

Committee Substitute for House Bill No. 1-A

An act relating to capital offenses; creating the "Death Penalty Reform Act of 2000"; amending s. 27.702, F.S.; providing limitation on the filing of postconviction and collateral actions; amending s. 119.19, F.S.; revising provisions relating to capital postconviction public records production; amending s. 922.095, F.S.; revising provisions with respect to grounds for a death warrant; providing a limitation on actions; amending s. 924.055, F.S.; revising provisions with respect to postconviction review in capital cases; providing for legislative findings and intent; creating s. 924.056, F.S.; providing for capital postconviction proceedings for which a sentence of death is imposed on or after the effective date of this act; creating s. 924.057, F.S.; providing for a limitation on postconviction cases in which the death sentence was imposed before the effective date of this act; creating s. 924.058, F.S.; providing for capital postconviction claims; creating s. 924.059, F.S.; providing for time limitations on judicial review in capital postconviction actions; repealing Rule 3.850, Florida Rules of Criminal Procedure, relating to the grant of a new trial to the extent it is inconsistent with this act; repealing Rule 3.851, Florida Rules of Criminal Procedure, relating to collateral relief after the death sentence has been imposed; repealing Rule 3.852, Florida Rules of Criminal Procedure, relating to capital postconviction public records production; amending s. 27.710, F.S.; providing for the appointment of attorneys to represent persons in collateral actions; amending s. 27.51, F.S.; prohibiting specified public defenders from providing appellate representation for certain persons sentenced to death; amending s. 27.703, F.S.; providing for designation of alternative regional counsel when there is a conflict of interest; revising provisions governing the payment of such counsel; providing for the transfer of funds to be used for contracts with private attorneys and authorizing additional support positions; amending s. 27.709, F.S.; requiring the Commission on Capital Cases to compile and analyze case-tracking reports produced by the Supreme Court; amending s. 27.711, F.S.; revising provisions governing the payment of assigned counsel; providing for review of the billings of assigned counsel; creating s. 924.395, F.S.; providing for sanctions against any person within the court's jurisdiction for certain actions taken in capital postconviction proceedings or appeals therefrom; creating s. 922.108, F.S.; providing for sentencing orders in capital cases; repealing s. 924.051(6)(b), F.S., which imposes limitations on the filing of motions for collateral or other postconviction relief and on the calling of expert witnesses; requesting the Supreme Court to study the feasibility of requiring all capital postconviction actions to be filed in the Supreme Court and requesting the Court to submit its recommendations by a specified date; providing for severability; providing an effective date.

WHEREAS, it is in the best interest of the administration of justice that a sentence of death ordered by the courts of this state be carried out in a

manner that is fair, just, and humane and that conforms to constitutional requirements, and

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

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

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

Section 1. This act may be cited as the “Death Penalty Reform Act of 2000.”

Section 2. Subsection (1) of section 27.702, Florida Statutes, is amended to read:

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

(1) The capital collateral regional counsel shall represent each person convicted and sentenced to death in this state for the sole purpose of instituting and prosecuting collateral actions challenging the legality of the judgment and sentence imposed against such person in the state courts, federal courts in this state, the United States Court of Appeals for the Eleventh Circuit, and the United States Supreme Court. The capital collateral regional counsel and the attorneys appointed pursuant to s. 27.710 shall file only those postconviction or collateral actions authorized by statute. The three capital collateral regional 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.

Section 3. Section 119.19, Florida Statutes, is amended to read:

119.19 Capital postconviction public records production.—

(1) As used in this section, the term “trial court” means:

(a) The judge who entered the judgment and imposed the sentence of death; or

(b) If a motion for postconviction relief in a capital case ~~under Rule 3.850 or Rule 3.851~~ has been filed and a different judge has already been assigned to that motion, the judge who is assigned to rule on that motion.

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

~~(3)(a) Upon imposition of a death sentence or upon the effective date of this act with respect to any case in which a death sentence has been imposed but the mandate has not yet been issued in an appeal affirming the sentence, issuance of the Florida Supreme Court's mandate, the Attorney General shall promptly provide written notification to the state attorney who prosecuted the case that a death sentence has been affirmed. Upon receipt of such notification, the prosecuting state attorney shall promptly provide written notification to each law enforcement agency involved in the case and to the Department of Corrections. If available, the written notification must include the defendant's date of birth, sex, race, and police-case numbers included in the prosecuting attorney's case file.~~

(b) Within 60 90 days after receipt of notification, each law enforcement agency involved in the case and the prosecuting state attorney who prosecuted the case shall copy, seal, and deliver to the repository all public records, except for those filed in the trial court, which were produced in the investigation or prosecution of the case or, if the records are confidential or exempt, to the clerk of the court in the county in which the capital case was tried. Each agency shall bear the costs of its own compliance.

