HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4005 Death Penalty
SPONSOR(S): Rehwinkel Vasilinda and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	4 Y, 9 N	Cunningham	Cunningham
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

In 1972, the United States Supreme Court decided *Furman v. Georgia*, which struck down all of the then-existing death penalty statutes in the United States on grounds that the imposition and carrying out of the death penalty constituted cruel and unusual punishment. Florida was the first state to pass legislation reenacting a death penalty scheme in the wake of *Furman*.

Florida is currently one of 33 states that impose the death penalty. As of January 28, 2013, there were 405 people on death row in Florida – more than any other state aside from California. On average, Florida death row inmates spend 13.22 years on death row prior to execution. Since 1976, Florida has executed 74 inmates.

In recent years, the states that impose the death penalty appear to be doing so more sparingly. In 2012, the number of new death sentences (77) was the second lowest since the death penalty was reinstated in 1976. The only year with fewer death sentences was 2011, when 76 defendants were sentenced to death. Additionally, while the number of executions (43) remained the same from 2011 to 2012, fewer states carried them out (9 of the 33 death penalty states executed death row inmates in 2012 compared to 13 in 2011). Four states (Texas, Oklahoma, Mississippi, and Arizona) were responsible for over three-quarters of the executions in the U.S.

The bill abolishes the death penalty and specifies that a capital felony is punishable by life imprisonment. The bill amends or repeals a multitude of statutes that reference the death penalty and that are tied to the death penalty process.

Due to the nuances of capital cases and the multitude of agencies and personnel involved (e.g., judges, clerks, public defenders, registry attorneys, Capital Collateral Regional Counsel, Department of Corrections, Attorney General, etc.), it is difficult to precisely quantify the costs associated with Florida's death penalty system. Research shows that the time it takes to litigate a capital case on appeal in both state and federal court is a major factor in determining how long it takes for an inmate to progress through the judicial system. How much that litigation costs can vary widely from case to case, depending on the legal matters involved. See "Fiscal Comments."

The bill is effective July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Death Row - Background

In 1972, the United States Supreme Court decided *Furman v. Georgia*, which struck down all of the then-existing death penalty statutes in the United States on grounds that the imposition and carrying out of the death penalty constituted cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments.[1]

Florida was the first state to reenact a death penalty statute in the wake of *Furman*. This was done in the fall of 1972, when House Bill 1-A was passed during a Special Session of the Legislature.[2] While many statutory changes have been made over the years, this legislation formed the basis for Florida's current death penalty scheme.

Florida's Current Death Penalty Scheme

Capital Felonies

Currently, capital felonies in Florida include:

- Section 782.04(1)(a), F.S. (first degree murder);
- Section 790.161(4), F.S. (willfully and unlawfully making, possessing, throwing, projecting, placing, discharging, or attempting to make, possess, throw, project, place, or discharge any destructive device when the act results in the death of another person);
- Section 790.166(2), F.S. (unlawfully manufacturing, possessing, selling, delivering, sending, mailing, displaying, using, threatening to use, attempting to use, or conspiring to use, or making readily accessible to others a weapon of mass destruction when the act results in the death of a person);
- Section 794.011(2)(a), F.S. (sexual battery by a person 18 years of age or older upon a person less than 12 years of age, or attempted sexual battery by a person 18 years of age of older where the attempt injures the sexual organs of a person less than 12 years of age);[3]
- Section 893.135(1)(b)2., F.S. (trafficking in cocaine that results in a death);
- Section 893.135(1)(b)3., F.S. (capital importation of cocaine);
- Section 893.135(1)(c)2., F.S. (trafficking in illegal drugs that results in a death);
- Section 893.135(1)(c)3., F.S. (capital importation of illegal drugs);
- Section 893.135(1)(d)2., F.S. (capital importation of phencyclidine);
- Section 893.135(1)(e)2., F.S. (capital importation of methaqualone);
- Section 893.135(1)(f)2., F.S. (capital manufacture or importation of amphetamine);
- Section 893.135(1)(g)2., F.S. (trafficking in flunitrazepam that results in a death);
- Section 893.135(1)(h)2., F.S. (capital manufacture or importation of gamma-hydroxybutyric acid);
- Section 893.135(1)(i)2., F.S. (capital manufacture or importation of gamma-butyrolactone);
- Section 893.135(1)(j)2., F.S. (capital manufacture or importation of 1,4-Butanediol);
- Section 893.135(1)(k)2., F.S. (capital manufacture or importation of Phenethylamines); and
- Section 893.135(1)(l)2., F.S. (capital manufacture or importation of lysergic acid diethylamide).

Section 775.082, F.S., requires a person convicted of a capital felony to be punished by death if the sentencing proceeding required by s. 921.141, F.S., results in a finding by the court that such person be punished by death. If the court does not make such finding, the person must be punished by life imprisonment.[4]

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[1] *Furman v. Georgia*, 408 U.S. 238 (1972).

[2] The bill was signed by Governor Askew on December 8, 1972. Chapter 72-724, L.O.F. (1973).

[3] In *Buford v. State*, 403 So.2d 943 (Fla. 1981), the Florida Supreme Court held that a sentence of death was grossly disproportionate and excessive punishment for the crime of sexual battery and was forbidden by Eighth Amendment as cruel and unusual punishment. However, the offense is currently treated as a capital offense for certain purposes (e.g., to deny pretrial release).

[4] Section 775.081(1), F.S.

