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2013 Legislature

1
2 An act relating to the death penalty; providing a
3 short title; amending s. 27.5304, F.S.; requiring
4 funds used to compensate court-appointed attorneys who
5 represent a person convicted and sentenced to death in
6 clemency proceedings to be paid by the Justice
7 Administrative Commission rather than the Department
8 of Corrections; amending s. 27.701(2), F.S.; repealing
9 a pilot project using registry attorneys to provide
10 capital collateral counsel services in the northern
11 region of the Capital Collateral Regional Counsel;
12 amending s. 27.702, F.S.; removing language requiring
13 the capital collateral regional counsel to only file
14 postconviction actions authorized by statute; amending
15 s. 27.703, F.S.; prohibiting the capital collateral
16 regional counsel and replacement regional counsel from
17 accepting an appointment or taking an action that
18 creates an actual conflict of interest; describing
19 actual conflict of interest; amending s. 27.704, F.S.;
20 requiring attorneys who contract with the capital
21 collateral regional counsel to meet certain criteria;
22 creating s. 27.7045, F.S.; prohibiting an attorney
23 from representing a person charged with a capital
24 offense in specified proceedings for 5 years if in two
25 separate instances a court, in a capital
26 postconviction proceeding, determined that the
27 attorney provided constitutionally deficient
28 representation and relief was granted; amending s.



ENROLLED

CS/CS/HB 7083, Engrossed 1

2013 Legislature

29 | 27.7081, F.S.; providing definitions; establishing
30 | procedures for public records production in
31 | postconviction capital cases proceedings; amending s.
32 | 27.710, F.S.; requiring private registry attorneys
33 | appointed by the court to represent persons in
34 | postconviction capital proceedings to contract with
35 | the Justice Administrative Commission rather than the
36 | Chief Financial Officer; specifying that the Justice
37 | Administrative Commission is the contract manager;
38 | requiring the Justice Administrative Commission to
39 | approve uniform contract forms and procedures;
40 | amending s. 27.711, F.S.; replacing references to the
41 | "Chief Financial Officer" with "Justice Administrative
42 | Commission" for purposes of paying private registry
43 | attorneys appointed by the court to represent persons
44 | in postconviction capital proceedings; permitting
45 | private registry attorneys appointed by the court to
46 | represent persons in postconviction capital
47 | proceedings to represent no more than ten, rather than
48 | five, defendants in capital postconviction litigation
49 | at any one time; amending s. 922.095, F.S.; requiring
50 | persons convicted and sentenced to death to pursue all
51 | possible collateral remedies in state court in
52 | accordance with the Florida Rules of Criminal
53 | Procedure rather than in accordance with statute;
54 | amending s. 922.052, F.S.; requiring the sheriff to
55 | send the record of a person's conviction and death
56 | sentence to the clerk of the Florida Supreme Court;



ENROLLED

CS/CS/HB 7083, Engrossed 1

2013 Legislature

57 | requiring the clerk of the Florida Supreme Court to
58 | inform the Governor in writing certifying that a
59 | person convicted and sentenced to death meets certain
60 | criteria; requiring the Governor to issue a warrant
61 | within 30 days of receiving the clerk's letter of
62 | certification in all cases where the executive
63 | clemency process has concluded directing the warden to
64 | execute the sentence within 180 days; authorizing the
65 | Governor to sign a warrant of execution if the clerk
66 | of the Florida Supreme Court does not comply; amending
67 | s. 924.055, F.S.; removing obsolete language requiring
68 | capital postconviction motions to be filed in
69 | accordance with statute; requiring capital
70 | postconviction motions to be filed in accordance with
71 | the Florida Rules of Criminal Procedure; amending s.
72 | 924.056, F.S.; requiring the Supreme Court to annually
73 | report certain information regarding capital
74 | postconviction cases to the Legislature; requiring
75 | courts to report specified findings of ineffective
76 | assistance of counsel to The Florida Bar; amending s.
77 | 924.057, F.S.; providing legislative intent regarding
78 | postconviction proceedings in capital cases; repealing
79 | ss. 924.058, 924.059, and 924.395, F.S., relating to
80 | postconviction capital case proceedings; providing
81 | severability; providing an appropriation; providing an
82 | effective date.

83 |
84 | Be It Enacted by the Legislature of the State of Florida:



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 CS/CS/HB 7083, Engrossed 1

2013 Legislature

85 Section 1. This act may be cited as the "Timely Justice
 86 Act of 2013."

87 Section 2. Paragraph (b) of subsection (5) of section
 88 27.5304, Florida Statutes, is amended to read:

89 27.5304 Private court-appointed counsel; compensation;
 90 notice.—

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

93 (b) If a death sentence is imposed and affirmed on appeal
 94 to the Supreme Court, the appointed attorney shall be allowed
 95 compensation, not to exceed \$1,000, for attorney fees and costs
 96 incurred in representing the defendant as to an application for
 97 executive clemency, with compensation to be paid out of general
 98 revenue from funds budgeted to the Justice Administrative
 99 Commission ~~Department of Corrections~~.