~~(4)(a) Upon issuance of the Florida Supreme Court's mandate, the Attorney General shall promptly provide written notification to the Department of Corrections that a death row inmate's sentence has been affirmed.~~

~~(c)(b)~~ Within 60 90 days after notification, the Department of Corrections shall copy, seal, and deliver to the repository or, if the records are confidential or exempt, to the clerk of the court in the county in which the capital case was tried all public records determined by the department to be relevant to the subject matter of a capital postconviction claim of the person sentenced to death proceeding under Rule 3.850 or Rule 3.851 and where such production would not be unduly burdensome for the department. The department shall bear the costs.

~~(4)(5)(a)~~ The chief law enforcement officer of each law enforcement agency that was involved in the case, whether through an investigation, arrest, prosecution, or incarceration, shall notify the Attorney General upon compliance with subsection (3) and shall certify that to the best of his or her knowledge and belief all public records in possession of the agency or in possession of any employee of the agency have been copied, indexed, and delivered to the records repository or, if the records are confidential or exempt, to the clerk of the court in the county in which the capital case was tried as required by this section ~~subsection (3).~~

(b) The prosecuting state attorney who prosecuted the case shall provide written notification to the Attorney General upon compliance with subsec-

tion (3) and shall certify that to the best of his or her knowledge and belief all public records in his or her possession have been copied, indexed, and delivered to the records repository or, if the records are confidential or exempt, to the clerk of the court in the county in which the capital case was tried as required by this section subsection (3).

(c) The Secretary of Corrections shall provide written notification to the Attorney General upon compliance with paragraph (3)(c) subsection (4) and shall certify that to the best of his or her knowledge and belief all public records in the department's possession have been copied, indexed, and delivered to the records repository or, if the records are confidential or exempt, to the clerk of the court in the county in which the capital case was tried as required by this section paragraph (4)(b).

~~(5)(6)(a)~~ Within 60 90 days after the imposition of a death sentence or upon the effective date of this act with respect to any case in which a death sentence has been imposed but the mandate has not yet been issued in an appeal affirming the sentence issuance of the Florida Supreme Court's mandate affirming a death sentence, both the public defender or private counsel for the defendant and the prosecuting state attorney involved in the case shall provide written notification to the Attorney General of the name and address of any person or agency in addition to those persons and agencies listed in subsection subsections (3) and (4) which may have information pertinent to the case unless previously provided to the capital collateral regional counsel or postconviction private counsel. The Attorney General shall promptly provide written notification to each identified person or agency after receiving the information from the public defender, private counsel for the defendant, or prosecuting state attorney and shall request that all public records in the possession of the person or agency which pertain to the case be copied, sealed, and delivered to the records repository.

(b) Within 60 90 days after receiving a request for public records under paragraph (a), the person or agency shall provide written notification to the Attorney General of compliance with this subsection and shall certify that to the best of his or her knowledge and belief all public records requested have been copied, indexed, and delivered to the records repository or, if the records are confidential or exempt, to the clerk of the court in the county in which the capital case was tried.

~~(6)(7)(a)~~ Any public record delivered to the records repository under this section which is confidential or exempt from the requirements of s. 119.07(1) and s. 24(a), Art. I of the State Constitution must be separately boxed, without being redacted, and sealed. The box must be delivered to the clerk of court in the county in which the capital case was tried. The outside of the box must clearly identify the public records as exempt, and the seal may not be broken without an order of the trial court. The outside of the box must identify the nature of the public records and the legal basis under which the public records are exempt.

~~(b) Upon the entry of an appropriate court order, sealed boxes subject to an inspection by the trial court shall be shipped to the respective clerk of court. Such a box may be opened only for an inspection by the trial court in~~

camera and only after notice giving with a representative of the agency the option to have a representative present at the unsealing by the court. The moving party shall bear all costs associated with the transportation and inspection of such records by the trial court.

(7)(8)(a) Within 180 90 days after a capital collateral regional counsel or private counsel is appointed to represent a defendant sentenced to death, or within 30 days after issuance of the Florida Supreme Court's mandate affirming a death sentence, whichever is later, the regional counsel, private counsel, or other counsel who is a member of The Florida Bar and is authorized by such counsel representing a defendant may shall send a written demand for additional public records to each person or agency submitting public records under subsection subsections (3) and (4) and to each person or agency identified as having information pertinent to the case under subsection (5) (6). Should the written demand include requests for records associated with particular named individuals, the written demand shall also include a brief statement describing each named persons role in the case and relationship to the defendant. Race, sex and date of birth shall also be included in the demand if the public defender, private counsel or capital collateral regional counsel has such information. Each person or agency notified under this subsection shall, within 60 90 days after receipt of the written demand, deliver to the records repository or, if the records are confidential or exempt, to the clerk of the court in the county in which the capital case was tried any additional public records in the possession of the person or agency which pertain to the case and shall certify that to the best of his or her knowledge and belief all additional public records have been delivered to the Attorney General or, if no additional public records are found, shall recertify that the public records previously delivered are complete.

(b) Within 25 60 days after receiving the written demand, the agency or person may file an objection in the trial court alleging that the request is overly broad or unduly burdensome. Within 30 days after the filing of an objection, the trial court shall hold a hearing and order an agency or person to produce additional public records if it finds each of the following:

1. The regional counsel or private counsel has made a timely and diligent search as provided in this section.

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

3. The additional public records sought are relevant to the subject matter of a capital postconviction relief proceeding under Rule 3.850 or Rule 3.851 or appear reasonably calculated to lead to the discovery of admissible evidence in prosecuting such claim.

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

(c) The Attorney General and state attorney shall provide notification as provided in subsections (3) and (4) on cases where the mandate has issued

on the date that this statute becomes effective, but where initial requests for public records have not been made.

~~(c)(d)~~ If, on the date that this statute becomes effective, a defendant is represented by appointed capital collateral regional counsel or private counsel, and he or she has initiated the public records request process, counsel shall file within 90 days of the effective date of this statute, a written demand for any additional records that have not previously been the subject of a notice to produce. An agency may file an objection to such additional demand, and the trial court shall hold a hearing as provided by paragraph ~~(b)~~. This statute shall not be a basis for renewing requests that have been initiated previously or for relitigating issues pertaining to production of public records upon which a court has ruled prior to the effective date of the statute, or for stopping an execution which has been scheduled based upon a warrant executed by the Governor prior to the effective date of the statute.

~~(d)(e)~~ If, on October 1, 1998 the date that this statute becomes effective, the defendant has had a Rule 3.850 motion denied and no Rule 3.850 motion was is pending, no additional requests shall be made by capital collateral regional counsel or contracted private counsel until a death warrant is signed by the Governor and an execution is scheduled. Within 10 days of the signing of the death warrant, capital collateral regional counsel or contracted private counsel may request of a person or agency that the defendant has previously requested to produce records any records previously requested to which no objection was raised or sustained, but which the agency has received or produced since the previous request or which for any reason the agency has in its possession and did not produce within 10 days of the receipt of the previous notice or such shorter time period ordered by the court to comply with the time for the scheduled execution. The person or agency shall produce the record or shall file in the trial court an affidavit stating that it does not have the requested record or that the record has been produced previously.

~~(8)(9)(a)~~ After production of additional public records or recertification as provided in subsection ~~(7) (8)~~, the regional counsel or the private counsel is prohibited from making any further public records requests under this chapter. An agency is not required to produce additional public records except by court order as provided in this subsection.

~~(b)~~ In order to obtain additional public records beyond those provided under subsection ~~(7) (8)~~, the regional counsel, private counsel, or other counsel who is a member of The Florida Bar and is authorized by the regional counsel or private counsel shall file an affidavit in the trial court which attests that he or she has made a timely and diligent search of the records repository and specifically identifies those additional public records that are not at the repository and are relevant to the subject matter of a capital postconviction claim proceeding under Rule 3.850 or Rule 3.851 or are reasonably calculated to lead to the discovery of admissible evidence in the prosecution of such claim. The affiant shall provide a copy of the affidavit to all affected agencies upon the filing of such affidavit in the trial court.

~~(c)~~ Within 15 ~~30~~ days after the filing of an affidavit, the trial court shall order an agency to produce additional public records only if it finds each of the following:

1. The regional counsel or private counsel has made a timely and diligent search as provided in this section.
2. The regional or private counsel's affidavit identifies, with specificity, those additional public records that are not at the repository.
3. The additional public records sought are relevant to the subject matter of a claim for capital postconviction relief proceeding under Rule 3.850 or Rule 3.851 or appear reasonably calculated to lead to the discovery of admissible evidence in prosecuting such claim.
4. The additional public records request is not overbroad or unduly burdensome.

~~(9)(10)~~ The Secretary of State ~~capital collateral regional counsel or private counsel~~ shall provide the personnel, supplies, and any necessary equipment used by the capital collateral regional counsel or private counsel to copy records held at the records repository.

~~(10)(11)~~ The trial court shall resolve any dispute that arises under this section, unless the appellate court has exclusive jurisdiction.

~~(11)(12)~~ The capital collateral regional counsel or private counsel shall not solicit another person to make a request for public records on behalf of the regional counsel or private counsel. The trial court shall impose appropriate sanctions against any regional counsel or private counsel found in violation of this subsection.

~~(12)(13)~~ Sixty days after a capital sentence is carried out, 60 days after a defendant is released from incarceration following the granting of a pardon or reversal of the sentence, or 60 days after the defendant has been resentenced to a term of years, the Attorney General shall provide written notification to the Secretary of State, who may then destroy the records held by the records repository which pertain to that case.