Pretrial Process

Article I, Section 15 of the Florida Constitution requires capital felonies to be prosecuted by indictment. In order to indict an individual accused of a capital felony, a grand jury[5] must find that probable cause exists that the individual committed a capital offense.[6]

An indictment can be returned only upon the affirmative vote of at least 12 members of the grand jury.[7]

Appointment of Trial Counsel

A person charged with a capital offense is eligible for appointed counsel (either a public defender[8] or private court-appointed counsel[9]) if the person is indigent[10] and desires representation. If eligible for representation, the accused will be appointed qualified counsel[11] "when the person is formally charged with an offense, or as soon as feasible after custodial restraint, or at the first appearance before a committing judge, whichever occurs earliest."[12] The accused may waive their right to counsel on the record while in court or by filing a written waiver of representation.[13]

Arraignment

Following the indictment, the defendant will be ordered to appear for an arraignment, at which time the court will orally inform the defendant of the charges and ask the defendant to enter a plea to the charges.[14] The defendant may plead guilty, not guilty, or, with consent of the court, nolo contendere.[15] The state has the option to file a "Notice of Intent to Seek the Death Penalty" within 45 days after the date of arraignment.[16] Filing this notice places the duty upon the defendant to file a "Notice of Intent to Present Expert Testimony of Mental Mitigation" at least 20 days prior to trial if the defendant intends to raise mental retardation or a mental mitigating circumstance during the penalty phase of the trial.[17]

Prior to the trial, attorneys for the state and defense are encouraged to discuss and agree on pleas that may be entered by the defendant.[18] Defendants who plead guilty without an agreement as to the sentence, proceed to the penalty phase before a jury empanelled for that purpose.[19] Defendants who plead not guilty proceed to trial.

Trial – Guilt / Innocence Phase

Capital trials are heard before the circuit court and conducted in two phases: the guilt/innocence phase and, if the defendant is found guilty, the penalty phase.

Individuals charged with a capital felony have the right to a trial by jury;[20] however, they also possess the right to waive a jury trial with the consent of the state.[21] If the defendant does not waive his/her

[5] A grand jury is composed of between fifteen and twenty-one individuals. Section 905.01, F.S.

[6] *Florida Grand Jury Instructions,* The Supreme Court Committee On Standard Jury Instructions In Criminal Cases.

[7] Section 905.23, F.S.

[8] Section 27.51, F.S. (detailing the duties of public defenders).

[9] Section 27.5304, F.S., (detailing the maximum fees for private court-appointed counsel who defended capital cases—the maximum payment at the trial level is $15,000).

[10] An applicant is indigent if the applicant's income is equal to or below 200 percent of the then-current federal poverty guidelines prescribed for the size of the household of the applicant by the United States Department of Health and Human Services or if the person is receiving Temporary Assistance for Needy Families-Cash Assistance, poverty-related veterans' benefits, or Supplemental Security Income. Section 27.52(2), F.S.

[11] Fla. R. Crim. Proc. 3.112 (providing minimum standards for trial attorneys in capital cases).

[12] Fla. R. Crim. Proc. 3.111(a).

[13] Fla. R. Crim. Proc. 3.111(d)(4) (a written waiver must be signed by no less than two witnesses attesting that the signature was obtained voluntarily).

[14] Fla. R. Crim. Proc. 3.160(a).

[15] Fla. R. Crim. Proc. 3.170(a).

[16] Fla. R. Crim. Proc. 3.202(a).

[17] Section 921.137(3), F.S.; Fla. R. Crim. Proc. 3.202(b) and (c).

[18] Fla. R. Crim. Proc. 3.171(a).

[19] Section 921.141(1), F.S.

[20] Art. I, Sec, 22, Fla. Const.; Section 918.0157, F.S.; Fla. R. Crim. Proc. 3.251.

[21] Fla. R. Crim. Proc. 3.260.

right to a jury trial, the court, in conjunction with the state and defense, must select twelve jurors and, if deemed necessary by the court, alternate jurors.[22]

When selecting the jury, the court first examines the prospective jurors either individually or collectively and then the state and defense has an opportunity to examine the jurors.[23] The state and defense may challenge any juror for cause for reasons specified in s. 913.03, F.S. In addition, the state may exclude for cause any juror who has beliefs which preclude him or her from finding a defendant guilty of a capital offense.[24] The state and the defense may each peremptorily challenge[25] up to ten jurors.[26]

During the guilt/innocence phase, both the state and defense may present opening and closing arguments as well as witnesses and other types of evidence. Both sides also have the opportunity to cross-examine witnesses presented by the other side. After both sides have presented their closing arguments, the court will instruct the jury, orally and in writing, as to the law of the case.[27] The jury's duty is to assess the evidence presented and to determine whether the state has proven that the defendant is guilty of a capital offense beyond a reasonable doubt. If the defendant is found guilty of a capital felony, the case proceeds to the second phase of a death penalty trial, the penalty phase.

Trial - Penalty Phase

During the penalty phase, both the judge and jury are involved in determining whether the appropriate sentence for a defendant convicted of a capital felony is life without the possibility of parole or death.[28] The jury's sentencing recommendation serves as an advisory sentence to the judge who ultimately makes the sentencing decision.[29]

The penalty phase is conducted before the trial jury unless the defendant waives his or her right to a jury.[30] The court may empanel a special jury to make the sentencing recommendation if a jury was waived for the guilt phase, the defendant entered a plea, or the judge is unable to reconvene the trial jury.[31]

During the penalty phase, the judge and the jury may hear evidence relevant to the nature of the crime and the character of the defendant, and must hear evidence specifically relating to the applicable statutory aggravating and mitigating circumstances.[32] Any such evidence which the court deems to have probative value may be received, regardless of its admissibility under the exclusionary rules of evidence, provided the defendant has a fair opportunity to rebut any hearsay statements.[33] Both the state and the defense may make opening and closing arguments, present witnesses, and cross-examine all witnesses presented by the opposing party.[34] Additionally, after the state has presented evidence as to the existence of one or more aggravating circumstances, it may introduce evidence about the victim's life and the effect of the victim's death on the community.[35]

After hearing all of the evidence, the jury must give an advisory sentence to the court based on the following:

- Whether sufficient aggravating circumstances exist;

[22] Section 913.10, F.S.; Art. I, Sec. 22, Fla. Const.; Fla. R. Crim. Proc. 3.270 and 3.280(a).
[23] Fla. R. Crim. Proc. 3.300(b).
[24] Section 913.13, F.S.
[25] A peremptory challenge allows the plaintiff and the defendant in a jury trial to have a juror dismissed before trial without stating a reason, http://legal-dictionary.thefreedictionary.com/peremptory+challenge (last visited on February 1, 2013).
[26] Section 913.08(1)(a), F.S.; Fla. R. Crim. Proc. 3.350(a) (1) and (d) (in cases in which there are alternate jurors, each side has one additional peremptory challenge per alternate juror to be used only on alternate jurors).
[27] Section 918.10, F.S.; Fla. R. Crim. Proc. 3.390(a) and (b).
[28] Section 921.141(1), F.S.
[29] Section 921.141(2) and (3), F.S.
[30] Section 921.141(1), F.S.
[31] *Id*.
[32] Section 921.141(1), F.S.; Fla. R. Crim. Proc. 3.780(a).
[33] Section 921.141(1), F.S.
[34] Fla. R. Crim. Proc. 3.780(a) and (c).
[35] Section 921.141(7), F.S.

