

By the Committee on Appropriations

576-03313-14

20142508\_\_

1                   A bill to be entitled  
2       An act relating to executive clemency; amending ss.  
3       27.51 and 27.511, F.S.; removing authority of the  
4       trial court to appoint counsel for executive clemency  
5       proceedings; amending s. 27.5303, F.S.; removing  
6       authority of the court rendering judgment imposing the  
7       death penalty to appoint counsel for executive  
8       clemency proceedings; amending s. 27.5304, F.S.;  
9       removing authority for payment to the appointed  
10      attorney for representing a defendant in an  
11      application for executive clemency after the  
12      imposition of a death sentence; creating s. 940.031,  
13      F.S; authorizing the Board of Executive Clemency to  
14      appoint private counsel to represent a person  
15      sentenced to death in an executive clemency  
16      proceeding; authorizing compensation of up to a  
17      specified amount to the appointed attorney from the  
18      General Revenue Funds appropriated to the Parole  
19      Commission; providing legislative intent; providing an  
20      effective date.

21  
22 Be It Enacted by the Legislature of the State of Florida:

23  
24       Section 1. Paragraph (a) of subsection (5) of section  
25       27.51, Florida Statutes, is amended to read:

26       27.51 Duties of public defender.—

27       (5) (a) When direct appellate proceedings prosecuted by a  
28       public defender on behalf of an accused and challenging a  
29       judgment of conviction and sentence of death terminate in an

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30 affirmance of such conviction and sentence, whether by the  
31 Florida Supreme Court or by the United States Supreme Court or  
32 by expiration of any deadline for filing such appeal in a state  
33 or federal court, the public defender shall notify the accused  
34 of his or her rights pursuant to Rule 3.850, Florida Rules of  
35 Criminal Procedure, including any time limits pertinent thereto,  
36 and shall advise such person that representation in any  
37 collateral proceedings is the responsibility of the capital  
38 collateral regional counsel. The public defender shall then  
39 forward all original files on the matter to the capital  
40 collateral regional counsel, retaining such copies for his or  
41 her files as may be desired. ~~However, the trial court shall~~  
42 ~~retain the power to appoint the public defender or other~~  
43 ~~attorney not employed by the capital collateral regional counsel~~  
44 ~~to represent such person in proceedings for relief by executive~~  
45 ~~elementary pursuant to ss. 27.40 and 27.5303.~~

46 Section 2. Subsection (9) of section 27.511, Florida  
47 Statutes, is amended to read:

48 27.511 Offices of criminal conflict and civil regional  
49 counsel; legislative intent; qualifications; appointment;  
50 duties.—

51 (9) When direct appellate proceedings prosecuted by the  
52 office of criminal conflict and civil regional counsel on behalf  
53 of an accused and challenging a judgment of conviction and  
54 sentence of death terminate in an affirmance of such conviction  
55 and sentence, whether by the Supreme Court or by the United  
56 States Supreme Court or by expiration of any deadline for filing  
57 such appeal in a state or federal court, the office of criminal  
58 conflict and civil regional counsel shall notify the accused of

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59 his or her rights pursuant to Rule 3.850, Florida Rules of  
60 Criminal Procedure, including any time limits pertinent thereto,  
61 and shall advise such person that representation in any  
62 collateral proceedings is the responsibility of the capital  
63 collateral regional counsel. The office of criminal conflict and  
64 civil regional counsel shall forward all original files on the  
65 matter to the capital collateral regional counsel, retaining  
66 such copies for his or her files as may be desired or required  
67 by law. ~~However, the trial court shall retain the power to~~  
68 ~~appoint the office of criminal conflict and civil regional~~  
69 ~~counsel or other attorney not employed by the capital collateral~~  
70 ~~regional counsel to represent such person in proceedings for~~  
71 ~~relief by executive clemency pursuant to ss. 27.40 and 27.5303.~~

72 Section 3. Subsection (4) of section 27.5303, Florida  
73 Statutes, is amended to read:

74 27.5303 Public defenders; criminal conflict and civil  
75 regional counsel; conflict of interest.-

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

83 (b) ~~The public defender or an attorney appointed pursuant~~  
84 ~~to this section may be appointed by the court rendering the~~  
85 ~~judgment imposing the death penalty to represent an indigent~~  
86 ~~defendant who has applied for executive clemency as relief from~~  
87 ~~the execution of the judgment imposing the death penalty.~~

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

92           Section 4. Subsection (5) of section 27.5304, Florida  
93 Statutes, is amended to read:

94           27.5304 Private court-appointed counsel; compensation;  
95 notice.—

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

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

100           **(b) 2.** For noncapital, nonlife felonies represented at the  
101 trial level: \$2,500.

102           **(c) 3.** For life felonies represented at the trial level:  
103 \$3,000.

104           **(d) 4.** For capital cases represented at the trial level:  
105 \$15,000. For purposes of this paragraph ~~subparagraph~~, a "capital  
106 case" is any offense for which the potential sentence is death  
107 and the state has not waived seeking the death penalty.

108           **(e) 5.** For representation on appeal: \$2,000.

109           ~~(b) If a death sentence is imposed and affirmed on appeal  
110 to the Supreme Court, the appointed attorney shall be allowed  
111 compensation, not to exceed \$1,000, for attorney fees and costs  
112 incurred in representing the defendant as to an application for  
113 executive clemency, with compensation to be paid out of general  
114 revenue from funds budgeted to the Justice Administrative  
115 Commission.~~

116           Section 5. Section 940.031, Florida Statutes, is created to

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117 read:

118 940.031 Clemency counsel when sentence of death has been  
119 imposed.-

120 (1) The Board of Executive Clemency may appoint private  
121 counsel to represent a person sentenced to death for relief by  
122 executive clemency at such time as the board deems appropriate  
123 for clemency consideration. The board shall maintain a list of  
124 private counsel available for appointment under this section.

125 (2) The appointed private counsel shall be compensated by  
126 the board up to \$10,000 for attorney fees and costs incurred in  
127 representing the person for relief by executive clemency, with  
128 compensation to be paid out of the General Revenue Fund from  
129 funds appropriated to the Parole Commission.

130 (3) It is the intent of the Legislature that the fee  
131 prescribed under this section be the full and complete  
132 compensation for appointed private counsel. It is further the  
133 intent of the Legislature that the fee in this section be  
134 prescribed for the purpose of providing counsel with notice of  
135 the limit on the amount of compensation for representation under  
136 this section. Appointment of counsel for executive clemency  
137 under this section shall be at the board's sole discretion. The  
138 provision of counsel for relief by executive clemency under this  
139 section does not create a statutory right to counsel in such  
140 proceedings.

141 Section 6. This act shall take effect July 1, 2014.