100 Section 3. Section 27.701, Florida Statutes, is amended to
 101 read:

102 27.701 Capital collateral regional counsel.—

103 ~~(1)~~ There are created three regional offices of capital
 104 collateral counsel, which shall be located in a northern,
 105 middle, and southern region of the state. The northern region
 106 shall consist of the First, Second, Third, Fourth, Eighth, and
 107 Fourteenth Judicial Circuits; the middle region shall consist of
 108 the Fifth, Sixth, Seventh, Ninth, Tenth, Twelfth, Thirteenth,
 109 and Eighteenth Judicial Circuits; and the southern region shall
 110 consist of the Eleventh, Fifteenth, Sixteenth, Seventeenth,
 111 Nineteenth, and Twentieth Judicial Circuits. Each regional
 112 office shall be administered by a regional counsel. A regional



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CS/CS/HB 7083, Engrossed 1

2013 Legislature

113 counsel must be, and must have been for the preceding 5 years, a
114 member in good standing of The Florida Bar or a similar
115 organization in another state. Each capital collateral regional
116 counsel shall be appointed by the Governor, and is subject to
117 confirmation by the Senate. The Supreme Court Judicial
118 Nominating Commission shall recommend to the Governor three
119 qualified candidates for each appointment as regional counsel.
120 The Governor shall appoint a regional counsel for each region
121 from among the recommendations, or, if it is in the best
122 interest of the fair administration of justice in capital cases,
123 the Governor may reject the nominations and request submission
124 of three new nominees by the Supreme Court Judicial Nominating
125 Commission. Each capital collateral regional counsel shall be
126 appointed to a term of 3 years. Vacancies in the office of
127 capital collateral regional counsel shall be filled in the same
128 manner as appointments. A person appointed as a regional counsel
129 may not run for or accept appointment to any state office for 2
130 years following vacation of office.

131 ~~(2) Notwithstanding the provisions of subsection (1), the~~
132 ~~responsibilities of the regional office of capital collateral~~
133 ~~counsel for the northern region of the state shall be met~~
134 ~~through a pilot program using only attorneys from the registry~~
135 ~~of attorneys maintained pursuant to s. 27.710. Each attorney~~
136 ~~participating in the pilot must be qualified to provide~~
137 ~~representation in federal court. The Auditor General shall~~
138 ~~schedule a performance review of the pilot program to determine~~
139 ~~the effectiveness and efficiency of using attorneys from the~~
140 ~~registry compared to the capital collateral regional counsel.~~



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CS/CS/HB 7083, Engrossed 1

2013 Legislature

141 ~~The review, at a minimum, shall include comparisons of the~~
 142 ~~timeliness and costs of the pilot and the counsel and shall be~~
 143 ~~submitted to the President of the Senate and the Speaker of the~~
 144 ~~House of Representatives by January 30, 2007. The Legislature~~
 145 ~~may determine whether to convert the pilot program to a~~
 146 ~~permanent program after receipt of the Auditor General's review.~~

147 Section 4. Subsection (1) and paragraph (b) of subsection
 148 (4) of section 27.702, Florida Statutes, are amended to read:

149 27.702 Duties of the capital collateral regional counsel;
 150 reports.—

151 (1) The capital collateral regional counsel shall
 152 represent each person convicted and sentenced to death in this
 153 state for the sole purpose of instituting and prosecuting
 154 collateral actions challenging the legality of the judgment and
 155 sentence imposed against such person in the state courts,
 156 federal courts in this state, the United States Court of Appeals
 157 for the Eleventh Circuit, and the United States Supreme Court.
 158 ~~The capital collateral regional counsel and the attorneys~~
 159 ~~appointed pursuant to s. 27.710 shall file only those~~
 160 ~~postconviction or collateral actions authorized by statute. The~~
 161 three capital collateral regional counsel's offices shall
 162 function independently and be separate budget entities, and the
 163 regional counsel shall be the office heads for all purposes. The
 164 Justice Administrative Commission shall provide administrative
 165 support and service to the three offices to the extent requested
 166 by the regional counsel. The three regional offices shall not be
 167 subject to control, supervision, or direction by the Justice
 168 Administrative Commission in any manner, including, but not



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CS/CS/HB 7083, Engrossed 1

2013 Legislature

169 limited to, personnel, purchasing, transactions involving real
 170 or personal property, and budgetary matters.

171 (4)

172 (b) Each capital collateral regional counsel ~~and each~~
 173 ~~attorney participating in the pilot program in the northern~~
 174 ~~region pursuant to s. 27.701(2)~~ shall provide a quarterly report
 175 to the President of the Senate and the Speaker of the House of
 176 Representatives which details the number of hours worked by
 177 investigators and legal counsel per case and the amounts per
 178 case expended during the preceding quarter in investigating and
 179 litigating capital collateral cases.

180 Section 5. Section 27.703, Florida Statutes, is amended to
 181 read:

182 27.703 Conflict of interest and substitute counsel.—

183 (1) The capital collateral regional counsel shall not
 184 accept an appointment or take any other action that will create
 185 an actual ~~a~~ conflict of interest. If, at any time during the
 186 representation of a person, the capital collateral regional
 187 counsel alleges ~~determines~~ that the continued representation of
 188 that person creates an actual ~~a~~ conflict of interest, the
 189 sentencing court shall, upon determining that an actual conflict
 190 exists ~~upon application by the regional counsel~~, designate
 191 another regional counsel. If the replacement regional counsel
 192 alleges that an actual conflict of interest exists, the
 193 sentencing court shall, upon determining that an actual conflict
 194 exists and, only if a conflict exists with the other two
 195 ~~counsel~~, appoint one or more members of The Florida Bar who meet
 196 the requirements of s. 27.704(2) and who are not disqualified



ENROLLED

CS/CS/HB 7083, Engrossed 1

2013 Legislature

197 pursuant to s. 27.7045 to represent the person ~~one or more of~~
 198 ~~such persons.~~ An actual conflict of interest exists when an
 199 attorney actively represents conflicting interests. A possible,
 200 speculative, or merely hypothetical conflict is insufficient to
 201 support an allegation that an actual conflict of interest
 202 exists.