- Whether sufficient mitigating circumstances exist which outweigh the aggravating circumstances found to exist; and
- Based on those considerations, whether the defendant should be sentenced to life imprisonment or death.[36]

If the jury finds that the state failed to prove any aggravating circumstances beyond a reasonable doubt, that the mitigating circumstances outweigh the aggravating circumstances, or, in the absence of mitigating factors, that the aggravating factors alone do not justify a sentence of death, the jury must recommend life without the possibility of parole.[37] In contrast, if the jury finds that the state proved one or more of the aggravating circumstances beyond a reasonable doubt and that the mitigating circumstances do not outweigh the aggravating circumstances, or, in the absence of mitigating factors, that the aggravating factors alone are sufficient, the jury may recommend a sentence of death be imposed.[38] The jury is never required to recommend the death penalty.[39] The advisory sentence must be made by a majority vote of the jury.[40]

Notwithstanding the jury's recommendation, the judge, after independently weighing the aggravating and mitigating circumstances, must sentence the defendant to either life in prison or death.[41] In doing so, the judge must give "great weight" to the jury's advisory sentence.[42] In order for a judge to override a jury's verdict of life imprisonment without the possibility of parole, the facts suggesting a death sentence must be so clear and convincing that no reasonable person could differ as to the appropriate sentence.[43]

If the judge imposes a sentence of death, the judge must set forth in writing a detailed explanation for the decision by explaining which aggravating circumstances were proven and why the proven mitigating circumstances, if any, failed to outweigh the aggravating circumstances.[44]

Death sentences are automatically appealed to the Florida Supreme Court.[45]

Direct Appeal

During the appeal process, counsel for both the appellant[46] and the state have the opportunity to file appellate briefs and make oral arguments before the Florida Supreme Court.[47] The Florida Supreme Court reviews the enumerations of error, if raised, the sufficiency of the evidence used to convict the defendant, and the proportionality of the appellant's death sentence.[48] The Court is required to review the sufficiency of the evidence and the proportionality of the appellant's death sentence even if such issues are not raised on appeal.[49]

The Florida Supreme Court must render a judgment within two years of the filing of the notice of appeal.[50] The Court's judgment may affirm the trial court's decision or remand the case to the trial court for a new guilt/innocence and/or penalty phase, or remand the case to the trial court with directions for a judgment of acquittal or to reduce the sentence to life.

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[36] Section 921.141(2), F.S.
[37] Fla. Standard Jury Instructions for Criminal Cases s. 7.11.
[38] *Id*.
[39] *Id*.
[40] Section 921.141(3), F.S.
[41] *Id*.
[42] *Webb v. State*, 433 So.2d 496, 499 (Fla. 1983); *Tedder v. State*, 322 So.2d 908, 910 (Fla. 1975).
[43] *Tedder v. State*, 322 So.2d 908, at 910 (Fla. 1975).
[44] If the court does not make the findings requiring the death sentence within 30 days after the rendition of the judgment and sentence, the court must impose a sentence of life imprisonment. Section 921.141(3), F.S.
[45] Section 921.141(4), F.S.; Art. 5, Sec. 3, Fla. Const.; Fla. R. App. Proc. 9.030(a)(1)(A)(i).
[46] If the defendant is convicted and a death sentence is imposed, the appointed attorney must continue representation through appeal to the Florida Supreme Court. Section 27.5303(4)(a), F.S.
[47] Fla. R. App. Proc. 9.142(a)(2) and (4).
[48] Section 924.051(3) and 921.141(4), F.S.; Fla. R. App. Proc. 9.142(a)(5).
[49] Fla. R. App. P. 9.142(a)(5).
[50] Section 921.141(4), F.S.

If the Florida Supreme Court affirms the appellant's conviction and sentence, the appellant has 90 days after the decision is entered to file a petition for a writ of certiorari with the United States Supreme Court seeking discretionary review of the Florida Supreme Court's decision.[51] The United States Supreme Court may either deny or accept the appellant's case for review.[52] If the United States Supreme Court accepts the case, the Court may affirm the conviction and the sentence, affirm the conviction and overturn the sentence, or overturn both the conviction and sentence.[53] If the United States Supreme Court denies the case, the direct appeal has concluded.[54]

Postconviction Proceedings

Rule 3.851 of the Florida Rules of Criminal Procedure governs all state postconviction proceedings initiated by death-row inmates challenging a conviction and/or death sentence.

Appointment of Counsel, Judge, and other Preliminary Matters

When the Florida Supreme Court affirms a judgment and sentence of death on direct appeal, the court must simultaneously appoint the appropriate office of the Capital Collateral Regional Counsel (CCRC)[55] to represent the inmate during postconviction proceedings.[56] If the CCRC has a conflict of interest and the postconviction judge accepts their motion to withdraw, or the inmate was convicted and sentenced to death in the Northern Region of Florida (which no longer has a CCRC office), the chief judge of the circuit court must appoint an attorney from the statewide registry[57] to represent the inmate in postconviction proceedings.[58]

Within 45 days of appointment of postconviction counsel, the inmate's trial counsel must provide postconviction counsel with all information pertaining to the inmate's capital case and postconviction counsel must maintain the confidentiality of all confidential information received.[59]

Within 30 days of the judgment of conviction and sentence of death being affirmed on direct appeal, the chief judge must assign the case to a judge qualified to conduct capital proceedings.[60] Within 90 days of the assignment, the judge must hold a status hearing and thereafter hold status conferences at least every 90 days until:

- An evidentiary hearing, if ordered, has been completed; or
- The motion has been ruled on without a hearing.[61]

At the status hearing and conferences, the judge will entertain pending motions, disputes involving public records, or any other matters ordered by the court.[62]

