By Senator Negron

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A bill to be entitled

An act relating to postconviction capital case proceedings; providing a short title; amending ss. 27.40, 27.51, 27.511, 27.5303, and 27.5304, F.S.; removing the right to have appointed counsel in clemency proceedings; repealing s. 27.701(2), F.S., relating to the pilot project for capital representation; amending s. 27.702, F.S.; providing that the capital collateral regional counsel and the attorneys appointed pursuant to law shall file only those postconviction or collateral actions authorized by statute; amending s. 27.703, F.S.; providing that if the collateral counsel believes continued representation of a person creates a conflict of interest, the court shall hold a hearing to determine if a conflict actually exists; amending s. 27.708, F.S.; directing capital collateral counsel to comply with statutory requirements rather than rules of court; amending s. 27.7081, F.S., relating to public records; defining terms; describing access to public records; proscribing procedures to obtain relevant records; amending s. 27.7091, F.S.; removing a request to the Supreme Court to adopt by rule the provisions that limit the time for postconviction proceedings in capital cases; amending s. 27.711, F.S.; revising provisions to conform to changes made by the act; amending s. 922.095, F.S.; providing that any postconviction claim not pursued within the statutory time limits is barred; reenacting s. 922.108, F.S.,

relating to sentencing orders in capital cases; amending s. 924.055, F.S.; providing legislative intent; directing courts to expedite postconviction proceedings; amending s. 924.056, F.S.; providing that the section governs all postconviction proceedings in every capital case in which the conviction and sentence of death have been affirmed on direct appeal on or after a specified date; providing for the appointment of postconviction counsel; amending s.924.057, F.S.; providing that the section governs all postconviction proceeding to capital postconviction actions brought before a specified date; making technical changes; amending s. 924.058, F.S.; providing that the section regulates procedures in actions involving successive postconviction motions in all postconviction proceedings in capital cases affirmed on or after a specified date; creating s. 924.0581, F.S.; providing that the section governs capital postconviction appeals to the Florida Supreme Court in every capital case in which the conviction and sentence of death have been affirmed on direct appeal on or after a specified date; creating s. 924.0585, F.S.; requiring the Florida Supreme Court to annually report to the Speaker of the Florida House of Representatives and the President of the Florida Senate concerning the status of each capital case in which a postconviction action has been filed that has been pending for more than 3 years; amending s. 924.059, F.S.; providing procedures to resolve

conflicts of interest in capital postconviction proceedings; creating s. 924.0591, F.S.; providing that a death-sentenced inmate pursuing collateral relief who is found by the court to be mentally incompetent shall not be proceeded against; providing procedures for competency examinations and hearings; creating s. 924.0592, F.S.; providing that the section governs all postconviction proceedings in every capital case in which the conviction and sentence of death have been affirmed on direct appeal on or after a specified date and in which a death warrant has been issued; creating s. 924.0593, F.S.; governing procedures relating to claims of insanity at the time of execution; creating s. 924.0594, F.S.; providing procedures that apply if an inmate seeks both to dismiss a pending postconviction proceeding and to discharge collateral counsel; providing for severability; providing for a contingent effective date.

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

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

WHEREAS, in order to ensure the fair, just, and humane administration of capital punishment, it is necessary for the Legislature to comprehensively address the processes by which an offender sentenced to death may pursue postconviction and collateral review of the judgment and the sentence of death, and

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

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

WHEREAS, the Constitution of the State of Florida has been amended to require postconviction and collateral review of capital cases resulting in a sentence of death to be governed by, and to the extent provided by, general law, and

WHEREAS, provisions of the Death Penalty Reform Act of 2000 which were held unconstitutional may now be reenacted, while other provisions can be modified, and new provisions added to ensure a prompt and efficient administration of justice following any sentence of death, NOW, THEREFORE,

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

Section 1. <u>This act may be cited as the "Timely Justice Act."</u>

Section 2. Effective July 1, 2013, subsection (1) of section 27.40, Florida Statutes, is amended to read:

27.40 Court-appointed counsel; circuit registries; minimum requirements; appointment by court.—

(1) Counsel shall be appointed to represent any individual in a criminal or civil proceeding entitled to court-appointed counsel under the Federal or State Constitution or as authorized by general law. Such proceedings do not include proceedings for relief by executive clemency in which the application for executive clemency was filed on or after July 1, 2013. The court shall appoint a public defender to represent indigent persons as authorized in s. 27.51. The office of criminal conflict and civil regional counsel shall be appointed to represent persons in those cases in which provision is made for court-appointed counsel but the public defender is unable to provide representation due to a conflict of interest or is not authorized to provide representation.

Section 3. Effective July 1, 2013, paragraph (a) of subsection (5) of section 27.51, Florida Statutes, is amended to read:

27.51 Duties of public defender.—

(5)(a) When direct appellate proceedings prosecuted by a public defender on behalf of an accused and challenging a judgment of conviction and sentence of death terminate in an affirmance of such conviction and sentence, whether by the Florida Supreme Court or by the United States Supreme Court or by expiration of any deadline for filing such appeal in a state or federal court, the public defender shall notify the accused of his or her rights pursuant to Rule 3.850, Florida Rules of

Criminal Procedure, including any time limits pertinent thereto, and shall advise such person that representation in any collateral proceedings is the responsibility of the capital collateral regional counsel. The public defender shall then forward all original files on the matter to the capital collateral regional counsel, retaining such copies for his or her files as may be desired. However, for clemency applications pending or filed before July 1, 2013, the trial court shall retain the power to appoint the public defender or other attorney not employed by the capital collateral regional counsel to represent such person in proceedings for relief by executive clemency pursuant to ss. 27.40 and 27.5303.

Section 4. Paragraph (a) of subsection (5) of section 27.51, Florida Statutes, as amended by this act, is amended to read:

27.51 Duties of public defender.—

(5)(a) When direct appellate proceedings prosecuted by a public defender on behalf of an accused and challenging a judgment of conviction and sentence of death terminate in an affirmance of such conviction and sentence, whether by the Florida Supreme Court or by the United States Supreme Court or by expiration of any deadline for filing such appeal in a state or federal court, the public defender shall notify the accused of his or her rights pursuant to s. 924.056 ~~Rule 3.850, Florida Rules of Criminal Procedure~~, including any time limits pertinent thereto, and shall advise such person that representation in any collateral proceedings is the responsibility of the capital collateral regional counsel. The public defender shall then forward all original files on the matter to the capital

collateral regional counsel, retaining such copies for his or her files as may be desired. However, for clemency applications pending or filed before July 1, 2013, the trial court shall retain the power to appoint the public defender or other attorney not employed by the capital collateral regional counsel to represent such person in proceedings for relief by executive clemency pursuant to ss. 27.40 and 27.5303.

Section 5. Effective July 1, 2013, subsection (9) of section 27.511, Florida Statutes, is amended to read:

27.511 Offices of criminal conflict and civil regional counsel; legislative intent; qualifications; appointment; duties.—

(9) When direct appellate proceedings prosecuted by the office of criminal conflict and civil regional counsel on behalf of an accused and challenging a judgment of conviction and sentence of death terminate in an affirmance of such conviction and sentence, whether by the Supreme Court or by the United States Supreme Court or by expiration of any deadline for filing such appeal in a state or federal court, the office of criminal conflict and civil regional counsel shall notify the accused of his or her rights pursuant to Rule 3.850, Florida Rules of Criminal Procedure, including any time limits pertinent thereto, and shall advise such person that representation in any collateral proceedings is the responsibility of the capital collateral regional counsel. The office of criminal conflict and civil regional counsel shall forward all original files on the matter to the capital collateral regional counsel, retaining such copies for his or her files as may be desired or required by law. However, for clemency applications pending or filed

before July 1, 2013, the trial court shall retain the power to appoint the office of criminal conflict and civil regional counsel or other attorney not employed by the capital collateral regional counsel to represent such person in proceedings for relief by executive clemency pursuant to ss. 27.40 and 27.5303.

Section 6. Subsection (9) of section 27.511, Florida Statutes, as amended by this act, is amended to read:

27.511 Offices of criminal conflict and civil regional counsel; legislative intent; qualifications; appointment; duties.—

(9) When direct appellate proceedings prosecuted by the office of criminal conflict and civil regional counsel on behalf of an accused and challenging a judgment of conviction and sentence of death terminate in an affirmance of such conviction and sentence, whether by the Supreme Court or by the United States Supreme Court or by expiration of any deadline for filing such appeal in a state or federal court, the office of criminal conflict and civil regional counsel shall notify the accused of his or her rights pursuant to s. 924.056 ~~Rule 3.850, Florida Rules of Criminal Procedure~~, including any time limits pertinent thereto, and shall advise such person that representation in any collateral proceedings is the responsibility of the capital collateral regional counsel. The office of criminal conflict and civil regional counsel shall forward all original files on the matter to the capital collateral regional counsel, retaining such copies for his or her files as may be desired or required by law. However, for clemency applications pending or filed before July 1, 2013, the trial court shall retain the power to appoint the office of criminal conflict and civil regional

counsel or other attorney not employed by the capital collateral regional counsel to represent such person in proceedings for relief by executive clemency pursuant to ss. 27.40 and 27.5303.