203 (2) Appointed counsel shall be paid from funds
 204 appropriated to the Chief Financial Officer. The hourly rate may
 205 not exceed \$100. However, all appointments of private counsel
 206 under this section shall be in accordance with ss. 27.710 and
 207 27.711.

208 (3) Capital collateral regional ~~Prior to employment,~~
 209 counsel appointed pursuant to this section must have
 210 participated in at least five felony jury trials, five felony
 211 appeals, or five capital postconviction evidentiary hearings, or
 212 any combination of at least five of such proceedings, and must
 213 not be disqualified pursuant to s. 27.7045.

214 Section 6. Section 27.704, Florida Statutes, is amended to
 215 read:

216 27.704 Appointment of assistants and other staff.—Each
 217 capital collateral regional counsel may:

218 (1) Appoint, employ, and establish, in such numbers as he
 219 or she determines, full-time or part-time assistant counsel,
 220 investigators, and other clerical and support personnel who
 221 shall be paid from funds appropriated for that purpose. A full-
 222 time assistant capital collateral counsel must not be
 223 disqualified pursuant to s. 27.7045; must be a member in good
 224 standing of The Florida Bar, with not less than 3 years'



ENROLLED

CS/CS/HB 7083, Engrossed 1

2013 Legislature

225 | experience in the practice of criminal law;~~7~~ and, prior to
226 | employment, must have participated in at least five felony jury
227 | trials, five felony appeals, or five capital postconviction
228 | evidentiary hearings or any combination of at least five of such
229 | proceedings. Law school graduates who do not have the
230 | qualifications of a full-time assistant capital collateral
231 | counsel may be employed as members of the legal staff but may
232 | not be designated as sole counsel for any person.

233 | (2) Contract with private counsel who are members in good
234 | standing of The Florida Bar or with public defenders for the
235 | purpose of providing prompt and cost-effective representation
236 | for individuals who are sentenced to death in this state. A
237 | private counsel or public defender under contract with the
238 | regional counsel must not be disqualified pursuant to s.
239 | 27.7045; must have at least 3 years' experience in the practice
240 | of criminal law;~~7~~ and, prior to the contract, must have
241 | participated in at least two capital trials or capital
242 | sentencing proceedings ~~five felony jury trials~~, five felony
243 | appeals, or five capital postconviction evidentiary hearings, or
244 | any combination of at least five of such proceedings.

245 | (3) Appoint pro bono assistant counsel, who must be
246 | members in good standing of The Florida Bar, and who shall serve
247 | without compensation at the discretion of the capital collateral
248 | regional counsel.

249 | Section 7. Section 27.7045, Florida Statutes, is created
250 | to read:

251 | 27.7045 Capital case proceedings; constitutionally
252 | deficient representation.—Notwithstanding another provision of



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CS/CS/HB 7083, Engrossed 1

2013 Legislature

253 law, an attorney employed by the state or appointed pursuant to
 254 s. 27.711 may not represent a person charged with a capital
 255 offense at trial or on direct appeal or a person sentenced to
 256 death in a postconviction proceeding if, in two separate
 257 instances, a court, in a capital postconviction proceeding,
 258 determined that such attorney provided constitutionally
 259 deficient representation and relief was granted as a result.
 260 This prohibition on representation shall be for a period of 5
 261 years, which commences at the time relief is granted after the
 262 highest court having jurisdiction to review the deficient
 263 representation determination has issued its final order
 264 affirming the second such determination.

265 Section 8. Section 27.7081, Florida Statutes, is amended
 266 to read:

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

269 27.7081 Capital postconviction public records production.—

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

271 (a) "Agency" has the same meaning as provided in s.
 272 119.011.

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

280 (c) "Public records" has the same meaning as provided in



ENROLLED
CS/CS/HB 7083, Engrossed 1

2013 Legislature

281 s. 119.011.

282 (d) "Trial court" means:

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

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

289 (2) APPLICABILITY AND SCOPE.—This section only applies to
290 the production of public records for capital postconviction
291 defendants and does not change or alter the time periods
292 specified in Rule 3.851, Florida Rules of Criminal Procedure.
293 Furthermore, this section does not affect, expand, or limit the
294 production of public records for any purpose other than use in a
295 proceeding held pursuant to Rule 3.850 or Rule 3.851, Florida
296 Rules of Criminal Procedure. This section shall not be a basis
297 for renewing public records requests that have been initiated
298 previously or for relitigating issues pertaining to production
299 of public records upon which a court has ruled before July 1,
300 2013. Public records requests made in postconviction proceedings
301 in capital cases in which the conviction and sentence of death
302 have been affirmed on direct appeal before July 1, 2013, shall
303 be governed by the rules and laws in effect immediately before
304 July 1, 2013.