Time Limits for Filing an Initial Postconviction Motion

[51] 28 U.S.C. s. 1257; Sup. Ct. R. 13.
[52] Sup. Ct. R. 16.
[53] 28 U.S.C. s. 2106.
[54] Section 940.03, F.S., requires inmates sentenced to death to file an application for executive clemency within 1 year after the date the Florida Supreme Court issues a mandate on direct appeal or the United States Supreme Court denies a petition for a writ of certiorari, whichever is later. Article IV, Section 8(a) of the Florida Constitution provides: Except in cases of treason and in cases where impeachment results in conviction, the governor may, by executive order filed with the custodian of state records, suspend collection of fines and forfeitures, grant reprieves not exceeding sixty days and, with the approval of two members of the cabinet, grant full or conditional pardons, restore civil rights, commute punishment, and remit fines and forfeitures for offenses.
[55] The CCRC represents persons convicted and sentenced to death for the sole purpose of instituting and prosecuting collateral actions challenging the legality of the judgment and sentence imposed against such persons 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. Each regional office is administered by a regional counsel. Section 27.701(1), F.S.
[56] Fla. R. Crim. Proc. 3.851(b)(1).
[57] Section 27.701(2), F.S., requires the responsibilities of the northern region CCRC office to be met through a pilot program using only attorneys from the registry of attorneys maintained pursuant to s. 27.710, F.S.
[58] Fla. R. Crim. Proc. 3.851(b)(1); sections 27.701(2), 27.703(1), and 27.710(5), F.S.
[59] Fla. R. Crim. Proc. 3.851(c)(4).
[60] Fla. R. Crim. Proc. 3.851(c)(1).
[61] Fla. R. Crim. Proc. 3.851(c)(2).
[62] *Id.*

Any person sentenced to death whose conviction and sentence have been affirmed on direct appeal may file an initial rule 3.851 motion, under oath, seeking postconviction relief.[63] This motion must be filed within one year after the inmate's judgment and sentence become final. A judgment and sentence become final:

- On the expiration of the time permitted to file in the United States Supreme Court a petition for writ of certiorari seeking review of the Florida Supreme Court's decision affirming the inmate's judgment and sentence of death (ninety days after the opinion becomes final); or
- On the disposition of the petition for writ of certiorari by the United States Supreme Court, if filed.[64]

The Florida Supreme Court may grant an extension of time for the filing of a postconviction motion if the inmate's counsel can demonstrate good cause as to why counsel could not file the motion within the one-year time limit.[65]

A postconviction motion filed after the one-year time limit will not be entertained unless the movant alleges that:

- The facts on which the claim is predicated were not known to the movant or his/her attorney and could not have been ascertained within the one-year time limit by the exercise of due diligence;[66]
- The fundamental constitutional right asserted was not established within the one year time limit and has been held to apply retroactively; or
- His/her postconviction counsel, through neglect, failed to file the motion.[67]

In addition to the aforementioned exceptions, Florida law allows a litigant to overcome a valid procedural bar by claiming that the alleged error constitutes "fundamental error." In order for an error to be fundamental and justify consideration—despite being otherwise barred—"the error must reach down into the validity of the trial itself to the extent that a verdict of guilty [or sentence of death] could not have been obtained without the assistance of the alleged error."[68] For instance, improper comments made in the closing arguments of the penalty phase only constitute fundamental error when they are so prejudicial as to taint the jury's sentencing recommendation.[69] Fundamental error can be raised at any time,[70] including to collaterally attack a conviction or sentence in postconviction proceedings.[71]

Timely filed motions may be amended or supplemented outside of the one-year time limit.[72] To accomplish this, the movant must file a motion to amend no later than thirty days before the evidentiary hearing, including in the motion the reasons additional claims were not raised upon the initial filing and attaching to the motion the claims sought to be added.[73] If the motion is allowed, the state has 20 days after the amended motion is filed to file an amended answer.[74]

Contents of an Initial Postconviction Motion
An initial postconviction motion[75] must include:

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[63] Fla. R. Crim. Proc. 3.851.
[64] *Id*.
[65] Fla. R. Crim. Proc. 3.851(d)(5).
[66] In order for evidence to be "newly discovered," the movant must demonstrate that: (1) The asserted facts "must have been unknown by the trial court, by the party, or by counsel at the time of trial, and it must appear that movant or his[her] counsel could not have known them by the use of diligence; and (2) "the newly discovered evidence must be of such nature that it would *probably* produce an acquittal on retrial." *See Scott v. Dugger*, 604 So.2d 465, 468 (Fla. 1992); *see also Miller v. State*, 926 So.2d 1243, 1258 (Fla. 2006).
[67] Fla. R. Crim. Proc. 3.851(d)(2).
[68] *Miller*, 926 So.2d at 1261.
[69] *Id*. Fundamental error can never be found harmless. *Johnson v. State*, 460 So.2d 954, 958 (Fla. 5th DCA 1984).
[70] *Moore v. State*, 924 So.2d 840, 841 (Fla. 4th DCA 2006).
[71] *Johnson*, 460 So.2d at 958.
[72] Fla. R. Crim. Proc. 3.851(d)(4) and (f)(4).
[73] Fla. R. Crim. Proc. 3.851(f)(4).
[74] *Id*.
[75] When the state court has not previously ruled on a postconviction motion challenging the same judgment and sentence, a postconviction motion then-filed is deemed an "initial motion." Fla. R. Crim. Proc. 3.851(e)(1).