~~(13)(14)~~ This section pertains only to the production of records for capital postconviction defendants and does not change or alter any time limitations provided by law governing capital postconviction claims and actions periods specified in Rule 3.850 or Rule 3.851, Florida Rules of Criminal Procedure. Furthermore, this section does not affect, expand, or limit the production of public records for any purposes other than use in a capital postconviction proceeding held pursuant to Rule 3.850 or Rule 3.851, Florida Rules of Criminal Procedure. Nothing in this section constitutes grounds to expand the time limitations or allow any pleading in violation of chapter 924 or to stay an execution or death warrant.

Section 4. Section 922.095, Florida Statutes, is amended to read:

922.095 Grounds for death warrant; limitations of actions.—A person who is convicted and sentenced to death must pursue all possible collateral remedies within the time limits provided by statute in state and federal court in a timely manner. ~~If any court refuses to grant relief in a collateral postconviction proceeding, the convicted person has 90 days in which to seek~~

~~further collateral review. Failure to seek relief within the statutory time limits further collateral review within the 90-day period constitutes grounds for issuance of a death warrant under s. 922.052 or s. 922.14. Any claim not pursued within the statutory time limits is barred. No claim filed after the time required by law shall be grounds for a judicial stay of any warrant.~~

Section 5. Section 924.055, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 924.055, F.S., for present text.)

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

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

(2) It is the further intent of the Legislature that no state resources be expended in violation of this act. In the event that any state employee or party contracting with the state violates the provisions of this act, the Attorney General shall deliver to the Speaker of the House of Representatives and the President of the Senate a copy of any court pleading or order that describes or adjudicates a violation.

Section 6. Section 924.056, Florida Statutes, is created to read:

924.056 Commencement of capital postconviction actions for which sentence of death is imposed on or after the effective date of this act; limitations on actions.—

(1) In every capital case in which the trial court imposes a sentence of death on or after the effective date of this act, this section shall govern all postconviction proceedings in state court.

(a) Within 15 days after imposing a sentence of death, the sentencing court shall appoint the appropriate office of the capital collateral regional counsel or private postconviction counsel, unless the defendant declines to accept postconviction legal representation in which case the state shall not provide postconviction legal representation. Within 30 days after the appointment, the capital collateral regional counsel shall file a notice of appearance in the trial court or a motion to withdraw based on a conflict of interest or for good cause. The court shall appoint private counsel pursuant

to part IV of chapter 27 in any case in which the capital collateral regional counsel files a motion to withdraw, or otherwise informs the court that the capital collateral regional counsel cannot comply with the provisions of chapter 924 or in which the court determines that the agency cannot comply with chapter 924 or other applicable laws.

(b) The defendant who accepts the appointment of postconviction counsel must cooperate with and assist postconviction counsel. If the sentencing court finds the defendant is obstructing the postconviction process, the defendant shall not be entitled to any further postconviction legal representation provided by the state. Each attorney participating in a capital case on behalf of a defendant must provide all information pertaining to the capital case which the attorney obtained during the representation of that defendant to that defendant's capital postconviction counsel. Postconviction counsel must maintain the confidentiality of any confidential information received from any attorney for that defendant and is subject to the same penalties as the providing attorney for violating confidentiality. If the defendant requests without good cause that any attorney appointed under this subsection be removed or replaced, the court shall notify the defendant that no further state resources may be expended for postconviction representation for that defendant, unless the defendant withdraws the request to remove or replace postconviction counsel. If the defendant does not immediately withdraw his or her request, then any appointed attorney must be removed from the case and no further state resources may be expended for the defendant's postconviction representation. The prosecuting attorney and the defendant's trial counsel shall provide the defendant or, if represented, the defendant's capital postconviction counsel with copies of all pretrial and trial discovery and all contents of the prosecuting attorney's file, except for information that the prosecuting attorney has a legal right under state or federal law to withhold from disclosure.

(2) The clerk of the court shall provide a copy of the record on appeal to the capital postconviction attorney and the state attorney and Attorney General within 60 days after the sentencing court appoints postconviction counsel. However, the court may grant an extension of up to 30 days when extraordinary circumstances exist.

(3)(a) With respect to all capital postconviction actions commenced after the effective date of this act, a capital postconviction action is not commenced until the defendant or the defendant's postconviction counsel files a fully pled postconviction action in the sentencing court or, as provided in subsection (4), the Florida Supreme Court. For the purposes of this subsection, a fully pled capital postconviction action is one which complies with s. 924.058(2) or any superseding rule adopted by the Florida Supreme Court. Except as provided by subsection (4) or subsection (5), all capital postconviction actions shall be barred unless they are commenced within 180 days after the filing of the appellant's initial brief in the Florida Supreme Court on direct appeal of the defendant's capital conviction and sentence. The fully pled postconviction action must raise all cognizable claims that the defendant's judgment or sentence was entered in violation of the Constitution or laws of the United States or the Constitution or the laws of the state, including any claim of ineffective assistance of trial counsel, allegations of

innocence, or that the state withheld evidence favorable to the defendant. No claim may be considered in such action which could have or should have been raised before trial, at trial, or if preserved on direct appeal. For the purposes of this subsection, a capital postconviction action is not fully pled unless it satisfies the requirements of s. 924.058(2) or any superseding rule of court.

(b) No claim of ineffective assistance of collateral postconviction counsel may be raised in a state court.

(c) The pendency of public records requests or litigation, or the pendency of other litigation, or the failure of the defendant or the defendant's postconviction counsel to timely prosecute a case shall not constitute cause for the court to grant any request for an extension of time or other delay. No appeal may be taken from a court's ruling denying such a request for an extension of time or other delay.

(d) The time for commencement, of the postconviction action, may not be tolled for any reason or cause. All claims raised by amendment of a defendant's capital postconviction action are barred if the claims are raised outside the time limitations provided by statute for the filing of capital postconviction actions.

(4) All capital postconviction actions raising any claim of ineffective assistance of direct appeal counsel are barred unless they are commenced in conformity with this subsection. The defendant or the defendant's capital postconviction counsel shall file an action in the Florida Supreme Court raising any claim of ineffective assistance of direct appeal counsel within 45 days after mandate issues affirming the death sentence in the direct appeal.

(5) Regardless of when a sentence is imposed, all successive capital postconviction actions are barred unless commenced by filing a fully pled postconviction action within 90 days after the facts giving rise to the cause of action were discovered or should have been discovered with the exercise of due diligence. Such claim shall be barred pursuant to subsection (3) or s. 924.057 unless the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable fact finder would have found the defendant guilty of the underlying offense. Additionally, the facts underlying this claim must have been unknown to the defendant or his or her attorney and must be such that they could not have been ascertained by the exercise of due diligence prior to filing the earlier postconviction motion. The time period allowed for filing a successive collateral postconviction action shall not be grounds for a stay.

Section 7. Section 924.057, Florida Statutes, is created to read:

924.057 Limitation on postconviction cases in which the death sentence was imposed before the effective date of this act.—This section shall govern all capital postconviction actions in cases in which the trial court imposed the sentence of death before the effective date of this act.

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

(2) Except as provided in s. 924.056(5), in every case in which mandate has issued in the Florida Supreme Court concluding at least one capital postconviction action in the state court system, a successive capital postconviction action shall be barred on the effective date of this act, unless the rules or law in effect immediately prior to the effective date of this act permitted the successive postconviction action, in which case the action shall be barred on the date provided in subsection (4).

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

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

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

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

Section 8. Section 924.058, Florida Statutes, is created to read:

924.058 Capital postconviction claims.—This section shall regulate the procedures in actions for capital postconviction relief commencing after the effective date of this act unless and until such procedures are revised by rule or rules adopted by the Florida Supreme Court which specifically reference this section.

(1) The defendant or the defendant's capital postconviction counsel shall not file more than one capital postconviction action in the sentencing court, one appeal therefrom in the Florida Supreme Court, and one original capital postconviction action alleging the ineffectiveness of direct appeal counsel in the Florida Supreme Court, except as expressly allowed by s. 924.056(5).

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

(a) The judgment or sentence under attack and the court which rendered the same;

(b) A statement of each issue raised on appeal and the disposition thereof;

(c) Whether a previous postconviction action has been filed and, if so, the disposition of all previous claims raised in postconviction litigation; if a previous action or actions have been filed, the reason or reasons the claim or claims in the present motion were not raised in the former action or actions;

(d) The nature of the relief sought;

(e) A fully detailed allegation of the factual basis for any claim of legal or constitutional error asserted, including the attachment of any document supporting the claim, the name and address of any witness, the attachment of affidavits of the witnesses or a proffer of the testimony; and

(f) A concise memorandum of applicable case law as to each claim asserted.

(3) Any capital postconviction action that does not comply with any requirement in this section or other applicable provision in law shall not be considered in any state court. No amendment of a defendant's capital postconviction action shall be allowed by the court after the expiration of the time limitation provided by statute for the commencement of capital postconviction actions.

(4) The prosecuting attorney or Attorney General shall be allowed to file one response to any capital postconviction action within 60 days after receipt of the defendant's fully pled capital postconviction action.

Section 9. Section 924.059, Florida Statutes, is created to read:

924.059 Time limitations and judicial review in capital postconviction actions.—This section shall regulate the procedures in actions for capital postconviction relief commencing after the effective date of this act unless and until such procedures are revised by rule or rules adopted by the Florida Supreme Court which specifically reference this section.

(1) No amendment of a defendant's capital postconviction action shall be allowed by the court after the expiration of the time periods provided by statute for the filing of capital postconviction claims.

(2) Within 30 days after the state files its answer, the sentencing court shall conduct a hearing to determine if an evidentiary hearing is required, if a hearing has been requested by the defendant or the defendant's capital postconviction counsel. Within 30 days thereafter, the court shall rule whether an evidentiary hearing is required and, if so, shall schedule an evidentiary hearing to be held within 90 days. If the court determines that the defendant's capital postconviction action is legally insufficient or the action, files, and records in the case show that the defendant is not entitled to relief, the court shall, within 45 days thereafter, deny the action, setting forth a detailed rationale therefore, and attaching or referencing such portions of the record as are necessary to allow for meaningful appellate review.

(3) Within 10 days after the order scheduling an evidentiary hearing, the defendant or the defendant's capital postconviction counsel shall disclose the

names and addresses of any potential witnesses not previously disclosed, with their affidavits or a proffer of their testimony. Upon receipt of the defendant's disclosure, the state shall have 10 days within which to provide reciprocal disclosure. If the defendant intends to offer expert testimony of his or her mental status, the state shall be entitled to have the defendant examined by an expert of its choosing. All of the defendant's mental status claims shall be deemed denied as a matter of law if the defendant fails to cooperate with the state's expert. Reports provided by expert witnesses shall be disclosed by opposing counsel upon receipt.

(4) Following the evidentiary hearing, the court shall order the transcription of the proceeding which shall be filed within 30 days. Within 30 days after receipt of the transcript, the sentencing court shall issue a final order granting or denying postconviction relief, making detailed findings of fact and conclusions of law with respect to any allegation asserted.

(5) An appeal may be taken to the Supreme Court of Florida within 15 days from the entry of a final order on a capital postconviction action. No interlocutory appeal shall be permitted. No motion for rehearing shall be permitted. The clerk of the court shall promptly serve upon all parties a copy of the final order.

(6) If the sentencing court has denied the capital postconviction action without an evidentiary hearing, the appeal to the Florida Supreme Court will be expeditiously resolved in a summary fashion. On appeal the case shall be initially reviewed for a determination whether the sentencing court correctly resolved the defendant's claims without an evidentiary hearing. If the Florida Supreme Court determines an evidentiary hearing should have been held, the decision to remand for an evidentiary hearing may be made by an order without an opinion. Jurisdiction shall be relinquished to the trial court for a specified period, which must be scheduled within 30 days and must be concluded within 90 days, for the purpose of conducting an evidentiary hearing on any issue identified by the Florida Supreme Court's order. Thereafter, the record shall be supplemented with the hearing transcript.

(7) The Florida Supreme Court shall render its decision within 180 days after receipt of the record on appeal. If a denial of an action for postconviction relief is affirmed, the Governor may proceed to issue a warrant for execution.

(8) A capital postconviction action filed in violation of the time limitations provided by statute is barred, and all claims raised therein are waived. A state court shall not consider any capital postconviction action filed in violation of s. 924.056 or s. 924.057. The Attorney General shall deliver to the Governor, the President of the Senate, and the Speaker of the House of Representatives a copy of any pleading or order that alleges or adjudicates any violation of this provision.

Section 10. Rule 3.850, Florida Rules of Criminal Procedure, relating to the grant of a new trial, is repealed to the extent that it is inconsistent with this act. Rule 3.851, Florida Rules of Criminal Procedure as amended January 15, 1998, relating to collateral relief after death sentence has been

imposed, is repealed. Rule 3.852, Florida Rules of Criminal Procedure, relating to capital postconviction public records production, is repealed.

Section 11. Subsections (4) and (5) of section 27.710, Florida Statutes, are amended to read:

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

(4) Each private attorney who is appointed by the court to represent a capital defendant must enter into a contract with the Comptroller. If the appointed attorney fails to execute the contract within 30 days after the date the contract is mailed to the attorney, the executive director of the Commission on Capital Cases shall notify the trial court. ~~The Comptroller executive director of the Commission on Capital Cases shall develop the form of the contract, and the Comptroller shall function as contract manager, and shall enforce performance of the terms and conditions of the contract.~~ By signing such contract, the attorney certifies that he or she intends to continue the representation under the terms and conditions set forth in the contract until the sentence is reversed, reduced, or carried out or until released by order of the trial court.

(5)(a) Upon the motion of the capital collateral regional counsel to withdraw pursuant to s. 924.056(1)(a); or

(b) Upon notification by the state attorney or the Attorney General that:

1. Thirty days have elapsed since appointment of the capital collateral regional counsel and no entry of appearance has been filed pursuant to s. 924.056; or

~~(a) Ninety-one days have elapsed since the Supreme Court issued a mandate on a direct appeal, or the Supreme Court of the United States has denied a petition for certiorari, whichever is later;~~

2.(b) A person under sentence of death who was previously represented by private counsel is currently unrepresented in a postconviction capital collateral proceeding; or

~~(c) The trial court has issued an order finding that a year and a day have elapsed since the commencement of the period for filing a motion for postconviction relief under s. 924.055(2), and the defendant's complete original motion for postconviction relief has not been filed in the trial court,~~

the executive director shall immediately notify the trial court that imposed the sentence of death that the court must immediately appoint an attorney, selected from the current registry, to represent such person in collateral actions challenging the legality of the judgment and sentence in the appropriate state and federal courts. The court shall have the authority to strike a notice of appearance filed by a Capital Collateral Regional Counsel, if the court finds the notice was not filed in good faith and may so notify the executive director that the client is no longer represented by the Office of

Capital Collateral Regional Counsel. In making an assignment, the court shall give priority to attorneys whose experience and abilities in criminal law, especially in capital proceedings, are known by the court to be commensurate with the responsibility of representing a person sentenced to death. The trial court must issue an order of appointment which contains specific findings that the appointed counsel meets the statutory requirements and has the high ethical standards necessary to represent a person sentenced to death.

