

## CHAPTER 2013-216

### Committee Substitute for Committee Substitute for House Bill No. 7083

An act relating to the death penalty; providing a short title; amending s. 27.5304, F.S.; requiring funds used to compensate court-appointed attorneys who represent a person convicted and sentenced to death in clemency proceedings to be paid by the Justice Administrative Commission rather than the Department of Corrections; amending s. 27.701(2), F.S.; repealing a pilot project using registry attorneys to provide capital collateral counsel services in the northern region of the Capital Collateral Regional Counsel; amending s. 27.702, F.S.; removing language requiring the capital collateral regional counsel to only file postconviction actions authorized by statute; amending s. 27.703, F.S.; prohibiting the capital collateral regional counsel and replacement regional counsel from accepting an appointment or taking an action that creates an actual conflict of interest; describing actual conflict of interest; amending s. 27.704, F.S.; requiring attorneys who contract with the capital collateral regional counsel to meet certain criteria; creating s. 27.7045, F.S.; prohibiting an attorney from representing a person charged with a capital offense in specified proceedings for 5 years if in two separate instances a court, in a capital postconviction proceeding, determined that the attorney provided constitutionally deficient representation and relief was granted; amending s. 27.7081, F.S.; providing definitions; establishing procedures for public records production in postconviction capital cases proceedings; amending s. 27.710, F.S.; requiring private registry attorneys appointed by the court to represent persons in postconviction capital proceedings to contract with the Justice Administrative Commission rather than the Chief Financial Officer; specifying that the Justice Administrative Commission is the contract manager; requiring the Justice Administrative Commission to approve uniform contract forms and procedures; amending s. 27.711, F.S.; replacing references to the "Chief Financial Officer" with "Justice Administrative Commission" for purposes of paying private registry attorneys appointed by the court to represent persons in postconviction capital proceedings; permitting private registry attorneys appointed by the court to represent persons in postconviction capital proceedings to represent no more than ten, rather than five, defendants in capital postconviction litigation at any one time; amending s. 922.095, F.S.; requiring persons convicted and sentenced to death to pursue all possible collateral remedies in state court in accordance with the Florida Rules of Criminal Procedure rather than in accordance with statute; amending s. 922.052, F.S.; requiring the sheriff to send the record of a person's conviction and death sentence to the clerk of the Florida Supreme Court; requiring the clerk of the Florida Supreme Court to inform the Governor in writing certifying that a person convicted and sentenced to death meets certain criteria; requiring the Governor to issue a warrant within 30 days of receiving the clerk's letter of certification in all cases where the executive

clemency process has concluded directing the warden to execute the sentence within 180 days; authorizing the Governor to sign a warrant of execution if the clerk of the Florida Supreme Court does not comply; amending s. 924.055, F.S.; removing obsolete language requiring capital postconviction motions to be filed in accordance with statute; requiring capital postconviction motions to be filed in accordance with the Florida Rules of Criminal Procedure; amending s. 924.056, F.S.; requiring the Supreme Court to annually report certain information regarding capital postconviction cases to the Legislature; requiring courts to report specified findings of ineffective assistance of counsel to The Florida Bar; amending s. 924.057, F.S.; providing legislative intent regarding postconviction proceedings in capital cases; repealing ss. 924.058, 924.059, and 924.395, F.S., relating to postconviction capital case proceedings; providing severability; providing an appropriation; providing an effective date.

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

Section 1. This act may be cited as the “Timely Justice Act of 2013.”

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

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

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

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

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

27.701 Capital collateral regional counsel.—

(1) There are created three regional offices 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 be, and must have been for the preceding 5 years, a member in good standing of The Florida Bar or a similar organization in another state. Each capital collateral regional counsel 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. Vacancies in the office of capital collateral regional counsel shall be filled in the same manner as appointments. A person appointed as a regional counsel may not run for or accept appointment to any state office for 2 years following vacation of office.

~~(2) Notwithstanding the provisions of subsection (1), the responsibilities of the regional office of capital collateral counsel for the northern region of the state shall be met through a pilot program using only attorneys from the registry of attorneys maintained pursuant to s. 27.710. Each attorney participating in the pilot must be qualified to provide representation in federal court. The Auditor General shall schedule a performance review of the pilot program to determine the effectiveness and efficiency of using attorneys from the registry compared to the capital collateral regional counsel. The review, at a minimum, shall include comparisons of the timeliness and costs of the pilot and the counsel and shall be submitted to the President of the Senate and the Speaker of the House of Representatives by January 30, 2007. The Legislature may determine whether to convert the pilot program to a permanent program after receipt of the Auditor General's review.~~

Section 4. Subsection (1) and paragraph (b) of subsection (4) of section 27.702, Florida Statutes, are 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 counsel's offices shall function independently and be separate budget entities, and the regional counsel 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 counsel. 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.