- A statement specifying the judgment and sentence under attack and the name of the court that rendered the judgment and sentence;
- A statement of each issue raised on appeal and the disposition of each issue;
- The nature of the relief sought;
- A detailed allegation of the factual basis for any claim for which an evidentiary hearing is sought; and
- A detailed allegation as to the basis for any purely legal or constitutional claims for which an evidentiary hearing is not required and the reason that these claims could not have been or were not raised on direct appeal.[76]

The movant must also attach to the motion a memorandum of law setting forth the relevant case law supporting relief on each asserted claim.[77] The memorandum of law must also state why claims that should have or could have been raised on direct appeal are being raised for the first time in the postconviction motion.[78]

The court may strike an initial motion that fails to comply with the above requirements, but it is an abuse of discretion to do so without also allowing the movant to amend the motion within a reasonable time (normally between 10 and 30 days).[79] The state has 60 days from the filing of the initial postconviction motion to file its answer.[80]

Discovery and the Evidentiary Hearing

Within 90 days of the state filing its answer to an initial postconviction motion, the court must hold a case management conference, where both parties must "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."[81] At this conference, the court must also:

- Schedule an evidentiary hearing, to be held within 90 days, on claims asserted by the movant which require a factual determination;
- Hear argument on purely legal claims not based on disputed facts; and
- Resolve any discovery disputes.[82]

The court, upon a showing of good cause by either party, may extend the time for holding an evidentiary hearing on the initial postconviction motion for up to 90 days.[83]

The court may dispose of an initial postconviction motion without holding an evidentiary hearing where:

- The motion, files, and records in the case conclusively show that the movant is not entitled to any relief; or
- The motion or a particular claim is legally insufficient."[84]

The movant must support the motion with specific factual allegations;[85] conclusory allegations will not justify an evidentiary hearing.[86]

When an evidentiary hearing is held, the court must immediately request a transcript of the hearing at its conclusion.[87] Within 30 days after receiving the transcript, the court must render its order, including:

- A ruling on each claim considered at the evidentiary hearing and all other claims asserted in the motion;

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[76] *Id*.
[77] *Id*.
[78] *Id.*
[79] *Bryant v. State*, 901 So.2d 810, 819 (Fla. 2005).
[80] Fla. R. Crim. Proc. 3.851(f)(3)(A).
[81] The list of potential witnesses must include expert witnesses and the parties must attach reports of any potential expert witnesses to the list. Fla. R. Crim. Proc. 3.851(f)(5)(A).
[82] *Id*.
[83] Fla. R. Crim. Proc. 3.851(f)(5)(C).
[84] *Johnson v. State*, 904 So.2d 400, 403 (Fla. 2005).
[85] *Id.* at 404 (citing *Thompson v. State*, 759 So.2d 650, 659 (Fla. 2000)).
[86] *Id.* (citing *Kennedy v. State*, 547 So.2d 912, 913 (Fla. 1989)).
[87] Fla. R. Crim. Proc. 3.851(f)(5)(D).

- Detailed findings of fact and conclusions of law with respect to each claim; and
- Attached or referenced portions of the record as are necessary for meaningful appellate review.[88]

Either party may move for a rehearing within 15 days of the rendition of the court's order on the postconviction motion.[89] Responses to such motions must be made within 10 days, and the court must render an order disposing of the motion for rehearing within 15 days.[90]

The movant may appeal the court's decision to the Florida Supreme Court within 30 days from the date the court rendered its order on the postconviction motion.[91] If the Florida Supreme Court affirms the lower court's decision, the movant may file a petition for a writ of certiorari with the United States Supreme Court.[92] If the United States Supreme Court declines review or affirms the lower's court decision, the postconviction appeal is complete.

Successive Motions

When the state court has previously ruled on a postconviction motion, a motion filed thereafter challenging the same judgment and sentence is considered a "successive motion."[93] In addition to the contents required for an initial motion, a successive motion must include:

- The disposition of all previous claims raised in postconviction proceedings and the reason(s) the claims in the present motion were not raised in the former motion(s); and
- The following, if the claims are based on newly discovered evidence:
    - The names, addresses, and telephone numbers of all witnesses supporting the claim;
    - A statement that the witness will be available to testify under oath to the facts alleged in the motion, should an evidentiary hearing be held on that issue;
    - If evidentiary support is in the form of documents, copies of relevant documents and affidavits must be attached to the motion; and
    - As to any witness or document in the motion or attachment to the motion, an explanation as to why the witness or document was not previously available.[94]

The state has 20 days from the filing of a successive motion to file its answer.[95]

Within 30 days after the state files its answer to a successive postconviction motion, the court must hold a case management conference, at which the court must determine whether an evidentiary hearing should be held and hear arguments on any purely legal claims not based on disputed facts.[96] As with initial postconviction motions, the court may dispose of any successive motion without holding an evidentiary hearing where the motion, files, and records in the case conclusively show that the movant is not entitled to any relief.[97] Additionally, the court may dismiss successive motions without an evidentiary hearing where:

- The movant does not provide a reason for failing to raise the successive claims in his/her previous rule 3.851 motion;[98] or
- The motion raises claims that have already been asserted and adjudicated on the merits in a previous rule 3.851 proceeding.[99]

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[88] *Id.*
[89] Fla. R. Crim. Proc. 3.851(f)(7).
[90] *Id.*
[91] Fla. R. App. Proc. 9.110(b), Fla. R. App. Proc. 9.140(b)(1)(D) and (b)(3).
[92] 28 U.S.C. s. 1257.
[93] Fla. R. Crim. Proc. 3.851(e)(2).
[94] *Id.*
[95] Fla. R. Crim. Proc. 3.851(f)(3)(B).
[96] Fla. R. Crim. Proc. 3.851(f)(5)(B).
[97] *Id.*
[98] *See, e.g., Hill v. State*, 921 So.2d 579, 584 (Fla. 2006) (holding that the movant's successive claim alleging that he was mentally retarded and, therefore, could not be executed pursuant to *Atkins v. Virginia*, 536 U.S. 304 (2002), was procedurally barred because the movant gave no reason why the claim could not have been raised in his 2003 Rule 3.851 motion, which was filed after the issuance of the *Atkins* decision).

If, however, the court determines that an evidentiary hearing should be held, the hearing should be scheduled and held within 60 days.[100] The court, upon a showing of good cause by either party, may extend the time for holding an evidentiary hearing on a successive motion for up to 90 days.[101]

The deadlines for requesting transcripts and rendering orders after an evidentiary hearing on a successive postconviction motion are the same as those applicable to initial postconviction motions.[102] The rules relating to motions for rehearing and appealing an initial postconviction motion also apply to successive motions.[103]

Special Procedures for Postconviction Motions Filed After a Death Warrant is Signed
In cases in which the Governor signs a death warrant prior to the one-year filing deadline, the Florida Supreme Court is required, on the movant's request, to grant a stay of execution to allow postconviction motions to proceed in a timely and orderly manner.[104] In practice, however, this requirement is unnecessary because the Governor has agreed that, absent the circumstance where a competent death-sentenced individual voluntarily requests that a death warrant be signed, no death warrants will be issued during the initial round of federal and state review, provided that counsel for the death penalty movant is proceeding in a timely and diligent manner.[105]

