

Committee Substitute for House Bill No. 1091

An act relating to the representation of persons sentenced to death; amending s. 27.701, F.S.; providing for the office of capital collateral representative to be replaced by three capital collateral regional counsels appointed within the northern, middle, and southern regions of the state; providing for nominations of the regional counsels by the Supreme Court Judicial Nominating Commission; requiring the Governor to appoint the regional counsels; providing for terms of office; prohibiting a regional counsel from running for or accepting appointment to a state office for a specified period after leaving office; amending s. 27.702, F.S.; specifying the duties of the capital collateral regional counsel; establishing the independence of the regional offices but consolidating the administrative functions of three offices within the Justice Administrative Commission; authorizing the court to assess attorney's fees and costs against a nonindigent or indigent-but-able-to-contribute defendant; providing for a determination of indigency; requiring the regional counsel to provide certain reports to the President of the Senate, the Speaker of the House of Representatives, and the Commission on the Administration of Justice in Capital Cases; amending s. 27.703, F.S.; providing for the appointment of substitute counsel in instances of conflict of interest; establishing qualifications for appointed counsel; establishing a rate of compensation for attorney's fees in such cases; amending s. 27.704, F.S.; authorizing the capital collateral regional counsel to appoint assistant counsel, investigators, and support personnel; providing for employment of law school graduates; providing employment qualifications for certain positions; providing for contracts with private counsel or public defenders; amending s. 27.705, F.S.; providing for the capital collateral counsel to be paid under the General Appropriations Act; providing for the payment of office and travel expenses; requiring the regional counsel to submit a pay plan each year; amending s. 27.706, F.S.; prohibiting the capital collateral regional counsel and full-time assistants from engaging in the private practice of law; amending s. 27.707, F.S.; authorizing investigators employed by the capital collateral regional counsel to serve subpoenas and court orders; amending s. 27.708, F.S.; providing for access to persons sentenced to death who are incarcerated; requiring the regional counsel and contracted private counsel to comply with the Rules of Criminal Procedure; requiring the regional counsel to approve requests for public records made by assistant counsel or appointed counsel; creating the Commission on the Administration of Justice in Capital Cases; providing for membership; setting terms of membership; providing for the selection of a chair; providing for per diem and travel expenses; requiring quarterly meetings of the commission; providing for the Joint Legislative Management Committee to staff the commission; requiring the commission to review the administration of justice in capital collateral cases, receive relevant public input, review the operation of the regional offices of

capital collateral counsel, and advise and make recommendations to the Governor, Legislature, and Supreme Court; requiring that the commission hear complaints regarding the practice of any such office; amending s. 16.01, F.S.; requiring that the Attorney General act as co-counsel in capital collateral proceedings; amending s. 924.051, F.S.; providing circumstances under which a motion for collateral or postconviction relief in any capital case may be considered after a specified date; prohibiting the testimony of an expert witness in any such case unless approved by the court; providing recommendations for the Supreme Court; providing a transition period; authorizing the Governor to appoint interim and regional counsel by specified dates; authorizing attorneys to continue representation of clients during the transitional period; providing an effective date.

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

Section 1. Section 27.701, Florida Statutes, is amended to read:

27.701 Capital collateral ~~regional counsels representative.~~—There ~~are~~ is hereby created three regional offices in the judicial branch of state government the office of capital collateral counsel, which shall be located in a northern, middle, and southern region of the state. The northern region shall consist of the First, Second, Third, Fourth, Eighth, and Fourteenth Judicial Circuits; the middle region shall consist of the Fifth, Sixth, Seventh, Ninth, Tenth, Twelfth, Thirteenth, and Eighteenth Judicial Circuits; and the southern region shall consist of the Eleventh, Fifteenth, Sixteenth, Seventeenth, Nineteenth, and Twentieth Judicial Circuits. Each regional office shall be administered by a regional counsel. A regional counsel must represent ~~ative, the head of which shall be the capital collateral representative for the state. The capital collateral representative shall be, and must shall have been for the preceding 5 years, a member in good standing of The Florida Bar or a similar organization in another state. Each The capital collateral regional counsel representative shall be appointed by the Governor, and is subject to confirmation by the Senate. The Supreme Court Judicial Nominating Commission shall recommend to the Governor three qualified candidates for each appointment as regional counsel. The Governor shall appoint a regional counsel for each region from among the recommendations, or, if it is in the best interest of the fair administration of justice in capital cases, the Governor may reject the nominations and request submission of three new nominees by the Supreme Court Judicial Nominating Commission. Each capital collateral regional counsel shall be appointed to a term of 3 years., from three or more nominations submitted by any or all elected public defenders and shall serve a term of 4 years. Six months prior to the end of any such term, the Governor shall accept nominations from any or all elected public defenders for the office of capital collateral representative for the next succeeding term and may appoint the incumbent or any other nominated person for the next succeeding term. Vacancies in the office of capital collateral regional counsel representative shall be filled in the same manner as appointments. A person appointed as a regional counsel may not run capital collateral representative is prohibited from running for or accept accepting appointment to any state office for a period of 2 years following~~

~~vacation of office. The principal office of the capital collateral representative shall be located in Tallahassee. The capital collateral representative may establish such branch offices as may, in his or her discretion, be warranted to fulfill statutory duties herein.~~

Section 2. Section 27.702, Florida Statutes, 1996 Supplement, is amended to read:

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

(1) The capital collateral regional counsel ~~representative~~ shall represent, ~~without additional compensation,~~ each person convicted and sentenced to death in this state for the sole purpose of instituting and prosecuting collateral actions challenging the legality of the judgment and sentence imposed against such person in the state courts, federal courts in this state, the United States Court of Appeals for the Eleventh Circuit, and the United States Supreme Court. Representation by the regional counsel ~~capital collateral representative~~ shall commence automatically upon termination of direct appellate proceedings in state or federal courts. Within 91 days after the date the Supreme Court issues a mandate on a direct appeal or the United States Supreme Court denies a petition for certiorari, whichever is later, the capital collateral regional counsel ~~representative~~ shall file a notice of appearance in the trial court in which the judgment and sentence were entered and shall secure all direct-appeal files for collateral representation. Upon receipt of files from the public defender or other counsel, the capital collateral regional counsel ~~representative~~ shall assign each such case to personnel in his or her office for investigation, client contact, and any such further action as the circumstances may warrant. The three capital collateral regional counsels' offices shall function independently and be separate budget entities, and the regional counsels shall be the office heads for all purposes. The Justice Administrative Commission shall provide administrative support and service to the three offices to the extent requested by the regional counsels. The three regional offices shall not be subject to control, supervision, or direction by the Justice Administrative Commission in any manner, including, but not limited to, personnel, purchasing, transactions involving real or personal property, and budgetary matters.

(2) The capital collateral regional counsel ~~representative~~ shall represent each person convicted and sentenced to death within the region in this state in collateral postconviction proceedings, unless a court appoints or permits other counsel to appear as counsel of record.

(3)(a) The capital collateral regional counsel ~~representative~~ shall file motions seeking compensation for representation and reimbursement for expenses pursuant to 18 U.S.C. s. 3006A when providing representation to indigent persons in the federal courts, and shall deposit all such payments received into the Capital Collateral Trust Fund established for such purpose.

(b) The court having jurisdiction over any nonindigent or indigent-but-able-to-contribute defendant who has been receiving the services of the capital collateral regional counsel may assess attorney's fees and costs

against the defendant at any stage in the proceedings as the court may deem appropriate. The determination of indigency or nonindigency of any defendant shall be made by the court pursuant to s. 27.52. Liability for the costs of such representation may be imposed in the form of a lien against the property of the nonindigent or indigent-but-able-to-contribute defendant, which lien shall be enforceable as provided in s. 27.56 or s. 27.561.

(4) Each capital collateral regional counsel shall provide a quarterly report to the President of the Senate, the Speaker of the House of Representatives, and the Commission on the Administration of Justice in Capital Cases which details the number of hours worked by investigators and legal counsel per case and the amounts per case expended during the preceding quarter in investigating and litigating capital collateral cases.

Section 3. Section 27.703, Florida Statutes, 1996 Supplement, is amended to read:

27.703 Conflict of interest and substitute counsel.—

(1) If, at any time during the representation of two or more persons, the capital collateral regional counsel representative determines that the interests of those persons are so adverse or hostile that they cannot all be counseled by the regional counsel capital collateral representative or his or her staff without conflict of interest, the sentencing court shall, upon application therefor by the regional counsel, designate another regional counsel and, only if a conflict exists with the other two counsels, capital collateral representative appoint one or more members of The Florida Bar to represent one or more of such persons.

(2) Appointed counsel shall be paid from funds appropriated to the Justice Administrative Commission. The hourly rate may not exceed \$100.

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

Section 4. Section 27.704, Florida Statutes, is amended to read:

27.704 Appointment of assistants and other staff; method of payments.—Each capital collateral regional counsel may:

(1) The capital collateral representative is authorized to Appoint, employ, and establish, in such numbers as he or she determines shall determine, full-time or part-time assistant counsel capital collateral representatives, investigators, and other clerical and support personnel who shall be paid from funds appropriated for that purpose. A full-time assistant capital collateral counsel must representatives shall be a member members in good standing of The Florida Bar, with not less than 3 2 years' experience in the practice of criminal law, and, prior to employment, must have participated in at least five felony jury trials, five felony appeals, or five capital postconviction evidentiary hearings or any combination of at least five of such proceedings. Law school graduates who do not have the qualifications of a

full-time assistant capital collateral counsel may be employed as members of the legal staff but may not be designated as sole counsel for any person.

(2) Contract with private counsel who are members in good standing of The Florida Bar or with public defenders for the purpose of providing prompt and cost-effective representation for individuals who are sentenced to death in this state. A private counsel or public defender under contract with the regional counsel must have at least 3 years' experience in the practice of criminal law, and, prior to the contract, must have participated in at least five felony jury trials, five felony appeals, or five capital postconviction evidentiary hearings or any combination of at least five of such proceedings.

~~(3)(2) The capital collateral representative is authorized to Appoint pro bono part-time assistant counsel capital collateral representatives, who must shall be members in good standing of The Florida Bar, and who shall serve without compensation at the discretion of the capital collateral regional counsel representative.~~

Section 5. Section 27.705, Florida Statutes, is amended to read:

27.705 Salaries of the capital collateral regional counsel representative and assistant capital collateral counsel representatives. —

(1) ~~Each~~ The capital collateral regional counsel representative shall be paid a salary by the state, which shall be as provided in the General Appropriations Act and shall be paid in equal monthly installments.

(2) Full-time assistant capital collateral counsel representatives shall be compensated in an amount set by the capital collateral regional counsel, which may representative not to exceed 100 percent of the salary of the capital collateral regional counsel representative and shall be paid from funds appropriated for that purpose.

(3) All payments of the salary of ~~each~~ of the capital collateral regional counsel representative and employees of his or her office, and payments for other necessary expenses of office from state funds appropriated therefor, ~~are shall be considered as being~~ for a valid public purpose. Travel expenses for official business within and outside the state shall be paid in accordance with the provisions of s. 112.061. For purposes of s. 112.061 only, part-time assistant capital collateral counsel representatives shall be considered employees of the regional office of capital collateral counsel representative.

(4) ~~Each~~ The capital collateral regional counsel representative shall develop a classification and pay plan to be submitted on or before January 1 of each year to the Justice Administrative Commission, the office of the President of the Senate, and the office of the Speaker of the House of Representatives. Such plan shall be developed in accordance with policies and procedures of the Executive Office of the Governor established pursuant to s. 216.181.

Section 6. Section 27.706, Florida Statutes, is amended to read:

27.706 Private practice of law prohibited.—~~Each~~ The capital collateral regional counsel representative and all full-time assistants appointed by

him or her shall serve on a full-time basis and ~~may not engage~~ ~~are prohibited from engaging~~ in the private practice of law.

Section 7. Section 27.707, Florida Statutes, is amended to read:

27.707 Investigators; service of process.—Each investigator employed by the capital collateral ~~regional counsel has representative shall have~~ full authority to serve any ~~subpoena witness subpoenaed~~ or court order issued by any court or judge in any case for which the office has responsibility for providing representation.

Section 8. Section 27.708, Florida Statutes, is amended to read:

27.708 Access to prisoners; compliance with the Florida Rules of Criminal Procedure in capital collateral litigation; records requests; approval of records requests.—

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

(2) The capital collateral regional counsel and contracted private counsel must timely comply with all provisions of the Florida Rules of Criminal Procedure governing collateral review of capital cases, including provisions pertaining to requests for records under Florida Rule of Criminal Procedure 3.852.

(3) All requests for records in capital postconviction proceedings must be made in accordance with Florida Rule of Criminal Procedure 3.852, and, if the person sentenced to death is represented by an assistant capital collateral regional counsel or other attorney appointed to assist the regional counsel, the regional counsel must approve the request.

Section 9. (1)(a) There is created the Commission on the Administration of Justice in Capital Cases, which shall consist of the six following members:

1. Two members appointed by the Governor.

2. Two members appointed by the President of the Senate from the membership of the Senate. One member shall be a member of the majority party and one member shall be a member of the minority party.

3. Two members appointed by the Speaker of the House of Representatives from the membership of the House of Representatives. One member shall be a member of the majority party and one member shall be a member of the minority party.

(b) The chair of the commission shall be selected by the members for a term of 1 year.

(c) The commission shall meet quarterly, and other meetings may be called by the chair upon giving at least 7 days' notice to all members and the public.

(d) Members of the commission are entitled to per diem and travel expenses to be paid by the appointing entity.

(e) The initial members of the commission must be appointed on or before October 1, 1997. Members of the commission shall be appointed to serve terms of 4 years each, except that a member's term shall expire upon leaving office as a member of the Senate or the House of Representatives. Two of the initial members, one from the Senate and one from the House of Representatives, shall be appointed for terms of 2 years each. Two of the initial members, one from the Senate and one from the House of Representatives, shall be appointed for terms of 3 years each.

(f) The Joint Legislative Management Committee shall staff the commission.

(2) The commission shall review the administration of justice in capital collateral cases, receive relevant public input, review the operation of the capital collateral regional counsel, and advise and make recommendations to the Governor, Legislature, and Supreme Court. In addition, the commission shall receive complaints regarding the practice of any office of regional counsel and shall refer any complaint to The Florida Bar, the State Supreme Court, or the Commission on Ethics, as appropriate.

Section 10. Present subsections (6), (7), and (8) of section 16.01, Florida Statutes, are renumbered as subsections (7), (8), and (9), respectively, and a new subsection (6) is added to that section, to read:

16.01 Residence, office, and duties of Attorney General.—The Attorney General:

(6) Shall act as co-counsel of record in capital collateral proceedings.

Section 11. Subsection (6) of section 924.051, Florida Statutes, 1996 Supplement, is amended to read:

924.051 Terms and conditions of appeals and collateral review in criminal cases.—

(6)(a) In a noncapital case, a petition or motion for collateral or other postconviction relief may not be considered if it is filed more than 2 years after the judgment and sentence became final, in a noncapital case or more than 1 year after the judgment and sentence became final in a capital case in which a death sentence was imposed unless the petition or motion it alleges that:

1.(a) The facts upon which the claim is predicated were unknown to the petitioner or his attorney and could not have been ascertained by the exercise of due diligence;

2.(b) The fundamental constitutional right asserted was not established within the period provided for in this subsection and has been held to apply retroactively; or

3.(c) The sentence imposed was illegal because it either exceeded the maximum or fell below the minimum authorized by statute for the criminal offense at issue. Either the state or the defendant may petition the trial court to vacate an illegal sentence at any time.

(b) In a capital case in which the sentence of death has been imposed:

1. A motion for collateral or other postconviction relief may not be considered if the motion is filed more than 1 year after the judgment and sentence became final, unless the facts upon which the claim is predicated were unknown to the petitioner or his or her attorney and could not have been ascertained by the exercise of due diligence, or the fundamental constitutional right asserted was not established within the period provided for in this subsection and has been held to apply retroactively.

2. An expert witness may not be called to testify unless approved by the court.

Section 12. In the interest of promoting justice and integrity with respect to capital collateral representation, the Legislature recommends that the Supreme Court:

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

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

Section 13. Transition.—The Governor shall appoint each capital collateral regional counsel no later than August 1, 1997. Each regional counsel shall assume office on October 1, 1997. The Governor is authorized to appoint three interim capital collateral regional counsel who are authorized to carry out the duties provided in this act until September 30, 1997. In order to maintain continuity, all attorneys assigned to represent clients as of June 30, 1997, shall continue to provide such representation until substitute counsel is ordered by the court or until the interim or appointed regional counsel removes the attorney from the case.

Section 14. This act shall take effect upon becoming law.

Approved by the Governor June 16, 1997.

Filed in Office Secretary of State June 16, 1997.