Section 7. Effective July 1, 2013, subsection (4) of section 27.5303, Florida Statutes, is amended to read:

27.5303 Public defenders; criminal conflict and civil regional counsel; conflict of interest.—

(4)(a) If a defendant is convicted and the death sentence is imposed, the appointed attorney shall continue representation through appeal to the Supreme Court. The attorney shall be compensated as provided in s. 27.5304. If the attorney first appointed is unable to handle the appeal, the court shall appoint another attorney and that attorney shall be compensated as provided in s. 27.5304.

(b) The public defender or an attorney appointed pursuant to this section may be appointed by the court rendering the judgment imposing the death penalty to represent an indigent defendant who, before July 1, 2013, has an application for executive clemency pending or has applied for executive clemency as relief from the execution of the judgment imposing the death penalty.

(c) When the appointed attorney in a capital case has completed the duties imposed by this section, the attorney shall file a written report in the trial court stating the duties performed by the attorney and apply for discharge.

Section 8. Effective July 1, 2013, subsection (5) of section 27.5304, Florida Statutes, is amended to read:

27.5304 Private court-appointed counsel; compensation; notice.—

(5) The compensation for representation in a criminal proceeding shall not exceed the following:

(a)1. For misdemeanors and juveniles represented at the trial level: $1,000.

2. For noncapital, nonlife felonies represented at the trial level: $2,500.

3. For life felonies represented at the trial level: $3,000.

4. For capital cases represented at the trial level: $15,000. For purposes of this subparagraph, a "capital case" is any offense for which the potential sentence is death and the state has not waived seeking the death penalty.

5. For representation on appeal: $2,000.

(b) If a death sentence is imposed and affirmed on appeal to the Supreme Court, the appointed attorney shall be allowed compensation, not to exceed $1,000, for attorney fees and costs incurred in representing the defendant as to an application for executive clemency <u>submitted before July 1, 2013</u>, with compensation to be paid out of general revenue from funds budgeted to the Department of Corrections.

Section 9. Effective July 1, 2013, subsection (2) of section 27.701, Florida Statutes, is repealed.

Section 10. Subsection (1) of section 27.702, Florida Statutes, is amended to read:

27.702 Duties of the capital collateral regional counsel; reports.—

(1) The capital collateral regional counsel shall represent each person convicted and sentenced to death in this state for the sole purpose of instituting and prosecuting collateral

actions challenging the legality of the judgment and sentence imposed against such person in the state courts, federal courts in this state, the United States Court of Appeals for the Eleventh Circuit, and the United States Supreme Court. ~~The capital collateral regional counsel and the attorneys appointed pursuant to s. 27.710 shall file only those postconviction or collateral actions authorized by statute.~~ The three capital collateral regional counsel's offices shall function independently and be separate budget entities, and the regional counsel shall be the office heads for all purposes. The Justice Administrative Commission shall provide administrative support and service to the three offices to the extent requested by the regional counsel. The three regional offices shall not be subject to control, supervision, or direction by the Justice Administrative Commission in any manner, including, but not limited to, personnel, purchasing, transactions involving real or personal property, and budgetary matters.

Section 11. Effective July 1, 2013, paragraph (b) of subsection (4) of section 27.702, Florida Statutes, is amended to read:

27.702 Duties of the capital collateral regional counsel; reports.—

(4)

(b) Each capital collateral regional counsel ~~and each attorney participating in the pilot program in the northern region pursuant to s. 27.701(2)~~ shall provide a quarterly report to the President of the Senate and the Speaker of the House of Representatives which details the number of hours worked by investigators and legal counsel per case and the amounts per

case expended during the preceding quarter in investigating and litigating capital collateral cases.

Section 12. Section 27.703, Florida Statutes, is reenacted to read:

27.703 Conflict of interest and substitute counsel.—

(1) The capital collateral regional counsel shall not accept an appointment or take any other action that will create a conflict of interest. If, at any time during the representation of a person, the capital collateral regional counsel alleges ~~determines~~ that the continued representation of that person creates a conflict of interest, the sentencing court shall hold a hearing in accordance with s. 924.059 to determine if an actual conflict exists. If the court determines that an actual conflict exists and that such conflict will adversely affect the capital collateral regional counsel's performance, the court shall~~, upon application by the regional counsel,~~ designate another regional counsel. If the replacement regional counsel alleges that a conflict of interest exists, the sentencing court shall hold a hearing in accordance with s. 924.059 to determine if an actual conflict exists. If the court determines that an actual conflict exists and that such conflict will adversely affect the replacement regional counsel's performance, the court shall ~~and, only if a conflict exists with the other two counsel,~~ appoint one or more members of The Florida Bar to represent the person ~~one or more of such persons~~.

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

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

Section 13. Section 27.708, Florida Statutes, is amended to read:

27.708 Access to inmates ~~prisoners~~; ~~compliance with the Florida Rules of Criminal Procedure;~~ records requests.—

(1) Each capital collateral regional counsel and his or her assistants may inquire of all persons sentenced to death who are incarcerated and tender them advice and counsel at any reasonable time, but this section does not apply with respect to persons who are represented by other counsel.

(2) The capital collateral regional counsel and contracted private counsel must timely comply with all statutory requirements ~~provisions of the Florida Rules of Criminal Procedure~~ governing collateral review of capital cases.

(3) Except as provided in s. 27.7081, the capital collateral regional counsel or contracted private counsel shall not make any public records request on behalf of his or her client.

Section 14. Section 27.7081, Florida Statutes, is amended to read:

(Substantial rewording of section.
See s. 27.7081, F.S., for present text.)

27.7081 Capital postconviction public records production.—

(1) DEFINITIONS.—As used in this section, the term:

(a) "Agency" has the same meaning as provided in s.

119.011.

(b) "Collateral counsel" means a capital collateral regional counsel from one of the three regions in Florida, a private attorney who has been appointed to represent a capital defendant for postconviction litigation, or a private attorney who has been hired by the capital defendant or who has agreed to work pro bono for a capital defendant for postconviction litigation.

(c) "Public records" has the same meaning as provided in s. 119.011.

(d) "Trial court" means:

1. The judge who entered the judgment and imposed the sentence of death; or

2. If a motion for postconviction relief in a capital case has been filed and a different judge has already been assigned to that motion, the judge who is assigned to rule on that motion.

(2) APPLICABILITY AND SCOPE.—This section only applies to the production of public records for capital postconviction defendants and does not change or alter the time periods specified in s. 924.056 or s. 924.058. Furthermore, this section does not affect, expand, or limit the production of public records for any purposes other than use in a proceeding held pursuant to s. 924.056 or s. 924.058. This section shall not be a basis for renewing public records requests that have been initiated previously or for relitigating issues pertaining to production of public records upon which a court has ruled prior to July 1, 2015. Public records requests made in postconviction proceedings in capital cases in which the conviction and

sentence of death have been affirmed on direct appeal before July 1, 2015, shall be governed by the rules and laws in effect immediately prior to the effective date of this act.

(3) RECORDS REPOSITORY.—The Secretary of State shall establish and maintain a records repository for the purpose of archiving capital postconviction public records as provided for in this section.

(4) FILING AND SERVICE.—

(a) The original of all notices, requests, or objections filed under this section must be filed with the clerk of the trial court. Copies must be served on the trial court, the Attorney General, the state attorney, collateral counsel, and any affected person or agency, unless otherwise required by this section.

(b) Service shall be made pursuant to Florida Rule of Criminal Procedure 3.030.

(c) In all instances requiring written notification or request, the party who has the obligation of providing a notification or request shall provide proof of receipt.

(d) Persons and agencies receiving postconviction public records notifications or requests pursuant to this section are not required to furnish records filed in a trial court prior to the receipt of the notice.

(5) ACTION UPON ISSUANCE OF THE MANDATE ON DIRECT APPEAL.—

(a) Within 15 days after receiving written notification of the Supreme Court of Florida’s mandate affirming the sentence of death, the Attorney General shall file with the trial court a written notice of the mandate and serve a copy of it upon the state attorney who prosecuted the case, the Department of

Corrections, and the defendant's trial counsel. The notice to the state attorney shall direct the state attorney to submit public records to the records repository within 90 days after receipt of written notification and to notify each law enforcement agency involved in the investigation of the capital offense to submit public records to the records repository within 90 days after receipt of written notification. The notice to the Department of Corrections shall direct the department to submit public records to the records repository within 90 days after receipt of written notification.

(b) Within 90 days after receiving written notification of issuance of the Supreme Court of Florida's mandate affirming a death sentence, the state attorney shall provide written notification to the Attorney General of the name and address of any additional person or agency that has public records pertinent to the case.

(c) Within 90 days after receiving written notification of issuance of the Supreme Court of Florida's mandate affirming a death sentence, the defendant's trial counsel shall provide written notification to the Attorney General of the name and address of any person or agency with information pertinent to the case which has not previously been provided to collateral counsel.

(d) Within 15 days after receiving written notification of any additional person or agency pursuant to paragraphs (b) or (c), the Attorney General shall notify all persons or agencies identified pursuant to paragraphs (b) or (c) that these persons or agencies are required by law to copy, index, and deliver to the records repository all public records pertaining to the case

that are in their possession. The person or agency shall bear the costs related to copying, indexing, and delivering the records.

(6) ACTION UPON RECEIPT OF NOTICE OF MANDATE.—

(a) Within 15 days after receipt of a written notice of the mandate from the Attorney General, the state attorney shall provide written notification to each law enforcement agency involved in the specific case to submit public records to the records repository within 90 days after receipt of written notification. A copy of the notice shall be served upon the defendant's trial counsel.

(b) Within 90 days after receipt of a written notice of the mandate from the Attorney General, the state attorney shall copy, index, and deliver to the records repository all public records that were produced in the state attorney's investigation or prosecution of the case. The state attorney shall bear the costs. The state attorney shall also provide written notification to the Attorney General of compliance with this section, including certifying that, to the best of the state attorney's knowledge or belief, all public records in the state attorney's possession have been copied, indexed, and delivered to the records repository as required by this section.

(c) Within 90 days after receipt of written notification of the mandate from the Attorney General, the Department of Corrections shall copy, index, and deliver to the records repository all public records determined by the department to be relevant to the subject matter of a proceeding under s. 924.056 or s. 924.058, unless such copying, indexing, and delivering would be unduly burdensome. The department shall bear the costs.

The secretary of the department shall provide written notification to the Attorney General of compliance with this paragraph certifying that, to the best of the secretary of the department's knowledge or belief, all such public records in the possession of the secretary of the department have been copied, indexed, and delivered to the records repository.

(d) Within 90 days after receipt of written notification of the mandate from the state attorney, a law enforcement agency shall copy, index, and deliver to the records repository all public records which were produced in the investigation or prosecution of the case. Each agency shall bear the costs. The chief law enforcement officer of each law enforcement agency shall provide written notification to the Attorney General of compliance with this paragraph including certifying that, to the best of the chief law enforcement officer's knowledge or belief, all such public records in possession of the agency or in possession of any employee of the agency, have been copied, indexed, and delivered to the records repository.

(e) Within 90 days after receipt of written notification of the mandate from the Attorney General, each additional person or agency identified pursuant to paragraphs (5)(b) or (5)(c) shall copy, index, and deliver to the records repository all public records which were produced during the prosecution of the case. The person or agency shall bear the costs. The person or agency shall provide written notification to the Attorney General of compliance with this subdivision and shall certify, to the best of the person or agency's knowledge and belief, all such public records in the possession of the person or agency have been copied, indexed, and delivered to the records repository.

(7) EXEMPT OR CONFIDENTIAL PUBLIC RECORDS.—

(a) Any public records delivered to the records repository pursuant to this section that are confidential or exempt from the requirements of s. 119.07(1) or Art. I, Section 24(a), Florida Constitution, must be separately contained, without being redacted, and sealed. The outside of the container must clearly identify that the public record is confidential or exempt and that the seal may not be broken without an order of the trial court. The outside of the container must identify the nature of the public records and the legal basis for the exemption.

(b) Upon the entry of an appropriate court order, sealed containers subject to an inspection by the trial court shall be shipped to the clerk of court. The containers may be opened only for inspection by the trial court in camera. The moving party shall bear all costs associated with the transportation and inspection of such records by the trial court. The trial court shall perform the unsealing and inspection without ex parte communications and in accord with procedures for reviewing sealed documents.

(8) DEMAND FOR ADDITIONAL PUBLIC RECORDS.—

(a) Within 240 days after collateral counsel is appointed, retained, or appears pro bono, such counsel shall send a written demand for additional public records to each person or agency submitting public records or identified as having information pertinent to the case under subsection (5).

(b) Within 90 days of receipt of the written demand, each person or agency notified under this subsection shall deliver to the records repository any additional public records in the

possession of the person or agency that pertain to the case and shall certify to the best of the person or agency's knowledge and belief that all additional public records have been delivered to the records repository or, if no additional public records are found, shall recertify that the public records previously delivered are complete.

(c) Within 60 days of receipt of the written demand, any person or agency may file with the trial court an objection to the written demand described in paragraph (a). The trial court shall hold a hearing and issue a ruling within 30 days after the filing of any objection, ordering a person or agency to produce additional public records if the court determines each of the following exists:

1. Collateral counsel has made a timely and diligent search as provided in this section.

2. Collateral counsel's written demand identifies, with specificity, those additional public records that are not at the records repository.

3. The additional public records sought are relevant to the subject matter of a postconviction proceeding under s. 924.056 or s. 924.058, or appear reasonably calculated to lead to the discovery of admissible evidence.

4. The additional public records request is not overly broad or unduly burdensome.

(9) LIMITATION ON POSTPRODUCTION REQUEST FOR ADDITIONAL RECORDS.—

(a) In order to obtain public records in addition to those provided under subsections (6), (7), and (8), collateral counsel shall file an affidavit in the trial court which:

1. Attests that collateral counsel has made a timely and diligent search of the records repository; and

2. Identifies with specificity those public records not at the records repository; and

3. Establishes that the additional public records are either relevant to the subject matter of the postconviction proceeding or are reasonably calculated to lead to the discovery of admissible evidence; and

4. Shall be served in accord with subsection (4).

(b) Within 30 days after the affidavit of collateral counsel is filed, the trial court shall order a person or agency to produce additional public records only upon finding each of the following:

1. Collateral counsel has made a timely and diligent search of the records repository;

2. Collateral counsel's affidavit identifies with specificity those additional public records that are not at the records repository;

3. The additional public records sought are either relevant to the subject matter of a capital postconviction proceeding or appear reasonably calculated to lead to the discovery of admissible evidence; and

4. The additional records request is not overly broad or unduly burdensome.

(10) Collateral counsel shall provide the personnel, supplies, and any necessary equipment to copy records held at the records repository.

(11) AUTHORITY OF THE COURT.—In proceedings under this section the trial court may:

(a) Compel or deny disclosure of records;

(b) Conduct an in-camera inspection;

(c) Extend the times in this section upon a showing of good cause;

(d) Impose sanctions upon any party, person, or agency affected by this section including initiating contempt proceedings, taxing expenses, extending time, ordering facts to be established, and granting other relief; and

(e) Resolve any dispute arising under this section unless jurisdiction is in an appellate court.

(12) SCOPE OF PRODUCTION AND RESOLUTION OF PRODUCTION ISSUES.—

(a) Unless otherwise limited, the scope of production under any part of this section shall be that the public records sought are not privileged or immune from production and are either relevant to the subject matter of a postconviction proceeding under s. 924.056 or s. 924.058 or are reasonably calculated to lead to the discovery of admissible evidence.

(b) Any objections or motions to compel production of public records pursuant to this section shall be filed within 30 days after the end of the production time period provided by this section. Counsel for the party objecting or moving to compel shall file a copy of the objection or motion directly with the trial court. The trial court shall hold a hearing on the objection or motion on an expedited basis.

(c) The trial court may order mediation for any controversy as to public records production pursuant to this section in accord with Florida Rules of Civil Procedure 1.700, 1.710, 1.720, 1.730, or the trial court may refer any such controversy

to a magistrate in accord with Florida Rule of Civil Procedure 1.490.

(13) DESTRUCTION OF RECORDS REPOSITORY RECORDS.—Sixty days after a capital sentence is carried out, after a defendant is released from incarceration following the granting of a pardon or reversal of the sentence, or after a defendant has been resentenced to a term of years, the Attorney General shall provide written notification of this occurrence to the secretary of State. After the expiration of the 60 days, the Secretary of State may then destroy the copies of the records held by the records repository that pertain to that case, unless an objection to the destruction is filed in the trial court and served upon the Secretary of State. If no objection has been served within the 60-day period, the records may then be destroyed. If an objection is served, the records shall not be destroyed until a final disposition of the objection.

Section 15. Effective July 1, 2013, section 27.7091, Florida Statutes, is amended to read:

27.7091 Legislative recommendations to Supreme Court; postconviction proceedings; pro bono service credit.—In the interest of promoting justice and integrity with respect to capital collateral representation, the Legislature recommends that the Supreme Court~~:~~

~~(1) Adopt by rule the provisions of s. 924.055, which limit the time for postconviction proceedings in capital cases.~~

~~(2)~~ award pro bono service credit for time spent by an attorney in providing legal representation to an individual sentenced to death in this state, regardless of whether the attorney receives compensation for such representation.

Section 16. Effective July 1, 2013, subsection (3) of section 27.711, Florida Statutes, is amended to read:

27.711 Terms and conditions of appointment of attorneys as counsel in postconviction capital collateral proceedings.—

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

Section 17. Paragraph (b) of subsection (4) of section 27.711, Florida Statutes, is amended to read:

27.711 Terms and conditions of appointment of attorneys as

counsel in postconviction capital collateral proceedings.—

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

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

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

Section 18. Section 922.095, Florida Statutes, is amended to read:

922.095 Grounds for death warrant; limitations of actions.— A person who is convicted and sentenced to death must pursue all possible collateral remedies within the time limits provided by statute. Failure to seek relief within the statutory time limits constitutes grounds for issuance of a death warrant under s. 922.052 or s. 922.14. Any <u>postconviction</u> claim not pursued within the statutory time limits is barred. No <u>postconviction</u> claim filed after the time required by law shall be grounds for

a judicial stay of any warrant.

Section 19. Section 922.108, Florida Statutes, is reenacted to read:

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

Section 20. Section 924.055, Florida Statutes, is amended to read:

924.055 Postconviction review in capital cases; legislative findings and intent.—

(1) It is the intent of the Legislature to reduce delays in capital cases and to ensure that all ~~appeals and~~ postconviction actions in capital cases are resolved as quickly as possible ~~within 5 years~~ after the date a sentence of death is imposed in the circuit court. ~~All capital postconviction actions must be filed as early as possible after the imposition of a sentence of death which may be during a direct appeal of the conviction and sentence.~~ A person sentenced to death or that person's capital postconviction counsel must file any postconviction ~~legal~~ action in compliance with the timeframes ~~statutes of limitation~~ established in s. 924.056, s. 924.058, and elsewhere in this chapter. Except as expressly allowed by s. 924.058 ~~s. 924.056(5)~~, a person sentenced to death or that person's capital postconviction counsel may not file more than one postconviction action in a sentencing court and one appeal therefrom to the Florida Supreme Court, unless authorized by law.

(2) It is the further intent of the Legislature that no state resources be expended in violation of this act. In the

event that any state employee or party contracting with the state violates the provisions of this act, the Attorney General shall deliver to the Speaker of the House of Representatives and the President of the Senate a copy of any court pleading or order that describes or adjudicates a violation.

Section 21. Section 924.056, Florida Statutes, is amended to read:

(Substantial rewording of section.
See s. 924.056, F.S., for present text.)

924.056 Capital postconviction proceedings.—This section governs all postconviction proceedings in every capital case in which the conviction and sentence of death have been affirmed on direct appeal on or after July 1, 2015.

(1) APPOINTMENT OF POSTCONVICTION COUNSEL.—

(a) Upon the issuance of the mandate affirming a judgment and sentence of death on direct appeal, the Supreme Court of Florida shall at the same time issue an order appointing the appropriate office of the Capital Collateral Regional Counsel.

(b) Within 30 days of being appointed, the regional counsel shall file a notice of appearance in the trial court or a motion to withdraw based on an actual conflict of interest or some other legal ground. Motions to withdraw filed more than 30 days after being appointed shall not be entertained unless based on an actual conflict of interest.

(c) The court shall conduct a hearing in accordance with s. 924.059 if the regional counsel’s motion to withdraw is based on an actual conflict. If the regional counsel files a motion to withdraw based on any other legal ground, the chief judge or assigned judge shall rule on the motion within 15 days of the

filling of the motion. If the court determines that new postconviction counsel should be appointed, the court shall appoint another regional counsel and, only if a conflict exists with the replacement regional counsel, appoint new postconviction counsel from the statewide registry of attorneys compiled and maintained by the Justice Administrative Commission pursuant to s. 27.710.

(d) If the defendant requests without good cause that any attorney appointed under this subsection be removed or replaced, the court shall notify the defendant that no further state resources may be expended for postconviction representation for that defendant, unless the defendant withdraws the request to remove or replace postconviction counsel. If the defendant does not withdraw his or her request, then any appointed attorney must be removed from the case and no further state resources may be expended for the defendant's postconviction representation.

(2) PRELIMINARY PROCEDURES.—

(a) Within 30 days of the issuance of mandate affirming a judgment and sentence of death on direct appeal, the chief judge shall assign the case to a judge qualified under the Rules of Judicial Administration to conduct capital proceedings.

(b) The assigned judge shall conduct a status conference no later than 90 days after the judicial assignment, and shall hold status conferences at least every 90 days thereafter until the evidentiary hearing has been completed or the postconviction motion has been ruled on without a hearing. The attorneys, with leave of the trial court, may, with leave of the court, appear electronically at the status conferences. Requests to appear electronically shall be liberally granted. Pending motions,

disputes involving public records, or any other matters ordered by the court shall be heard at the status conferences. The inmate's presence is not required at status conferences held pursuant to this paragraph.

(c) Within 45 days of appointment of postconviction counsel, the defendant's trial counsel shall provide to postconviction counsel all information pertaining to the defendant's capital case which was obtained during the representation of the defendant. Postconviction counsel shall maintain the confidentiality of all confidential information received.

(3) TIME LIMITATIONS ON FILING A POSTCONVICTION MOTION.—

(a) Any postconviction motion must be filed by the inmate within one year after the judgment and sentence become final. For the purposes of this subsection, a judgment is final:

1. Upon the expiration of the time permitted to file in the United States Supreme Court a petition for writ of certiorari seeking review of the Supreme Court of Florida decision affirming a judgment and sentence of death; or

2. Upon the disposition of the petition for writ of certiorari by the United States Supreme Court, if filed.

(b) No postconviction motion shall be filed or considered pursuant to this subsection if filed beyond the time limitation provided in paragraph (a) unless it alleges:

1. The facts on which the motion is predicated were unknown to the movant or the movant's attorney and could not have been ascertained by the exercise of due diligence;

2. The fundamental constitutional right asserted was not established within the period provided for in paragraph (a) and

has been held to apply retroactively; or

3. Postconviction counsel, through neglect, failed to file the motion.

(c) All petitions for extraordinary relief in which the Supreme Court of Florida has original jurisdiction, including petitions for writs of habeas corpus, shall be filed simultaneously with the initial brief filed on behalf of the death-sentenced inmate in the appeal of the circuit court's order on the initial motion for postconviction relief filed under this subsection.

(d) The time limitation provided in paragraph (a) is established with the understanding that each inmate sentenced to death will have counsel assigned and available to begin addressing the inmate's postconviction issues within the time specified in this subsection. Should the Governor sign a death warrant before the expiration of the time limitation provided in paragraph (a), the Supreme Court of Florida, on a defendant's request, will grant a stay of execution to allow any postconviction relief motions to proceed in a timely manner.

(4) CONTENTS OF A POSTCONVICTION MOTION.—

(a) No state court shall consider a postconviction motion unless the motion is fully pled. For the purposes of this subsection, a fully pled postconviction motion is one which complies with paragraph (b). The fully pled postconviction motion must raise all cognizable claims that the defendant's judgment or sentence was entered in violation of the Constitution or laws of the United States or the Constitution or the laws of the state, including any claim of ineffective assistance of trial counsel or direct appeal counsel,

allegations of innocence, or that the state withheld evidence favorable to the defendant.

(b) The defendant's postconviction motion shall be filed under oath and shall be fully pled to include:

1. The judgment or sentence under attack and the court which rendered the same;

2. A statement of each issue raised on appeal and the disposition thereof;

3. Whether a previous postconviction motion has been filed and, if so, the disposition of all previous claims raised in postconviction litigation; if a previous motion or motions have been filed, the reason or reasons the claim or claims in the present motion were not raised in the former motion or motions;

4. The nature of the relief sought;

5. A fully detailed allegation of the factual basis for any claim for which an evidentiary hearing is sought, including the attachment of any document supporting the claim, the name and address of any witness, the attachment of affidavits of the witnesses or a proffer of the testimony;

6. A fully detailed allegation as to the basis for any purely legal or constitutional claim for which an evidentiary hearing is not required and the reason that this claim could not have been or was not raised on direct appeal; and

7. A concise memorandum of applicable case law as to each claim asserted.

(c) A postconviction motion and memorandum of law filed under this subsection shall not exceed 75 pages exclusive of the attachments. Attachments shall include, but are not limited to, the judgment and sentence. The memorandum of law shall set forth

the applicable case law supporting the granting of relief as to each separately pled claim.

(d) Claims raised in a postconviction motion that could have or should have been raised at trial and, if properly preserved, on direct appeal of the judgment and sentence, are barred.

(e) A postconviction motion may not include a claim of ineffective assistance of collateral postconviction counsel.

(f) A postconviction motion may not be amended without court approval. In no instance shall such motion be amended beyond the time limitations provided by subsection (3) for the filing of a postconviction motion. If amendment is allowed, the state shall file an amended answer within 20 days after the amended motion is filed.

(g) Any postconviction motion that does not comply with any requirement in this subsection shall not be considered in any state court.

(5) PROCEDURE; EVIDENTIARY HEARING; DISPOSITION.—

(a) All pleadings in a postconviction proceeding shall be filed with the clerk of the trial court and served on the assigned judge, opposing party, and the Attorney General. The clerk shall immediately deliver to the chief judge or the assigned judge any motion filed in a postconviction proceeding along with the court file.

(b) If the defendant intends to offer expert testimony of his or her mental status in a postconviction proceeding, the state shall be entitled to have the defendant examined by its own mental health expert. If the defendant fails to cooperate with the state’s expert, the trial court may, in its discretion,

proceed as provided in rule 3.202(e) of the Florida Rules of Criminal Procedure. Reports provided to either party by an expert witness shall be disclosed to opposing counsel upon receipt.

(c) The state shall file its answer within 60 days of the filing of an initial postconviction motion. The answer and accompanying memorandum of law shall not exceed 75 pages, exclusive of attachments and exhibits. The answer shall address the legal sufficiency of any claim in the motion, respond to the allegations of the motion, address any procedural bars, and state the reasons that an evidentiary hearing is or is not required. As to any claims of legal insufficiency or procedural bar, the state shall include a short statement of any applicable case law.

(d) No later than 30 days after the state files its answer to an initial motion, the trial court shall hold a case management conference. At the case management conference, both parties shall disclose all documentary exhibits that they intend to offer at the evidentiary hearing, provide an exhibit list of all such exhibits, and exchange a witness list with the names and addresses of any potential witnesses. All expert witnesses shall be specifically designated on the witness list, and copies of all expert reports shall be attached. At the case management conference, the trial court shall:

1. Schedule an evidentiary hearing, to be held within 90 days, on claims listed by the defendant as requiring a factual determination;

2. Hear argument on any purely legal claims not based on disputed facts; and

3. Resolve disputes arising from the exchange of information under this paragraph.

(e) If the court determines that an evidentiary hearing is not necessary and that the defendant's postconviction motion is legally insufficient or that the motion, files, and records in the case show that the defendant is not entitled to relief, the court shall, within 30 days of the conclusion of the case management conference, deny the motion, setting forth a detailed rationale therefore, and attaching or referencing such portions of the record as are necessary to allow for meaningful appellate review.

(f) Immediately following an evidentiary hearing, the trial court shall order a transcript of the hearing which shall be filed within 30 days. Within 30 days of receipt of the transcript, the court shall render its order, ruling on each claim considered at the evidentiary hearing and all other claims raised in the postconviction motion, making detailed findings of fact and conclusions of law with respect to each claim, and attaching or referencing such portions of the record as are necessary to allow for meaningful appellate review. The order issued after the evidentiary hearing shall resolve all the claims raised in the postconviction motion and shall be considered the final order for purposes of appeal. The clerk of the trial court shall promptly serve upon the parties and the Attorney General a copy of the final order, with a certificate of service.

(g) Motions for rehearing shall be filed within 15 days of the rendition of the trial court's order and a response thereto filed within 10 days thereafter. The trial court's order

disposing of the motion for rehearing shall be rendered no later than 15 days after the response is filed.

(h) An appeal may be taken by filing a notice to appeal with the Florida Supreme Court within 15 days of the entry of a final order on a capital postconviction motion. No interlocutory appeal shall be permitted.

Section 22. Section 924.057, Florida Statutes, is amended to read:

924.057 ~~Limitation on~~ Capital postconviction proceedings in cases in which the conviction and sentence of death were affirmed on direct appeal before July 1, 2015 ~~death sentence was imposed before January 14, 2000. This section shall govern all capital postconviction actions in cases in which the trial court imposed the sentence of death before the effective date of this act.~~

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

(2) Postconviction proceedings in every capital case in which the conviction and sentence of death have been affirmed on direct appeal before July 1, 2015, shall be governed by the rules and laws in effect immediately prior to the effective date of this act.

~~(2) Except as provided in s. 924.056(5), in every case in which mandate has issued in the Florida Supreme Court concluding at least one capital postconviction action in the state court system, a successive capital postconviction action shall be~~

~~barred on the effective date of this act, unless the rules or law in effect immediately prior to the effective date of this act permitted the successive postconviction action, in which case the action shall be barred on the date provided in subsection (4).~~

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

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

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

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

Section 23. Section 924.058, Florida Statutes, is amended to read:

(Substantial rewording of section.
See s. 924.058, F.S., for present text.)

924.058 Successive postconviction motions.—This section governs successive postconviction motions in all postconviction proceedings in every capital case in which the conviction and

sentence of death have been affirmed on direct appeal on or after July 1, 2015. A postconviction motion is successive if a state court has previously ruled on a postconviction motion challenging the same judgment and sentence.

(1) TIME LIMITATIONS ON FILING A SUCCESSIVE POSTCONVICTION MOTION.—

(a) A successive postconviction motion is barred unless commenced by filing a fully pled successive postconviction motion within 90 days:

1. After the facts giving rise to the claim were discovered or should have been discovered with the exercise of due diligence; or

2. After the fundamental constitutional right asserted was established and held to apply retroactively.

(b) No successive postconviction motion shall be filed or considered pursuant to this subsection if filed beyond the time limitation provided in paragraph (a) unless it alleges that postconviction counsel, through neglect, failed to file the motion.

(2) CONTENTS OF A SUCCESSIVE POSTCONVICTION MOTION.—

(a) No state court shall consider a successive postconviction motion unless the motion is fully pled. For the purposes of this subsection, a fully pled successive postconviction motion includes:

1. All of the pleading requirements of an initial postconviction motion under s. 924.056;

2. The disposition of all previous claims raised in postconviction proceedings and the reason or reasons the claim or claims raised in the present motion were not raised in the

former motion or motions;

3. If based upon newly discovered evidence, *Brady v. Maryland*, 373 U.S. 83 (1963), or *Giglio v. United States*, 405 U.S. 150 (1972), the following:

a. The names, addresses, and telephone numbers of all witnesses supporting the claim;

b. A statement that the witness will be available, should an evidentiary hearing be scheduled, to testify under oath to the facts alleged in the motion or affidavit;

c. If evidentiary support is in the form of documents, copies of all documents shall be attached, including any affidavits obtained; and

d. As to any witness or document listed in the motion or attachment to the motion, a statement of the reason why the witness or document was not previously available.

(b) A successive postconviction motion and memorandum of law filed under this subsection shall not exceed 25 pages exclusive of the attachments. Attachments shall include, but are not limited to, the judgment and sentence. The memorandum of law shall set forth the applicable case law supporting the granting of relief as to each separately pled claim.

(c) Claims raised in a successive postconviction motion that could have or should have been raised at trial, on direct appeal of the judgment and sentence, if properly preserved, and in the initial postconviction motion, are barred.

(d) A successive postconviction motion may not include a claim of ineffective assistance of collateral postconviction counsel.

(e) A succesive postconviction motion may not be amended

without court approval. In no instance shall such motion be amended beyond the time limitations provided by subsection (1) for the filing of a successive postconviction motion. If amendment is allowed, the state shall file an amended answer within 20 days after the amended motion is filed.

(f) Any successive postconviction motion that does not comply with any requirement in this subsection shall not be considered in any state court.

(3) PROCEDURE; EVIDENTIARY HEARING; DISPOSITION.—

(a) If the defendant intends to offer expert testimony of his or her mental status in a successive postconviction motion proceeding, the state shall be entitled to have the defendant examined by its own mental health expert. If the defendant fails to cooperate with the state's expert, the trial court may, in its discretion, proceed as provided in rule 3.202(e) of the Florida Rules of Criminal Procedure. Reports provided to either party by an expert witness shall be disclosed to opposing counsel upon receipt.

(b) The state shall file its answer within 20 days of the filing of a successive postconviction motion. The answer shall not exceed 25 pages, exclusive of attachments and exhibits. The answer shall address the legal sufficiency of any claim in the motion, respond to the allegations of the motion, address any procedural bars, and state the reasons that an evidentiary hearing is or is not required. As to any claims of legal insufficiency or procedural bar, the answer shall include a short statement of any applicable case law.

(c) No later than 30 days after the state files its answer to a successive postconviction motion, the trial court shall

hold a case management conference. At the case management conference, both parties shall disclose all documentary exhibits that they intend to offer at the evidentiary hearing, provide an exhibit list of all such exhibits, and exchange a witness list with the names and addresses of any potential witnesses. All expert witnesses shall be specifically designated on the witness list, and copies of all expert reports shall be attached. At the case management conference, the trial court shall:

1. Schedule an evidentiary hearing, to be held within 90 days, on claims listed by the defendant as requiring a factual determination;

2. Hear argument on any purely legal claims not based on disputed facts; and

3. Resolve disputes arising from the exchange of information under this paragraph.

(d) If the court determines that an evidentiary hearing is not necessary and that the defendant's successive postconviction motion is legally insufficient or that the motion, files, and records in the case show that the defendant is not entitled to relief, the court shall, within 30 days of the conclusion of the case management conference, deny the motion, setting forth a detailed rationale therefore, and attaching or referencing such portions of the record as are necessary to allow for meaningful appellate review.

(e) Immediately following an evidentiary hearing, the trial court shall order a transcript of the hearing which shall be filed within 30 days. Within 30 days of receipt of the transcript, the court shall render its order, ruling on each claim considered at the evidentiary hearing and all other claims

raised in the successive postconviction motion, making detailed findings of fact and conclusions of law with respect to each claim, and attaching or referencing such portions of the record as are necessary to allow for meaningful appellate review. The order issued after the evidentiary hearing shall resolve all the claims raised in the successive postconviction motion and shall be considered the final order for purposes of appeal. The clerk of the trial court shall promptly serve upon the parties and the Attorney General a copy of the final order, with a certificate of service.

(f) Motions for rehearing shall be filed within 15 days of the rendition of the trial court's order and a response thereto filed within 10 days thereafter. The trial court's order disposing of the motion for rehearing shall be rendered no later than 15 days after the response is filed.

(g) An appeal may be taken by filing a notice to appeal with the Florida Supreme Court within 15 days of the entry of a final order on a capital postconviction motion. No interlocutory appeal shall be permitted.

Section 24. Section 924.0581, Florida Statutes, is created to read:

924.0581 Capital postconviction appeals to the Florida Supreme Court.—This section governs capital postconviction appeals to the Florida Supreme Court in every capital case in which the conviction and sentence of death have been affirmed on direct appeal on or after July 1, 2015.

(1) Initial and Successive Postconviction Motion Appeals.—

(a) When the notice of appeal is filed in the Florida Supreme Court, the chief justice shall direct the appropriate

chief judge of the circuit court to monitor the preparation of the complete record for timely filing in the Florida Supreme Court.

(b) The complete record in a death penalty appeal shall include transcripts of all proceedings conducted in the lower court, all items required by rule 9.200 of the Florida Rules of Appellate Procedure, and any item listed in any order issued by the Florida Supreme Court. The record shall begin with the most recent mandate issued by the Florida Supreme Court; or, in the event the preceding appeal was disposed of without a mandate, the most recent filing not already transmitted to the Florida Supreme Court in a prior record. The record shall exclude any materials already transmitted to the Florida Supreme Court as the record in any prior appeal.

(c) The Florida Supreme Court shall take judicial notice of the appellate records in all prior appeals and writ proceedings involving a challenge to the same judgment of conviction and sentence of death. Appellate records subject to judicial notice under this section shall not be duplicated in the record transmitted for the appeal under review.

(d) If the sentencing court has denied the initial or successive postconviction motion without an evidentiary hearing, the Florida Supreme Court shall initially review the case to determine whether the trial court correctly resolved the defendant's claims without an evidentiary hearing. If the Florida Supreme Court determines an evidentiary hearing should have been held, the court may remand the case for an evidentiary hearing. Jurisdiction shall be relinquished to the trial court for the purpose of conducting an evidentiary hearing on any

issues identified in the Florida Supreme Court's order. The trial court must schedule an evidentiary hearing within 30 days of the Florida Supreme Court's order and conclude the hearing within 90 days of scheduling. Upon conclusion of the evidentiary hearing, the record shall be supplemented with the hearing transcript.

(e) The defendant has 30 days from the date the record is filed to file an initial brief. The answer brief must be filed within 20 days after filing of the initial brief. The reply brief, if any, must be filed within 20 days after filing of the answer brief. The cross-reply brief, if any, shall be filed within 20 days thereafter. A brief submitted after these time periods is barred and shall not be heard.

(f) Oral arguments shall be scheduled within 30 days after the filing of the defendant's replay brief.

(g)1. The Florida Supreme Court shall render its decision within 180 days after oral arguments have concluded. If a denial of an action for postconviction relief is affirmed, the Governor may proceed to issue a warrant for execution.

2. In instances where the Florida Supreme Court does not comply with subparagraph 1., the Chief Justice of the Florida Supreme Court shall, within 10 days after the expiration of the 180 day deadline, submit a report to the Speaker of the Florida House of Representatives and the President of the Florida Senate explaining why a decision was not timely rendered. The Chief Justice shall submit a report to the Speaker of the Florida House of Representatives and the President of the Florida Senate every 30 days thereafter in which a decision is not rendered explaining the reasons therefore.

(2) PETITIONS FOR EXTRAORDINARY RELIEF.—

(a) Review proceedings under this subsection shall be treated as original proceedings under rule 9.100 of the Rules of Appellate Procedure, except as otherwise provided in this subsection.

(b) A petition for extraordinary relief shall be in the form prescribed by rule 9.100 of the Rules of Appellate Procedure, may include supporting documents, and shall recite in the statement of facts:

1. The date and nature of the lower tribunal's order sought to be reviewed;

2. The name of the lower tribunal rendering the order;

3. The nature, disposition, and dates of all previous court proceedings;

4. If a previous petition was filed, the reason the claim in the present petition was not raised previously; and

5. The nature of the relief sought.

(c) 1. A petition for belated appeal shall include a detailed allegation of the specific acts sworn to by the petitioner or petitioner's counsel that constitute the basis for entitlement to belated appeal, including whether petitioner requested counsel to proceed with the appeal and the date of any such request, whether counsel misadvised the petitioner as to the availability of appellate review or the filing of the notice of appeal, or whether there were circumstances unrelated to counsel's action or inaction, including names of individuals involved and dates of the occurrences, that were beyond the petitioner's control and otherwise interfered with the petitioner's ability to file a timely appeal.

2. A petition for belated appeal shall not be filed more than 1 year after the expiration of time for filing the notice of appeal from a final order denying relief pursuant to s. 924.056 or s. 924.058, unless it alleges under oath with a specific factual basis that the petitioner:

a. Was unaware an appeal had not been timely filed, was not advised of the right to an appeal, was misadvised as to the rights to an appeal, or was prevented from timely filing a notice of appeal due to circumstances beyond the petitioner's control; and

b. Could not have ascertained such facts by the exercise of due diligence.

(d) A petition alleging ineffective assistance of appellate counsel must include detailed allegations of the specific acts that constitute the alleged ineffective assistance of counsel on direct appeal and must be filed simultaneously with the initial brief in the appeal from the lower tribunal's final order denying relief pursuant to s. 924.056 or s. 924.058.

(3) PETITIONS SEEKING RELIEF OF NONFINAL ORDERS IN DEATH PENALTY POSTCONVICTION PROECEDINGS.—

(a) This subsection applies to proceedings that invoke the jurisdiction of the supreme court for review of nonfinal orders issued in postconviction proceedings following the imposition of the death penalty. Review of such proceedings shall be treated as original proceedings under rule 9.100 of the Rules of Appellate Procedure, except as otherwise provided in this subsection.

(b) Jurisdiction of the Florida Supreme Court shall be invoked by filing a petition with the Clerk of the Florida

Supreme Court within 30 days of rendition of the nonfinal order to be reviewed. A copy of the petition shall be served on the opposing party and furnished to the judge who issued the order to be reviewed. Either party to the death penalty postconviction proceedings may seek review under this subsection.

(c) The petition shall be in the form prescribed by rule 9.100 of the Rules of Appellate Procedure, and shall contain:

1. The basis for invoking the jurisdiction of the court;

2. The date and nature of the order sought to be reviewed;

3. The name of the lower tribunal rendering the order;

4. The name, disposition, and dates of all previous trial, appellate, and postconviction proceedings relating to the conviction and death sentence that are the subject of the proceedings in which the order sought to be reviewed was entered;

5. The facts on which the petitioner relies, with references to the appropriate pages of the supporting appendix;

6. Argument in support of the petition, including an explanation of why the order departs from the essential requirements of law and how the order may cause material injury for which there is no adequate remedy on appeal, and appropriate citations of authority; and

7. The nature of the relief sought.

(d) The petition shall be accompanied by an appendix, as prescribed by rule 9.220 of the Rules of Appellate Procedure, which shall contain the portions of the record necessary for a determination of the issues presented.

(e) If the petition demonstrates a preliminary basis for relief or a departure from the essential requirements of law

that may cause material injury for which there is no adequate remedy by appeal, the court may issue an order directing the respondent to show cause, within the time set by the court, why relief should not be granted. No response shall be permitted unless ordered by the court. Within 20 days after service of the response or such other time set by the court, the petitioner may serve a reply, which shall not exceed 15 pages in length, and supplemental appendix.

(f) A stay of proceedings under this subsection is not automatic. The party seeking a stay must petition the Florida Supreme Court for a stay of proceedings. During the pendency of a review of a nonfinal order, unless a stay is granted by the Florida Supreme Court, the lower tribunal may proceed with all matters, except that the lower tribunal may not render a final order disposing of the cause pending review of the nonfinal order.

(g) The parties may not file any other pleadings, motions, replies, or miscellaneous papers without leave of court.

(h) Seeking review under this subsection shall not extend the time limitations in s. 924.056, s. 924.058, or s. 27.7081.

Section 25. Effective July 1, 2013, section 924.0585, Florida Statutes, is created to read:

924.0585 Capital postconviction proceedings; reporting requirements.—The Florida Supreme Court shall annually report to the Speaker of the Florida House of Representatives and the President of the Florida Senate the status of each capital case in which a postconviction action has been filed that has been pending for more than 3 years. The report must include the name of the state court judge involved in the case.

Section 26. Section 924.0585, Florida Statutes, as created by this act, is amended to read:

924.0585 Capital postconviction proceedings; reporting requirements.—

(3) A capital postconviction action filed in violation of the time limitations provided by statute is barred, and all claims raised therein are waived. A state court shall not consider any capital postconviction action filed in violation of s. 924.056 or s. 924.058. The Attorney General shall deliver to the Governor, the President of the Senate, and the Speaker of the House of Representatives a copy of any pleading or order that alleges or adjudicates any violation of this provision.

Section 27. Section 924.059, Florida Statutes, is amended to read:

(Substantial rewording of section.

See s. 924.059, F.S., for present text.)

924.059 Conflicts of interest in capital postconviction proceedings.—In any capital postconviction proceeding in which it is alleged that there is a conflict of interest with postconviction counsel, the court shall hold a hearing within 30 days of such allegation to determine whether an actual conflict exists and whether such conflict will adversely affect a defendant’s lawyer’s performance. An actual conflict of interest exists when an attorney actively represents conflicting interests. To demonstrate an actual conflict, the defendant must identify specific evidence suggesting that his or her interests were or may be compromised. A possible, speculative, or merely hypothetical conflict is insufficient to support an allegation that a conflict of interest exists. The court must rule within

10 days of the conclusion of the hearing.

Section 28. Section 924.0591, Florida Statutes, is created to read:

924.0591 Incompetence to proceed in capital postconviction proceedings.—

(1) A death-sentenced inmate pursuing collateral relief who is found by the court to be mentally incompetent shall not be proceeded against if there are factual matters at issue, the development or resolution of which require the inmate's input. However, all collateral relief issues that involve only matters of record and claims that do not require the inmate's input shall proceed in collateral proceedings notwithstanding the inmate's incompetency.

(2) If, at any stage of a postconviction proceeding, the court determines that there are reasonable grounds to believe that a death-sentenced inmate is incompetent to proceed and that factual matters are at issue, the development or resolution of which require the inmate's input, a judicial determination of incompetency is required.

(3) Collateral counsel may file a motion for competency determination and an accompanying certificate of counsel that the motion is made in good faith and on reasonable grounds to believe that the death-sentenced inmate is incompetent to proceed. The motion and certificate shall replace the signed oath by the inmate that otherwise must accompany a postconviction motion filed under s. 924.056 and s. 924.058.

(4) The motion for competency examination shall be in writing and shall allege with specificity the factual matters at issue and the reason that a competency consultation with the

inmate is necessary with respect to each factual matter specified. To the extent that it does not invade the lawyer-client privilege with collateral counsel, the motion shall contain a recital of the specific observations of, and conversations with, the death-sentenced inmate that have formed the basis of the motion.

(5) If the court finds that there are reasonable grounds to believe that a death-sentenced inmate is incompetent to proceed in a postconviction proceeding in which factual matters are at issue, the development or resolution of which require the inmate's input, the court shall order the inmate examined by no more than 3, nor fewer than 2, experts before setting the matter for a hearing. The court may seek input from the death-sentenced inmate's counsel and the state attorney before appointment of the experts.

(6) The order appointing experts shall:

(a) Identify the purpose of the evaluation and specify the area of inquiry that should be addressed;

(b) Specify the legal criteria to be applied; and

(c) Specify the date by which the report shall be submitted and to whom it shall be submitted.

(7) Counsel for both the death-sentenced inmate and the state may be present at the examination, which shall be conducted at a date and time convenient for all parties and the Department of Corrections.

(8) On appointment by the court, the experts shall examine the death-sentenced inmate with respect to the issue of competence to proceed, as specified by the court in its order appointing the experts to evaluate the inmate, and shall

evaluate the inmate as ordered.

(a) The experts first shall consider factors related to the issue of whether the death-sentenced inmate meets the criteria for competence to proceed, that is, whether the inmate has sufficient present ability to consult with counsel with a reasonable degree of rational understanding and whether the inmate has a rational as well as factual understanding of the pending collateral proceedings.

(b) In considering the issue of competence to proceed, the experts shall consider and include in their report:

1. The inmate's capacity to understand the adversary nature of the legal process and the collateral proceedings;

2. The inmate's ability to disclose to collateral counsel facts pertinent to the postconviction proceeding at issue; and

3. Any other factors considered relevant by the experts and the court as specified in the order appointing the experts.

(c) Any written report submitted by an expert shall:

1. Identify the specific matters referred for evaluation;

2. Describe the evaluative procedures, techniques, and tests used in the examination and the purpose or purposes for each;

3. State the expert's clinical observations, findings, and opinions on each issue referred by the court for evaluation, and indicate specifically those issues, if any, on which the expert could not give an opinion; and

4. Identify the sources of information used by the expert and present the factual basis for the expert's clinical findings and opinions.

(9) If the experts find that the death-sentenced inmate is

incompetent to proceed, the experts shall report on any recommended treatment for the inmate to attain competence to proceed. In considering the issues relating to treatment, the experts shall report on:

(a) The mental illness or mental retardation causing the incompetence;

(b) The treatment or treatments appropriate for the mental illness or mental retardation of the inmate and an explanation of each of the possible treatment alternatives in order of choices; and

(c) The likelihood of the inmate attaining competence under the treatment recommended, an assessment of the probable duration of the treatment required to restore competence, and the probability that the inmate will attain competence to proceed in the foreseeable future.

(10) Within 30 days after the experts have completed their examinations of the death-sentenced inmate, the court shall schedule a hearing on the issue of the inmate's competence to proceed.

(11) If, after a hearing, the court finds the inmate competent to proceed, or, after having found the inmate incompetent, finds that competency has been restored, the court shall enter its order so finding and shall proceed with a postconviction motion. The inmate shall have 60 days to amend his or her postconviction motion only as to those issues that the court found required factual consultation with counsel.

(12) If the court does not find the inmate incompetent, the order shall contain:

(a) Findings of fact relating to the issues of competency;

(b) Copies of the reports of the examining experts; and

(c) Copies of any other psychiatric, psychological, or social work reports submitted to the court relative to the mental state of the death-sentenced inmate.

(13) If the court finds the inmate incompetent or finds the inmate competent subject to the continuation of appropriate treatment, the court shall follow the procedures set forth in rule 3.212(c) of the Florida Rules of Criminal Procedure, except that, to the extent practicable, any treatment shall take place at a custodial facility under the direct supervision of the Department of Corrections.

Section 29. Section 924.0592, Florida Statutes, is created to read:

924.0592 Capital postconviction proceedings after a death warrant has been issued.—This section governs all postconviction proceedings in every capital case in which the conviction and sentence of death have been affirmed on direct appeal on or after July 1, 2015, and in which a death warrant has been issued.

(1) Upon issuance of a death warrant pursuant to s. 922.052 or s. 922.14, the issuing entity shall notify the chief judge of the circuit that sentenced the inmate to death. The chief judge shall assign the case to a judge qualified under the Rules of Judicial Administration to conduct capital cases immediately upon receipt of such notification.