Once the one-year filing deadline has passed and after the initial round of state and federal collateral review is over, the Governor may sign a death warrant. At this point, any subsequently-filed postconviction motions, initial or successive, are subject to the following expedited procedures:

- The chief judge of the circuit court is required to assign the case to a judge as soon as the judge receives notification of the death warrant;
- Proceedings after a death warrant has been issued are required to take precedence over all other cases;
- The normal time limitations in rule 3.851 do not apply after a death warrant has been signed; instead, all motions must be heard expeditiously considering the time limitations set by the execution date and the time required for appellate review;
- The assigned judge must schedule a case management conference as soon as reasonably possible after receiving notification that a death warrant has been signed; and
- At the conference, the court must set a deadline for the filing of a rule 3.851 postconviction motion, schedule a hearing to determine whether an evidentiary hearing should be held, and hear arguments on any purely legal claims not based on disputed facts.[106]

All motions for postconviction relief filed after a death warrant is issued are considered successive motions and must comply with the content requirements for successive motions.[107] If the motion, files, and records in the case conclusively show that the movant is not entitled to relief, the motion may be denied without an evidentiary hearing.[108] If, however, the trial court determines that an evidentiary hearing should be held, it must hold the evidentiary hearing as soon as reasonably possible considering the time limitations set by the date of execution and the time required for appellate review.[109] After the evidentiary hearing is completed, the court must immediately obtain a transcript of all proceedings and, as soon as possible after the hearing is concluded, render its order.[110] A copy of the

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[99] *See, e.g.*, *Johnson v. State*, 904 So.2d 400, 412 (Fla. 2005) (rejecting the movant's successive claim that lethal injection constitutes cruel and unusual punishment because it was raised and rejected in the movant's previous postconviction proceeding).
[100] Fla. R. Crim. Proc. 3.851(f)(5)(B).
[101] Fla. R. Crim. Proc. 3.851(f)(5)(C).
[102] Fla. R. Crim. Proc. 3.851(f)(5)(D).
[103] Fla. R. Crim. Proc. 3.851(f)(7) and (8).
[104] Fla. R. Crim. Proc. 3.851(d)(4).
[105] Fla. R. Crim. Proc. 3.851 (comment).
[106] Fla. R. Crim. Proc. 3.851(h).
[107] Fla. R. Crim. Proc. 3.851(h)(5).
[108] Fla. R. Crim. Proc. 3.851(h)(6).
[109] *Id*.
[110] Fla. R. Crim. Proc. 3.851(h)(8).

final order must immediately be transmitted to the Florida Supreme Court and to the attorneys of record - electronically, where possible.[111]

Federal Habeas Corpus

After state postconviction proceedings have been completed, a capital defendant is entitled to file a petition for writ of habeas corpus in federal court. In habeas proceedings, the federal court reviews whether the conviction or sentence violates federal law. Federal habeas is limited to consideration of claims previously asserted on direct appeal or in state postconviction proceedings. Federal habeas proceedings may require an evidentiary hearing and may, in specified instances, be appealed to the Eleventh Circuit Court of Appeals and the United States Supreme Court.[112]

Execution

An inmate's death sentence may not be carried out until the Governor issues a death warrant.[113] A death warrant may be issued after the inmate has pursued all possible collateral remedies in a timely manner or after the inmate has failed to pursue said remedies within specified time limits.[114] Upon issuance of a death warrant, the Governor must transmit the warrant and the record to the warden and direct the warden to execute the sentence at a time designated in the warrant.[115]

An inmate's death sentence will be carried out by lethal injection unless the inmate requests to be executed by electrocution.[116] The warden of the state prison designates the executioner.[117] The warden (or a deputy) must be present at the execution and must select twelve individuals to witness the execution.[118] A qualified physician must be present, and the inmate's counsel, ministers of religion, representatives of the media, and prison and correctional officers may be present.[119] Immediately before the inmate's execution, the death warrant must be read to the inmate.[120] The physician must announce when death has been inflicted.[121]

After the death sentence has been executed, the warden must send the warrant and a signed statement of the execution to the Secretary of State and file an attested copy of the warrant and statement with the clerk of the court that imposed the sentence.[122]

Current Death Row Statistics

Florida is currently one of 33 states that impose the death penalty.[123] As of January 28, 2013, there were 405 people on death row in Florida – more than any other state aside from California.[124] On average, Florida death row inmates spend 13.22 years on death row prior to execution.[125] Of the 405 inmates on death row, 155 have been in custody for more than 20 years.[126]

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[111] Fla. R. Crim. Proc. 3.851(h)(8) and (9).
[112] *See* 28 U.S.C. ss. 2161-2166.
[113] Section 922.052(1), F.S.
[114] Section 922.095, F.S
[115] Section 922.052(1), F.S.
[116] Section 922.105, F.S.
[117] Section 922.10, F.S. A person authorized by state law to prepare, compound, or dispense medication and designated by the Department of Corrections may prepare, compound, or dispense a lethal injection. Section 922.105(6), F.S.
[118] Section 922.11, F.S.
[119] *Id.*
[120] Section 922.10, F.S.
[121] Section 922.11(2), F.S.
[122] Section 922.12, F.S.
[123] The other states are California, Texas, Pennsylvania, Alabama, North Carolina, Ohio, Arizona, Georgia, Louisiana, Tennessee, Nevada, Oklahoma, South Carolina, Mississippi, Missouri, Arkansas, Oregon, Kentucky, Delaware, Idaho, Indiana, Virginia, Nebraska, Kansas, Utah, Washington, Maryland, South Dakota, Colorado, Montana, New Hampshire, and Wyoming. *Facts About the Death Penalty* (updated December 28, 2012), Death Penalty Information Center, www.deathpenaltyinfo.org/FactSheet.pdf (last visited on January 28, 2013).
[124] California has 724 inmates on death row. *See, supra* note 1. *Also see,* http://www.dc.state.fl.us/activeinmates/deathrowroster.asp (last visited on January 28, 2013).
[125] http://www.dc.state.fl.us/oth/deathrow/index.html#Statistics (last visited on January 28, 2013).
[126] *Id*.

