7 | with copies of all pretrial and trial discovery and all
8 | contents of the prosecuting attorney's file, except for
9 | information that the prosecuting attorney has a legal right
10 | under state or federal law to withhold from disclosure.

11 | (2) The clerk of the court shall provide a copy of the
12 | record on appeal to the capital postconviction attorney and
13 | the state attorney and Attorney General within 60 days after
14 | the sentencing court appoints postconviction counsel. However,
15 | the court may grant an extension of up to 30 days when
16 | extraordinary circumstances exist.

17 | (3)(a) With respect to all capital postconviction
18 | actions commenced after the effective date of this act, a
19 | capital postconviction action is not commenced until the
20 | defendant or the defendant's postconviction counsel files a
21 | fully pled postconviction action in the sentencing court or,
22 | as provided in subsection (4), the Florida Supreme Court. For
23 | the purposes of this subsection, a fully pled capital
24 | postconviction action is one which complies with s. 924.058(2)
25 | or any superseding rule adopted by the Florida Supreme Court.
26 | Except as provided by subsection (4) or subsection (5), all
27 | capital postconviction actions shall be barred unless they are
28 | commenced within 180 days after the filing of the appellant's
29 | initial brief in the Florida Supreme Court on direct appeal of
30 | the defendant's capital conviction and sentence. The fully
31 | pled postconviction action must raise all cognizable claims

1 | that the defendant's judgment or sentence was entered in
2 | violation of the Constitution or laws of the United States or
3 | the Constitution or the laws of the state, including any claim
4 | of ineffective assistance of trial counsel, allegations of
5 | innocence, or that the state withheld evidence favorable to
6 | the defendant. No claim may be considered in such action which
7 | could have or should have been raised before trial, at trial,
8 | or if preserved on direct appeal. For the purposes of this
9 | subsection, a capital postconviction action is not fully pled
10 | unless it satisfies the requirements of s. 924.058(2) ~~or any~~
11 | ~~superseding rule of court.~~

12 | (b) No claim of ineffective assistance of collateral
13 | postconviction counsel may be raised in a state court.

14 | (c) The pendency of public records requests or
15 | litigation, or the pendency of other litigation, or the
16 | failure of the defendant or the defendant's postconviction
17 | counsel to timely prosecute a case shall not constitute cause
18 | for the court to grant any request for an extension of time or
19 | other delay. No appeal may be taken from a court's ruling
20 | denying such a request for an extension of time or other
21 | delay.

22 | (d) The time for commencement of the postconviction
23 | action may not be tolled for any reason or cause. All claims
24 | raised by amendment of a defendant's capital postconviction
25 | action are barred if the claims are raised outside the time
26 | limitations provided by statute for the filing of capital
27 | postconviction actions.

28 | (4) All capital postconviction actions raising any
29 | claim of ineffective assistance of direct appeal counsel are
30 | barred unless they are commenced in conformity with this
31 | subsection. The defendant or the defendant's capital

1 postconviction counsel shall file an action in the Florida
2 Supreme Court raising any claim of ineffective assistance of
3 direct appeal counsel within 45 days after mandate issues
4 affirming the death sentence in the direct appeal.

5 (5) Regardless of when a sentence is imposed, all
6 successive capital postconviction actions are barred unless
7 commenced by filing a fully pled postconviction action within
8 90 days after the facts giving rise to the cause of action
9 were discovered or should have been discovered with the
10 exercise of due diligence. Such claim shall be barred pursuant
11 to subsection (3) or s. 924.057 unless the facts underlying
12 the claim, if proven and viewed in light of the evidence as a
13 whole, would be sufficient to establish by clear and
14 convincing evidence that, but for constitutional error, no
15 reasonable fact finder would have found the defendant guilty
16 of the underlying offense. Additionally, the facts underlying
17 this claim must have been unknown to the defendant or his or
18 her attorney and must be such that they could not have been
19 ascertained by the exercise of due diligence prior to filing
20 the earlier postconviction motion. The time period allowed for
21 filing a successive collateral postconviction action shall not
22 be grounds for a stay.

23 Section 14. Section 924.057, Florida Statutes, is
24 amended to read:

25 924.057 Limitation on postconviction cases in which
26 the death sentence was imposed before July 1, 2009 ~~January 14,~~
27 ~~2000~~.--This section shall govern all capital postconviction
28 actions in cases in which the trial court imposed the sentence
29 of death before the effective date of this act.