(2) Postconviction proceedings after a death warrant has been issued shall take precedence over all other cases. The assigned judge shall make every effort to resolve scheduling conflicts with other cases including cancellation or

rescheduling of hearings or trials and requesting senior judge assistance.

(3) The time limitations provided in s. 924.056 and s. 924.058 do not apply after a death warrant has been issued. All postconviction motions filed after a death warrant has been issued shall be heard expeditiously considering the time limitations set by the date of execution and the time required for appellate review.

(4) The location of any hearings after a death warrant is issued shall be determined by the trial judge considering the availability of witnesses or evidence, the security problems involved in the case, and any other factor determined by the trial court.

(5) All postconviction motions filed after a death warrant is issued shall be considered successive motions and subject to the content requirement of s. 924.058.

(6) The assigned judge shall schedule a case management conference as soon as reasonably possible after receiving notification that a death warrant has been issued. During the case management conference the court shall set a time for filing a postconviction motion, shall schedule a hearing to determine whether an evidentiary hearing should be held, and shall hear arguments on any purely legal claims not based on disputed facts. If the postconviction motion, files, and records in the case conclusively show that the movant is entitled to no relief, the motion may be denied without an evidentiary hearing. If the trial court determines that an evidentiary hearing should be held, the court shall schedule the hearing to be held as soon as reasonably possible considering the time limitations set by the

date of execution and the time required for appellate review.

(7) The assigned judge shall require all proceedings conducted pursuant to this section to be reported using the most advanced and accurate technology available in general use at the location of the hearing. The proceedings shall be transcribed expeditiously considering the time limitations set by the execution date.

(8) The court shall obtain a transcript of all proceedings conducted pursuant to this section and shall render its order in accordance with s. 924.056(5)(e) as soon as possible after the hearing is concluded. A copy of the final order shall be electronically transmitted to the Supreme Court of Florida and to the attorneys of record. The record shall be immediately delivered to the clerk of the Supreme Court of Florida by the clerk of the trial court or as ordered by the assigned judge. The record shall also be electronically transmitted if the technology is available. A notice of appeal shall not be required to transmit the record.

Section 30. Section 924.0593, Florida Statutes, is created to read:

924.0593 Insanity at the time of execution.—

(1) A person under sentence of death shall not be executed while insane. A person under sentence of death is insane for purposes of execution if the person lacks the mental capacity to understand the fact of the impending execution and the reason for it.

(2) No motion for a stay of execution pending hearing, based on grounds of the inmate’s insanity to be executed, shall be entertained by any court until such time as the Governor of

Florida has held appropriate proceedings for determining the issue pursuant to s. 922.07.

(3)(a) On determination of the Governor of Florida, subsequent to the signing of a death warrant for an inmate under sentence of death and pursuant to s. 922.07, that the inmate is sane to be executed, counsel for the inmate may move for a stay of execution and a hearing based on the inmate's insanity to be executed. The motion:

1. Shall be filed in the circuit court of the circuit in which the execution is to take place and shall be heard by one of the judges of that circuit or such other judge as shall be assigned by the Chief Justice of the Florida Supreme Court to hear the motion. The state attorney of the circuit shall represent the State of Florida in any proceedings held on the motion; and

2. Shall be in writing and shall contain a certificate of counsel that the motion is made in good faith and on reasonable grounds to believe that the prisoner to be executed is insane.

(b) Counsel for the inmate shall file, along with the motion, all reports of experts that were submitted to the governor pursuant to s. 922.07. If any of the evidence is not available to counsel for the inmate, counsel shall attach to the motion an affidavit so stating, with an explanation of why the evidence is unavailable.

(c) Counsel for the inmate and the state may submit such other evidentiary material and written submissions including reports of experts on behalf of the inmate that are relevant to determination of the issue.

(d) A copy of the motion and all supporting documents shall

be served on the Florida Department of Legal Affairs and the state attorney of the circuit in which the motion has been filed.

(4) If the circuit judge, upon review of the motion and submissions, has reasonable grounds to believe that the inmate to be executed is insane, the judge shall grant a stay of execution and may order further proceedings which may include a hearing.

(5) Any hearing on the insanity of the inmate to be executed shall not be a review of the Governor's determination, but shall be a hearing de novo. At the hearing, the issue the court must determine whether the inmate presently meets the criteria for insanity at time of execution, that is, whether the prisoner lacks the mental capacity to understand the fact of the pending execution and the reason for it.

(6) The court may do any of the following as may be appropriate and adequate for a just resolution of the issues raised:

(a) Require the presence of the inmate at the hearing;

(b) Appoint no more than 3 disinterested mental health experts to examine the inmate with respect to the criteria for insanity and to report their findings and conclusions to the court; or

(c) Enter such other orders as may be appropriate to effectuate a speedy and just resolution of the issues raised.

(7) At hearings held pursuant to this section, the court may admit such evidence as the court deems relevant to the issues, including but not limited to the reports of expert witnesses, and the court shall not be strictly bound by the

rules of evidence.

(8) If, at the conclusion of the hearing, the court finds, by clear and convincing evidence, that the inmate is insane, the court shall enter its order continuing the stay of the death warrant; otherwise, the court shall deny the motion and enter its order dissolving the stay of execution.

Section 31. Section 924.0594, Florida Statutes, is created to read:

924.0594 Dismissal of postconviction proceedings.—This section applies only when an inmate seeks both to dismiss a pending postconviction proceedings and to discharge collateral counsel.

(1) If an inmate files a motion to dismiss a pending postconviciton motion and to discharge collateral counsel pro se, the Clerk of the Court shall serve copies of the motion on counsel of record for both the inmate and the state. Counsel of record may file responses within 10 days.

(2) The trial judge shall review the motion and the responses and schedule a hearing. The inmate, collateral counsel, and the state shall be present at the hearing.

(3) The judge shall examine the inmate at the hearing and shall hear argument of the inmate, collateral counsel, and the state. No fewer than 2 or more than 3 qualified experts shall be appointed to examine the inmate if the judge concludes that there are reasonable grounds to believe the inmate is not mentally competent for purposes of this section. The experts shall file reports with the court setting forth their findings. Thereafter, the court shall conduct an evidentiary hearing and enter an order setting forth findings of competency or

incompetency.

(4) If the inmate is found to be incompetent for purposes of this section, the court shall deny the motion without prejudice.

(5) If the inmate is found to be competent for purposes of this section, the court shall conduct a complete Durocher/Faretta inquiry to determine whether the inmate knowingly, freely, and voluntarily wants to dismiss pending postconviction proceedings and discharge collateral counsel.

(6) If the court determines that the inmate has made the decision to dismiss pending postconviction proceedings and discharge collateral counsel knowingly, freely, and voluntarily, the court shall enter an order dismissing all pending postconviction proceedings and discharging collateral counsel. If the court determines that the inmate has not made the decision to dismiss pending postconviction proceedings and discharge collateral counsel knowingly, freely, and voluntarily, the court shall enter an order denying the motion without prejudice.

(7) If the court denies the motion, the inmate may seek review pursuant to s. 924.0581(2). If the court grants the motion:

(a) A copy of the motion, the order, and the transcript of the hearing or hearings conducted on the motion shall be forwarded to the Clerk of the Supreme Court of Florida within 30 days; and

(b) Discharged counsel shall, within 10 days after issuance of the order, file with the clerk of the circuit court 2 copies of a notice seeking review in the Supreme Court of Florida, and

shall, within 20 days after the filing of the transcript, serve an initial brief. Both the inmate and the state may serve responsive briefs.

(8)(a) Within 10 days of the rendition of an order granting a inmate's motion to discharge counsel and dismiss the motion for postconviction relief, discharged counsel must file with the clerk of the circuit court a notice seeking review in the Florida Supreme Court.

(b) The circuit judge presiding over the motion to dismiss and discharge counsel shall order a transcript of the hearing to be prepared and filed with the clerk of the circuit court no later than 25 days from rendition of the final order. Within 30 days of the granting of a motion to dismiss and discharge counsel, the clerk of the circuit court shall forward a copy of the motion, order, and transcripts of all hearings held on the motion to the Clerk of the Florida Supreme Court.

(c) Within 20 days of the filing of the record in the Florida Supreme Court, discharged counsel shall serve an initial brief. Both the state and the prisoner may serve responsive briefs. All briefs must be served and filed as prescribed by rule 9.210 of the Rules of Appellate Procedure.

(d) The Florida Supreme Court shall rule on the motion within 60 days of the last brief filing deadline.

Section 32. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 33. Except as otherwise provided herein, this act shall take effect July 1, 2015, contingent upon voter approval of SJR_____ in the General Election of 2014.