(4)

(b) Each capital collateral regional counsel ~~and each attorney participating in the pilot program in the northern region pursuant to s. 27.701(2)~~ shall provide a quarterly report to the President of the Senate and the Speaker of the House of Representatives 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 5. Section 27.703, Florida Statutes, is 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 an actual a conflict of interest. If, at any time during the representation of a person, the capital collateral regional counsel alleges ~~determines~~ that the continued representation of that person creates an actual a conflict of interest, the sentencing court shall, upon determining that an actual conflict exists upon application by the regional counsel, designate another regional counsel. If the replacement regional counsel alleges that an actual conflict of interest exists, the sentencing court shall, upon determining that an actual conflict exists and, only if a conflict exists with the other two counsel, appoint one or more members of The Florida Bar who meet the requirements of s. 27.704(2) and who are not disqualified pursuant to s. 27.7045 to represent the person one or more of such persons. An actual conflict of interest exists when an attorney actively represents conflicting interests. A possible, speculative, or merely hypothetical conflict is insufficient to support an allegation that an actual conflict of interest exists.

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

(3) Capital collateral regional ~~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, and must not be disqualified pursuant to s. 27.7045.

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

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

(1) Appoint, employ, and establish, in such numbers as he or she determines, full-time or part-time assistant counsel, 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

not be disqualified pursuant to s. 27.7045; must be a member in good standing of The Florida Bar, with not less than 3 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 not be disqualified pursuant to s. 27.7045; must have at least 3 years' experience in the practice of criminal law; and, prior to the contract, must have participated in at least two capital trials or capital sentencing proceedings ~~five felony jury trials~~, five felony appeals, or five capital postconviction evidentiary hearings, or any combination of at least five of such proceedings.

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

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

27.7045 Capital case proceedings; constitutionally deficient representation.—Notwithstanding another provision of law, an attorney employed by the state or appointed pursuant to s. 27.711 may not represent a person charged with a capital offense at trial or on direct appeal or a person sentenced to death in a postconviction proceeding if, in two separate instances, a court, in a capital postconviction proceeding, determined that such attorney provided constitutionally deficient representation and relief was granted as a result. This prohibition on representation shall be for a period of 5 years, which commences at the time relief is granted after the highest court having jurisdiction to review the deficient representation determination has issued its final order affirming the second such determination.

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

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

27.7081 Capital postconviction public records production.—

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

(a) “Agency” has the same meaning as provided in s. 119.011.

(b) “Collateral counsel” means a capital collateral regional counsel from one of the three regions in Florida, a private attorney who has been appointed to represent a capital defendant for postconviction litigation, or a private attorney who has been hired by the capital defendant or who has agreed to work pro bono for a capital defendant for postconviction litigation.

(c) “Public records” has the same meaning as provided in s. 119.011.

(d) “Trial court” means:

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

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

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

(4) FILING AND SERVICE.—

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

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

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

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

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

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

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

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

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

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

(a) Within 15 days after receipt of a written notice of the mandate from the Attorney General, the state attorney shall provide written notification to each law enforcement agency involved in the specific case to submit public records to the records repository within 90 days after receipt of written notification. A copy of the notice shall be served upon the defendant’s trial counsel.

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

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

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

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

(7) EXEMPT OR CONFIDENTIAL PUBLIC RECORDS.—

(a) Public records delivered to the records repository pursuant to this section that are confidential or exempt from the requirements of s. 119.07(1) or s. 24(a), Art. I of the State Constitution, must be separately contained, without being redacted, and sealed. The outside of the container must clearly



identify that the public record is confidential or exempt and that the seal may not be broken without an order of the trial court. The outside of the container must identify the nature of the public records and the legal basis for the exemption.

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

(8) DEMAND FOR ADDITIONAL PUBLIC RECORDS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Compel or deny disclosure of records.

(b) Conduct an inspection in camera.

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

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

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

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

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

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

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

(13) DESTRUCTION OF RECORDS.—Sixty days after a capital sentence is carried out, after a defendant is released from incarceration after the granting of a pardon or reversal of the sentence, or after a defendant has been resentenced to a term of years, the Attorney General shall provide written notification of this occurrence to the Secretary of State. After the expiration of the 60 days, the Secretary of State may destroy the copies of the records held by the records repository that pertain to that case, unless an objection to the destruction is filed in the trial court and served upon the Secretary of State. If no objection is served within the 60-day period, the records may then be destroyed. If an objection is served, the records shall not be destroyed until a final disposition of the objection.

Section 9. Subsections (3) and (4) 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.—

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

(4) Each private attorney who is appointed by the court to represent a capital defendant must enter into a contract with the Justice Administrative Commission ~~Chief Financial Officer~~. 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 shall notify the trial court. The Justice Administrative Commission ~~Chief Financial Officer~~ shall ~~develop the form of the contract,~~ function as contract manager, and enforce performance of the terms and conditions of the contract. The Justice Administrative Commission shall approve uniform contract forms for use in procuring the services of private court-appointed counsel and uniform procedures and forms for use by a court-appointed attorney in support of billing for attorney fees, costs, and related expenses to demonstrate attorney completion of specified duties. 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.

Section 10. Subsections (3), (4), (5), (6), (7), (9), (12), (13), and (14) of section 27.711, Florida Statutes, are amended 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. ~~An attorney may not be compensated under this section for work performed by the attorney before July 1, 2003, while employed by the northern regional office of the capital collateral counsel.~~ The Justice Administrative Commission ~~Chief Financial Officer~~ 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.

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

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

(b) The attorney is entitled to \$100 per hour, up to a maximum of \$20,000, after timely filing in the trial court the capital defendant's complete original motion for postconviction relief under the Florida Rules of Criminal Procedure. The motion must raise all issues to be addressed by the trial court. However, an attorney is entitled to fees under this paragraph if the court schedules a hearing on a matter that makes the filing of the original motion for postconviction relief unnecessary or if the court otherwise disposes of the case.

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

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

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

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

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

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

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

(5) An attorney who represents a capital defendant may use the services of one or more investigators to assist in representing a capital defendant. Upon approval by the trial court, the attorney is entitled to payment from the Justice Administrative Commission ~~Chief Financial Officer~~ of \$40 per hour,

up to a maximum of \$15,000, for the purpose of paying for investigative services.

(6) An attorney who represents a capital defendant is entitled to a maximum of \$15,000 for miscellaneous expenses, such as the costs of preparing transcripts, compensating expert witnesses, and copying documents. Upon approval by the trial court, the attorney is entitled to payment by the Justice Administrative Commission Chief Financial Officer of up to \$15,000 for miscellaneous expenses, except that, if the trial court finds that extraordinary circumstances exist, the attorney is entitled to payment in excess of \$15,000.

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

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

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

(13) ~~Before~~ ~~Prior to~~ the filing of a motion for order approving payment of ~~attorney~~ 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 Justice Administrative Commission Chief Financial Officer's ~~named contract manager~~. The Justice Administrative Commission shall review the intended billing. ~~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 Justice Administrative Commission ~~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~~ attorney's fees, costs, or related expenses together with supporting affidavits and all other necessary documentation. The motion must specify whether the Justice Administrative Commission Chief Financial Officer'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

~~motions and attachments shall be served on the Justice Administrative Commission at least 5 business days before the date of a hearing. The Justice Administrative Commission has standing to appear before the court to contest any motion for an order approving payment of attorney fees, costs, or related expenses and may participate in a hearing on the motion by use of telephonic or other communication equipment. A copy of the motion and attachments shall be served on the Chief Financial Officer'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 Justice Administrative Commission Chief Financial Officer'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.~~

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

Section 11. 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 in state court in accordance with the Florida Rules of Criminal Procedure within the time limits provided by statute. Failure to seek relief within the statutory time limits 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 12. Section 922.052, Florida Statutes, is amended to read:

~~922.052 Issuance of warrant of execution.—~~

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

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

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

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

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

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

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

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

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

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 as soon as possible ~~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 Florida Rules of Criminal Procedure 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 14. Section 924.056, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 924.056, F.S., for present text.)



924.056 Capital postconviction proceedings; reporting requirements.—

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

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

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

(Substantial rewording of section. See s. 924.057, F.S., for present text.)

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

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

Section 17. If a provision of this act or the application thereof to a 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 18. Effective July 1, 2013, four full-time equivalent positions with associated salary and rate of 220,000 are authorized and \$417,338 in recurring funds from the General Revenue Fund and \$14,832 in nonrecurring general revenue is appropriated to the Justice Administration

Commission for the creation of the northern region office of the Capital Collateral Regional Counsel as provided in this act.

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

Approved by the Governor June 14, 2013.

Filed in Office Secretary of State June 14, 2013.