305 (3) RECORDS REPOSITORY.—The Secretary of State shall
306 establish and maintain a records repository to archive capital
307 postconviction public records as provided for in this section.

308 (4) FILING AND SERVICE.—



ENROLLED

CS/CS/HB 7083, Engrossed 1

2013 Legislature

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

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

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

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

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

325 (a) Within 15 days after receiving written notification of
326 the Florida Supreme Court's mandate affirming the sentence of
327 death, the Attorney General shall file with the trial court a
328 written notice of the mandate and serve a copy of the notice
329 upon the state attorney who prosecuted the case, the Department
330 of Corrections, and the defendant's trial counsel. The notice to
331 the state attorney shall direct the state attorney to submit
332 public records to the records repository within 90 days after
333 receipt of written notification and to notify each law
334 enforcement agency involved in the investigation of the capital
335 offense to submit public records to the records repository
336 within 90 days after receipt of written notification. The notice



ENROLLED

CS/CS/HB 7083, Engrossed 1

2013 Legislature

337 to the Department of Corrections shall direct the department to
338 submit public records to the records repository within 90 days
339 after receipt of written notification.

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

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

353 (d) Within 15 days after receiving written notification of
354 any additional person or agency pursuant to paragraph (b) or
355 paragraph (c), the Attorney General shall notify all persons or
356 agencies identified pursuant to paragraph (b) or paragraph (c)
357 that these persons or agencies are required by law to copy,
358 index, and deliver to the records repository all public records
359 pertaining to the case that are in their possession. The person
360 or agency shall bear the costs related to copying, indexing, and
361 delivering the records.

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

363 (a) Within 15 days after receipt of a written notice of
364 the mandate from the Attorney General, the state attorney shall



ENROLLED

CS/CS/HB 7083, Engrossed 1

2013 Legislature

365 provide written notification to each law enforcement agency
366 involved in the specific case to submit public records to the
367 records repository within 90 days after receipt of written
368 notification. A copy of the notice shall be served upon the
369 defendant's trial counsel.

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

381 (c) Within 90 days after receipt of written notification
382 of the mandate from the Attorney General, the Department of
383 Corrections shall, at its own expense, copy, index, and deliver
384 to the records repository all public records determined by the
385 department to be relevant to the subject matter of a proceeding
386 under Rule 3.851, Florida Rules of Criminal Procedure, unless
387 such copying, indexing, and delivering would be unduly
388 burdensome. The Secretary of Corrections shall provide written
389 notification to the Attorney General of compliance with this
390 paragraph certifying that, to the best of the Secretary of
391 Corrections' knowledge or belief, all such public records in the
392 possession of the Secretary of Corrections have been copied,



ENROLLED

CS/CS/HB 7083, Engrossed 1

2013 Legislature

393 indexed, and delivered to the records repository.

394 (d) Within 90 days after receipt of written notification
395 of the mandate from the state attorney, a law enforcement agency
396 shall, at its own expense, copy, index, and deliver to the
397 records repository all public records that were produced in the
398 investigation or prosecution of the case. The chief law
399 enforcement officer of each law enforcement agency shall provide
400 written notification to the Attorney General of compliance with
401 this paragraph including certifying that, to the best of the
402 chief law enforcement officer's knowledge or belief, all such
403 public records in possession of the agency or in possession of
404 an employee of the agency, have been copied, indexed, and
405 delivered to the records repository.

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

418 (7) EXEMPT OR CONFIDENTIAL PUBLIC RECORDS.—

419 (a) Public records delivered to the records repository
420 pursuant to this section that are confidential or exempt from



ENROLLED

CS/CS/HB 7083, Engrossed 1

2013 Legislature

421 the requirements of s. 119.07(1) or s. 24(a), Art. I of the
422 State Constitution, must be separately contained, without being
423 redacted, and sealed. The outside of the container must clearly
424 identify that the public record is confidential or exempt and
425 that the seal may not be broken without an order of the trial
426 court. The outside of the container must identify the nature of
427 the public records and the legal basis for the exemption.

428 (b) Upon the entry of an appropriate court order, sealed
429 containers subject to an inspection by the trial court shall be
430 shipped to the clerk of court. The containers may be opened only
431 for inspection by the trial court. The moving party shall bear
432 all costs associated with the transportation and inspection of
433 such records by the trial court.

434 (8) DEMAND FOR ADDITIONAL PUBLIC RECORDS.—

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

440 (b) Within 90 days after receipt of the written demand,
441 each person or agency notified under this subsection shall
442 deliver to the records repository additional public records in
443 the possession of the person or agency that pertain to the case
444 and shall certify to the best of the person or agency's
445 knowledge and belief that all additional public records have
446 been delivered to the records repository or, if no additional
447 public records are found, shall recertify that the public
448 records previously delivered are complete.



449 (c) Within 60 days after receipt of the written demand, a
 450 person or agency may file with the trial court an objection to
 451 the written demand described in paragraph (a). The trial court
 452 may order a person or agency to produce additional public
 453 records if the court determines that:

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

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

459 3. The additional public records sought are relevant to
 460 the subject matter of a postconviction proceeding under Rule
 461 3.851, Florida Rules of Criminal Procedure, or appear reasonably
 462 calculated to lead to the discovery of admissible evidence.

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

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

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

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

472 2. Identifies with specificity those public records not at
 473 the records repository.

474 3. Establishes that the additional public records are
 475 either relevant to the subject matter of the postconviction
 476 proceeding or are reasonably calculated to lead to the discovery



477 of admissible evidence.

478 4. Must be served in accordance with subsection (4).

479 (b) The trial court may order a person or agency to
 480 produce additional public records only upon finding that:

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

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

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

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

492 (10) COPYING RECORDS.— The Secretary of State shall
 493 provide the personnel, supplies, and any necessary equipment to
 494 copy records held at the records repository.

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

497 (a) Compel or deny disclosure of records.

498 (b) Conduct an inspection in camera.

499 (c) Extend the time periods in this section upon a showing
 500 of good cause.

501 (d) Impose sanctions upon a party, person, or agency
 502 affected by this section, including initiating contempt
 503 proceedings, taxing expenses, extending time periods, ordering
 504 facts to be established, and granting other relief.



ENROLLED
CS/CS/HB 7083, Engrossed 1

2013 Legislature

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

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

509 (a) Unless otherwise limited, the scope of production
510 under any part of this section shall be that the public records
511 sought are not privileged or immune from production and are
512 either relevant to the subject matter of a postconviction
513 proceeding under Rule 3.851, Florida Rules of Criminal
514 Procedure, or are reasonably calculated to lead to the discovery
515 of admissible evidence.

516 (b) Counsel for a party objecting or moving to compel
517 production of public records pursuant to this section must file
518 a copy of the objection or motion directly with the trial court.

519 (c) The trial court may order mediation for a controversy
520 as to public records production pursuant to this section in
521 accord with Rules 1.700, 1.710, 1.720, and 1.730, Florida Rules
522 of Civil Procedure, or the trial court may refer such
523 controversy to a magistrate in accord with Rule 1.490, Florida
524 Rules of Civil Procedure.

525 (13) DESTRUCTION OF RECORDS.—Sixty days after a capital
526 sentence is carried out, after a defendant is released from
527 incarceration after the granting of a pardon or reversal of the
528 sentence, or after a defendant has been resentenced to a term of
529 years, the Attorney General shall provide written notification
530 of this occurrence to the Secretary of State. After the
531 expiration of the 60 days, the Secretary of State may destroy
532 the copies of the records held by the records repository that



ENROLLED

CS/CS/HB 7083, Engrossed 1

2013 Legislature

533 pertain to that case, unless an objection to the destruction is
534 filed in the trial court and served upon the Secretary of State.
535 If no objection is served within the 60-day period, the records
536 may then be destroyed. If an objection is served, the records
537 shall not be destroyed until a final disposition of the
538 objection.

539 Section 9. Subsections (3) and (4) of section 27.710,
540 Florida Statutes, are amended to read:

541 27.710 Registry of attorneys applying to represent persons
542 in postconviction capital collateral proceedings; certification
543 of minimum requirements; appointment by trial court.-

544 (3) An attorney who applies for registration and court
545 appointment as counsel in postconviction capital collateral
546 proceedings must certify that he or she is counsel of record in
547 not more than nine ~~four~~ such proceedings and, if appointed to
548 represent a person in postconviction capital collateral
549 proceedings, shall continue such representation under the terms
550 and conditions set forth in s. 27.711 until the sentence is
551 reversed, reduced, or carried out or unless permitted to
552 withdraw from representation by the trial court. The court may
553 not permit an attorney to withdraw from representation without a
554 finding of sufficient good cause. The court may impose
555 appropriate sanctions if it finds that an attorney has shown bad
556 faith with respect to continuing to represent a defendant in a
557 postconviction capital collateral proceeding. This section does
558 not preclude the court from reassigning a case to a capital
559 collateral regional counsel following discontinuation of
560 representation if a conflict of interest no longer exists with



ENROLLED

CS/CS/HB 7083, Engrossed 1

2013 Legislature

561 | respect to the case.

562 | (4) Each private attorney who is appointed by the court to
563 | represent a capital defendant must enter into a contract with
564 | the Justice Administrative Commission ~~Chief Financial Officer~~.
565 | If the appointed attorney fails to execute the contract within
566 | 30 days after the date the contract is mailed to the attorney,
567 | the executive director shall notify the trial court. The Justice
568 | Administrative Commission ~~Chief Financial Officer~~ shall ~~develop~~
569 | ~~the form of the contract,~~ function as contract manager, and
570 | enforce performance of the terms and conditions of the contract.
571 | The Justice Administrative Commission shall approve uniform
572 | contract forms for use in procuring the services of private
573 | court-appointed counsel and uniform procedures and forms for use
574 | by a court-appointed attorney in support of billing for attorney
575 | fees, costs, and related expenses to demonstrate attorney
576 | completion of specified duties. By signing such contract, the
577 | attorney certifies that he or she intends to continue the
578 | representation under the terms and conditions set forth in the
579 | contract until the sentence is reversed, reduced, or carried out
580 | or until released by order of the trial court.

581 | Section 10. Subsections (3), (4), (5), (6), (7), (9),
582 | (12), (13), and (14) of section 27.711, Florida Statutes, are
583 | amended to read:

584 | 27.711 Terms and conditions of appointment of attorneys as
585 | counsel in postconviction capital collateral proceedings.—

586 | (3) An attorney appointed to represent a capital defendant
587 | is entitled to payment of the fees set forth in this section
588 | only upon full performance by the attorney of the duties



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CS/CS/HB 7083, Engrossed 1

2013 Legislature

589 | specified in this section and approval of payment by the trial
590 | court, and the submission of a payment request by the attorney,
591 | subject to the availability of sufficient funding specifically
592 | appropriated for this purpose. ~~An attorney may not be~~
593 | ~~compensated under this section for work performed by the~~
594 | ~~attorney before July 1, 2003, while employed by the northern~~
595 | ~~regional office of the capital collateral counsel.~~ The Justice
596 | Administrative Commission ~~Chief Financial Officer~~ shall notify
597 | ~~the executive director~~ and the court if it appears that
598 | sufficient funding has not been specifically appropriated for
599 | this purpose to pay any fees which may be incurred. The attorney
600 | shall maintain appropriate documentation, including a current
601 | and detailed hourly accounting of time spent representing the
602 | capital defendant. The fee and payment schedule in this section
603 | is the exclusive means of compensating a court-appointed
604 | attorney who represents a capital defendant. When appropriate, a
605 | court-appointed attorney must seek further compensation from the
606 | Federal Government, as provided in 18 U.S.C. s. 3006A or other
607 | federal law, in habeas corpus litigation in the federal courts.

608 | (4) Upon approval by the trial court, an attorney
609 | appointed to represent a capital defendant under s. 27.710 is
610 | entitled to payment of the following fees by the Justice
611 | Administrative Commission ~~Chief Financial Officer~~:

612 | (a) Regardless of the stage of postconviction capital
613 | collateral proceedings, the attorney is entitled to \$100 per
614 | hour, up to a maximum of \$2,500, after accepting appointment and
615 | filing a notice of appearance.

616 | (b) The attorney is entitled to \$100 per hour, up to a



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CS/CS/HB 7083, Engrossed 1

2013 Legislature

617 maximum of \$20,000, after timely filing in the trial court the
618 capital defendant's complete original motion for postconviction
619 relief under the Florida Rules of Criminal Procedure. The motion
620 must raise all issues to be addressed by the trial court.

621 However, an attorney is entitled to fees under this paragraph if
622 the court schedules a hearing on a matter that makes the filing
623 of the original motion for postconviction relief unnecessary or
624 if the court otherwise disposes of the case.

625 (c) The attorney is entitled to \$100 per hour, up to a
626 maximum of \$20,000, after the trial court issues a final order
627 granting or denying the capital defendant's motion for
628 postconviction relief.

629 (d) The attorney is entitled to \$100 per hour, up to a
630 maximum of \$20,000, after timely filing in the Supreme Court the
631 capital defendant's brief or briefs that address the trial
632 court's final order granting or denying the capital defendant's
633 motion for postconviction relief and the state petition for writ
634 of habeas corpus.

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

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



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CS/CS/HB 7083, Engrossed 1

2013 Legislature

645 (g) At the conclusion of the capital defendant's
646 postconviction capital collateral proceedings in state court,
647 the attorney is entitled to \$100 per hour, up to a maximum of
648 \$2,500, after filing a petition for writ of certiorari in the
649 Supreme Court of the United States.

650 (h) If, at any time, a death warrant is issued, the
651 attorney is entitled to \$100 per hour, up to a maximum of
652 \$5,000. This payment shall be full compensation for attorney
653 ~~attorney's~~ fees and costs for representing the capital defendant
654 throughout the proceedings before the state courts of Florida.

655
656 The hours billed by a contracting attorney under this subsection
657 may include time devoted to representation of the defendant by
658 another attorney who is qualified under s. 27.710 and who has
659 been designated by the contracting attorney to assist him or
660 her.

661 (5) An attorney who represents a capital defendant may use
662 the services of one or more investigators to assist in
663 representing a capital defendant. Upon approval by the trial
664 court, the attorney is entitled to payment from the Justice
665 Administrative Commission ~~Chief Financial Officer~~ of \$40 per
666 hour, up to a maximum of \$15,000, for the purpose of paying for
667 investigative services.

668 (6) An attorney who represents a capital defendant is
669 entitled to a maximum of \$15,000 for miscellaneous expenses,
670 such as the costs of preparing transcripts, compensating expert
671 witnesses, and copying documents. Upon approval by the trial
672 court, the attorney is entitled to payment by the Justice



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CS/CS/HB 7083, Engrossed 1

2013 Legislature

673 Administrative Commission ~~Chief Financial Officer~~ of up to
674 \$15,000 for miscellaneous expenses, except that, if the trial
675 court finds that extraordinary circumstances exist, the attorney
676 is entitled to payment in excess of \$15,000.

677 (7) An attorney who is actively representing a capital
678 defendant is entitled to a maximum of \$500 per fiscal year for
679 tuition and expenses for continuing legal education that
680 pertains to the representation of capital defendants. Upon
681 approval by the trial court, the attorney is entitled to payment
682 by the Justice Administrative Commission ~~Chief Financial Officer~~
683 for expenses for such tuition and continuing legal education.

684 (9) An attorney may not represent more than ten ~~five~~
685 defendants in capital postconviction litigation at any one time.

686 (12) The court shall monitor the performance of assigned
687 counsel to ensure that the capital defendant is receiving
688 quality representation. The court shall also receive and
689 evaluate allegations that are made regarding the performance of
690 assigned counsel. The Justice Administrative Commission ~~Chief~~
691 ~~Financial Officer~~, the Department of Legal Affairs, ~~the~~
692 ~~executive director~~, or any interested person may advise the
693 court of any circumstance that could affect the quality of
694 representation, including, but not limited to, false or
695 fraudulent billing, misconduct, failure to meet continuing legal
696 education requirements, solicitation to receive compensation
697 from the capital defendant, or failure to file appropriate
698 motions in a timely manner.

699 (13) Before ~~Prior to~~ the filing of a motion for order
700 approving payment of attorney ~~attorney's~~ fees, costs, or related



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CS/CS/HB 7083, Engrossed 1

2013 Legislature

701 expenses, the assigned counsel shall deliver a copy of his
702 intended billing, together with supporting affidavits and all
703 other necessary documentation, to the Justice Administrative
704 Commission Chief Financial Officer's ~~named contract manager~~. The
705 Justice Administrative Commission shall review the intended
706 billing contract manager shall have 10 business days from
707 ~~receipt to review the billings, affidavit, and documentation~~ for
708 completeness and compliance with contractual and statutory
709 requirements. If the Justice Administrative Commission ~~contract~~
710 ~~manager~~ objects to any portion of the proposed billing, the
711 objection and reasons therefor shall be communicated to the
712 assigned counsel. The assigned counsel may thereafter file his
713 or her motion for order approving payment of attorney ~~attorney's~~
714 fees, costs, or related expenses together with supporting
715 affidavits and all other necessary documentation. The motion
716 must specify whether the Justice Administrative Commission ~~Chief~~
717 ~~Financial Officer's contract manager~~ objects to any portion of
718 the billing or the sufficiency of documentation and, if so, the
719 reason therefor. A copy of the motions and attachments shall be
720 served on the Justice Administrative Commission at least 5
721 business days before the date of a hearing. The Justice
722 Administrative Commission has standing to appear before the
723 court to contest any motion for an order approving payment of
724 attorney fees, costs, or related expenses and may participate in
725 a hearing on the motion by use of telephonic or other
726 communication equipment. A copy of the motion and attachments
727 ~~shall be served on the Chief Financial Officer's contract~~
728 ~~manager, who shall have standing to file pleadings and appear~~



ENROLLED

CS/CS/HB 7083, Engrossed 1

2013 Legislature

729 ~~before the court to contest any motion for order approving~~
 730 ~~payment.~~ The fact that the Justice Administrative Commission
 731 ~~Chief Financial Officer's contract manager~~ has not objected to
 732 any portion of the billing or to the sufficiency of the
 733 documentation is not binding on the court, which retains primary
 734 authority and responsibility for determining the reasonableness
 735 of all billings for fees, costs, and related expenses, subject
 736 to statutory limitations.

737 ~~(14) Each attorney participating in the pilot program in~~
 738 ~~the northern region pursuant to s. 27.701(2), as a condition of~~
 739 ~~payment pursuant to this section, shall report on the~~
 740 ~~performance measures adopted by the Legislature for the capital~~
 741 ~~collateral regional counsel.~~

742 Section 11. Section 922.095, Florida Statutes, is amended
 743 to read:

744 922.095 Grounds for death warrant; ~~limitations of~~
 745 ~~actions.~~—A person who is convicted and sentenced to death must
 746 pursue all possible collateral remedies in state court in
 747 accordance with the Florida Rules of Criminal Procedure within
 748 ~~the time limits provided by statute. Failure to seek relief~~
 749 ~~within the statutory time limits constitutes grounds for~~
 750 ~~issuance of a death warrant under s. 922.052 or s. 922.14. Any~~
 751 ~~claim not pursued within the statutory time limits is barred. No~~
 752 ~~claim filed after the time required by law shall be grounds for~~
 753 ~~a judicial stay of any warrant.~~

754 Section 12. Section 922.052, Florida Statutes, is amended
 755 to read:

756 922.052 Issuance of warrant of execution.—



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CS/CS/HB 7083, Engrossed 1

2013 Legislature

757 (1) When a person is sentenced to death, the clerk of the
758 court shall prepare a certified copy of the record of the
759 conviction and sentence, and the sheriff shall send the record
760 to the Governor and the clerk of the Florida Supreme Court.

761 (2) (a) The clerk of the Florida Supreme Court shall inform
762 the Governor in writing certifying that a person convicted and
763 sentenced to death, before or after the effective date of the
764 act, has:

765 1. Completed such person's direct appeal and initial
766 postconviction proceeding in state court, and habeas corpus
767 proceeding and appeal therefrom in federal court; or

768 2. Allowed the time permitted for filing a habeas corpus
769 petition in federal court to expire.

770 (b) Within 30 days after receiving the letter of
771 certification from the clerk of the Florida Supreme Court, the
772 Governor shall issue a warrant for execution if the executive
773 clemency process has concluded, directing the warden to execute
774 the sentence within 180 days, at a time designated in the
775 warrant.

776 (c) If, in the Governor's sole discretion, the clerk of
777 the Florida Supreme Court has not complied with the provisions
778 of paragraph (a) with respect to any person sentenced to death,
779 the Governor may sign a warrant of execution for such person
780 where the executive clemency process has concluded.

781 (3) The sentence shall not be executed until the Governor
782 issues a warrant, attaches it to the copy of the record, and
783 transmits it to the warden, directing the warden to execute the
784 sentence at a time designated in the warrant.



ENROLLED

CS/CS/HB 7083, Engrossed 1

2013 Legislature

785 ~~(4)~~⁽²⁾ If, for any reason, the sentence is not executed
786 during the week designated, the warrant shall remain in full
787 force and effect and the sentence shall be carried out as
788 provided in s. 922.06.

789 Section 13. Section 924.055, Florida Statutes, is amended
790 to read:

791 924.055 Postconviction review in capital cases;
792 legislative findings and intent.—

793 ~~(1)~~ It is the intent of the Legislature to reduce delays
794 in capital cases and to ensure that all appeals and
795 postconviction actions in capital cases are resolved as soon as
796 possible ~~within 5 years~~ after the date a sentence of death is
797 imposed in the circuit court. ~~All capital postconviction actions~~
798 ~~must be filed as early as possible after the imposition of a~~
799 ~~sentence of death which may be during a direct appeal of the~~
800 ~~conviction and sentence.~~ A person sentenced to death or that
801 person's capital postconviction counsel must file any
802 postconviction legal action in compliance with the Florida Rules
803 of Criminal Procedure ~~statutes of limitation established in s.~~
804 ~~924.056 and elsewhere in this chapter. Except as expressly~~
805 ~~allowed by s. 924.056(5), a person sentenced to death or that~~
806 ~~person's capital postconviction counsel may not file more than~~
807 ~~one postconviction action in a sentencing court and one appeal~~
808 ~~therefrom to the Florida Supreme Court, unless authorized by~~
809 ~~law.~~

810 ~~(2)~~ ~~It is the further intent of the Legislature that no~~
811 ~~state resources be expended in violation of this act. In the~~
812 ~~event that any state employee or party contracting with the~~



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CS/CS/HB 7083, Engrossed 1

2013 Legislature

813 ~~state violates the provisions of this act, the Attorney General~~
814 ~~shall deliver to the Speaker of the House of Representatives and~~
815 ~~the President of the Senate a copy of any court pleading or~~
816 ~~order that describes or adjudicates a violation.~~

817 Section 14. Section 924.056, Florida Statutes, is amended
818 to read:

819 (Substantial rewording of section. See

820 s. 924.056, F.S., for present text.)

821 924.056 Capital postconviction proceedings; reporting
822 requirements.—

823 (1) The Supreme Court shall annually report to the Speaker
824 of the House of Representatives and the President of the Senate
825 the status of each capital case in which a postconviction action
826 has been filed that has been continuously pending for more than
827 3 years. The report must include the name of the state court
828 judge involved in the case.

829 (2) In a capital postconviction proceeding in which it has
830 been determined that an attorney of record provided
831 constitutionally deficient representation and relief has been
832 granted as a result of such determination, after the highest
833 court having jurisdiction to review such determination has
834 issued its final order affirming the determination, the court
835 making such determination shall furnish a copy of the findings
836 to The Florida Bar for appropriate disciplinary action.

837 Section 15. Section 924.057, Florida Statutes, is amended
838 to read:

839 (Substantial rewording of section. See

840 s. 924.057, F.S., for present text.)



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CS/CS/HB 7083, Engrossed 1

2013 Legislature

841 924.057 Capital postconviction proceedings; legislative
842 intent.—The Legislature acknowledges the efforts made by the
843 judicial branch in establishing the rules of criminal procedure
844 that make the capital postconviction process fair and more
845 efficient. The Legislature also recognizes and commends the
846 judicial branch for continuing these efforts by issuing
847 Administrative Order AOSC13-11, which creates a Capital
848 Postconviction Proceedings Subcommittee of the Criminal Court
849 Steering Committee, and directs the subcommittee to undertake a
850 comprehensive review of capital postconviction proceedings, and
851 to make recommendations to the Supreme Court whether court rules
852 should be amended to improve the overall efficiency of the
853 capital postconviction process. In support of these efforts, the
854 Legislature expresses its intent that capital postconviction
855 proceedings be conducted in accordance with court rules, and
856 that courts strictly adhere to the timeframes and postconviction
857 motion content requirements established therein.

858 Section 16. Sections 924.058, 924.059, and 924.395,
859 Florida Statutes, are repealed.

860 Section 17. If a provision of this act or the application
861 thereof to a person or circumstance is held invalid, the
862 invalidity does not affect other provisions or applications of
863 the act which can be given effect without the invalid provision
864 or application, and to this end the provisions of this act are
865 declared severable.

866 Section 18. Effective July 1, 2013, four full-time
867 equivalent positions with associated salary and rate of 220,000
868 are authorized and \$417,338 in recurring funds from the General



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CS/CS/HB 7083, Engrossed 1

2013 Legislature

869 Revenue Fund and \$14,832 in nonrecurring general revenue is
870 appropriated to the Justice Administration Commission for the
871 creation of the northern region office of the Capital Collateral
872 Regional Counsel as provided in this act.

873 Section 19. This act shall take effect July 1, 2013.