Since 1976, Florida has executed 74 inmates.[127] During the same period, Texas has executed 492 inmates, Virginia has executed 109 inmates, and Oklahoma has executed 102 inmates.[128] Florida executed two death row inmates in 2011, and three in 2012.[129]

In recent years, the states that impose the death penalty appear to be doing so more sparingly. In 2012, the number of new death sentences (77) was the second lowest since the death penalty was reinstated in 1976 (the only year with fewer death sentences was 2011, when 76 defendants were sentenced to death).[130] The number of sentences in 2012 was 75 percent lower than the high of 315 death sentences in 1996.[131] Additionally, while the number of executions (43) remained the same from 2011 to 2012, fewer states carried them out (9 of the 33 death penalty states executed death row inmates in 2012 compared to 13 in 2011). Just four states (Texas, Oklahoma, Mississippi, and Arizona) were responsible for over three-quarters of the executions in the U.S.[132]

Effect of the Bill

The bill abolishes the death penalty. In doing so, the bill amends or repeals a multitude of statutes as described below.

Capital Offenses and Sentencing - Sections 1, 7, 8, 9, 10, 11, and 12

The bill amends s. 775.082(1), F.S., to specify that a capital felony is punishable by life imprisonment. The bill also removes language in s. 775.082(2), F.S., that:

- Requires the court to resentence a person to life imprisonment should the death penalty ever be held unconstitutional by the Florida or United States Supreme Court; and
- Prohibits the court from reducing a death sentence as a result of a determination that a method of execution is unconstitutional under the state or federal constitution.

The bill removes similar language in s. 790.161(4), F.S. (specifying that willfully and unlawfully making, possessing, throwing, projecting, placing, discharging, or attempting to make, possess, throw, project, place, or discharge any destructive device when the act results in the death of another person is a capital felony.)

The bill removes a provision in s. 775.15, F.S., requiring all crimes designated as capital felonies to be considered life felonies, for purposes of statutes of limitations, if the death penalty is ever held to be unconstitutional by the Florida or United States Supreme Court.

The bill repeals s. 913.13, F.S., specifying that a person who has beliefs which preclude her or him from finding a defendant guilty of an offense punishable by death is not qualified as a juror in a capital case.

The bill repeals s. 921.137, F.S., which prohibits a death sentence from being imposed on a defendant convicted of a capital felony if it is determined that the defendant has mental retardation.

The bill repeals ss. 921.141 and 941.142, F.S., which require the court to conduct a separate sentencing proceeding to determine whether a defendant convicted of a capital felony should be sentenced to death or life imprisonment. The statute also sets forth requirements for such proceedings. The bill removes language in s. 782.04, F.S. (the murder statute), requiring the sentencing procedure set forth in s. 921.141, F.S., to be followed.

Duties of the Public Defender and Conflict Counsel - Sections 2 and 3

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[127] *Id*.
[128] *Facts About the Death Penalty* (updated December 28, 2012), Death Penalty Information Center, www.deathpenaltyinfo.org/FactSheet.pdf (last visited on January 28, 2013).
[129] *Id*.
[130] *The Death Penalty in 2012: Year End Report*, Death Penalty Information Center, December 2012 http://deathpenaltyinfo.org/documents/2012YearEnd.pdf (last visited on January 31, 2013).
[131] *Id*.
[132] *Id*.

The bill removes provisions in ss. 27.51 and 27.511, F.S., that require the public defender and criminal conflict counsel to represent an indigent person who has been convicted and sentenced to death in direct appellate proceedings.

Capital Collateral Regional Counsel – Sections 4 and 6

The bill repeals ss. 27.7001, 27.7002, 27.701, 27.702, 27.703, 27.704, 27.705, 27.706, 27.707, 27.708, 27.7081, 27.7091, 27.710, 27.711, and 27.715, F.S., all relating to capital collateral representation.

The bill removes a reference to the CCRC in s. 282.201, F.S., which exempts specified entities from data center consolidation.

Public Records – Section 5

Section 119.071(1)(d)1., F.S., specifies that a public record that was prepared by an agency attorney (or prepared at the attorney's express direction) that reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the agency, and that was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or that was prepared in anticipation of imminent civil or criminal litigation or imminent adversarial administrative proceedings, is exempt from public records until the conclusion of the litigation or adversarial administrative proceedings.

The bill removes a provision in s. 119.071(1)(d)1., F.S., that entitles the Attorney General's office to claim the above-described exemption for public records prepared for direct appeal as well as for all capital collateral litigation after direct appeal until execution of sentence or imposition of a life sentence.

Postconviction Proceedings – Sections 18 and 19

The bill deletes the legislative intent language in s. 924.055(1), F.S., relating to reducing delays in capital cases.

The bill repeals ss. 924.056 and 924.057, F.S., which govern postconviction proceedings in state courts.

Death Warrants and Execution – Sections 17, 22, and 23

The bill repeals ss. 922.052 (issuance of warrant of execution), 922.06 (stay of execution of death sentence), 922.07 (proceedings when person under sentence of death appears to be insane), 922.08 (proceedings when person under sentence of death appears to be pregnant), 922.095 (grounds for death warrant; limitations of actions), 922.10 (execution of death sentence; executioner), 922.105 (execution of death sentence; prohibition against reduction of death sentence as a result of determination that a method of execution is unconstitutional), 922.108 (sentencing orders in capital cases), 922.11 (regulation of execution), 922.111 (transfer to state prison for safekeeping before death warrant issued), 922.12 (return of warrant of execution issued by Governor), 922.14 (sentence of death unexecuted for unjustifiable reasons), and 922.15, F.S. (return of warrant of execution issued by Supreme Court).

The bill removes language in s. 925.11(4), F.S., requiring that physical evidence be maintained for 60 days after an execution takes place.

The bill removes language in s. 945.10(1), F.S., specifying that information identifying an executioner is confidential and exempt from s. 119.07, F.S.

Technical Changes – Sections 13, 14, 15, 16, 20, and 21

The bill corrects cross-references and/or makes conforming changes to ss. 394.912, 782.065, 794.011, 893.135, 924.058, and 924.059, F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 775.082, F.S., relating to penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison.

Section 2. Amends s. 27.51, F.S., relating to duties of public defender.