Section 12. Section 27.51, Florida Statutes, is amended to read:

27.51 Duties of public defender.—

(1) The public defender shall represent, without additional compensation, any person who is determined by the court to be indigent as provided in s. 27.52 and who is:

(a) Under arrest for, or is charged with, a felony;

(b) Under arrest for, or is charged with, a misdemeanor, a violation of chapter 316 which is punishable by imprisonment, criminal contempt, or a violation of a municipal or county ordinance in the county court, unless the court, prior to trial, files in the cause an order of no imprisonment which states that the defendant will not be imprisoned if he or she is convicted;

(c) Alleged to be a delinquent child pursuant to a petition filed before a circuit court; or

(d) Sought by petition filed in such court to be involuntarily placed as a mentally ill person or sexually violent predator or involuntarily admitted to residential services as a person with developmental disabilities. However, a public defender does not have the authority to represent any person who is a plaintiff in a civil action brought under the Florida Rules of Civil Procedure, the Federal Rules of Civil Procedure, or the federal statutes, or who is a petitioner in an administrative proceeding challenging a rule under chapter 120, unless specifically authorized by statute.

(2) The court may not appoint the public defender to represent, even on a temporary basis, any person who is not indigent. The court, however, may appoint private counsel in capital cases as provided in s. 925.035.

(3) Each public defender shall serve on a full-time basis and is prohibited from engaging in the private practice of law while holding office. Assistant public defenders shall give priority and preference to their duties as assistant public defenders and shall not otherwise engage in the practice of criminal law.

(4) The public defender for a judicial circuit enumerated in this subsection shall, after the record on appeal is transmitted to the appellate court by the office of the public defender which handled the trial and if requested by any public defender within the indicated appellate district, handle all felony appeals to the state and federal courts required of the official making such request:

(a) Public defender of the second judicial circuit, on behalf of any public defender within the district comprising the First District Court of Appeal.

(b) Public defender of the tenth judicial circuit, on behalf of any public defender within the district comprising the Second District Court of Appeal.

(c) Public defender of the eleventh judicial circuit, on behalf of any public defender within the district comprising the Third District Court of Appeal.

(d) Public defender of the fifteenth judicial circuit, on behalf of any public defender within the district comprising the Fourth District Court of Appeal.

(e) Public defender of the seventh judicial circuit, on behalf of any public defender within the district comprising the Fifth District Court of Appeal.

(5) When the public defender for a judicial circuit enumerated in subsection (4) has represented at trial a person sentenced to death, the public defender shall not represent that person in any direct appellate proceedings. That public defender shall notify the Florida Supreme Court within 10 days after filing a notice of appeal, and the Court shall appoint another public defender enumerated in subsection (4) to represent the person in any direct appellate proceedings.

~~(6)~~(5)(a) When direct appellate proceedings prosecuted by a public defender on behalf of an accused and challenging a judgment of conviction and sentence of death terminate in an affirmation of such conviction and sentence, whether by the Florida Supreme Court or by the United States Supreme Court or by expiration of any deadline for filing such appeal in a state or federal court, the public defender shall notify the accused of his or her rights pursuant to Rule 3.850, Florida Rules of Criminal Procedure, including any time limits pertinent thereto, and shall advise such person that representation in any collateral proceedings is the responsibility of the capital collateral representative. The public defender shall then forward all original files on the matter to the capital collateral representative, retaining such copies for his or her files as may be desired. However, the trial court shall retain the power to appoint the public defender or other attorney not employed by the capital collateral representative to represent such person in proceedings for relief by executive clemency pursuant to s. 925.035.

(b) It is the intent of the Legislature that any public defender representing an inmate in any collateral proceedings in any court on June 24, 1985, shall continue representation of that inmate in all postconviction proceedings unless relieved of responsibility from further representation by the court.

~~(7)~~(6) A sum shall be appropriated to the public defender of each judicial circuit enumerated in subsection (4) for the employment of assistant public defenders and clerical employees and the payment of expenses incurred in cases on appeal.

Section 13. Subsections (1) and (2) of section 27.703, Florida Statutes, are amended to read:

27.703 Conflict of interest and substitute counsel.—

(1) The capital collateral regional counsel shall not accept an appointment or take any other action that will create a conflict of interest. If, at any time during the representation of a person two or more persons, the capital collateral regional counsel determines that the continued representation of that person creates a interests of those persons are so adverse or hostile that they cannot all be counseled by the regional counsel or his or her staff without conflict of interest, the sentencing court shall, upon application by the regional counsel, designate another regional counsel and, only if a conflict exists with the other two counsels, 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 ~~Comptroller Justice Administrative Commission~~. The hourly rate may not exceed \$100. However, effective July 1, 1999, all appointments of private counsel under this section shall be in accordance with ss. 27.710 and 27.711.

Section 14. In order to implement the provisions of section 27.703, Florida Statutes, as amended by this act, the Justice Administrative Commission shall transfer all unexpended funds from Specific Appropriation 615 of the 1999-2000 General Appropriations Act to the Administrative Trust Fund within the Department of Banking and Finance for disbursement purposes. The Department of Banking and Finance is authorized to expend such funds transferred by the Justice Administrative Commission for contracts with private attorneys. In addition, the Department of Banking and Finance is authorized to expend up to \$60,000 of such funds for associated administrative support and two additional positions are authorized for fiscal year 1999-2000.

Section 15. Subsection (2) of section 27.709, Florida Statutes, is amended to read:

27.709 Commission on Capital Cases.—

(2)(a) 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.

(b) As part of its duties, the commission shall compile and analyze case-tracking reports produced by the Supreme Court. In analyzing these reports, the commission shall develop statistics to identify trends and changes in case management and case processing, identify and evaluate unproductive points of delay, and generally evaluate the way cases are progressing. The commission shall report these findings to the Legislature by January 1 of each year.

(c) 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 16. Subsection (3) of section 27.711, Florida Statutes, is amended, and subsection (13) is added to that section, to read:

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

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

(13) Prior to the filing of a motion for order approving payment of attorney's fees, costs, or related expenses, the assigned counsel shall deliver a copy of his intended billing, together with supporting affidavits and all other necessary documentation, to the Comptroller's named contract manager. The contract manager shall have 10 business days from receipt to review the billings, affidavit, and documentation for completeness and compliance with contractual and statutory requirements. If the contract manager objects to any portion of the proposed billing, the objection and reasons therefor shall be communicated to the assigned counsel. The assigned counsel may thereafter file his or her motion for order approving payment of attorney's fees, costs, or related expenses together with supporting affidavits and all other necessary documentation. The motion must specify whether the Comptroller's contract manager objects to any portion of the billing or the sufficiency of documentation and, if so, the reason therefor. A copy of the motion and attachments shall be served on the Comptroller's contract manager, who shall have standing to file pleadings and appear before the court to contest any motion for order approving payment. The fact that the Comptroller's contract manager has not objected to any portion of the billing or to the sufficiency of the documentation is not binding on the court, which retains primary authority and responsibility for determining the reasonableness of all billings for fees, costs, and related expenses, subject to statutory limitations.

Section 17. Section 924.395, Florida Statutes, is created to read:

924.395 Sanctions.—

(1) The Legislature strongly encourages the courts, through their inherent powers and pursuant to this section, to impose sanctions against any

person within the court's jurisdiction who is found by a court, in a capital postconviction proceeding or appeal therefrom, to have:

(a) Abused a petition for extraordinary relief, postconviction motion, or appeal therefrom;

(b) Raised a claim that a court has found to be frivolous or procedurally barred or that should have been raised on the direct appeal;

(c) Improperly withheld evidence or testimony; or

(d) Adversely affected the orderly administration of justice.

(2) Sanctions the court may and should consider, when applicable and appropriate in a case, include, but are not limited to:

(a) Dismissal of a pleading;

(b) Disciplinary sanctions;

(c) A fine; and

(d) Any other sanction that is available to the court under its inherent powers.

Section 18. Section 922.108, Florida Statutes, is created to read:

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

Section 19. Paragraph (b) of subsection (6) of section 924.051, Florida Statutes, is repealed.

Section 20. The Legislature finds that centralized case management of capital postconviction actions has the potential to reduce delays and should be considered. The Legislature requests that the Florida Supreme Court study the feasibility of a requirement that all capital postconviction actions be filed in the Florida Supreme Court as proposed by a member of the Supreme Court Committee on Postconviction Relief in Capital Cases (Morris Committee). The Legislature recognizes that such a reform may substantially enhance judicial efficiency and may initially necessitate additional workload funding. If the Supreme Court finds that centralized case management is a more efficient model, the Court shall estimate the implementation costs. The Legislature requests that the Court submit any recommendation to the Governor, the Senate, and the House of Representatives before January 1, 2001.

Section 21. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 22. This act shall take effect upon becoming a law, but section 10 shall take effect only if this act is passed by the affirmative vote of two-thirds of the membership of each house of the Legislature.

Approved by the Governor January 14, 2000.

Filed in Office Secretary of State January 14, 2000.