30 (1) Nothing in this act shall expand any right or time
31 period allowed for the prosecution of capital postconviction

1 | claims in any case in which a postconviction action was
2 | commenced or should have been commenced prior to the effective
3 | date of this act.

4 | (2) Except as provided in s. 924.056(5), in every case
5 | in which mandate has issued in the Florida Supreme Court
6 | concluding at least one capital postconviction action in the
7 | state court system, a successive capital postconviction action
8 | shall be barred on the effective date of this act, unless the
9 | rules or law in effect immediately prior to the effective date
10 | of this act permitted the successive postconviction action, in
11 | which case the action shall be barred on the date provided in
12 | subsection (4).

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

18 | (a) The time in which the action would be barred by
19 | this section if the action had not begun prior to the
20 | effective date of this act, or

21 | (b) Any earlier date provided by the rules or law, or
22 | court order, in effect immediately prior to the effective date
23 | of this act.

24 | (4) In every capital case in which the trial court
25 | imposed the sentence of death before the effective date of
26 | this act, a capital postconviction action shall be barred
27 | unless it is commenced on or before July 1 2010 ~~January 8,~~
28 | ~~2001~~, or any earlier date provided by the rule or law in
29 | effect immediately prior to July 1, 2009 ~~the effective date of~~
30 | ~~this act~~.

31 |

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

3 924.058 Capital postconviction claims.--This section
4 shall regulate the procedures in actions for capital
5 postconviction relief commencing after July 1, 2009 ~~the~~
6 ~~effective date of this act unless and until such procedures~~
7 ~~are revised by rule or rules adopted by the Florida Supreme~~
8 ~~Court which specifically reference this section.~~

9 (1) The defendant or the defendant's capital
10 postconviction counsel shall not file more than one capital
11 postconviction action in the sentencing court, one appeal
12 therefrom in the Florida Supreme Court, and one original
13 capital postconviction action alleging the ineffectiveness of
14 direct appeal counsel in the Florida Supreme Court, except as
15 expressly allowed by s. 924.056(5).

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

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

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

22 (c) Whether a previous postconviction action has been
23 filed and, if so, the disposition of all previous claims
24 raised in postconviction litigation; if a previous action or
25 actions have been filed, the reason or reasons the claim or
26 claims in the present motion were not raised in the former
27 action or actions;

28 (d) The nature of the relief sought;

29 (e) A fully detailed allegation of the factual basis
30 for any claim of legal or constitutional error asserted,
31 including the attachment of any document supporting the claim,

1 | the name and address of any witness, the attachment of
2 | affidavits of the witnesses or a proffer of the testimony; and
3 | (f) A concise memorandum of applicable case law as to
4 | each claim asserted.

5 | (3) Any capital postconviction action that does not
6 | comply with any requirement in this section or other
7 | applicable provision in law shall not be considered in any
8 | state court. No amendment of a defendant's capital
9 | postconviction action shall be allowed by the court after the
10 | expiration of the time limitation provided by statute for the
11 | commencement of capital postconviction actions.

12 | (4) The prosecuting attorney or Attorney General shall
13 | be allowed to file one response to any capital postconviction
14 | action within 60 days after receipt of the defendant's fully
15 | pled capital postconviction action.

16 | Section 16. Section 924.059, Florida Statutes, is
17 | amended to read:

18 | 924.059 Time limitations and judicial review in
19 | capital postconviction actions.--This section shall regulate
20 | the procedures in actions for capital postconviction relief
21 | commencing July 1, 2009 ~~after the effective date of this act~~
22 | ~~unless and until such procedures are revised by rule or rules~~
23 | ~~adopted by the Florida Supreme Court which specifically~~
24 | ~~reference this section.~~

25 | (1) No amendment of a defendant's capital
26 | postconviction action shall be allowed by the court after the
27 | expiration of the time periods provided by statute for the
28 | filing of capital postconviction claims.

29 | (2) Within 30 days after the state files its answer,
30 | the sentencing court shall conduct a hearing to determine if
31 | an evidentiary hearing is required, if a hearing has been

1 requested by the defendant or the defendant's capital
2 postconviction counsel. Within 30 days thereafter, the court
3 shall rule whether an evidentiary hearing is required and, if
4 so, shall schedule an evidentiary hearing to be held within 90
5 days. If the court determines that the defendant's capital
6 postconviction action is legally insufficient or the action,
7 files, and records in the case show that the defendant is not
8 entitled to relief, the court shall, within 45 days
9 thereafter, deny the action, setting forth a detailed
10 rationale therefore, and attaching or referencing such
11 portions of the record as are necessary to allow for
12 meaningful appellate review.

13 (3) Within 10 days after the order scheduling an
14 evidentiary hearing, the defendant or the defendant's capital
15 postconviction counsel shall disclose the names and addresses
16 of any potential witnesses not previously disclosed, with
17 their affidavits or a proffer of their testimony. Upon receipt
18 of the defendant's disclosure, the state shall have 10 days
19 within which to provide reciprocal disclosure. If the
20 defendant intends to offer expert testimony of his or her
21 mental status, the state shall be entitled to have the
22 defendant examined by an expert of its choosing. All of the
23 defendant's mental status claims shall be deemed denied as a
24 matter of law if the defendant fails to cooperate with the
25 state's expert. Reports provided by expert witnesses shall be
26 disclosed by opposing counsel upon receipt.

27 (4) Following the evidentiary hearing, the court shall
28 order the transcription of the proceeding which shall be filed
29 within 30 days. Within 30 days after receipt of the
30 transcript, the sentencing court shall issue a final order
31 granting or denying postconviction relief, making detailed

1 findings of fact and conclusions of law with respect to any
2 allegation asserted.

3 (5) An appeal may be taken to the Supreme Court of
4 Florida within 15 days from the entry of a final order on a
5 capital postconviction action. No interlocutory appeal shall
6 be permitted. No motion for rehearing shall be permitted. The
7 clerk of the court shall promptly serve upon all parties a
8 copy of the final order.

9 (6) If the sentencing court has denied the capital
10 postconviction action without an evidentiary hearing, the
11 appeal to the Florida Supreme Court will be expeditiously
12 resolved in a summary fashion. On appeal, the case shall be
13 initially reviewed for a determination whether the sentencing
14 court correctly resolved the defendant's claims without an
15 evidentiary hearing. If the Florida Supreme Court determines
16 an evidentiary hearing should have been held, the decision to
17 remand for an evidentiary hearing may be made by an order
18 without an opinion. Jurisdiction shall be relinquished to the
19 trial court for a specified period, which must be scheduled
20 within 30 days and must be concluded within 90 days, for the
21 purpose of conducting an evidentiary hearing on any issue
22 identified by the Florida Supreme Court's order. Thereafter,
23 the record shall be supplemented with the hearing transcript.

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

29 (8) A capital postconviction action filed in violation
30 of the time limitations provided by statute is barred, and all
31 claims raised therein are waived. A state court shall not

1 | consider any capital postconviction action filed in violation
2 | of s. 924.056 or s. 924.057. The Attorney General shall
3 | deliver to the Governor, the President of the Senate, and the
4 | Speaker of the House of Representatives a copy of any pleading
5 | or order that alleges or adjudicates any violation of this
6 | provision.

7 | Section 17. Section 924.395, Florida Statutes, is
8 | reenacted to read:

9 | 924.395 Sanctions.--

10 | (1) The Legislature strongly encourages the courts,
11 | through their inherent powers and pursuant to this section, to
12 | impose sanctions against any person within the court's
13 | jurisdiction who is found by a court, in a capital
14 | postconviction proceeding or appeal therefrom, to have:

15 | (a) Abused a petition for extraordinary relief,
16 | postconviction motion, or appeal therefrom;

17 | (b) Raised a claim that a court has found to be
18 | frivolous or procedurally barred or that should have been
19 | raised on the direct appeal;

20 | (c) Improperly withheld evidence or testimony; or

21 | (d) Adversely affected the orderly administration of
22 | justice.

23 | (2) Sanctions the court may and should consider, when
24 | applicable and appropriate in a case, include, but are not
25 | limited to:

26 | (a) Dismissal of a pleading;

27 | (b) Disciplinary sanctions;

28 | (c) A fine; and

29 | (d) Any other sanction that is available to the court
30 | under its inherent powers.

31 |