Section 3. Amends s. 27.511, F.S., relating to offices of criminal conflict and civil regional counsel; legislative intent; qualifications; appointment; duties.

Section 4. Repeals ss. 27.7001, 27.7002, 27.701, 27.702, 27.703, 27.704, 27.705, 27.706, 27.707, 27.708, 27.7081, 27.7091, 27.710, 27.711, and 27.715, F.S., all relating to capital collateral representation.

Section 5. Amends s. 119.071, F.S., relating to general exemptions from inspection or copying of public records.

Section 6. Amends s. 282.201, F.S., relating to state data center system; agency duties and limitations.

Section 7. Amends s. 775.15, F.S., relating to time limitations; general time limitations; exceptions.

Section 8. Amends s. 790.161, F.S., relating to making, possessing, throwing, projecting, placing, or discharging any destructive device or attempt to do so, felony; penalties.

Section 9. Repeals s. 913.13, F.S., relating to jurors in capital cases.

Section 10. Repeals s. 921.137, F.S., relating to imposition of the death sentence upon a defendant with mental retardation prohibited.

Section 11. Repeals s. 921.141, F.S., (sentence of death or life imprisonment for capital felonies; further proceedings to determine sentence) and s. 921.142, F.S. (sentence of death or life imprisonment for capital drug trafficking felonies; further proceedings to determine sentence).

Section 12. Amends s. 782.04, F.S., relating to murder.
Section 13. Amends s. 394.912, F.S., relating to definitions.

Section 14. Amends s. 782.065, F.S., relating to murder; law enforcement officer, correctional officer, correctional probation officer.

Section 15. Amends s. 794.011, F.S., relating to sexual battery.

Section 16. Amends s. 893.135, F.S., relating to trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.

Section 17. Repeals ss. 922.052 (issuance of warrant of execution), 922.06 (stay of execution of death sentence), 922.07 (proceedings when person under sentence of death appears to be insane), 922.08 (proceedings when person under sentence of death appears to be pregnant), 922.095 (grounds for death warrant; limitations of actions), 922.10 (execution of death sentence; executioner), 922.105 (execution of death sentence; prohibition against reduction of death sentence as a result of determination that a method of execution is unconstitutional), 922.108 (sentencing orders in capital cases), 922.11 (regulation of execution), 922.111 (transfer to state prison for safekeeping before death warrant issued), 922.12 (return of warrant of execution issued by Governor), 922.14 (sentence of death unexecuted for unjustifiable reasons), and 922.15, F.S. (return of warrant of execution issued by Supreme Court).

Section 18. Amends s. 924.055, F.S., relating to postconviction review in capital cases; legislative findings and intent.

Section 19. Repeals s. 924.056, F.S. (commencement of capital postconviction actions for which sentence of death is imposed on or after January 14, 2000; limitations on actions), and s. 924.057, F.S. (limitation on postconviction cases in which the death sentence was imposed before January 14, 2000).

Section 20. Amends s. 924.058, F.S., relating to capital postconviction claims.

Section 21. Amends s. 924.059, F.S., relating to time limitations and judicial review in capital postconviction actions.

Section 22. Amends s. 925.11, F.S., relating to postsentencing DNA testing.

Section 23. Amends s. 945.10, F.S., relating to confidential information.

Section 24. Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See "Fiscal Comments."

2. Expenditures:

   See "Fiscal Comments."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not appear to have a fiscal impact on local government revenues.

2. Expenditures:

   The bill does not appear to have a fiscal impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See "Fiscal Comments."

D. FISCAL COMMENTS:

Due to the nuances of capital cases and the multitude of agencies and personnel involved (e.g., judges, clerks, court security, Attorney General staff, etc.), it is difficult to precisely quantify the costs associated with Florida's death penalty system. Research shows that the time it takes to litigate a capital case on appeal in both state and federal court is a major factor in determining how long it takes for an inmate to progress through the judicial system. How much that litigation costs can vary widely from case to case, depending on the legal matters involved.[133]

Public Defender / Conflict Counsel / Private Court-Appointed Counsel

Public defenders, regional conflict counsel, and private attorneys appointed by the court[134] would no longer be required to represent indigent defendants sentenced to death on direct appeal. This could result in a cost-savings to the state. However, it should be noted that while eliminating the death penalty would result in there no longer being automatic appeals of death sentences, it is likely defendants would still appeal their life sentences. As such, cost savings to the state are indeterminate.

Death Row Inmates

Death row inmates are currently housed at Union Correctional Institution and Florida State Prison. The average per diem for inmates housed at these facilities is $67.58 and $61.35, respectively, per day. It should be noted that these figures are not specific to death row inmates but instead apply to the entire inmate populations at those facilities.

[133] *Special report: Cost of Florida's death row easily exceeds $1M per inmate*, http://www.tcpalm.com/news/2012/oct/07/newspaper-investigates-florida-death-row-cost/?print=1 (last visited on January 31, 2013).

[134] Section 27.5304, F.S., specifies that a private attorney appointed to represent a defendant sentenced to death on direct appeal can receive up to $2,000 for doing so, which is paid by the Justice Administrative Commission.

On average, Florida death row inmates spend 13.22 years on death row prior to execution. Using the per diem figures above, Florida spends anywhere between $326,093 and $296,032 housing a death row inmate prior to his or her execution. These figures would arguably increase if the death penalty were abolished since inmates who would have been sentenced to death would instead receive life sentences. However, without more data as to inmate life expectancy and the type of facility such inmates would be housed in, it's unknown to what extent the figures would increase.

Additionally, to the extent there are costs associated with the actual execution process, such costs would be saved by eliminating the death penalty.

Postconviction Proceedings

The base budget for the CCRC, which represents inmates sentenced to death in postconviction proceedings, is $7,020,537 for Fiscal Year 13/14. Eliminating the death penalty would result in a direct savings to the state in this amount, since the CCRC would be abolished.

Registry attorneys, who also represent inmates sentenced to death in postconviction proceedings, are paid based on the amounts set forth in s. 27.711, F.S. In FY 2011/2012, the Department of Financial Services spent $1.6 million compensating registry attorneys. Eliminating the death penalty would result in a direct savings to the state in this amount, since the registry attorneys would not be needed.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES