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# **Criminal Justice Subcommittee**

**February 7, 2013**

**2:00 PM**

**404 HOB**

REVISED

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Criminal Justice Subcommittee

**Start Date and Time:** Thursday, February 07, 2013 02:00 pm  
**End Date and Time:** Thursday, February 07, 2013 04:30 pm  
**Location:** 404 HOB  
**Duration:** 2.50 hrs

**Consideration of the following bill(s):**

HB 119 Searches and Seizures by Workman  
HB 191 Theft of Utility Services by Raulerson  
HB 4005 Death Penalty by Rehwinkel Vasilinda

Workshop on proposed legislation relating to postconviction capital case proceedings.

**NOTICE FINALIZED on 01/31/2013 16:16 by hudson.jessica**



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 119 Searches and Seizures  
**SPONSOR(S):** Workman  
**TIED BILLS:** IDEN./SIM. **BILLS:** CS/SB 92

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Jones <i>LTS</i>	Cunningham <i>AW</i>
2) Local & Federal Affairs Committee			
3) Judiciary Committee			

### SUMMARY ANALYSIS

The bill creates the "Freedom from Unwarranted Surveillance Act" (Act) which prohibits a law enforcement agency from using a drone to collect evidence or other information.

The bill provides an exception that allows drones to be used if the United States Secretary of Homeland Security determines that there is credible intelligence to indicate a high risk terrorist attack by a specific individual or organization.

Evidence gathered in violation of the Act is inadmissible in a criminal prosecution in any state court. The bill allows for a civil action to be brought against a law enforcement agency who violates the Act. The bill defines the terms "drone" and "law enforcement agency".

The bill may have a negative fiscal impact on state and local expenditures if a law enforcement agency violates the Act and is subject to the civil penalties provided.

The bill becomes effective July 1, 2013.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Drones

Drones, also known as Unmanned Aircraft Systems (UAS), are unmanned aircraft that can be flown by remote control or on a predetermined flight path.<sup>1</sup> The size of a drone varies - they can be as small as an insect and as large as a jet.<sup>2</sup> Drones can be equipped with various devices such as infrared cameras,<sup>3</sup> license plate readers,<sup>4</sup> and "ladar" (laser radar).<sup>5</sup> It has been reported that in 2011, the U.S. Army contracted with two corporations to develop facial recognition and behavioral recognition technologies for drone use.<sup>6</sup>

There are three major markets for drones: military, civil government and commercial.<sup>7</sup> Drones have recently gained national attention for their military use abroad in Afghanistan and Pakistan. The majority of drones are operated by the military and have a small impact on U.S. airspace.<sup>8</sup> However, drone use in the U.S. is increasing because of technological advances.<sup>9</sup> In 2010, the Federal Aviation Administration (FAA) estimated that there will be 30,000 drones in U.S. airspace within the next twenty years.<sup>10</sup>

##### **Non-Military Drone Use**

The FAA, which first allowed drones in U.S. airspace in 1990, is in charge of overseeing the integration of drones into U.S. airspace.<sup>11</sup> In doing so, it has to balance the integration of drones and the safety of the nation's airspace.<sup>12</sup> To safeguard the U.S. airspace, the FAA limits drone use to public interest missions such as fighting fires, search and rescue, scientific research, and environmental monitoring by NASA and NOAA.<sup>13</sup> In 2004, the U.S. Customs and Border Patrol (Border Patrol) began utilizing drones to monitor the borders.<sup>14</sup> In 2010, the Border Patrol expanded its use of drones to monitor Florida's shorelines.<sup>15</sup> The FAA has also limited the type of airspace that drones are able to operate in. Currently drones are not allowed to operate in Class B airspace, which is the airspace over the major urban areas and where the largest amount of manned aircraft is flown in the U.S.<sup>16</sup>

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<sup>1</sup> *Drones in Domestic Surveillance Operations*, Congressional Research Service, September 6, 2012, [www.fas.org/sgp/crs/natsec/R42701.pdf](http://www.fas.org/sgp/crs/natsec/R42701.pdf) (last visited on January 28, 2013).

<sup>2</sup> See CRS Report R42136. *U.S. Unmanned Aerial Systems*, Jeremiah Gertler.

<sup>3</sup> *US Army unveils 1.8 gigapixel camera helicopter drone*, BBC NEWS, December 29, 2011, <http://www.bbc.com/news/technology-16358851> (last visited on January 28, 2013).

<sup>4</sup> See *Draganflyer X6, Thermal Infrared Camera*, <http://www.draganfly.com/uav-helicopter/draganflyer-x6/features/flir-camera.php> (last visited on January 28, 2013).

<sup>5</sup> *Unmanned Aerial Vehicles Support Border Security*, Customs and Border Protection Today, July 2004, [www.cbp.gov/xp/CustomsToday/2004/Aug/other/aerial\\_vehicles.xml](http://www.cbp.gov/xp/CustomsToday/2004/Aug/other/aerial_vehicles.xml) (last visited on January 28, 2013).

<sup>6</sup> *Army Developing Drones That Can Recognize Your Face From a Distance And even recognize you intentions*, Clay Dillow, Popular Science, September 28, 2011, <http://www.popsci.com/technology/article/2011-09/army-wants-drones-can-recognize-your-face-and-read-your-mind> (last visited on January 28, 2013).

<sup>7</sup> Federal Aviation Administration, *FAA Aerospace Forecast: Fiscal Years 2010-2030* at 48 (2010).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Public Law 112-95, February 14, 2012, The FAA Modernization and Reform Act of 2012; FAA Fact Sheet, *Unmanned Aircraft Systems*, December 14, 2012, [http://www.faa.gov/news/fact\\_sheets/news\\_story.cfm?newsId=14153](http://www.faa.gov/news/fact_sheets/news_story.cfm?newsId=14153) (last visited on January 28, 2013).

<sup>12</sup> FAA Fact Sheet, *Unmanned Aircraft Systems*, December 14, 2012, [http://www.faa.gov/news/fact\\_sheets/news\\_story.cfm?newsId=14153](http://www.faa.gov/news/fact_sheets/news_story.cfm?newsId=14153) (last visited on January 28, 2013).

<sup>13</sup> *Id.*

<sup>14</sup> *Supra* note 5.

<sup>15</sup> *Space Florida Probing Drone's Future Potential*, Howard Altman, Tampa Bay Online, August 5, 2012.

<http://www2.tbo.com/news/breaking-news/2012/aug/05/space-florida-probing-drones-future-potential-ar-453511/> (last visited on January 18, 2013).

<sup>16</sup> *Supra* note 7.

FAA approval is necessary to operate a drone for non-military purposes and there are two ways to receive approval.<sup>17</sup> The first is to receive a private sector experimental airworthiness certificate that allows for research, development, training, and flight demonstrations.<sup>18</sup> The second is to obtain a Certificate of Waiver of Authorization (COA) which allows public entities, including governmental agencies, to fly drones in civil airspace.<sup>19</sup> An agency seeking a COA must apply online and detail the proposed operation for the drone.<sup>20</sup> If the FAA issues a COA it contains a stated time period, usually two years, a certain block of airspace for the drone, and other special provisions unique to the specific operation.<sup>21</sup> As of November 2012, there were 345 active COAs.<sup>22</sup>

### **FAA Modernization Reform Act of 2012**

In February 2012, Congress passed the FAA Modernization Reform Act (Reform Act) which requires the FAA to safely integrate drones into U.S. airspace by September 2015.<sup>23</sup> The Reform Act authorizes the FAA to allow government public safety agencies to operate drones under certain restrictions and made the process for approving authorization requests more efficient.<sup>24</sup> The restrictions are that drones must be flown within the line of sight of the operator, less than 400 feet above the ground, during daylight conditions, inside Class G (uncontrolled) airspace, and more than five miles from any airport or other location with aviation activities.<sup>25</sup> The Reform Act also instructs the FAA to develop operation standards and certification criteria for drones and conduct studies concerning the safe use of drones.<sup>26</sup>

The FAA has had some issues implementing the Reform Act. It has delayed the selection of six drone safety testing sites, mandated by the Reform Act, because of privacy concerns with integrating drones into U.S. airspace.<sup>27</sup> In a letter to Congressional Unmanned Systems Caucus, FAA acting chief Michael Huerta addressed the delay and said the "...[I]ncreasing the use of UAS [drones] in our airspace also raises privacy issues, and these issues will need to be addressed as unmanned aircraft are safely integrated."<sup>28</sup> The Reform Act does not address the privacy concerns and it is not clear if the FAA will attempt to remedy these issues through drone operational standards or studies required by Reform Act.<sup>29</sup>

In response to the Reform Act, U.S. Senator Rand Paul filed legislation entitled "Preserving Freedom from Unwarranted Surveillance Act of 2012."<sup>30</sup> Senator Paul's legislation, which is essentially identical to the bill, did not become law.<sup>31</sup>

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<sup>17</sup> *Supra* note 12.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Public Law 112-95, February 14, 2012, The FAA Modernization and Reform Act of 2012; *Drones in Domestic Surveillance Operations*, Congressional Research Service, September 6, 2012, [www.fas.org/sgp/crs/natsec/R42701.pdf](http://www.fas.org/sgp/crs/natsec/R42701.pdf) (last visited on January 28, 2013).

<sup>24</sup> Public Law 112-95, February 14, 2012, The FAA Modernization and Reform Act of 2012; *FAA Makes Progress with UAS Integration*, Federal Aviation Administration, May 14, 2012, [www.faa.gov/news/updates/?newsId=68004](http://www.faa.gov/news/updates/?newsId=68004) (last visited on January 28, 2013).

<sup>25</sup> Public Law 112-95, February 14, 2012, The FAA Modernization and Reform Act of 2012.

<sup>26</sup> *Id.*

<sup>27</sup> Public Law 112-95, February 14, 2012, The FAA Modernization and Reform Act of 2012; *FAA Going Slow on Drones as Privacy Concerns Studied*, Alan Levine, Bloomberg, November 26, 2012, <http://go.bloomberg.com/political-capital/2012-11-26/faa-going-slow/> (last visited on January 22, 2013).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Preserving Freedom from Unwarranted Surveillance Act of 2012*, S.3287, H.R. 5925.

<sup>31</sup> Govtrack.us <http://www.govtrack.us/congress/bills/112/s3287> (last visited on January 24, 2013).

## **Drone use by Law Enforcement Agencies in Florida**

The Miami-Dade Police Department, Orange County Sheriff's Office and Polk County Sheriff's Office are the three law enforcement agencies in Florida that have obtained a COA from the FAA and purchased drones.<sup>32</sup>

- The Miami-Dade Police Department's COA became effective on July 1, 2011. Their drones have not been flown in an actual operation.<sup>33</sup>
- The Polk County Sheriff's Office determined that the drone was too expensive to train pilots and operate so they have discontinued the use of the drone.<sup>34</sup>
- The Orange County Sheriff's Office is currently is only experimenting with the drones.<sup>35</sup> The Orange County Sheriff's Office needs permission from the Orange County Commission before the drones can be put to use and hopes to launch the drones by the summer of 2013.<sup>36</sup>

Several Police Chiefs who do not have COAs and who have not started drone testing have indicated that drone use would benefit their agencies by reducing the risk to officers and citizens in high risk situations involving hostages, active shooters, or armed and barricaded suspects.<sup>37</sup>

### **Effect of the Bill**

The bill creates the "Freedom from Unwarranted Surveillance Act" (Act) which prohibits a law enforcement agency from using drones to collect evidence or other information.

The bill creates an exception that allows drones to be used if the United States Secretary of Homeland Security determines that there is credible intelligence to indicate a high risk terrorist attack by a specific individual or organization.

Evidence obtained in violation of the Act is inadmissible in a criminal prosecution in any state court. The bill authorizes an aggrieved party to initiate a civil action against a law enforcement agency who violates the Act to obtain all appropriate relief that will prevent or remedy the violation.

The bill provides the following definitions:

- "Drone" means a powered, aerial vehicle that:
  - Does not carry a human operator;
  - Uses aerodynamic forces to provide vehicle lift;
  - Can fly autonomously or be piloted remotely;
  - Can be expendable or recoverable; and
  - Can carry a lethal or nonlethal payload.
- "Law enforcement agency" means a lawfully established state or local public agency that is responsible for the prevention and detection of crime and the enforcement of penal, traffic, regulatory, game, or controlled substance laws.

## **B. SECTION DIRECTORY:**

Section 1. Creates an unnumbered section of statute relating to searches and seizure using a drone.

Section 2. Provides an effective date of July 1, 2013.

<sup>32</sup> FAA Drones COA, <https://www.eff.org/file/34697#page/1/mode/1up> (last visited on January 23, 2013).

<sup>33</sup> Miami-Dade Police Department Fact Sheet, Special Patrol Bureau/Aviation Unit, Micro Air Vehicle "MAV" Program, provided to Senate Committee Staff, January 8, 2013 (on file with the Criminal Justice Subcommittee Staff Attorney).

<sup>34</sup> *Central Florida Sheriff Wants to Fly Drones by the Summer*, Aero News Network, January 16, 2013, <http://www.aero-news.net/getmorefromann.cfm?do=main.textpost&id=2ee04d46-6fe7-4f65-bae5-c843dce80ab5> (last visited on January 24, 2013).

<sup>35</sup> *Orange sheriff: Drones won't be used for spying*, Dan Tracy, Orlando Sentinel, January 18, 2013, <http://www.orlandosentinel.com/news/local/breakingnews/os-orange-sheriff-drone-flies-20130118,0,6760531.story> (last visited on January 24, 2013).

<sup>36</sup> *Id.*

<sup>37</sup> Memo provided to Senate Committee Staff on December 12, 2012 by the Florida Police Chiefs Association (on file with the Criminal Justice Subcommittee Staff Attorney).

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill does not appear to have any impact on state revenues.

#### 2. Expenditures:

The bill authorizes an aggrieved party to initiate a civil action against a law enforcement agency who violates the Act to obtain all appropriate relief that will prevent or remedy the violation. The remedy could result in monetary damages, which would have a negative fiscal impact on state government expenditures.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill does not appear to have any impact on local government revenues.

#### 2. Expenditures:

The bill authorizes an aggrieved party to initiate a civil action against a law enforcement agency who violates the Act to obtain all appropriate relief that will prevent or remedy the violation. The remedy could result in monetary damages, which would have a negative fiscal impact on local government expenditures.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

#### 2. Other:

Currently, law enforcement agencies obtain a COA and use a drone as specified in the COA. Nevertheless, their drone use must be within the confines of the Fourth Amendment.

The Fourth Amendment of the United States Constitution guarantees the people in this country security in their houses, persons, papers, and possessions from unreasonable searches and seizures by government actors.<sup>38</sup> Article 1, Section 12 of the Florida Constitution contains the same guarantees; however the Florida Constitution provides more protections and specifically

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<sup>38</sup> The text of the Fourth Amendment provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.



extends the Fourth Amendment to protect private communications.

The U.S. Supreme Court has yet to hear a case that addresses the Fourth Amendment as it relates to a search conducted by a drone. However, some guidance is found in the Court's rulings in cases involving aerial searches by law enforcement officers in manned aircraft.

In *California v. Ciraolo* and *Florida v. Riley*, police received anonymous tips that marijuana was growing in the defendants' backyards.<sup>39</sup> Police were unable to see into the backyards, so they used planes to fly at altitudes of 400 and 1,000 feet over the yards and saw marijuana plants growing.<sup>40</sup> The Court held that the naked eye aerial observation of the backyards did not constitute a search and did not violate the Fourth Amendment.<sup>41</sup> Similarly, in *Dow Chemical v. United States*, the Court addressed the issue of whether "industrial curtilage" would prevent the government from conducting aerial surveillance over one of Dow's plants.<sup>42</sup> The Court again found that such aerial inspection of the plant was not a search under the Fourth Amendment.<sup>43</sup>

The Court's analysis of the Fourth Amendment and drone use would likely be analogous with manned aircraft. However, because the bill outlaws drone use except when the Secretary of Homeland Security determines that there is credible intelligence to indicate a high risk terrorist attack by a specific individual or organization, the Fourth Amendment will only apply when that exception is triggered.

**B. RULE-MAKING AUTHORITY:**

The bill does not appear to create a need for rulemaking or rulemaking authority.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

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<sup>39</sup> *California v. Ciraolo*, 476 U.S. 207 (1986); *Florida v. Riley*, 488 U.S. 445 (1989).

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Dow Chemical Company v. United States*, 476 U.S. 227 (1986).

<sup>43</sup> *Id.*

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A bill to be entitled  
 An act relating to searches and seizures; creating the  
 "Freedom from Unwarranted Surveillance Act"; defining  
 the terms "drone" and "law enforcement agency";  
 prohibiting a law enforcement agency from using a  
 drone to gather evidence or other information;  
 providing an exception; authorizing an aggrieved party  
 to initiate a civil action in order to prevent or  
 remedy a violation of the act; prohibiting use of  
 evidence obtained or collected in violation of the act  
 in any criminal prosecution in any court of law in  
 this state; providing an effective date.

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

Section 1. Searches and seizure using a drone.-

(1) SHORT TITLE.-This act may be cited as the "Freedom  
 from Unwarranted Surveillance Act."

(2) DEFINITIONS.-As used in this act, the term:

(a) "Drone" means a powered, aerial vehicle that:

- 1. Does not carry a human operator;
- 2. Uses aerodynamic forces to provide vehicle lift;
- 3. Can fly autonomously or be piloted remotely;
- 4. Can be expendable or recoverable; and
- 5. Can carry a lethal or nonlethal payload.

(b) "Law enforcement agency" means a lawfully established  
 state or local public agency that is responsible for the  
 prevention and detection of crime and the enforcement of penal,

29 traffic, regulatory, game, or controlled substance laws.

30 (3) PROHIBITED USE OF DRONES.—A law enforcement agency may  
 31 not use a drone to gather evidence or other information.

32 (4) EXCEPTIONS.—This act does not prohibit the use of a  
 33 drone to counter a high risk of a terrorist attack by a specific  
 34 individual or organization if the United States Secretary of  
 35 Homeland Security determines that credible intelligence  
 36 indicates that there is such a risk.

37 (5) REMEDIES FOR VIOLATION.—An aggrieved party may  
 38 initiate a civil action against a law enforcement agency to  
 39 obtain all appropriate relief in order to prevent or remedy a  
 40 violation of this act.

41 (6) PROHIBITION ON USE OF EVIDENCE.—Evidence obtained or  
 42 collected in violation of this act is not admissible as evidence  
 43 in a criminal prosecution in any court of law in this state.

44 Section 2. This act shall take effect July 1, 2013.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 119 (2013)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

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1 Committee/Subcommittee hearing bill: Criminal Justice  
2 Subcommittee

3 Representative Workman offered the following:

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5 **Amendment**

6 Remove line 28 and insert:

7 prevention and detection of crime, local government code  
8 enforcement, and the enforcement of penal,

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	_____	(Y/N)
ADOPTED AS AMENDED	_____	(Y/N)
ADOPTED W/O OBJECTION	_____	(Y/N)
FAILED TO ADOPT	_____	(Y/N)
WITHDRAWN	_____	(Y/N)
OTHER		

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1 Committee/Subcommittee hearing bill: Criminal Justice  
 2 Subcommittee

3 Representative Workman offered the following:

**Amendment (with title amendment)**

6 Remove lines 32-36 and insert:

7 (4) EXCEPTIONS.—This act does not prohibit the use of a  
 8 drone:

9 (a) To counter a high risk of a terrorist attack by a  
 10 specific individual or organization if the United States  
 11 Secretary of Homeland Security determines that credible  
 12 intelligence indicates that there is such a risk.

13 (b) If the law enforcement agency first obtains a search  
 14 warrant signed by a judge authorizing the use of a drone.

15 (c) If the law enforcement agency possesses reasonable  
 16 suspicion that under particular circumstances, swift action is  
 17 needed to prevent imminent danger to life or serious damage to  
 18 property or to forestall the imminent escape of a suspect or the  
 19 destruction of evidence.

Amendment No. 2

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**T I T L E   A M E N D M E N T**

Remove line 7 and insert:  
providing exceptions; authorizing an aggrieved party



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 191 Theft of Utility Services  
**SPONSOR(S):** Raulerson  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 338

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee		Jones <i>LJS</i>	Cunningham <i>gc</i>
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

**SUMMARY ANALYSIS**

Section 812.14, F.S., establishes a variety of crimes involving the theft of utilities. A violation of any of the provisions in s. 812.14, F.S., is a first degree misdemeanor.

In a civil action, if a person is found in violation of s. 812.14, F.S., they are liable to the utility entity involved for an amount equal to 3 times the amount of services unlawfully obtained or \$1,000, whichever is greater.

The bill applies the criminal penalties in the general theft statute (s. 812.014, F.S.), to the utility theft offenses in s. 812.14, F.S. The general theft statute penalties are primarily based upon the dollar value of the stolen property. However, there are some circumstances where the penalties are determined by the type of property stolen or whether certain situations are present during the theft. The bill also increases the threshold amount available in a civil action from \$1,000 to \$3,000.

The bill may have a negative prison bed impact on the Department of Corrections and a positive jail bed impact on local governments. See Fiscal Section.

The bill is effective on October 1, 2013.



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

##### Theft of Utility Services

Section 812.14, F.S., establishes a variety of crimes involving the theft of utilities.<sup>1</sup> For example, subsections (2) and (4) make it a first degree misdemeanor<sup>2</sup> for a person to:

- Willfully alter, tamper with, injure, or knowingly suffer to be injured any meter, meter seal, pipe, conduit, wire, line, cable, transformer, amplifier, or other apparatus or device belonging to a utility line service in such a manner as to cause loss or damage or to prevent any meter installed for registering electricity, gas, or water from registering the quantity which otherwise would pass through the same; to alter the index or break the seal of any such meter; in any way to hinder or interfere with the proper action or just registration of any such meter or device; or knowingly to use, waste, or suffer the waste, by any means, of electricity or gas or water passing through any such meter, wire, pipe, or fitting, or other appliance or appurtenance connected with or belonging to any such utility, after such meter, wire, pipe or fitting, or other appliance or appurtenance has been tampered with, injured, or altered;
- Make or cause to be made any connection with any wire, main, service pipe or other pipes, appliance, or appurtenance in such manner as to use, without the consent of the utility, any service or any electricity, gas, or water, or to cause to be supplied any service or electricity, gas, or water from a utility to any person, firm, or corporation or any lamp, burner, orifice, faucet, or other outlet whatsoever, without such service being reported for payment or such electricity, gas, or water passing through a meter provided by the utility and used for measuring and registering the quantity of electricity, gas, or water passing through the same; or
- Use or receive the direct benefit from the use of a utility knowing, or under such circumstances as would induce a reasonable person to believe, that such direct benefits have resulted from any tampering with, altering of, or injury to any connection, wire, conductor, meter, pipe, conduit, line, cable, transformer, amplifier, or other apparatus or device owned, operated, or controlled by such utility, for the purpose of avoiding payment.<sup>3</sup>

Subsections (5) and (7) make it a first degree misdemeanor for a person or entity that owns, leases, or subleases a property to permit a tenant or occupant to use utility services knowing, or under such circumstances as would induce a reasonable person to believe, that such utility services have been connected in violation any of the above stated provisions.<sup>4</sup>

Subsection (8) makes theft of utility services for the purpose of facilitating the manufacture of a controlled substance<sup>5</sup> a first degree misdemeanor.<sup>6</sup>

In a civil action, if a person is found in violation of s. 812.14, F.S., they are liable to the utility entity involved for an amount equal to 3 times the amount of services unlawfully obtained or \$1,000, whichever is greater.

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<sup>1</sup> "Utility" is defined in s. 812.14, F.S., as any person, firm, corporation, association, or political subdivision, whether private, municipal, county, or cooperative, which engaged in the sale, generation, provision, or delivery of gas, electricity, heat, water, oil, sewer service, telephone service, telegraph service, radio service, or telecommunication service.

<sup>2</sup> A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

<sup>3</sup> Section 812.14(2)(a)-(c) and (4), F.S.

<sup>4</sup> Section 812.14(5) and (7), F.S.

<sup>5</sup> Section 893.02(4), F.S., defines "controlled substance" as any substance named or described in Schedules I-V of s. 893.03, F.S.

<sup>6</sup> Section 812.14(8), F.S.

## Theft

The criminal penalties under the general theft statute (s. 812.014, F.S.), are primarily based upon the dollar value of the stolen property.<sup>7</sup> Section 812.014, F.S., provides:

- If the stolen property is valued at \$100,000 or more, the offense is a first degree felony.<sup>8</sup>
- If the stolen property is valued between \$20,000 and \$100,000, the offense is a second degree felony.<sup>9</sup>
- If the stolen property is valued between \$300 and \$20,000, the offense is a third degree felony.<sup>10</sup>
- If the stolen property is valued between \$100 and \$300, the offense is a first degree misdemeanor.
- If the stolen property is under \$100, the offense is a second degree misdemeanor.<sup>11</sup>

In certain instances the theft statute imposes criminal penalties that are not solely based on value. For example, stealing a fire extinguisher is a third degree felony no matter the value of the fire extinguisher.<sup>12</sup> Stealing law enforcement equipment valued at \$300 or more from an emergency vehicle within a county subject to a state of emergency where the theft is facilitated by the emergency is a first degree felony.<sup>13</sup>

### **Effect of the Bill**

The bill applies the criminal penalties in the general theft statute (s. 812.014, F.S.), to the utility theft offenses in s. 812.14, F.S.

The bill also increases the threshold amount available in a civil action from \$1,000 to \$3,000.

## **B. SECTION DIRECTORY:**

Section 1. Amends s. 812.14, F.S., relating to trespass and larceny with relation to utility fixtures; theft of utility services.

Section 2. Provides an effective date of October 1, 2013.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

The bill does not appear to have any impact on state revenues.

#### **2. Expenditures:**

The Criminal Justice Impact Conference has not yet met to determine the prison bed impact of the bill. However, the bill applies the criminal penalties in the general theft statute (s. 812.014, F.S.), to the utility theft offenses in s. 812.14, F.S. Because this could make what is currently a first degree misdemeanor a felony, it may have a negative prison bed impact on the Department of Corrections.

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<sup>7</sup> See generally, s. 812.014, F.S.

<sup>8</sup> A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>9</sup> A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

<sup>10</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

<sup>11</sup> A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Sections 775.082 and 775.083, F.S.

<sup>12</sup> See s. 812.014(2)(c)8., F.S.

<sup>13</sup> See s. 812.014(2)(b)4., F.S.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill applies the criminal penalties in the general theft statute (s. 812.014, F.S.), to the utility theft offenses in s. 812.14, F.S. Because this could make what is currently a first degree misdemeanor either a second degree misdemeanor or a felony, this may have a positive jail bed impact on local governments.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Private utility companies may benefit because the bill increases the threshold amount available in civil actions from \$1,000 to \$3,000.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill does not appear to create a need for rulemaking or rulemaking authority.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

1                                   A bill to be entitled  
 2       An act relating to theft of utility services; amending  
 3       s. 812.14, F.S.; providing additional criminal  
 4       penalties for utility services wrongfully taken;  
 5       providing that the person who unlawfully took utility  
 6       services is liable to the utility for an increased  
 7       civil penalty subject to the amount of the utility  
 8       services unlawfully obtained; providing an effective  
 9       date.

10  
 11   Be It Enacted by the Legislature of the State of Florida:

12  
 13           Section 1. Subsections (4), (7), (8), and (10) of section  
 14   812.14, Florida Statutes, are amended to read:

15           812.14 Trespass and larceny with relation to utility  
 16   fixtures; theft of utility services.—

17           (4) A ~~Any~~ person who willfully violates paragraph (2)(a),  
 18   paragraph (2)(b), or paragraph (2)(c) commits theft a  
 19   ~~misdemeanor of the first degree~~, punishable as provided in s.  
 20   812.014 ~~s. 775.082 or s. 775.083~~.

21           (7) A person who willfully violates subsection (5) commits  
 22   a misdemeanor of the first degree, punishable as provided in s.  
 23   775.082 or s. 775.083. Prosecution for a violation of subsection  
 24   (5) does not preclude prosecution for theft pursuant to ~~under~~  
 25   subsection (8) or s. 812.014.

26           (8) Theft of utility services for the purpose of  
 27   facilitating the manufacture of a controlled substance is theft  
 28   ~~a misdemeanor of the first degree~~, punishable as provided in s.

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29 | 812.014 ~~s. 775.082 or s. 775.083.~~

30 |       (10) Whoever is found in a civil action to have violated  
31 | ~~the provisions of~~ this section is liable to the utility involved  
32 | in an amount equal to 3 times the amount of services unlawfully  
33 | obtained or \$3,000 ~~\$1,000~~, whichever is greater.

34 |       Section 2. This act shall take effect October 1, 2013.



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 4005 Death Penalty
SPONSOR(S): Rehwinkel Vasilinda and others
TIED BILLS: IDEN./SIM. BILLS:

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR or BUDGET/POLICY CHIEF. Row 1: 1) Criminal Justice Subcommittee, Cunningham, Cunningham.

SUMMARY ANALYSIS

In 1972, the United States Supreme Court decided Furman v. Georgia, which struck down all of the then-existing death penalty statutes in the United States on grounds that the imposition and carrying out of the death penalty constituted cruel and unusual punishment.

Florida is currently one of 33 states that impose the death penalty. As of January 28, 2013, there were 405 people on death row in Florida – more than any other state aside from California.

In recent years, the states that impose the death penalty appear to be doing so more sparingly. In 2012, the number of new death sentences (77) was the second lowest since the death penalty was reinstated in 1976.

The bill abolishes the death penalty and specifies that a capital felony is punishable by life imprisonment. The bill amends or repeals a multitude of statutes that reference the death penalty and that are tied to the death penalty process.

Due to the nuances of capital cases and the multitude of agencies and personnel involved (e.g., judges, clerks, public defenders, registry attorneys, Capital Collateral Regional Counsel, Department of Corrections, Attorney General, etc.), it is difficult to precisely quantify the costs associated with Florida's death penalty system.

The bill is effective July 1, 2013.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Death Row - Background**

In 1972, the United States Supreme Court decided *Furman v. Georgia*, which struck down all of the then-existing death penalty statutes in the United States on grounds that the imposition and carrying out of the death penalty constituted cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments.<sup>1</sup>

Florida was the first state to reenact a death penalty statute in the wake of *Furman*. This was done in the fall of 1972, when House Bill 1-A was passed during a Special Session of the Legislature.<sup>2</sup> While many statutory changes have been made over the years, this legislation formed the basis for Florida's current death penalty scheme.

#### **Florida's Current Death Penalty Scheme**

##### Capital Felonies

Currently, capital felonies in Florida include:

- Section 782.04(1)(a), F.S. (first degree murder);
- Section 790.161(4), F.S. (willfully and unlawfully making, possessing, throwing, projecting, placing, discharging, or attempting to make, possess, throw, project, place, or discharge any destructive device when the act results in the death of another person);
- Section 790.166(2), F.S. (unlawfully manufacturing, possessing, selling, delivering, sending, mailing, displaying, using, threatening to use, attempting to use, or conspiring to use, or making readily accessible to others a weapon of mass destruction when the act results in the death of a person);
- Section 794.011(2)(a), F.S. (sexual battery by a person 18 years of age or older upon a person less than 12 years of age, or attempted sexual battery by a person 18 years of age or older where the attempt injures the sexual organs of a person less than 12 years of age);<sup>3</sup>
- Section 893.135(1)(b)2., F.S. (trafficking in cocaine that results in a death);
- Section 893.135(1)(b)3., F.S. (capital importation of cocaine);
- Section 893.135(1)(c)2., F.S. (trafficking in illegal drugs that results in a death);
- Section 893.135(1)(c)3., F.S. (capital importation of illegal drugs);
- Section 893.135(1)(d)2., F.S. (capital importation of phencyclidine);
- Section 893.135(1)(e)2., F.S. (capital importation of methaqualone);
- Section 893.135(1)(f)2., F.S. (capital manufacture or importation of amphetamine);
- Section 893.135(1)(g)2., F.S. (trafficking in flunitrazepam that results in a death);
- Section 893.135(1)(h)2., F.S. (capital manufacture or importation of gamma-hydroxybutyric acid);
- Section 893.135(1)(i)2., F.S. (capital manufacture or importation of gamma-butyrolactone);
- Section 893.135(1)(j)2., F.S. (capital manufacture or importation of 1,4-Butanediol);
- Section 893.135(1)(k)2., F.S. (capital manufacture or importation of Phenethylamines); and
- Section 893.135(1)(l)2., F.S. (capital manufacture or importation of lysergic acid diethylamide).

Section 775.082, F.S., requires a person convicted of a capital felony to be punished by death if the sentencing proceeding required by s. 921.141, F.S., results in a finding by the court that such person be punished by death. If the court does not make such finding, the person must be punished by life imprisonment.<sup>4</sup>

<sup>1</sup> *Furman v. Georgia*, 408 U.S. 238 (1972).

<sup>2</sup> The bill was signed by Governor Askew on December 8, 1972. Chapter 72-724, L.O.F. (1973).

<sup>3</sup> In *Buford v. State*, 403 So.2d 943 (Fla. 1981), the Florida Supreme Court held that a sentence of death was grossly disproportionate and excessive punishment for the crime of sexual battery and was forbidden by Eighth Amendment as cruel and unusual punishment. However, the offense is currently treated as a capital offense for certain purposes (e.g., to deny pretrial release).

<sup>4</sup> Section 775.081(1), F.S.



### Pretrial Process

Article I, Section 15 of the Florida Constitution requires capital felonies to be prosecuted by indictment. In order to indict an individual accused of a capital felony, a grand jury<sup>5</sup> must find that probable cause exists that the individual committed a capital offense.<sup>6</sup>

An indictment can be returned only upon the affirmative vote of at least 12 members of the grand jury.<sup>7</sup>

### Appointment of Trial Counsel

A person charged with a capital offense is eligible for appointed counsel (either a public defender<sup>8</sup> or private court-appointed counsel<sup>9</sup>) if the person is indigent<sup>10</sup> and desires representation. If eligible for representation, the accused will be appointed qualified counsel<sup>11</sup> “when the person is formally charged with an offense, or as soon as feasible after custodial restraint, or at the first appearance before a committing judge, whichever occurs earliest.”<sup>12</sup> The accused may waive their right to counsel on the record while in court or by filing a written waiver of representation.<sup>13</sup>

### Arraignment

Following the indictment, the defendant will be ordered to appear for an arraignment, at which time the court will orally inform the defendant of the charges and ask the defendant to enter a plea to the charges.<sup>14</sup> The defendant may plead guilty, not guilty, or, with consent of the court, nolo contendere.<sup>15</sup> The state has the option to file a “Notice of Intent to Seek the Death Penalty” within 45 days after the date of arraignment.<sup>16</sup> Filing this notice places the duty upon the defendant to file a “Notice of Intent to Present Expert Testimony of Mental Mitigation” at least 20 days prior to trial if the defendant intends to raise mental retardation or a mental mitigating circumstance during the penalty phase of the trial.<sup>17</sup>

Prior to the trial, attorneys for the state and defense are encouraged to discuss and agree on pleas that may be entered by the defendant.<sup>18</sup> Defendants who plead guilty without an agreement as to the sentence, proceed to the penalty phase before a jury empanelled for that purpose.<sup>19</sup> Defendants who plead not guilty proceed to trial.

### Trial – Guilt / Innocence Phase

Capital trials are heard before the circuit court and conducted in two phases: the guilt/innocence phase and, if the defendant is found guilty, the penalty phase.

Individuals charged with a capital felony have the right to a trial by jury;<sup>20</sup> however, they also possess the right to waive a jury trial with the consent of the state.<sup>21</sup> If the defendant does not waive his/her

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<sup>5</sup> A grand jury is composed of between fifteen and twenty-one individuals. Section 905.01, F.S.

<sup>6</sup> *Florida Grand Jury Instructions*, The Supreme Court Committee On Standard Jury Instructions In Criminal Cases.

<sup>7</sup> Section 905.23, F.S.

<sup>8</sup> Section 27.51, F.S. (detailing the duties of public defenders).

<sup>9</sup> Section 27.5304, F.S., (detailing the maximum fees for private court-appointed counsel who defended capital cases—the maximum payment at the trial level is \$15,000).

<sup>10</sup> An applicant is indigent if the applicant’s income is equal to or below 200 percent of the then-current federal poverty guidelines prescribed for the size of the household of the applicant by the United States Department of Health and Human Services or if the person is receiving Temporary Assistance for Needy Families–Cash Assistance, poverty-related veterans’ benefits, or Supplemental Security Income. Section 27.52(2), F.S.

<sup>11</sup> Fla. R. Crim. Proc. 3.112 (providing minimum standards for trial attorneys in capital cases).

<sup>12</sup> Fla. R. Crim. Proc. 3.111(a).

<sup>13</sup> Fla. R. Crim. Proc. 3.111(d)(4) (a written waiver must be signed by no less than two witnesses attesting that the signature was obtained voluntarily).

<sup>14</sup> Fla. R. Crim. Proc. 3.160(a).

<sup>15</sup> Fla. R. Crim. Proc. 3.170(a).

<sup>16</sup> Fla. R. Crim. Proc. 3.202(a).

<sup>17</sup> Section 921.137(3), F.S.; Fla. R. Crim. Proc. 3.202(b) and (c).

<sup>18</sup> Fla. R. Crim. Proc. 3.171(a).

<sup>19</sup> Section 921.141(1), F.S.

<sup>20</sup> Art. I, Sec. 22, Fla. Const.; Section 918.0157, F.S.; Fla. R. Crim. Proc. 3.251.

<sup>21</sup> Fla. R. Crim. Proc. 3.260.

right to a jury trial, the court, in conjunction with the state and defense, must select twelve jurors and, if deemed necessary by the court, alternate jurors.<sup>22</sup>

When selecting the jury, the court first examines the prospective jurors either individually or collectively and then the state and defense has an opportunity to examine the jurors.<sup>23</sup> The state and defense may challenge any juror for cause for reasons specified in s. 913.03, F.S. In addition, the state may exclude for cause any juror who has beliefs which preclude him or her from finding a defendant guilty of a capital offense.<sup>24</sup> The state and the defense may each peremptorily challenge<sup>25</sup> up to ten jurors.<sup>26</sup>

During the guilt/innocence phase, both the state and defense may present opening and closing arguments as well as witnesses and other types of evidence. Both sides also have the opportunity to cross-examine witnesses presented by the other side. After both sides have presented their closing arguments, the court will instruct the jury, orally and in writing, as to the law of the case.<sup>27</sup> The jury's duty is to assess the evidence presented and to determine whether the state has proven that the defendant is guilty of a capital offense beyond a reasonable doubt. If the defendant is found guilty of a capital felony, the case proceeds to the second phase of a death penalty trial, the penalty phase.

### Trial - Penalty Phase

During the penalty phase, both the judge and jury are involved in determining whether the appropriate sentence for a defendant convicted of a capital felony is life without the possibility of parole or death.<sup>28</sup> The jury's sentencing recommendation serves as an advisory sentence to the judge who ultimately makes the sentencing decision.<sup>29</sup>

The penalty phase is conducted before the trial jury unless the defendant waives his or her right to a jury.<sup>30</sup> The court may empanel a special jury to make the sentencing recommendation if a jury was waived for the guilt phase, the defendant entered a plea, or the judge is unable to reconvene the trial jury.<sup>31</sup>

During the penalty phase, the judge and the jury may hear evidence relevant to the nature of the crime and the character of the defendant, and must hear evidence specifically relating to the applicable statutory aggravating and mitigating circumstances.<sup>32</sup> Any such evidence which the court deems to have probative value may be received, regardless of its admissibility under the exclusionary rules of evidence, provided the defendant has a fair opportunity to rebut any hearsay statements.<sup>33</sup> Both the state and the defense may make opening and closing arguments, present witnesses, and cross-examine all witnesses presented by the opposing party.<sup>34</sup> Additionally, after the state has presented evidence as to the existence of one or more aggravating circumstances, it may introduce evidence about the victim's life and the effect of the victim's death on the community.<sup>35</sup>

After hearing all of the evidence, the jury must give an advisory sentence to the court based on the following:

- Whether sufficient aggravating circumstances exist;

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<sup>22</sup> Section 913.10, F.S.; Art. I, Sec. 22, Fla. Const.; Fla. R. Crim. Proc. 3.270 and 3.280(a).

<sup>23</sup> Fla. R. Crim. Proc. 3.300(b).

<sup>24</sup> Section 913.13, F.S.

<sup>25</sup> A peremptory challenge allows the plaintiff and the defendant in a jury trial to have a juror dismissed before trial without stating a reason, <http://legal-dictionary.thefreedictionary.com/peremptory+challenge> (last visited on February 1, 2013).

<sup>26</sup> Section 913.08(1)(a), F.S.; Fla. R. Crim. Proc. 3.350(a) (1) and (d) (in cases in which there are alternate jurors, each side has one additional peremptory challenge per alternate juror to be used only on alternate jurors).

<sup>27</sup> Section 918.10, F.S.; Fla. R. Crim. Proc. 3.390(a) and (b).

<sup>28</sup> Section 921.141(1), F.S.

<sup>29</sup> Section 921.141(2) and (3), F.S.

<sup>30</sup> Section 921.141(1), F.S.

<sup>31</sup> *Id.*

<sup>32</sup> Section 921.141(1), F.S.; Fla. R. Crim. Proc. 3.780(a).

<sup>33</sup> Section 921.141(1), F.S.

<sup>34</sup> Fla. R. Crim. Proc. 3.780(a) and (c).

<sup>35</sup> Section 921.141(7), F.S.

- Whether sufficient mitigating circumstances exist which outweigh the aggravating circumstances found to exist; and
- Based on those considerations, whether the defendant should be sentenced to life imprisonment or death.<sup>36</sup>

If the jury finds that the state failed to prove any aggravating circumstances beyond a reasonable doubt, that the mitigating circumstances outweigh the aggravating circumstances, or, in the absence of mitigating factors, that the aggravating factors alone do not justify a sentence of death, the jury must recommend life without the possibility of parole.<sup>37</sup> In contrast, if the jury finds that the state proved one or more of the aggravating circumstances beyond a reasonable doubt and that the mitigating circumstances do not outweigh the aggravating circumstances, or, in the absence of mitigating factors, that the aggravating factors alone are sufficient, the jury may recommend a sentence of death be imposed.<sup>38</sup> The jury is never required to recommend the death penalty.<sup>39</sup> The advisory sentence must be made by a majority vote of the jury.<sup>40</sup>

Notwithstanding the jury's recommendation, the judge, after independently weighing the aggravating and mitigating circumstances, must sentence the defendant to either life in prison or death.<sup>41</sup> In doing so, the judge must give "great weight" to the jury's advisory sentence.<sup>42</sup> In order for a judge to override a jury's verdict of life imprisonment without the possibility of parole, the facts suggesting a death sentence must be so clear and convincing that no reasonable person could differ as to the appropriate sentence.<sup>43</sup>

If the judge imposes a sentence of death, the judge must set forth in writing a detailed explanation for the decision by explaining which aggravating circumstances were proven and why the proven mitigating circumstances, if any, failed to outweigh the aggravating circumstances.<sup>44</sup>

Death sentences are automatically appealed to the Florida Supreme Court.<sup>45</sup>

#### Direct Appeal

During the appeal process, counsel for both the appellant<sup>46</sup> and the state have the opportunity to file appellate briefs and make oral arguments before the Florida Supreme Court.<sup>47</sup> The Florida Supreme Court reviews the enumerations of error, if raised, the sufficiency of the evidence used to convict the defendant, and the proportionality of the appellant's death sentence.<sup>48</sup> The Court is required to review the sufficiency of the evidence and the proportionality of the appellant's death sentence even if such issues are not raised on appeal.<sup>49</sup>

The Florida Supreme Court must render a judgment within two years of the filing of the notice of appeal.<sup>50</sup> The Court's judgment may affirm the trial court's decision or remand the case to the trial court for a new guilt/innocence and/or penalty phase, or remand the case to the trial court with directions for a judgment of acquittal or to reduce the sentence to life.

<sup>36</sup> Section 921.141(2), F.S.

<sup>37</sup> Fla. Standard Jury Instructions for Criminal Cases s. 7.11.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> Section 921.141(3), F.S.

<sup>41</sup> *Id.*

<sup>42</sup> *Webb v. State*, 433 So.2d 496, 499 (Fla. 1983); *Tedder v. State*, 322 So.2d 908, 910 (Fla. 1975).

<sup>43</sup> *Tedder v. State*, 322 So.2d 908, at 910 (Fla. 1975).

<sup>44</sup> If the court does not make the findings requiring the death sentence within 30 days after the rendition of the judgment and sentence, the court must impose a sentence of life imprisonment. Section 921.141(3), F.S.

<sup>45</sup> Section 921.141(4), F.S.; Art. 5, Sec. 3, Fla. Const.; Fla. R. App. Proc. 9.030(a)(1)(A)(i).

<sup>46</sup> If the defendant is convicted and a death sentence is imposed, the appointed attorney must continue representation through appeal to the Florida Supreme Court. Section 27.5303(4)(a), F.S.

<sup>47</sup> Fla. R. App. Proc. 9.142(a)(2) and (4).

<sup>48</sup> Section 924.051(3) and 921.141(4), F.S.; Fla. R. App. Proc. 9.142(a)(5).

<sup>49</sup> Fla. R. App. P. 9.142(a)(5).

<sup>50</sup> Section 921.141(4), F.S.

If the Florida Supreme Court affirms the appellant's conviction and sentence, the appellant has 90 days after the decision is entered to file a petition for a writ of certiorari with the United States Supreme Court seeking discretionary review of the Florida Supreme Court's decision.<sup>51</sup> The United States Supreme Court may either deny or accept the appellant's case for review.<sup>52</sup> If the United States Supreme Court accepts the case, the Court may affirm the conviction and the sentence, affirm the conviction and overturn the sentence, or overturn both the conviction and sentence.<sup>53</sup> If the United States Supreme Court denies the case, the direct appeal has concluded.<sup>54</sup>

### Postconviction Proceedings

Rule 3.851 of the Florida Rules of Criminal Procedure governs all state postconviction proceedings initiated by death-row inmates challenging a conviction and/or death sentence.

#### *Appointment of Counsel, Judge, and other Preliminary Matters*

When the Florida Supreme Court affirms a judgment and sentence of death on direct appeal, the court must simultaneously appoint the appropriate office of the Capital Collateral Regional Counsel (CCRC)<sup>55</sup> to represent the inmate during postconviction proceedings.<sup>56</sup> If the CCRC has a conflict of interest and the postconviction judge accepts their motion to withdraw, or the inmate was convicted and sentenced to death in the Northern Region of Florida (which no longer has a CCRC office), the chief judge of the circuit court must appoint an attorney from the statewide registry<sup>57</sup> to represent the inmate in postconviction proceedings.<sup>58</sup>

Within 45 days of appointment of postconviction counsel, the inmate's trial counsel must provide postconviction counsel with all information pertaining to the inmate's capital case and postconviction counsel must maintain the confidentiality of all confidential information received.<sup>59</sup>

Within 30 days of the judgment of conviction and sentence of death being affirmed on direct appeal, the chief judge must assign the case to a judge qualified to conduct capital proceedings.<sup>60</sup> Within 90 days of the assignment, the judge must hold a status hearing and thereafter hold status conferences at least every 90 days until:

- An evidentiary hearing, if ordered, has been completed; or
- The motion has been ruled on without a hearing.<sup>61</sup>

At the status hearing and conferences, the judge will entertain pending motions, disputes involving public records, or any other matters ordered by the court.<sup>62</sup>

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<sup>51</sup> 28 U.S.C. s. 1257; Sup. Ct. R. 13.

<sup>52</sup> Sup. Ct. R. 16.

<sup>53</sup> 28 U.S.C. s. 2106.

<sup>54</sup> Section 940.03, F.S., requires inmates sentenced to death to file an application for executive clemency within 1 year after the date the Florida Supreme Court issues a mandate on direct appeal or the United States Supreme Court denies a petition for a writ of certiorari, whichever is later. Article IV, Section 8(a) of the Florida Constitution provides: Except in cases of treason and in cases where impeachment results in conviction, the governor may, by executive order filed with the custodian of state records, suspend collection of fines and forfeitures, grant reprieves not exceeding sixty days and, with the approval of two members of the cabinet, grant full or conditional pardons, restore civil rights, commute punishment, and remit fines and forfeitures for offenses.

<sup>55</sup> The CCRC represents persons convicted and sentenced to death for the sole purpose of instituting and prosecuting collateral actions challenging the legality of the judgment and sentence imposed against such persons 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. Each regional office is administered by a regional counsel. Section 27.701(1), F.S.

<sup>56</sup> Fla. R. Crim. Proc. 3.851(b)(1).

<sup>57</sup> Section 27.701(2), F.S., requires the responsibilities of the northern region CCRC office to be met through a pilot program using only attorneys from the registry of attorneys maintained pursuant to s. 27.710, F.S.

<sup>58</sup> Fla. R. Crim. Proc. 3.851(b)(1); sections 27.701(2), 27.703(1), and 27.710(5), F.S.

<sup>59</sup> Fla. R. Crim. Proc. 3.851(c)(4).

<sup>60</sup> Fla. R. Crim. Proc. 3.851(c)(1).

<sup>61</sup> Fla. R. Crim. Proc. 3.851(c)(2).

<sup>62</sup> *Id.*

### *Time Limits for Filing an Initial Postconviction Motion*

Any person sentenced to death whose conviction and sentence have been affirmed on direct appeal may file an initial rule 3.851 motion, under oath, seeking postconviction relief.<sup>63</sup> This motion must be filed within one year after the inmate's judgment and sentence become final. A judgment and sentence become final:

- On the expiration of the time permitted to file in the United States Supreme Court a petition for writ of certiorari seeking review of the Florida Supreme Court's decision affirming the inmate's judgment and sentence of death (ninety days after the opinion becomes final); or
- On the disposition of the petition for writ of certiorari by the United States Supreme Court, if filed.<sup>64</sup>

The Florida Supreme Court may grant an extension of time for the filing of a postconviction motion if the inmate's counsel can demonstrate good cause as to why counsel could not file the motion within the one-year time limit.<sup>65</sup>

A postconviction motion filed after the one-year time limit will not be entertained unless the movant alleges that:

- The facts on which the claim is predicated were not known to the movant or his/her attorney and could not have been ascertained within the one-year time limit by the exercise of due diligence;<sup>66</sup>
- The fundamental constitutional right asserted was not established within the one year time limit and has been held to apply retroactively; or
- His/her postconviction counsel, through neglect, failed to file the motion.<sup>67</sup>

In addition to the aforementioned exceptions, Florida law allows a litigant to overcome a valid procedural bar by claiming that the alleged error constitutes "fundamental error." In order for an error to be fundamental and justify consideration—despite being otherwise barred—"the error must reach down into the validity of the trial itself to the extent that a verdict of guilty [or sentence of death] could not have been obtained without the assistance of the alleged error."<sup>68</sup> For instance, improper comments made in the closing arguments of the penalty phase only constitute fundamental error when they are so prejudicial as to taint the jury's sentencing recommendation.<sup>69</sup> Fundamental error can be raised at any time,<sup>70</sup> including to collaterally attack a conviction or sentence in postconviction proceedings.<sup>71</sup>

Timely filed motions may be amended or supplemented outside of the one-year time limit.<sup>72</sup> To accomplish this, the movant must file a motion to amend no later than thirty days before the evidentiary hearing, including in the motion the reasons additional claims were not raised upon the initial filing and attaching to the motion the claims sought to be added.<sup>73</sup> If the motion is allowed, the state has 20 days after the amended motion is filed to file an amended answer.<sup>74</sup>

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<sup>63</sup> Fla. R. Crim. Proc. 3.851.

<sup>64</sup> *Id.*

<sup>65</sup> Fla. R. Crim. Proc. 3.851(d)(5).

<sup>66</sup> In order for evidence to be "newly discovered," the movant must demonstrate that: (1) The asserted facts "must have been unknown by the trial court, by the party, or by counsel at the time of trial, and it must appear that movant or his[her] counsel could not have known them by the use of diligence; and (2) "the newly discovered evidence must be of such nature that it would *probably* produce an acquittal on retrial." See *Scott v. Dugger*, 604 So.2d 465, 468 (Fla. 1992); see also *Miller v. State*, 926 So.2d 1243, 1258 (Fla. 2006).

<sup>67</sup> Fla. R. Crim. Proc. 3.851(d)(2).

<sup>68</sup> *Miller*, 926 So.2d at 1261.

<sup>69</sup> *Id.* Fundamental error can never be found harmless. *Johnson v. State*, 460 So.2d 954, 958 (Fla. 5th DCA 1984).

<sup>70</sup> *Moore v. State*, 924 So.2d 840, 841 (Fla. 4th DCA 2006).

<sup>71</sup> *Johnson*, 460 So.2d at 958.

<sup>72</sup> Fla. R. Crim. Proc. 3.851(d)(4) and (f)(4).

<sup>73</sup> Fla. R. Crim. Proc. 3.851(f)(4).

<sup>74</sup> *Id.*

### *Contents of an Initial Postconviction Motion*

An initial postconviction motion<sup>75</sup> must include:

- A statement specifying the judgment and sentence under attack and the name of the court that rendered the judgment and sentence;
- A statement of each issue raised on appeal and the disposition of each issue;
- The nature of the relief sought;
- A detailed allegation of the factual basis for any claim for which an evidentiary hearing is sought; and
- A detailed allegation as to the basis for any purely legal or constitutional claims for which an evidentiary hearing is not required and the reason that these claims could not have been or were not raised on direct appeal.<sup>76</sup>

The movant must also attach to the motion a memorandum of law setting forth the relevant case law supporting relief on each asserted claim.<sup>77</sup> The memorandum of law must also state why claims that should have or could have been raised on direct appeal are being raised for the first time in the postconviction motion.<sup>78</sup>

The court may strike an initial motion that fails to comply with the above requirements, but it is an abuse of discretion to do so without also allowing the movant to amend the motion within a reasonable time (normally between 10 and 30 days).<sup>79</sup> The state has 60 days from the filing of the initial postconviction motion to file its answer.<sup>80</sup>

### *Discovery and the Evidentiary Hearing*

Within 90 days of the state filing its answer to an initial postconviction motion, the court must hold a case management conference, where both parties must “disclose all documentary exhibits that they intend to offer at the evidentiary hearing, provide an exhibit list of all such exhibits, and exchange a witness list with the names and addresses of any potential witnesses.”<sup>81</sup> At this conference, the court must also:

- Schedule an evidentiary hearing, to be held within 90 days, on claims asserted by the movant which require a factual determination;
- Hear argument on purely legal claims not based on disputed facts; and
- Resolve any discovery disputes.<sup>82</sup>

The court, upon a showing of good cause by either party, may extend the time for holding an evidentiary hearing on the initial postconviction motion for up to 90 days.<sup>83</sup>

The court may dispose of an initial postconviction motion without holding an evidentiary hearing where:

- The motion, files, and records in the case conclusively show that the movant is not entitled to any relief; or
- The motion or a particular claim is legally insufficient.”<sup>84</sup>

The movant must support the motion with specific factual allegations;<sup>85</sup> conclusory allegations will not justify an evidentiary hearing.<sup>86</sup>

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<sup>75</sup> When the state court has not previously ruled on a postconviction motion challenging the same judgment and sentence, a postconviction motion then-filed is deemed an “initial motion.” Fla. R. Crim. Proc. 3.851(e)(1).

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

<sup>79</sup> *Bryant v. State*, 901 So.2d 810, 819 (Fla. 2005).

<sup>80</sup> Fla. R. Crim. Proc. 3.851(f)(3)(A).

<sup>81</sup> The list of potential witnesses must include expert witnesses and the parties must attach reports of any potential expert witnesses to the list. Fla. R. Crim. Proc. 3.851(f)(5)(A).

<sup>82</sup> *Id.*

<sup>83</sup> Fla. R. Crim. Proc. 3.851(f)(5)(C).

<sup>84</sup> *Johnson v. State*, 904 So.2d 400, 403 (Fla. 2005).

<sup>85</sup> *Id.* at 404 (citing *Thompson v. State*, 759 So.2d 650, 659 (Fla. 2000)).

<sup>86</sup> *Id.* (citing *Kennedy v. State*, 547 So.2d 912, 913 (Fla. 1989)).

When an evidentiary hearing is held, the court must immediately request a transcript of the hearing at its conclusion.<sup>87</sup> Within 30 days after receiving the transcript, the court must render its order, including:

- A ruling on each claim considered at the evidentiary hearing and all other claims asserted in the motion;
- Detailed findings of fact and conclusions of law with respect to each claim; and
- Attached or referenced portions of the record as are necessary for meaningful appellate review.<sup>88</sup>

Either party may move for a rehearing within 15 days of the rendition of the court's order on the postconviction motion.<sup>89</sup> Responses to such motions must be made within 10 days, and the court must render an order disposing of the motion for rehearing within 15 days.<sup>90</sup>

The movant may appeal the court's decision to the Florida Supreme Court within 30 days from the date the court rendered its order on the postconviction motion.<sup>91</sup> If the Florida Supreme Court affirms the lower court's decision, the movant may file a petition for a writ of certiorari with the United States Supreme Court.<sup>92</sup> If the United States Supreme Court declines review or affirms the lower's court decision, the postconviction appeal is complete.

### *Successive Motions*

When the state court has previously ruled on a postconviction motion, a motion filed thereafter challenging the same judgment and sentence is considered a "successive motion."<sup>93</sup> In addition to the contents required for an initial motion, a successive motion must include:

- The disposition of all previous claims raised in postconviction proceedings and the reason(s) the claims in the present motion were not raised in the former motion(s); and
- The following, if the claims are based on newly discovered evidence:
  - The names, addresses, and telephone numbers of all witnesses supporting the claim;
  - A statement that the witness will be available to testify under oath to the facts alleged in the motion, should an evidentiary hearing be held on that issue;
  - If evidentiary support is in the form of documents, copies of relevant documents and affidavits must be attached to the motion; and
  - As to any witness or document in the motion or attachment to the motion, an explanation as to why the witness or document was not previously available.<sup>94</sup>

The state has 20 days from the filing of a successive motion to file its answer.<sup>95</sup>

Within 30 days after the state files its answer to a successive postconviction motion, the court must hold a case management conference, at which the court must determine whether an evidentiary hearing should be held and hear arguments on any purely legal claims not based on disputed facts.<sup>96</sup> As with initial postconviction motions, the court may dispose of any successive motion without holding an evidentiary hearing where the motion, files, and records in the case conclusively show that the movant is not entitled to any relief.<sup>97</sup> Additionally, the court may dismiss successive motions without an evidentiary hearing where:

- The movant does not provide a reason for failing to raise the successive claims in his/her previous rule 3.851 motion,<sup>98</sup> or

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<sup>87</sup> Fla. R. Crim. Proc. 3.851(f)(5)(D).

<sup>88</sup> *Id.*

<sup>89</sup> Fla. R. Crim. Proc. 3.851(f)(7).

<sup>90</sup> *Id.*

<sup>91</sup> Fla. R. App. Proc. 9.110(b), Fla. R. App. Proc. 9.140(b)(1)(D) and (b)(3).

<sup>92</sup> 28 U.S.C. s. 1257.

<sup>93</sup> Fla. R. Crim. Proc. 3.851(e)(2).

<sup>94</sup> *Id.*

<sup>95</sup> Fla. R. Crim. Proc. 3.851(f)(3)(B).

<sup>96</sup> Fla. R. Crim. Proc. 3.851(f)(5)(B).

<sup>97</sup> *Id.*

<sup>98</sup> *See, e.g., Hill v. State*, 921 So.2d 579, 584 (Fla. 2006) (holding that the movant's successive claim alleging that he was mentally retarded and, therefore, could not be executed pursuant to *Atkins v. Virginia*, 536 U.S. 304 (2002), was procedurally barred because

- The motion raises claims that have already been asserted and adjudicated on the merits in a previous rule 3.851 proceeding.<sup>99</sup>

If, however, the court determines that an evidentiary hearing should be held, the hearing should be scheduled and held within 60 days.<sup>100</sup> The court, upon a showing of good cause by either party, may extend the time for holding an evidentiary hearing on a successive motion for up to 90 days.<sup>101</sup>

The deadlines for requesting transcripts and rendering orders after an evidentiary hearing on a successive postconviction motion are the same as those applicable to initial postconviction motions.<sup>102</sup> The rules relating to motions for rehearing and appealing an initial postconviction motion also apply to successive motions.<sup>103</sup>

*Special Procedures for Postconviction Motions Filed After a Death Warrant is Signed*

In cases in which the Governor signs a death warrant prior to the one-year filing deadline, the Florida Supreme Court is required, on the movant's request, to grant a stay of execution to allow postconviction motions to proceed in a timely and orderly manner.<sup>104</sup> In practice, however, this requirement is unnecessary because the Governor has agreed that, absent the circumstance where a competent death-sentenced individual voluntarily requests that a death warrant be signed, no death warrants will be issued during the initial round of federal and state review, provided that counsel for the death penalty movant is proceeding in a timely and diligent manner.<sup>105</sup>

Once the one-year filing deadline has passed and after the initial round of state and federal collateral review is over, the Governor may sign a death warrant. At this point, any subsequently-filed postconviction motions, initial or successive, are subject to the following expedited procedures:

- The chief judge of the circuit court is required to assign the case to a judge as soon as the judge receives notification of the death warrant;
- Proceedings after a death warrant has been issued are required to take precedence over all other cases;
- The normal time limitations in rule 3.851 do not apply after a death warrant has been signed; instead, all motions must be heard expeditiously considering the time limitations set by the execution date and the time required for appellate review;
- The assigned judge must schedule a case management conference as soon as reasonably possible after receiving notification that a death warrant has been signed; and
- At the conference, the court must set a deadline for the filing of a rule 3.851 postconviction motion, schedule a hearing to determine whether an evidentiary hearing should be held, and hear arguments on any purely legal claims not based on disputed facts.<sup>106</sup>

All motions for postconviction relief filed after a death warrant is issued are considered successive motions and must comply with the content requirements for successive motions.<sup>107</sup> If the motion, files, and records in the case conclusively show that the movant is not entitled to relief, the motion may be denied without an evidentiary hearing.<sup>108</sup> If, however, the trial court determines that an evidentiary hearing should be held, it must hold the evidentiary hearing as soon as reasonably possible considering the time limitations set by the date of execution and the time required for appellate review.<sup>109</sup>

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the movant gave no reason why the claim could not have been raised in his 2003 Rule 3.851 motion, which was filed after the issuance of the *Atkins* decision).

<sup>99</sup> See, e.g., *Johnson v. State*, 904 So.2d 400, 412 (Fla. 2005) (rejecting the movant's successive claim that lethal injection constitutes cruel and unusual punishment because it was raised and rejected in the movant's previous postconviction proceeding).

<sup>100</sup> Fla. R. Crim. Proc. 3.851(f)(5)(B).

<sup>101</sup> Fla. R. Crim. Proc. 3.851(f)(5)(C).

<sup>102</sup> Fla. R. Crim. Proc. 3.851(f)(5)(D).

<sup>103</sup> Fla. R. Crim. Proc. 3.851(f)(7) and (8).

<sup>104</sup> Fla. R. Crim. Proc. 3.851(d)(4).

<sup>105</sup> Fla. R. Crim. Proc. 3.851 (comment).

<sup>106</sup> Fla. R. Crim. Proc. 3.851(h).

<sup>107</sup> Fla. R. Crim. Proc. 3.851(h)(5).

<sup>108</sup> Fla. R. Crim. Proc. 3.851(h)(6).

<sup>109</sup> *Id.*



After the evidentiary hearing is completed, the court must immediately obtain a transcript of all proceedings and, as soon as possible after the hearing is concluded, render its order.<sup>110</sup> A copy of the final order must immediately be transmitted to the Florida Supreme Court and to the attorneys of record - electronically, where possible.<sup>111</sup>

### Federal Habeas Corpus

After state postconviction proceedings have been completed, a capital defendant is entitled to file a petition for writ of habeas corpus in federal court. In habeas proceedings, the federal court reviews whether the conviction or sentence violates federal law. Federal habeas is limited to consideration of claims previously asserted on direct appeal or in state postconviction proceedings. Federal habeas proceedings may require an evidentiary hearing and may, in specified instances, be appealed to the Eleventh Circuit Court of Appeals and the United States Supreme Court.<sup>112</sup>

### Execution

An inmate's death sentence may not be carried out until the Governor issues a death warrant.<sup>113</sup> A death warrant may be issued after the inmate has pursued all possible collateral remedies in a timely manner or after the inmate has failed to pursue said remedies within specified time limits.<sup>114</sup> Upon issuance of a death warrant, the Governor must transmit the warrant and the record to the warden and direct the warden to execute the sentence at a time designated in the warrant.<sup>115</sup>

An inmate's death sentence will be carried out by lethal injection unless the inmate requests to be executed by electrocution.<sup>116</sup> The warden of the state prison designates the executioner.<sup>117</sup> The warden (or a deputy) must be present at the execution and must select twelve individuals to witness the execution.<sup>118</sup> A qualified physician must be present, and the inmate's counsel, ministers of religion, representatives of the media, and prison and correctional officers may be present.<sup>119</sup> Immediately before the inmate's execution, the death warrant must be read to the inmate.<sup>120</sup> The physician must announce when death has been inflicted.<sup>121</sup>

After the death sentence has been executed, the warden must send the warrant and a signed statement of the execution to the Secretary of State and file an attested copy of the warrant and statement with the clerk of the court that imposed the sentence.<sup>122</sup>

### **Current Death Row Statistics**

Florida is currently one of 33 states that impose the death penalty.<sup>123</sup> As of January 28, 2013, there were 405 people on death row in Florida – more than any other state aside from California.<sup>124</sup> On

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<sup>110</sup> Fla. R. Crim. Proc. 3.851(h)(8).

<sup>111</sup> Fla. R. Crim. Proc. 3.851(h)(8) and (9).

<sup>112</sup> See 28 U.S.C. ss. 2161-2166.

<sup>113</sup> Section 922.052(1), F.S.

<sup>114</sup> Section 922.095, F.S.

<sup>115</sup> Section 922.052(1), F.S.

<sup>116</sup> Section 922.105, F.S.

<sup>117</sup> Section 922.10, F.S. A person authorized by state law to prepare, compound, or dispense medication and designated by the Department of Corrections may prepare, compound, or dispense a lethal injection. Section 922.105(6), F.S.

<sup>118</sup> Section 922.11, F.S.

<sup>119</sup> *Id.*

<sup>120</sup> Section 922.10, F.S.

<sup>121</sup> Section 922.11(2), F.S.

<sup>122</sup> Section 922.12, F.S.

<sup>123</sup> The other states are California, Texas, Pennsylvania, Alabama, North Carolina, Ohio, Arizona, Georgia, Louisiana, Tennessee, Nevada, Oklahoma, South Carolina, Mississippi, Missouri, Arkansas, Oregon, Kentucky, Delaware, Idaho, Indiana, Virginia, Nebraska, Kansas, Utah, Washington, Maryland, South Dakota, Colorado, Montana, New Hampshire, and Wyoming. *Facts About the Death Penalty* (updated December 28, 2012), Death Penalty Information Center, [www.deathpenaltyinfo.org/FactSheet.pdf](http://www.deathpenaltyinfo.org/FactSheet.pdf) (last visited on January 28, 2013).

<sup>124</sup> California has 724 inmates on death row. See, *supra* note 1. Also see, <http://www.dc.state.fl.us/activeinmates/deathrowroster.asp> (last visited on January 28, 2013).

average, Florida death row inmates spend 13.22 years on death row prior to execution.<sup>125</sup> Of the 405 inmates on death row, 155 have been in custody for more than 20 years.<sup>126</sup>

Since 1976, Florida has executed 74 inmates.<sup>127</sup> During the same period, Texas has executed 492 inmates, Virginia has executed 109 inmates, and Oklahoma has executed 102 inmates.<sup>128</sup> Florida executed two death row inmates in 2011, and three in 2012.<sup>129</sup>

In recent years, the states that impose the death penalty appear to be doing so more sparingly. In 2012, the number of new death sentences (77) was the second lowest since the death penalty was reinstated in 1976 (the only year with fewer death sentences was 2011, when 76 defendants were sentenced to death).<sup>130</sup> The number of sentences in 2012 was 75 percent lower than the high of 315 death sentences in 1996.<sup>131</sup> Additionally, while the number of executions (43) remained the same from 2011 to 2012, fewer states carried them out (9 of the 33 death penalty states executed death row inmates in 2012 compared to 13 in 2011). Just four states (Texas, Oklahoma, Mississippi, and Arizona) were responsible for over three-quarters of the executions in the U.S.<sup>132</sup>

### **Effect of the Bill**

The bill abolishes the death penalty. In doing so, the bill amends or repeals a multitude of statutes as described below.

#### **Capital Offenses and Sentencing - Sections 1, 7, 8, 9, 10, 11, and 12**

The bill amends s. 775.082(1), F.S., to specify that a capital felony is punishable by life imprisonment. The bill also removes language in s. 775.082(2), F.S., that:

- Requires the court to resentence a person to life imprisonment should the death penalty ever be held unconstitutional by the Florida or United States Supreme Court; and
- Prohibits the court from reducing a death sentence as a result of a determination that a method of execution is unconstitutional under the state or federal constitution.

The bill removes similar language in s. 790.161(4), F.S. (specifying that willfully and unlawfully making, possessing, throwing, projecting, placing, discharging, or attempting to make, possess, throw, project, place, or discharge any destructive device when the act results in the death of another person is a capital felony.)

The bill removes a provision in s. 775.15, F.S., requiring all crimes designated as capital felonies to be considered life felonies, for purposes of statutes of limitations, if the death penalty is ever held to be unconstitutional by the Florida or United States Supreme Court.

The bill repeals s. 913.13, F.S., specifying that a person who has beliefs which preclude her or him from finding a defendant guilty of an offense punishable by death is not qualified as a juror in a capital case.

The bill repeals s. 921.137, F.S., which prohibits a death sentence from being imposed on a defendant convicted of a capital felony if it is determined that the defendant has mental retardation.

The bill repeals ss. 921.141 and 941.142, F.S., which require the court to conduct a separate sentencing proceeding to determine whether a defendant convicted of a capital felony should be sentenced to death or life imprisonment. The statute also sets forth requirements for such proceedings.

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<sup>125</sup> <http://www.dc.state.fl.us/oth/deathrow/index.html#Statistics> (last visited on January 28, 2013).

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *Facts About the Death Penalty* (updated December 28, 2012), Death Penalty Information Center, [www.deathpenaltyinfo.org/FactSheet.pdf](http://www.deathpenaltyinfo.org/FactSheet.pdf) (last visited on January 28, 2013).

<sup>129</sup> *Id.*

<sup>130</sup> *The Death Penalty in 2012: Year End Report*, Death Penalty Information Center, December 2012 <http://deathpenaltyinfo.org/documents/2012YearEnd.pdf> (last visited on January 31, 2013).

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*

The bill removes language in s. 782.04, F.S. (the murder statute), requiring the sentencing procedure set forth in s. 921.141, F.S., to be followed.

#### Duties of the Public Defender and Conflict Counsel - Sections 2 and 3

The bill removes provisions in ss. 27.51 and 27.511, F.S., that require the public defender and criminal conflict counsel to represent an indigent person who has been convicted and sentenced to death in direct appellate proceedings.

#### Capital Collateral Regional Counsel – Sections 4 and 6

The bill repeals ss. 27.7001, 27.7002, 27.701, 27.702, 27.703, 27.704, 27.705, 27.706, 27.707, 27.708, 27.7081, 27.7091, 27.710, 27.711, and 27.715, F.S., all relating to capital collateral representation.

The bill removes a reference to the CCRC in s. 282.201, F.S., which exempts specified entities from data center consolidation.

#### Public Records – Section 5

Section 119.071(1)(d)1., F.S., specifies that a public record that was prepared by an agency attorney (or prepared at the attorney's express direction) that reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the agency, and that was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or that was prepared in anticipation of imminent civil or criminal litigation or imminent adversarial administrative proceedings, is exempt from public records until the conclusion of the litigation or adversarial administrative proceedings.

The bill removes a provision in s. 119.071(1)(d)1., F.S., that entitles the Attorney General's office to claim the above-described exemption for public records prepared for direct appeal as well as for all capital collateral litigation after direct appeal until execution of sentence or imposition of a life sentence.

#### Postconviction Proceedings – Sections 18 and 19

The bill deletes the legislative intent language in s. 924.055(1), F.S., relating to reducing delays in capital cases.

The bill repeals ss. 924.056 and 924.057, F.S., which govern postconviction proceedings in state courts.

#### Death Warrants and Execution – Sections 17, 22, and 23

The bill repeals ss. 922.052 (issuance of warrant of execution), 922.06 (stay of execution of death sentence), 922.07 (proceedings when person under sentence of death appears to be insane), 922.08 (proceedings when person under sentence of death appears to be pregnant), 922.095 (grounds for death warrant; limitations of actions), 922.10 (execution of death sentence; executioner), 922.105 (execution of death sentence; prohibition against reduction of death sentence as a result of determination that a method of execution is unconstitutional), 922.108 (sentencing orders in capital cases), 922.11 (regulation of execution), 922.111 (transfer to state prison for safekeeping before death warrant issued), 922.12 (return of warrant of execution issued by Governor), 922.14 (sentence of death unexecuted for unjustifiable reasons), and 922.15, F.S. (return of warrant of execution issued by Supreme Court).

The bill removes language in s. 925.11(4), F.S., requiring that physical evidence be maintained for 60 days after an execution takes place.

The bill removes language in s. 945.10(1), F.S., specifying that information identifying an executioner is confidential and exempt from s. 119.07, F.S.

#### Technical Changes – Sections 13, 14, 15, 16, 20, and 21

The bill corrects cross-references and/or makes conforming changes to ss. 394.912, 782.065, 794.011, 893.135, 924.058, and 924.059, F.S.

**B. SECTION DIRECTORY:**

Section 1. Amends s. 775.082, F.S., relating to penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison.

Section 2. Amends s. 27.51, F.S., relating to duties of public defender.

Section 3. Amends s. 27.511, F.S., relating to offices of criminal conflict and civil regional counsel; legislative intent; qualifications; appointment; duties.

Section 4. Repeals ss. 27.7001, 27.7002, 27.701, 27.702, 27.703, 27.704, 27.705, 27.706, 27.707, 27.708, 27.7081, 27.7091, 27.710, 27.711, and 27.715, F.S., all relating to capital collateral representation.

Section 5. Amends s. 119.071, F.S., relating to general exemptions from inspection or copying of public records.

Section 6. Amends s. 282.201, F.S., relating to state data center system; agency duties and limitations.

Section 7. Amends s. 775.15, F.S., relating to time limitations; general time limitations; exceptions.

Section 8. Amends s. 790.161, F.S., relating to making, possessing, throwing, projecting, placing, or discharging any destructive device or attempt to do so, felony; penalties.

Section 9. Repeals s. 913.13, F.S., relating to jurors in capital cases.

Section 10. Repeals s. 921.137, F.S., relating to imposition of the death sentence upon a defendant with mental retardation prohibited.

Section 11. Repeals s. 921.141, F.S., (sentence of death or life imprisonment for capital felonies; further proceedings to determine sentence) and s. 921.142, F.S. (sentence of death or life imprisonment for capital drug trafficking felonies; further proceedings to determine sentence).

Section 12. Amends s. 782.04, F.S., relating to murder.

Section 13. Amends s. 394.912, F.S., relating to definitions.

Section 14. Amends s. 782.065, F.S., relating to murder; law enforcement officer, correctional officer, correctional probation officer.

Section 15. Amends s. 794.011, F.S., relating to sexual battery.

Section 16. Amends s. 893.135, F.S., relating to trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.

Section 17. Repeals ss. 922.052 (issuance of warrant of execution), 922.06 (stay of execution of death sentence), 922.07 (proceedings when person under sentence of death appears to be insane), 922.08 (proceedings when person under sentence of death appears to be pregnant), 922.095 (grounds for death warrant; limitations of actions), 922.10 (execution of death sentence; executioner), 922.105 (execution of death sentence; prohibition against reduction of death sentence as a result of determination that a method of execution is unconstitutional), 922.108 (sentencing orders in capital cases), 922.11 (regulation of execution), 922.111 (transfer to state prison for safekeeping before death warrant issued), 922.12 (return of warrant of execution issued by Governor), 922.14 (sentence of death unexecuted for unjustifiable reasons), and 922.15, F.S. (return of warrant of execution issued by Supreme Court).

Section 18. Amends s. 924.055, F.S., relating to postconviction review in capital cases; legislative findings and intent.

Section 19. Repeals s. 924.056, F.S. (commencement of capital postconviction actions for which sentence of death is imposed on or after January 14, 2000; limitations on actions), and s. 924.057, F.S. (limitation on postconviction cases in which the death sentence was imposed before January 14, 2000).

Section 20. Amends s. 924.058, F.S., relating to capital postconviction claims.

Section 21. Amends s. 924.059, F.S., relating to time limitations and judicial review in capital postconviction actions.

Section 22. Amends s. 925.11, F.S., relating to postsentencing DNA testing.

Section 23. Amends s. 945.10, F.S., relating to confidential information.

Section 24. Provides an effective date of July 1, 2013.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

See "Fiscal Comments."

#### 2. Expenditures:

See "Fiscal Comments."

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill does not appear to have a fiscal impact on local government revenues.

#### 2. Expenditures:

The bill does not appear to have a fiscal impact on local government expenditures.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See "Fiscal Comments."

### D. FISCAL COMMENTS:

Due to the nuances of capital cases and the multitude of agencies and personnel involved (e.g., judges, clerks, court security, Attorney General staff, etc.), it is difficult to precisely quantify the costs associated with Florida's death penalty system. Research shows that the time it takes to litigate a capital case on appeal in both state and federal court is a major factor in determining how long it takes for an inmate to progress through the judicial system. How much that litigation costs can vary widely from case to case, depending on the legal matters involved.<sup>133</sup>

#### Public Defender / Conflict Counsel / Private Court-Appointed Counsel

Public defenders, regional conflict counsel, and private attorneys appointed by the court<sup>134</sup> would no longer be required to represent indigent defendants sentenced to death on direct appeal. This could result in a cost-savings to the state. However, it should be noted that while eliminating the death

<sup>133</sup> *Special report: Cost of Florida's death row easily exceeds \$1M per inmate*, <http://www.tcpalm.com/news/2012/oct/07/newspaper-investigates-florida-death-row-cost/?print=1> (last visited on January 31, 2013).

<sup>134</sup> Section 27.5304, F.S., specifies that a private attorney appointed to represent a defendant sentenced to death on direct appeal can receive up to \$2,000 for doing so, which is paid by the Justice Administrative Commission.

penalty would result in there no longer being automatic appeals of death sentences, it is likely defendants would still appeal their life sentences. As such, cost savings to the state are indeterminate.

#### Death Row Inmates

Death row inmates are currently housed at Union Correctional Institution and Florida State Prison. The average per diem for inmates housed at these facilities is \$67.58 and \$61.35, respectively, per day. It should be noted that these figures are not specific to death row inmates but instead apply to the entire inmate populations at those facilities.

On average, Florida death row inmates spend 13.22 years on death row prior to execution. Using the per diem figures above, Florida spends anywhere between \$326,093 and \$296,032 housing a death row inmate prior to his or her execution. These figures would arguably increase if the death penalty were abolished since inmates who would have been sentenced to death would instead receive life sentences. However, without more data as to inmate life expectancy and the type of facility such inmates would be housed in, it's unknown to what extent the figures would increase.

Additionally, to the extent there are costs associated with the actual execution process, such costs would be saved by eliminating the death penalty.

#### Postconviction Proceedings

The base budget for the CCRC, which represents inmates sentenced to death in postconviction proceedings, is \$7,020,537 for Fiscal Year 13/14. Eliminating the death penalty would result in a direct savings to the state in this amount, since the CCRC would be abolished.

Registry attorneys, who also represent inmates sentenced to death in postconviction proceedings, are paid based on the amounts set forth in s. 27.711, F.S. In FY 2011/2012, the Department of Financial Services spent \$1.6 million compensating registry attorneys. Eliminating the death penalty would result in a direct savings to the state in this amount, since the registry attorneys would not be needed.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

The bill does not appear to create a need for rulemaking or rulemaking authority.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

1                                   A bill to be entitled  
 2       An act relating to the death penalty; amending s.  
 3       775.082, F.S.; deleting provisions providing for the  
 4       death penalty for capital felonies; deleting  
 5       provisions relating to the effect of a declaration by  
 6       a court of last resort that the death penalty in a  
 7       capital felony is unconstitutional; amending ss. 27.51  
 8       and 27.511, F.S.; deleting provisions relating to  
 9       representation in death penalty cases; repealing ss.  
 10      27.7001, 27.7002, 27.701, 27.702, 27.703, 27.704,  
 11      27.705, 27.706, 27.707, 27.708, 27.7081, 27.7091,  
 12      27.710, 27.711, and 27.715, F.S., relating to capital  
 13      collateral representation; amending s. 119.071, F.S.;  
 14      deleting a public records exemption relating to  
 15      capital collateral proceedings; amending s. 282.201,  
 16      F.S.; conforming a provision to changes made by the  
 17      act; amending ss. 775.15 and 790.161, F.S.; deleting  
 18      provisions relating to the effect of a declaration by  
 19      a court of last resort declaring that the death  
 20      penalty in a capital felony is unconstitutional;  
 21      repealing s. 913.13, F.S., relating to jurors in  
 22      capital cases; repealing s. 921.137, F.S., relating to  
 23      prohibiting the imposition of the death sentence upon  
 24      a defendant with mental retardation; repealing s.  
 25      921.141, F.S., relating to determination of whether to  
 26      impose a sentence of death or life imprisonment for a  
 27      capital felony; repealing s. 921.142, F.S., relating  
 28      to determination of whether to impose a sentence of

29 death or life imprisonment for a capital drug  
 30 trafficking felony; amending ss. 782.04, 394.912,  
 31 782.065, 794.011, and 893.135, F.S.; conforming  
 32 provisions to changes made by the act; repealing ss.  
 33 922.052, 922.06, 922.07, 922.08, 922.095, 922.10,  
 34 922.105, 922.108, 922.11, 922.111, 922.12, 922.14, and  
 35 922.15, F.S., relating to issuance of warrant of  
 36 execution, stay of execution of death sentence,  
 37 proceedings when person under sentence of death  
 38 appears to be insane, proceedings when person under  
 39 sentence of death appears to be pregnant, grounds for  
 40 death warrant, execution of death sentence,  
 41 prohibition against reduction of death sentence as a  
 42 result of determination that a method of execution is  
 43 unconstitutional, sentencing orders in capital cases,  
 44 regulation of execution, transfer to state prison for  
 45 safekeeping before death warrant issued, return of  
 46 warrant of execution issued by Governor, sentence of  
 47 death unexecuted for unjustifiable reasons, and return  
 48 of warrant of execution issued by Supreme Court,  
 49 respectively; amending s. 924.055, F.S.; deleting  
 50 provisions relating to legislative intent concerning  
 51 appeals and postconviction proceedings in death  
 52 penalty cases; repealing ss. 924.056 and 924.057,  
 53 F.S., relating to commencement of capital  
 54 postconviction actions for which sentence of death is  
 55 imposed on or after January 14, 2000, and limitation  
 56 on postconviction cases in which the death sentence



57 | was imposed before January 14, 2000, respectively;  
 58 | amending ss. 924.058 and 924.059, F.S.; conforming  
 59 | provisions to changes made by the act; amending s.  
 60 | 925.11, F.S.; deleting provisions relating to  
 61 | preservation of DNA evidence in death penalty cases;  
 62 | amending s. 945.10, F.S.; deleting a public records  
 63 | exemption for the identity of executioners; providing  
 64 | an effective date.

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

68 | Section 1. Subsections (1) and (2) of section 775.082,  
 69 | Florida Statutes, are amended to read:

70 | 775.082 Penalties; applicability of sentencing structures;  
 71 | mandatory minimum sentences for certain reoffenders previously  
 72 | released from prison.—

73 | (1) A person who has been convicted of a capital felony  
 74 | shall be ~~punished by death if the proceeding held to determine~~  
 75 | ~~sentence according to the procedure set forth in s. 921.141~~  
 76 | ~~results in findings by the court that such person shall be~~  
 77 | ~~punished by death, otherwise such person shall be punished by~~  
 78 | life imprisonment and shall be ineligible for parole.

79 | ~~(2) In the event the death penalty in a capital felony is~~  
 80 | ~~held to be unconstitutional by the Florida Supreme Court or the~~  
 81 | ~~United States Supreme Court, the court having jurisdiction over~~  
 82 | ~~a person previously sentenced to death for a capital felony~~  
 83 | ~~shall cause such person to be brought before the court, and the~~  
 84 | ~~court shall sentence such person to life imprisonment as~~

85 ~~provided in subsection (1). No sentence of death shall be~~  
 86 ~~reduced as a result of a determination that a method of~~  
 87 ~~execution is held to be unconstitutional under the State~~  
 88 ~~Constitution or the Constitution of the United States.~~

89 Section 2. Paragraphs (d), (e), and (f) of subsection (1)  
 90 of section 27.51, Florida Statutes, are amended to read:

91 27.51 Duties of public defender.-

92 (1) The public defender shall represent, without  
 93 additional compensation, any person determined to be indigent  
 94 under s. 27.52 and:

95 (d) Sought by petition filed in such court to be  
 96 involuntarily placed as a mentally ill person under part I of  
 97 chapter 394, involuntarily committed as a sexually violent  
 98 predator under part V of chapter 394, or involuntarily admitted  
 99 to residential services as a person with developmental  
 100 disabilities under chapter 393. A public defender shall not  
 101 represent any plaintiff in a civil action brought under the  
 102 Florida Rules of Civil Procedure, the Federal Rules of Civil  
 103 Procedure, or the federal statutes, or represent a petitioner in  
 104 a rule challenge under chapter 120, unless specifically  
 105 authorized by statute; or

106 ~~(e) Convicted and sentenced to death, for purposes of~~  
 107 ~~handling an appeal to the Supreme Court; or~~

108 (e)-(f) Is appealing a matter in a case arising under  
 109 paragraphs (a)-(d).

110 Section 3. Paragraphs (e), (f), and (g) of subsection (5)  
 111 and subsection (8) of section 27.511, Florida Statutes, are  
 112 amended to read:

113 27.511 Offices of criminal conflict and civil regional  
 114 counsel; legislative intent; qualifications; appointment;  
 115 duties.—

116 (5) When the Office of the Public Defender, at any time  
 117 during the representation of two or more defendants, determines  
 118 that the interests of those accused are so adverse or hostile  
 119 that they cannot all be counseled by the public defender or his  
 120 or her staff without a conflict of interest, or that none can be  
 121 counseled by the public defender or his or her staff because of  
 122 a conflict of interest, and the court grants the public  
 123 defender's motion to withdraw, the office of criminal conflict  
 124 and civil regional counsel shall be appointed and shall provide  
 125 legal services, without additional compensation, to any person  
 126 determined to be indigent under s. 27.52, who is:

127 ~~(e) Convicted and sentenced to death, for purposes of~~  
 128 ~~handling an appeal to the Supreme Court;~~

129 (e) ~~(f)~~ Appealing a matter in a case arising under  
 130 paragraphs (a)-(d); or

131 (f) ~~(g)~~ Seeking correction, reduction, or modification of a  
 132 sentence under Rule 3.800, Florida Rules of Criminal Procedure,  
 133 or seeking postconviction relief under Rule 3.850, Florida Rules  
 134 of Criminal Procedure, if, in either case, the court determines  
 135 that appointment of counsel is necessary to protect a person's  
 136 due process rights.

137 (8) The public defender for the judicial circuit specified  
 138 in s. 27.51(4) shall, after the record on appeal is transmitted  
 139 to the appellate court by the office of criminal conflict and  
 140 civil regional counsel which handled the trial and if requested

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141 | by the regional counsel for the indicated appellate district,  
 142 | handle all circuit court appeals authorized pursuant to  
 143 | paragraph (5) (e) ~~(f)~~ within the state courts system and any  
 144 | authorized appeals to the federal courts required of the  
 145 | official making the request. If the public defender certifies to  
 146 | the court that the public defender has a conflict consistent  
 147 | with the criteria prescribed in s. 27.5303 and moves to  
 148 | withdraw, the regional counsel shall handle the appeal, unless  
 149 | the regional counsel has a conflict, in which case the court  
 150 | shall appoint private counsel pursuant to s. 27.40.

151 |       Section 4. Sections 27.7001, 27.7002, 27.701, 27.702,  
 152 | 27.703, 27.704, 27.705, 27.706, 27.707, 27.708, 27.7081,  
 153 | 27.7091, 27.710, 27.711, and 27.715, Florida Statutes, are  
 154 | repealed.

155 |       Section 5. Paragraph (d) of subsection (1) of section  
 156 | 119.071, Florida Statutes, is amended to read:

157 |       119.071 General exemptions from inspection or copying of  
 158 | public records.—

159 |       (1) AGENCY ADMINISTRATION.—

160 |       (d)1. A public record that was prepared by an agency  
 161 | attorney (including an attorney employed or retained by the  
 162 | agency or employed or retained by another public officer or  
 163 | agency to protect or represent the interests of the agency  
 164 | having custody of the record) or prepared at the attorney's  
 165 | express direction, that reflects a mental impression,  
 166 | conclusion, litigation strategy, or legal theory of the attorney  
 167 | or the agency, and that was prepared exclusively for civil or  
 168 | criminal litigation or for adversarial administrative

169 | proceedings, or that was prepared in anticipation of imminent  
 170 | civil or criminal litigation or imminent adversarial  
 171 | administrative proceedings, is exempt from s. 119.07(1) and s.  
 172 | 24(a), Art. I of the State Constitution until the conclusion of  
 173 | the litigation or adversarial administrative proceedings. ~~For~~  
 174 | ~~purposes of capital collateral litigation as set forth in s.~~  
 175 | ~~27.7001, the Attorney General's office is entitled to claim this~~  
 176 | ~~exemption for those public records prepared for direct appeal as~~  
 177 | ~~well as for all capital collateral litigation after direct~~  
 178 | ~~appeal until execution of sentence or imposition of a life~~  
 179 | ~~sentence.~~

180 |         2. This exemption is not waived by the release of such  
 181 | public record to another public employee or officer of the same  
 182 | agency or any person consulted by the agency attorney. When  
 183 | asserting the right to withhold a public record pursuant to this  
 184 | paragraph, the agency shall identify the potential parties to  
 185 | any such criminal or civil litigation or adversarial  
 186 | administrative proceedings. If a court finds that the document  
 187 | or other record has been improperly withheld under this  
 188 | paragraph, the party seeking access to such document or record  
 189 | shall be awarded reasonable attorney's fees and costs in  
 190 | addition to any other remedy ordered by the court.

191 |         Section 6. Paragraph (k) of subsection (4) of section  
 192 | 282.201, Florida Statutes, is amended to read:

193 |         282.201 State data center system; agency duties and  
 194 | limitations.—A state data center system that includes all  
 195 | primary data centers, other nonprimary data centers, and  
 196 | computing facilities, and that provides an enterprise

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197 information technology service as defined in s. 282.0041, is  
 198 established.

199 (4) SCHEDULE FOR CONSOLIDATIONS OF AGENCY DATA CENTERS.—

200 (k) The Department of Law Enforcement, the Department of  
 201 the Lottery's Gaming System, Systems Design and Development in  
 202 the Office of Policy and Budget, and the State Board of  
 203 Administration, state attorneys, public defenders, criminal  
 204 conflict and civil regional counsel, ~~capital collateral regional~~  
 205 ~~counsel~~, the Florida Clerks of Court Operations Corporation, and  
 206 the Florida Housing Finance Corporation are exempt from data  
 207 center consolidation under this section.

208 Section 7. Subsection (1) of section 775.15, Florida  
 209 Statutes, is amended to read:

210 775.15 Time limitations; general time limitations;  
 211 exceptions.—

212 (1) A prosecution for a capital felony, a life felony, or  
 213 a felony that resulted in a death may be commenced at any time.  
 214 ~~If the death penalty is held to be unconstitutional by the~~  
 215 ~~Florida Supreme Court or the United States Supreme Court, all~~  
 216 ~~crimes designated as capital felonies shall be considered life~~  
 217 ~~felonies for the purposes of this section, and prosecution for~~  
 218 ~~such crimes may be commenced at any time.~~

219 Section 8. Subsection (4) of section 790.161, Florida  
 220 Statutes, is amended to read:

221 790.161 Making, possessing, throwing, projecting, placing,  
 222 or discharging any destructive device or attempt so to do,  
 223 felony; penalties.—A person who willfully and unlawfully makes,  
 224 possesses, throws, projects, places, discharges, or attempts to

225 | make, possess, throw, project, place, or discharge any  
 226 | destructive device:

227 |       (4) If the act results in the death of another person,  
 228 | commits a capital felony, punishable as provided in s. 775.082.  
 229 | ~~In the event the death penalty in a capital felony is held to be~~  
 230 | ~~unconstitutional by the Florida Supreme Court or the United~~  
 231 | ~~States Supreme Court, the court having jurisdiction over a~~  
 232 | ~~person previously sentenced to death for a capital felony shall~~  
 233 | ~~cause such person to be brought before the court, and the court~~  
 234 | ~~shall sentence such person to life imprisonment if convicted of~~  
 235 | ~~murder in the first degree or of a capital felony under this~~  
 236 | ~~subsection, and such person shall be ineligible for parole. No~~  
 237 | ~~sentence of death shall be reduced as a result of a~~  
 238 | ~~determination that a method of execution is held to be~~  
 239 | ~~unconstitutional under the State Constitution or the~~  
 240 | ~~Constitution of the United States.~~

241 |       Section 9. Section 913.13, Florida Statutes, is repealed.

242 |       Section 10. Section 921.137, Florida Statutes, is  
 243 | repealed.

244 |       Section 11. Sections 921.141 and 921.142, Florida  
 245 | Statutes, are repealed.

246 |       Section 12. Subsection (1) of section 782.04, Florida  
 247 | Statutes, is amended to read:

248 |       782.04 Murder.—

249 |       (1) ~~(a)~~ The unlawful killing of a human being:

250 |       (a)1. When perpetrated from a premeditated design to  
 251 | effect the death of the person killed or any human being;

252 |       (b)2. When committed by a person engaged in the

253 | perpetration of, or in the attempt to perpetrate, any:

254 |     1.a. Trafficking offense prohibited by s. 893.135(1),

255 |     2.b. Arson,

256 |     3.e. Sexual battery,

257 |     4.d. Robbery,

258 |     5.e. Burglary,

259 |     6.f. Kidnapping,

260 |     7.g. Escape,

261 |     8.h. Aggravated child abuse,

262 |     9.i. Aggravated abuse of an elderly person or disabled

263 | adult,

264 |     10.j. Aircraft piracy,

265 |     11.k. Unlawful throwing, placing, or discharging of a

266 | destructive device or bomb,

267 |     12.l. Carjacking,

268 |     13.m. Home-invasion robbery,

269 |     14.n. Aggravated stalking,

270 |     15.o. Murder of another human being,

271 |     16.p. Resisting an officer with violence to his or her

272 | person,

273 |     17.q. Aggravated fleeing or eluding with serious bodily

274 | injury or death,

275 |     18.r. Felony that is an act of terrorism or is in

276 | furtherance of an act of terrorism; or

277 |     (c)3. Which resulted from the unlawful distribution of any

278 | substance controlled under s. 893.03(1), cocaine as described in

279 | s. 893.03(2)(a)4., opium or any synthetic or natural salt,

280 | compound, derivative, or preparation of opium, or methadone by a



281 person 18 years of age or older, when such drug is proven to be  
 282 the proximate cause of the death of the user,  
 283  
 284 is murder in the first degree and constitutes a capital felony,  
 285 punishable as provided in s. 775.082.

286 ~~(b) In all cases under this section, the procedure set~~  
 287 ~~forth in s. 921.141 shall be followed in order to determine~~  
 288 ~~sentence of death or life imprisonment.~~

289 Section 13. Paragraph (a) of subsection (9) of section  
 290 394.912, Florida Statutes, is amended to read:

291 394.912 Definitions.—As used in this part, the term:

292 (9) "Sexually violent offense" means:

293 (a) Murder of a human being while engaged in sexual  
 294 battery in violation of s. 782.04(1)(b) ~~782.04(1)(a)2~~;

295 Section 14. Subsection (1) of section 782.065, Florida  
 296 Statutes, is amended to read:

297 782.065 Murder; law enforcement officer, correctional  
 298 officer, correctional probation officer.—Notwithstanding ss.  
 299 775.082, 775.0823, 782.04, 782.051, and chapter 921, a defendant  
 300 shall be sentenced to life imprisonment without eligibility for  
 301 release upon findings by the trier of fact that, beyond a  
 302 reasonable doubt:

303 (1) The defendant committed murder in the first degree in  
 304 violation of s. 782.04(1) and a death sentence was not imposed;  
 305 murder in the second or third degree in violation of s.  
 306 782.04(2), (3), or (4); attempted murder in the first or second  
 307 degree in violation of s. 782.04(1)(a) ~~782.04(1)(a)1~~ or (2); or  
 308 attempted felony murder in violation of s. 782.051; and

309 Section 15. Paragraph (a) of subsection (2) of section  
 310 794.011, Florida Statutes, is amended to read:

311 794.011 Sexual battery.—

312 (2)(a) A person 18 years of age or older who commits  
 313 sexual battery upon, or in an attempt to commit sexual battery  
 314 injures the sexual organs of, a person less than 12 years of age  
 315 commits a capital felony, punishable as provided in s. ss.  
 316 775.082 ~~and 921.141~~.

317 Section 16. Paragraphs (b) through (l) of subsection (1)  
 318 of section 893.135, Florida Statutes, are amended to read:

319 893.135 Trafficking; mandatory sentences; suspension or  
 320 reduction of sentences; conspiracy to engage in trafficking.—

321 (1) Except as authorized in this chapter or in chapter 499  
 322 and notwithstanding the provisions of s. 893.13:

323 (b)1. Any person who knowingly sells, purchases,  
 324 manufactures, delivers, or brings into this state, or who is  
 325 knowingly in actual or constructive possession of, 28 grams or  
 326 more of cocaine, as described in s. 893.03(2)(a)4., or of any  
 327 mixture containing cocaine, but less than 150 kilograms of  
 328 cocaine or any such mixture, commits a felony of the first  
 329 degree, which felony shall be known as "trafficking in cocaine,"  
 330 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

331 If the quantity involved:

332 a. Is 28 grams or more, but less than 200 grams, such  
 333 person shall be sentenced to a mandatory minimum term of  
 334 imprisonment of 3 years, and the defendant shall be ordered to  
 335 pay a fine of \$50,000.

336 b. Is 200 grams or more, but less than 400 grams, such

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337 person shall be sentenced to a mandatory minimum term of  
 338 imprisonment of 7 years, and the defendant shall be ordered to  
 339 pay a fine of \$100,000.

340       c. Is 400 grams or more, but less than 150 kilograms, such  
 341 person shall be sentenced to a mandatory minimum term of  
 342 imprisonment of 15 calendar years and pay a fine of \$250,000.

343       2. Any person who knowingly sells, purchases,  
 344 manufactures, delivers, or brings into this state, or who is  
 345 knowingly in actual or constructive possession of, 150 kilograms  
 346 or more of cocaine, as described in s. 893.03(2)(a)4., commits  
 347 the first degree felony of trafficking in cocaine. A person who  
 348 has been convicted of the first degree felony of trafficking in  
 349 cocaine under this subparagraph shall be punished by life  
 350 imprisonment and is ineligible for any form of discretionary  
 351 early release except pardon or executive clemency or conditional  
 352 medical release under s. 947.149. However, if the court  
 353 determines that, in addition to committing any act specified in  
 354 this paragraph:

355       a. The person intentionally killed an individual or  
 356 counseled, commanded, induced, procured, or caused the  
 357 intentional killing of an individual and such killing was the  
 358 result; or

359       b. The person's conduct in committing that act led to a  
 360 natural, though not inevitable, lethal result,  
 361 such person commits the capital felony of trafficking in  
 362 cocaine, punishable as provided in s. ss. 775.082 and ~~921.142~~.  
 363 Any person sentenced for a capital felony under this paragraph  
 364 shall also be sentenced to pay the maximum fine provided under

365 subparagraph 1.

366 3. Any person who knowingly brings into this state 300  
 367 kilograms or more of cocaine, as described in s. 893.03(2)(a)4.,  
 368 and who knows that the probable result of such importation would  
 369 be the death of any person, commits capital importation of  
 370 cocaine, a capital felony punishable as provided in s. ss-  
 371 775.082 and 921.142. Any person sentenced for a capital felony  
 372 under this paragraph shall also be sentenced to pay the maximum  
 373 fine provided under subparagraph 1.

374 (c)1. Any person who knowingly sells, purchases,  
 375 manufactures, delivers, or brings into this state, or who is  
 376 knowingly in actual or constructive possession of, 4 grams or  
 377 more of any morphine, opium, oxycodone, hydrocodone,  
 378 hydromorphone, or any salt, derivative, isomer, or salt of an  
 379 isomer thereof, including heroin, as described in s.  
 380 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 4 grams or more  
 381 of any mixture containing any such substance, but less than 30  
 382 kilograms of such substance or mixture, commits a felony of the  
 383 first degree, which felony shall be known as "trafficking in  
 384 illegal drugs," punishable as provided in s. 775.082, s.  
 385 775.083, or s. 775.084. If the quantity involved:

386 a. Is 4 grams or more, but less than 14 grams, such person  
 387 shall be sentenced to a mandatory minimum term of imprisonment  
 388 of 3 years, and the defendant shall be ordered to pay a fine of  
 389 \$50,000.

390 b. Is 14 grams or more, but less than 28 grams, such  
 391 person shall be sentenced to a mandatory minimum term of  
 392 imprisonment of 15 years, and the defendant shall be ordered to

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393 pay a fine of \$100,000.

394 c. Is 28 grams or more, but less than 30 kilograms, such  
 395 person shall be sentenced to a mandatory minimum term of  
 396 imprisonment of 25 calendar years and pay a fine of \$500,000.

397 2. Any person who knowingly sells, purchases,  
 398 manufactures, delivers, or brings into this state, or who is  
 399 knowingly in actual or constructive possession of, 30 kilograms  
 400 or more of any morphine, opium, oxycodone, hydrocodone,  
 401 hydromorphone, or any salt, derivative, isomer, or salt of an  
 402 isomer thereof, including heroin, as described in s.  
 403 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 30 kilograms or  
 404 more of any mixture containing any such substance, commits the  
 405 first degree felony of trafficking in illegal drugs. A person  
 406 who has been convicted of the first degree felony of trafficking  
 407 in illegal drugs under this subparagraph shall be punished by  
 408 life imprisonment and is ineligible for any form of  
 409 discretionary early release except pardon or executive clemency  
 410 or conditional medical release under s. 947.149. However, if the  
 411 court determines that, in addition to committing any act  
 412 specified in this paragraph:

413 a. The person intentionally killed an individual or  
 414 counseled, commanded, induced, procured, or caused the  
 415 intentional killing of an individual and such killing was the  
 416 result; or

417 b. The person's conduct in committing that act led to a  
 418 natural, though not inevitable, lethal result,  
 419 such person commits the capital felony of trafficking in illegal  
 420 drugs, punishable as provided in s. ss. 775.082 and 921.142. Any

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421 person sentenced for a capital felony under this paragraph shall  
 422 also be sentenced to pay the maximum fine provided under  
 423 subparagraph 1.

424 3. Any person who knowingly brings into this state 60  
 425 kilograms or more of any morphine, opium, oxycodone,  
 426 hydrocodone, hydromorphone, or any salt, derivative, isomer, or  
 427 salt of an isomer thereof, including heroin, as described in s.  
 428 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 60 kilograms or  
 429 more of any mixture containing any such substance, and who knows  
 430 that the probable result of such importation would be the death  
 431 of any person, commits capital importation of illegal drugs, a  
 432 capital felony punishable as provided in s. 775.082 and  
 433 ~~921.142~~. Any person sentenced for a capital felony under this  
 434 paragraph shall also be sentenced to pay the maximum fine  
 435 provided under subparagraph 1.

436 (d)1. Any person who knowingly sells, purchases,  
 437 manufactures, delivers, or brings into this state, or who is  
 438 knowingly in actual or constructive possession of, 28 grams or  
 439 more of phencyclidine or of any mixture containing  
 440 phencyclidine, as described in s. 893.03(2)(b), commits a felony  
 441 of the first degree, which felony shall be known as "trafficking  
 442 in phencyclidine," punishable as provided in s. 775.082, s.  
 443 775.083, or s. 775.084. If the quantity involved:

444 a. Is 28 grams or more, but less than 200 grams, such  
 445 person shall be sentenced to a mandatory minimum term of  
 446 imprisonment of 3 years, and the defendant shall be ordered to  
 447 pay a fine of \$50,000.

448 b. Is 200 grams or more, but less than 400 grams, such

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449 person shall be sentenced to a mandatory minimum term of  
450 imprisonment of 7 years, and the defendant shall be ordered to  
451 pay a fine of \$100,000.

452 c. Is 400 grams or more, such person shall be sentenced to  
453 a mandatory minimum term of imprisonment of 15 calendar years  
454 and pay a fine of \$250,000.

455 2. Any person who knowingly brings into this state 800  
456 grams or more of phencyclidine or of any mixture containing  
457 phencyclidine, as described in s. 893.03(2)(b), and who knows  
458 that the probable result of such importation would be the death  
459 of any person commits capital importation of phencyclidine, a  
460 capital felony punishable as provided in s. 775.082 and  
461 ~~921.142~~. Any person sentenced for a capital felony under this  
462 paragraph shall also be sentenced to pay the maximum fine  
463 provided under subparagraph 1.

464 (e)1. Any person who knowingly sells, purchases,  
465 manufactures, delivers, or brings into this state, or who is  
466 knowingly in actual or constructive possession of, 200 grams or  
467 more of methaqualone or of any mixture containing methaqualone,  
468 as described in s. 893.03(1)(d), commits a felony of the first  
469 degree, which felony shall be known as "trafficking in  
470 methaqualone," punishable as provided in s. 775.082, s. 775.083,  
471 or s. 775.084. If the quantity involved:

472 a. Is 200 grams or more, but less than 5 kilograms, such  
473 person shall be sentenced to a mandatory minimum term of  
474 imprisonment of 3 years, and the defendant shall be ordered to  
475 pay a fine of \$50,000.

476 b. Is 5 kilograms or more, but less than 25 kilograms,

477 such person shall be sentenced to a mandatory minimum term of  
 478 imprisonment of 7 years, and the defendant shall be ordered to  
 479 pay a fine of \$100,000.

480 c. Is 25 kilograms or more, such person shall be sentenced  
 481 to a mandatory minimum term of imprisonment of 15 calendar years  
 482 and pay a fine of \$250,000.

483 2. Any person who knowingly brings into this state 50  
 484 kilograms or more of methaqualone or of any mixture containing  
 485 methaqualone, as described in s. 893.03(1)(d), and who knows  
 486 that the probable result of such importation would be the death  
 487 of any person commits capital importation of methaqualone, a  
 488 capital felony punishable as provided in s. 775.082 ~~and~~  
 489 ~~921.142~~. Any person sentenced for a capital felony under this  
 490 paragraph shall also be sentenced to pay the maximum fine  
 491 provided under subparagraph 1.

492 (f)1. Any person who knowingly sells, purchases,  
 493 manufactures, delivers, or brings into this state, or who is  
 494 knowingly in actual or constructive possession of, 14 grams or  
 495 more of amphetamine, as described in s. 893.03(2)(c)2., or  
 496 methamphetamine, as described in s. 893.03(2)(c)4., or of any  
 497 mixture containing amphetamine or methamphetamine, or  
 498 phenylacetone, phenylacetic acid, pseudoephedrine, or ephedrine  
 499 in conjunction with other chemicals and equipment utilized in  
 500 the manufacture of amphetamine or methamphetamine, commits a  
 501 felony of the first degree, which felony shall be known as  
 502 "trafficking in amphetamine," punishable as provided in s.  
 503 775.082, s. 775.083, or s. 775.084. If the quantity involved:

504 a. Is 14 grams or more, but less than 28 grams, such



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505 person shall be sentenced to a mandatory minimum term of  
 506 imprisonment of 3 years, and the defendant shall be ordered to  
 507 pay a fine of \$50,000.

508 b. Is 28 grams or more, but less than 200 grams, such  
 509 person shall be sentenced to a mandatory minimum term of  
 510 imprisonment of 7 years, and the defendant shall be ordered to  
 511 pay a fine of \$100,000.

512 c. Is 200 grams or more, such person shall be sentenced to  
 513 a mandatory minimum term of imprisonment of 15 calendar years  
 514 and pay a fine of \$250,000.

515 2. Any person who knowingly manufactures or brings into  
 516 this state 400 grams or more of amphetamine, as described in s.  
 517 893.03(2)(c)2., or methamphetamine, as described in s.  
 518 893.03(2)(c)4., or of any mixture containing amphetamine or  
 519 methamphetamine, or phenylacetone, phenylacetic acid,  
 520 pseudoephedrine, or ephedrine in conjunction with other  
 521 chemicals and equipment used in the manufacture of amphetamine  
 522 or methamphetamine, and who knows that the probable result of  
 523 such manufacture or importation would be the death of any person  
 524 commits capital manufacture or importation of amphetamine, a  
 525 capital felony punishable as provided in s. 775.082 and  
 526 ~~921.142~~. Any person sentenced for a capital felony under this  
 527 paragraph shall also be sentenced to pay the maximum fine  
 528 provided under subparagraph 1.

529 (g)1. Any person who knowingly sells, purchases,  
 530 manufactures, delivers, or brings into this state, or who is  
 531 knowingly in actual or constructive possession of, 4 grams or  
 532 more of flunitrazepam or any mixture containing flunitrazepam as

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533 described in s. 893.03(1)(a) commits a felony of the first  
 534 degree, which felony shall be known as "trafficking in  
 535 flunitrazepam," punishable as provided in s. 775.082, s.  
 536 775.083, or s. 775.084. If the quantity involved:

537       a. Is 4 grams or more but less than 14 grams, such person  
 538 shall be sentenced to a mandatory minimum term of imprisonment  
 539 of 3 years, and the defendant shall be ordered to pay a fine of  
 540 \$50,000.

541       b. Is 14 grams or more but less than 28 grams, such person  
 542 shall be sentenced to a mandatory minimum term of imprisonment  
 543 of 7 years, and the defendant shall be ordered to pay a fine of  
 544 \$100,000.

545       c. Is 28 grams or more but less than 30 kilograms, such  
 546 person shall be sentenced to a mandatory minimum term of  
 547 imprisonment of 25 calendar years and pay a fine of \$500,000.

548       2. Any person who knowingly sells, purchases,  
 549 manufactures, delivers, or brings into this state or who is  
 550 knowingly in actual or constructive possession of 30 kilograms  
 551 or more of flunitrazepam or any mixture containing flunitrazepam  
 552 as described in s. 893.03(1)(a) commits the first degree felony  
 553 of trafficking in flunitrazepam. A person who has been convicted  
 554 of the first degree felony of trafficking in flunitrazepam under  
 555 this subparagraph shall be punished by life imprisonment and is  
 556 ineligible for any form of discretionary early release except  
 557 pardon or executive clemency or conditional medical release  
 558 under s. 947.149. However, if the court determines that, in  
 559 addition to committing any act specified in this paragraph:

560       a. The person intentionally killed an individual or

561 counseled, commanded, induced, procured, or caused the  
 562 intentional killing of an individual and such killing was the  
 563 result; or

564       b. The person's conduct in committing that act led to a  
 565 natural, though not inevitable, lethal result,  
 566 such person commits the capital felony of trafficking in  
 567 flunitrazepam, punishable as provided in s. 775.082 ~~and~~  
 568 ~~921.142~~. Any person sentenced for a capital felony under this  
 569 paragraph shall also be sentenced to pay the maximum fine  
 570 provided under subparagraph 1.

571       (h)1. Any person who knowingly sells, purchases,  
 572 manufactures, delivers, or brings into this state, or who is  
 573 knowingly in actual or constructive possession of, 1 kilogram or  
 574 more of gamma-hydroxybutyric acid (GHB), as described in s.  
 575 893.03(1)(d), or any mixture containing gamma-hydroxybutyric  
 576 acid (GHB), commits a felony of the first degree, which felony  
 577 shall be known as "trafficking in gamma-hydroxybutyric acid  
 578 (GHB)," punishable as provided in s. 775.082, s. 775.083, or s.  
 579 775.084. If the quantity involved:

580       a. Is 1 kilogram or more but less than 5 kilograms, such  
 581 person shall be sentenced to a mandatory minimum term of  
 582 imprisonment of 3 years, and the defendant shall be ordered to  
 583 pay a fine of \$50,000.

584       b. Is 5 kilograms or more but less than 10 kilograms, such  
 585 person shall be sentenced to a mandatory minimum term of  
 586 imprisonment of 7 years, and the defendant shall be ordered to  
 587 pay a fine of \$100,000.

588       c. Is 10 kilograms or more, such person shall be sentenced

589 to a mandatory minimum term of imprisonment of 15 calendar years  
 590 and pay a fine of \$250,000.

591 2. Any person who knowingly manufactures or brings into  
 592 this state 150 kilograms or more of gamma-hydroxybutyric acid  
 593 (GHB), as described in s. 893.03(1)(d), or any mixture  
 594 containing gamma-hydroxybutyric acid (GHB), and who knows that  
 595 the probable result of such manufacture or importation would be  
 596 the death of any person commits capital manufacture or  
 597 importation of gamma-hydroxybutyric acid (GHB), a capital felony  
 598 punishable as provided in s. ss. 775.082 and 921.142. Any person  
 599 sentenced for a capital felony under this paragraph shall also  
 600 be sentenced to pay the maximum fine provided under subparagraph  
 601 1.

602 (i)1. Any person who knowingly sells, purchases,  
 603 manufactures, delivers, or brings into this state, or who is  
 604 knowingly in actual or constructive possession of, 1 kilogram or  
 605 more of gamma-butyrolactone (GBL), as described in s.  
 606 893.03(1)(d), or any mixture containing gamma-butyrolactone  
 607 (GBL), commits a felony of the first degree, which felony shall  
 608 be known as "trafficking in gamma-butyrolactone (GBL),"  
 609 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.  
 610 If the quantity involved:

611 a. Is 1 kilogram or more but less than 5 kilograms, such  
 612 person shall be sentenced to a mandatory minimum term of  
 613 imprisonment of 3 years, and the defendant shall be ordered to  
 614 pay a fine of \$50,000.

615 b. Is 5 kilograms or more but less than 10 kilograms, such  
 616 person shall be sentenced to a mandatory minimum term of

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617 imprisonment of 7 years, and the defendant shall be ordered to  
 618 pay a fine of \$100,000.

619 c. Is 10 kilograms or more, such person shall be sentenced  
 620 to a mandatory minimum term of imprisonment of 15 calendar years  
 621 and pay a fine of \$250,000.

622 2. Any person who knowingly manufactures or brings into  
 623 the state 150 kilograms or more of gamma-butyrolactone (GBL), as  
 624 described in s. 893.03(1)(d), or any mixture containing gamma-  
 625 butyrolactone (GBL), and who knows that the probable result of  
 626 such manufacture or importation would be the death of any person  
 627 commits capital manufacture or importation of gamma-  
 628 butyrolactone (GBL), a capital felony punishable as provided in  
 629 s. ss- 775.082 and 921.142. Any person sentenced for a capital  
 630 felony under this paragraph shall also be sentenced to pay the  
 631 maximum fine provided under subparagraph 1.

632 (j)1. Any person who knowingly sells, purchases,  
 633 manufactures, delivers, or brings into this state, or who is  
 634 knowingly in actual or constructive possession of, 1 kilogram or  
 635 more of 1,4-Butanediol as described in s. 893.03(1)(d), or of  
 636 any mixture containing 1,4-Butanediol, commits a felony of the  
 637 first degree, which felony shall be known as "trafficking in  
 638 1,4-Butanediol," punishable as provided in s. 775.082, s.  
 639 775.083, or s. 775.084. If the quantity involved:

640 a. Is 1 kilogram or more, but less than 5 kilograms, such  
 641 person shall be sentenced to a mandatory minimum term of  
 642 imprisonment of 3 years, and the defendant shall be ordered to  
 643 pay a fine of \$50,000.

644 b. Is 5 kilograms or more, but less than 10 kilograms,

645 such person shall be sentenced to a mandatory minimum term of  
 646 imprisonment of 7 years, and the defendant shall be ordered to  
 647 pay a fine of \$100,000.

648 c. Is 10 kilograms or more, such person shall be sentenced  
 649 to a mandatory minimum term of imprisonment of 15 calendar years  
 650 and pay a fine of \$500,000.

651 2. Any person who knowingly manufactures or brings into  
 652 this state 150 kilograms or more of 1,4-Butanediol as described  
 653 in s. 893.03(1)(d), or any mixture containing 1,4-Butanediol,  
 654 and who knows that the probable result of such manufacture or  
 655 importation would be the death of any person commits capital  
 656 manufacture or importation of 1,4-Butanediol, a capital felony  
 657 punishable as provided in s. 775.082 ~~and 921.142~~. Any person  
 658 sentenced for a capital felony under this paragraph shall also  
 659 be sentenced to pay the maximum fine provided under subparagraph  
 660 1.

661 (k)1. Any person who knowingly sells, purchases,  
 662 manufactures, delivers, or brings into this state, or who is  
 663 knowingly in actual or constructive possession of, 10 grams or  
 664 more of any of the following substances described in s.  
 665 893.03(1)(a) or (c):

- 666 a. 3,4-Methylenedioxymethamphetamine (MDMA);
- 667 b. 4-Bromo-2,5-dimethoxyamphetamine;
- 668 c. 4-Bromo-2,5-dimethoxyphenethylamine;
- 669 d. 2,5-Dimethoxyamphetamine;
- 670 e. 2,5-Dimethoxy-4-ethylamphetamine (DOET);
- 671 f. N-ethylamphetamine;
- 672 g. N-Hydroxy-3,4-methylenedioxyamphetamine;

- 673 h. 5-Methoxy-3,4-methylenedioxyamphetamine;  
 674 i. 4-methoxyamphetamine;  
 675 j. 4-methoxymethamphetamine;  
 676 k. 4-Methyl-2,5-dimethoxyamphetamine;  
 677 l. 3,4-Methylenedioxy-N-ethylamphetamine;  
 678 m. 3,4-Methylenedioxyamphetamine;  
 679 n. N,N-dimethylamphetamine; or  
 680 o. 3,4,5-Trimethoxyamphetamine,  
 681 individually or in any combination of or any mixture containing  
 682 any substance listed in sub-subparagraphs a.-o., commits a  
 683 felony of the first degree, which felony shall be known as  
 684 "trafficking in Phenethylamines," punishable as provided in s.  
 685 775.082, s. 775.083, or s. 775.084.
- 686 2. If the quantity involved:
- 687 a. Is 10 grams or more but less than 200 grams, such  
 688 person shall be sentenced to a mandatory minimum term of  
 689 imprisonment of 3 years, and the defendant shall be ordered to  
 690 pay a fine of \$50,000.
- 691 b. Is 200 grams or more, but less than 400 grams, such  
 692 person shall be sentenced to a mandatory minimum term of  
 693 imprisonment of 7 years, and the defendant shall be ordered to  
 694 pay a fine of \$100,000.
- 695 c. Is 400 grams or more, such person shall be sentenced to  
 696 a mandatory minimum term of imprisonment of 15 calendar years  
 697 and pay a fine of \$250,000.
- 698 3. Any person who knowingly manufactures or brings into  
 699 this state 30 kilograms or more of any of the following  
 700 substances described in s. 893.03(1)(a) or (c):

701 a. 3,4-Methylenedioxyamphetamine (MDMA);  
 702 b. 4-Bromo-2,5-dimethoxyamphetamine;  
 703 c. 4-Bromo-2,5-dimethoxyphenethylamine;  
 704 d. 2,5-Dimethoxyamphetamine;  
 705 e. 2,5-Dimethoxy-4-ethylamphetamine (DOET);  
 706 f. N-ethylamphetamine;  
 707 g. N-Hydroxy-3,4-methylenedioxyamphetamine;  
 708 h. 5-Methoxy-3,4-methylenedioxyamphetamine;  
 709 i. 4-methoxyamphetamine;  
 710 j. 4-methoxymethamphetamine;  
 711 k. 4-Methyl-2,5-dimethoxyamphetamine;  
 712 l. 3,4-Methylenedioxy-N-ethylamphetamine;  
 713 m. 3,4-Methylenedioxyamphetamine;  
 714 n. N,N-dimethylamphetamine; or  
 715 o. 3,4,5-Trimethoxyamphetamine,  
 716 individually or in any combination of or any mixture containing  
 717 any substance listed in sub-subparagraphs a.-o., and who knows  
 718 that the probable result of such manufacture or importation  
 719 would be the death of any person commits capital manufacture or  
 720 importation of Phenethylamines, a capital felony punishable as  
 721 provided in s. ss. 775.082 and ~~921.142~~. Any person sentenced for  
 722 a capital felony under this paragraph shall also be sentenced to  
 723 pay the maximum fine provided under subparagraph 1.  
 724 (1)1. Any person who knowingly sells, purchases,  
 725 manufactures, delivers, or brings into this state, or who is  
 726 knowingly in actual or constructive possession of, 1 gram or  
 727 more of lysergic acid diethylamide (LSD) as described in s.  
 728 893.03(1)(c), or of any mixture containing lysergic acid



729 diethylamide (LSD), commits a felony of the first degree, which  
 730 felony shall be known as "trafficking in lysergic acid  
 731 diethylamide (LSD)," punishable as provided in s. 775.082, s.  
 732 775.083, or s. 775.084. If the quantity involved:

733       a. Is 1 gram or more, but less than 5 grams, such person  
 734 shall be sentenced to a mandatory minimum term of imprisonment  
 735 of 3 years, and the defendant shall be ordered to pay a fine of  
 736 \$50,000.

737       b. Is 5 grams or more, but less than 7 grams, such person  
 738 shall be sentenced to a mandatory minimum term of imprisonment  
 739 of 7 years, and the defendant shall be ordered to pay a fine of  
 740 \$100,000.

741       c. Is 7 grams or more, such person shall be sentenced to a  
 742 mandatory minimum term of imprisonment of 15 calendar years and  
 743 pay a fine of \$500,000.

744       2. Any person who knowingly manufactures or brings into  
 745 this state 7 grams or more of lysergic acid diethylamide (LSD)  
 746 as described in s. 893.03(1)(c), or any mixture containing  
 747 lysergic acid diethylamide (LSD), and who knows that the  
 748 probable result of such manufacture or importation would be the  
 749 death of any person commits capital manufacture or importation  
 750 of lysergic acid diethylamide (LSD), a capital felony punishable  
 751 as provided in s. 775.082 ~~and 921.142~~. Any person sentenced  
 752 for a capital felony under this paragraph shall also be  
 753 sentenced to pay the maximum fine provided under subparagraph 1.

754       Section 17. Sections 922.052, 922.06, 922.07, 922.08,  
 755 922.095, 922.10, 922.105, 922.108, 922.11, 922.111, 922.12,  
 756 922.14, and 922.15, Florida Statutes, are repealed.

757 Section 18. Section 924.055, Florida Statutes, is amended  
 758 to read:

759 924.055 Postconviction review in capital cases;  
 760 legislative findings and intent.—

761 ~~(1) It is the intent of the Legislature to reduce delays~~  
 762 ~~in capital cases and to ensure that all appeals and~~  
 763 ~~postconviction actions in capital cases are resolved within 5~~  
 764 ~~years after the date a sentence of death is imposed in the~~  
 765 ~~circuit court. All capital postconviction actions must be filed~~  
 766 ~~as early as possible after the imposition of a sentence of death~~  
 767 ~~which may be during a direct appeal of the conviction and~~  
 768 ~~sentence. A person sentenced to death or that person's capital~~  
 769 ~~postconviction counsel must file any postconviction legal action~~  
 770 ~~in compliance with the statutes of limitation established in s.~~  
 771 ~~924.056 and elsewhere in this chapter. Except as expressly~~  
 772 ~~allowed by s. 924.056(5), a person sentenced to death or that~~  
 773 ~~person's capital postconviction counsel may not file more than~~  
 774 ~~one postconviction action in a sentencing court and one appeal~~  
 775 ~~therefrom to the Florida Supreme Court, unless authorized by~~  
 776 ~~law.~~

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

784 Section 19. Sections 924.056 and 924.057, Florida  
 785 Statutes, are repealed.

786 Section 20. Subsection (1) of section 924.058, Florida  
 787 Statutes, is amended to read:

788 924.058 Capital postconviction claims.—This section shall  
 789 regulate the procedures in actions for capital postconviction  
 790 relief commencing after the effective date of this act unless  
 791 and until such procedures are revised by rule or rules adopted  
 792 by the Florida Supreme Court which specifically reference this  
 793 section.

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

801 Section 21. Subsection (8) of section 924.059, Florida  
 802 Statutes, is amended to read:

803 924.059 Time limitations and judicial review in capital  
 804 postconviction actions.—This section shall regulate the  
 805 procedures in actions for capital postconviction relief  
 806 commencing after the effective date of this act unless and until  
 807 such procedures are revised by rule or rules adopted by the  
 808 Florida Supreme Court which specifically reference this section.

809 (8) A capital postconviction action filed in violation of  
 810 the time limitations provided by statute is barred, and all  
 811 claims raised therein are waived. ~~A state court shall not~~

812 ~~consider any capital postconviction action filed in violation of~~  
 813 ~~s. 924.056 or s. 924.057.~~ The Attorney General shall deliver to  
 814 the Governor, the President of the Senate, and the Speaker of  
 815 the House of Representatives a copy of any pleading or order  
 816 that alleges or adjudicates any violation of this provision.

817 Section 22. Subsection (4) of section 925.11, Florida  
 818 Statutes, is amended to read:

819 925.11 Postsentencing DNA testing.—

820 (4) PRESERVATION OF EVIDENCE.—

821 ~~(a)~~ Governmental entities that may be in possession of any  
 822 physical evidence in the case, including, but not limited to,  
 823 any investigating law enforcement agency, the clerk of the  
 824 court, the prosecuting authority, or the Department of Law  
 825 Enforcement shall maintain any physical evidence collected at  
 826 the time of the crime for which a postsentencing testing of DNA  
 827 may be requested.

828 ~~(b) In a case in which the death penalty is imposed, the~~  
 829 ~~evidence shall be maintained for 60 days after execution of the~~  
 830 ~~sentence. In all other cases, a governmental entity may dispose~~  
 831 ~~of the physical evidence if the term of the sentence imposed in~~  
 832 ~~the case has expired and no other provision of law or rule~~  
 833 ~~requires that the physical evidence be preserved or retained.~~

834 Section 23. Paragraphs (g) and (h) of subsection (1) and  
 835 subsection (2) of section 945.10, Florida Statutes, are amended  
 836 to read:

837 945.10 Confidential information.—

838 (1) Except as otherwise provided by law or in this  
 839 section, the following records and information held by the

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840 Department of Corrections are confidential and exempt from the  
 841 provisions of s. 119.07(1) and s. 24(a), Art. I of the State  
 842 Constitution:

843 ~~(g) Information which identifies an executioner, or any~~  
 844 ~~person prescribing, preparing, compounding, dispensing, or~~  
 845 ~~administering a lethal injection.~~

846 (g) ~~(h)~~ Records that are otherwise confidential or exempt  
 847 from public disclosure by law.

848 (2) The records and information specified in subsection  
 849 ~~paragraphs~~ (1) ~~(a)-(h)~~ may be released as follows unless  
 850 expressly prohibited by federal law:

851 (a) Information specified in paragraphs (1)(b), (d), and  
 852 (f) to the Office of the Governor, the Legislature, the Parole  
 853 Commission, the Department of Children and Family Services, a  
 854 private correctional facility or program that operates under a  
 855 contract, the Department of Legal Affairs, a state attorney, the  
 856 court, or a law enforcement agency. A request for records or  
 857 information pursuant to this paragraph need not be in writing.

858 (b) Information specified in paragraphs (1)(c), (e), and  
 859 (g) ~~(h)~~ to the Office of the Governor, the Legislature, the  
 860 Parole Commission, the Department of Children and Family  
 861 Services, a private correctional facility or program that  
 862 operates under contract, the Department of Legal Affairs, a  
 863 state attorney, the court, or a law enforcement agency. A  
 864 request for records or information pursuant to this paragraph  
 865 must be in writing and a statement provided demonstrating a need  
 866 for the records or information.

867 (c) Information specified in paragraph (1)(b) to an

868 attorney representing an inmate under sentence of death, except  
 869 those portions of the records containing a victim's statement or  
 870 address, or the statement or address of a relative of the  
 871 victim. A request for records of information pursuant to this  
 872 paragraph must be in writing and a statement provided  
 873 demonstrating a need for the records or information.

874 (d) Information specified in paragraph (1)(b) to a public  
 875 defender representing a defendant, except those portions of the  
 876 records containing a victim's statement or address, or the  
 877 statement or address of a relative of the victim. A request for  
 878 records or information pursuant to this paragraph need not be in  
 879 writing.

880 (e) Information specified in paragraph (1)(b) to state or  
 881 local governmental agencies. A request for records or  
 882 information pursuant to this paragraph must be in writing and a  
 883 statement provided demonstrating a need for the records or  
 884 information.

885 (f) Information specified in paragraph (1)(b) to a person  
 886 conducting legitimate research. A request for records and  
 887 information pursuant to this paragraph must be in writing, the  
 888 person requesting the records or information must sign a  
 889 confidentiality agreement, and the department must approve the  
 890 request in writing.

891 (g) Information specified in paragraph (1)(a) to the  
 892 Department of Health and the county health department where an  
 893 inmate plans to reside if he or she has tested positive for the  
 894 presence of the antibody or antigen to human immunodeficiency  
 895 virus infection.

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896 | Records and information released under this subsection remain  
897 | confidential and exempt from the provisions of s. 119.07(1) and  
898 | s. 24(a), Art. I of the State Constitution when held by the  
899 | receiving person or entity.

900 |       Section 24. This act shall take effect July 1, 2013.





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A bill to be entitled  
An act relating to postconviction capital case  
proceedings; providing an effective date.

WHEREAS, it is in the best interest of the administration  
of justice that a sentence of death ordered by a court 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, and

WHEREAS, the Death Penalty Reform Act of 2000, chapter  
2000-3, Laws of Florida, was designed to accomplish these  
objectives and was passed by the Legislature and approved by the  
Governor of Florida in January of 2000, and

WHEREAS, the Death Penalty Reform Act of 2000, chapter  
2000-3, Laws of Florida, was declared unconstitutional by the  
Florida Supreme Court three months after becoming a law in Allen  
v. Butterworth, 756 So.2d 52 Fla. 2000, as being an encroachment

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28 | on the court's "exclusive power to 'adopt rules for the practice  
29 | and procedure in all courts,'" and

30 |       WHEREAS, the Constitution of the State of Florida has been  
31 | amended to require postconviction and collateral review of  
32 | capital cases resulting in a sentence of death to be governed  
33 | by, and to the extent provided by, general law, and

34 |       WHEREAS, many provisions of the Death Penalty Reform Act of  
35 | 2000 which were held unconstitutional may now be reenacted,  
36 | while other provisions can be modified, and new provisions added  
37 | to accomplish the same purpose, procedure, and objective of the  
38 | Death Penalty Reform Act of 2000, NOW, THEREFORE,

39 |

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

41 |

42 |       Section 1. This act may be cited as the Timely Justice Act  
43 | of 2013.

44 |       Section 2. Paragraph (a) of subsection (5) of section  
45 | 27.51, Florida Statutes, is amended to read:

46 |       27.51 Duties of public defender.—

47 |       (5) (a) When direct appellate proceedings prosecuted by a  
48 | public defender on behalf of an accused and challenging a  
49 | judgment of conviction and sentence of death terminate in an  
50 | affirmance of such conviction and sentence, whether by the  
51 | Florida Supreme Court or by the United States Supreme Court or  
52 | by expiration of any deadline for filing such appeal in a state  
53 | or federal court, the public defender shall notify the accused  
54 | of his or her rights pursuant to s. 924.056~~Rule 3.850, Florida~~  
55 | ~~Rules of Criminal Procedure~~, including any time limits pertinent

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56 thereto, and shall advise such person that representation in any  
 57 collateral proceedings is the responsibility of the capital  
 58 collateral regional counsel. The public defender shall then  
 59 forward all original files on the matter to the capital  
 60 collateral regional counsel, retaining such copies for his or  
 61 her files as may be desired. However, the trial court shall  
 62 retain the power to appoint the public defender or other  
 63 attorney not employed by the capital collateral regional counsel  
 64 to represent such person in proceedings for relief by executive  
 65 clemency pursuant to ss. 27.40 and 27.5303.

66 Section 3. Subsection (2) of section 27.701, Florida  
 67 Statutes, is repealed.

68 Section 4. Subsection (4) of section 27.702, Florida  
 69 Statutes, is amended to read:

70 27.702 Duties of the capital collateral regional counsel;  
 71 reports.-

72 (4)(a) The capital collateral regional counsel or private  
 73 counsel shall give written notification of each pleading filed  
 74 by that office and the name of the person filing the pleading to  
 75 the trial court assigned to the case.

76 (b) Each capital collateral regional counsel ~~and each~~  
 77 ~~attorney participating in the pilot program in the northern~~  
 78 ~~region pursuant to s. 27.701(2)~~ shall provide a quarterly report  
 79 to the President of the Senate and the Speaker of the House of  
 80 Representatives which details the number of hours worked by  
 81 investigators and legal counsel per case and the amounts per  
 82 case expended during the preceding quarter in investigating and  
 83 litigating capital collateral cases.

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84 Section 5. Section 27.703, Florida Statutes, is reenacted  
85 to read:

86 27.703 Conflict of interest and substitute counsel.-

87 (1) The capital collateral regional counsel shall not  
88 accept an appointment or take any other action that will create  
89 a conflict of interest. If, at any time during the  
90 representation of a person, the capital collateral regional  
91 counsel determines that the continued representation of that  
92 person creates a conflict of interest, the sentencing court  
93 shall, upon application by the regional counsel, designate  
94 another regional counsel and, only if a conflict exists with the  
95 other two counsel, appoint one or more members of The Florida  
96 Bar to represent one or more of such persons.

97 (2) Appointed counsel shall be paid from funds  
98 appropriated to the Chief Financial Officer. The hourly rate may  
99 not exceed \$100. However, all appointments of private counsel  
100 under this section shall be in accordance with ss. 27.710 and  
101 27.711.

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

107 Section 6. Subsection (2) of section 27.708, Florida  
108 Statutes, is amended to read:

109 27.708 Access to prisoners; ~~compliance with the Florida~~  
110 ~~Rules of Criminal Procedure;~~ records requests.-

111 (2) The capital collateral regional counsel and contracted

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112 private counsel must timely comply with all statutes ~~provisions~~  
 113 ~~of the Florida Rules of Criminal Procedure~~ governing collateral  
 114 review of capital cases.

115 Section 7. Section 27.7081, Florida Statutes, is amended  
 116 to read:

117 27.7081 Capital postconviction public records production.—

118 (1) As used in this section, the term "trial court" means:

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

121 (b) If a motion for postconviction relief in a capital  
 122 case has been filed and a different judge has already been  
 123 assigned to that motion, the judge who is assigned to rule on  
 124 that motion.

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

128 (3)(a) Upon imposition of a death sentence or upon the  
 129 effective date of this act with respect to any case in which a  
 130 death sentence has been imposed but the mandate has not yet been  
 131 issued in an appeal affirming the sentence, the prosecuting  
 132 attorney shall promptly provide written notification to each law  
 133 enforcement agency involved in the case and to the Department of  
 134 Corrections. If available, the written notification must include  
 135 the defendant's date of birth, sex, race, and police-case  
 136 numbers included in the prosecuting attorney's case file.

137 (b) Within 60 days after receipt of notification, each law  
 138 enforcement agency involved in the case and the prosecuting  
 139 attorney who prosecuted the case shall copy, seal, and deliver

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140 to the repository all public records, except for those filed in  
 141 the trial court, which were produced in the investigation or  
 142 prosecution of the case or, if the records are confidential or  
 143 exempt, to the clerk of the court in the county in which the  
 144 capital case was tried. Each agency shall bear the costs of its  
 145 own compliance.

146 (c) Within 60 days after notification, the Department of  
 147 Corrections shall copy, seal, and deliver to the repository or,  
 148 if the records are confidential or exempt, to the clerk of the  
 149 court in the county in which the capital case was tried all  
 150 public records determined by the department to be relevant to  
 151 the subject matter of a capital postconviction claim of the  
 152 person sentenced to death and where such production would not be  
 153 unduly burdensome for the department. The department shall bear  
 154 the costs.

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

166 (b) The prosecuting attorney who prosecuted the case shall  
 167 provide written notification to the Attorney General upon

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

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

182 |         (5)(a) Within 60 days after the imposition of a death  
 183 | sentence or upon the effective date of this act with respect to  
 184 | any case in which a death sentence has been imposed but the  
 185 | mandate has not yet been issued in an appeal affirming the  
 186 | sentence, both the public defender or private counsel for the  
 187 | defendant and the prosecuting attorney involved in the case  
 188 | shall provide written notification to the Attorney General of  
 189 | the name and address of any person or agency in addition to  
 190 | those persons and agencies listed in subsection (3) which may  
 191 | have information pertinent to the case unless previously  
 192 | provided to the capital collateral regional counsel or  
 193 | postconviction private counsel. The Attorney General shall  
 194 | promptly provide written notification to each identified person  
 195 | or agency after receiving the information from the public

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196 | defender, private counsel for the defendant, or prosecuting  
 197 | attorney and shall request that all public records in the  
 198 | possession of the person or agency which pertain to the case be  
 199 | copied, sealed, and delivered to the records repository.

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

208 |       (6) (a) Any public record under this section which is  
 209 | confidential or exempt from the requirements of s. 119.07(1) and  
 210 | s. 24(a), Art. I of the State Constitution must be separately  
 211 | boxed, without being redacted, and sealed. The box must be  
 212 | delivered to the clerk of court in the county in which the  
 213 | capital case was tried. The outside of the box must clearly  
 214 | identify the public records as exempt, and the seal may not be  
 215 | broken without an order of the trial court. The outside of the  
 216 | box must identify the nature of the public records and the legal  
 217 | basis under which the public records are exempt. Such a box may  
 218 | be opened only for an inspection by the trial court in camera  
 219 | and only after notice giving the agency the option to have a  
 220 | representative present at the unsealing by the court.

221 |       (7) (a) Within 180 days after a capital collateral regional  
 222 | counsel or private counsel is appointed to represent a defendant  
 223 | sentenced to death, or within 30 days after issuance of the



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224 Florida Supreme Court's mandate affirming a death sentence,  
 225 whichever is later, the regional counsel, private counsel, or  
 226 other counsel who is a member of The Florida Bar and is  
 227 authorized by such counsel representing a defendant may send a  
 228 written demand for additional public records to each person or  
 229 agency submitting public records under subsection (3) and to  
 230 each person or agency identified as having information pertinent  
 231 to the case under subsection (5). Should the written demand  
 232 include requests for records associated with particular named  
 233 individuals, the written demand shall also include a brief  
 234 statement describing each named person's role in the case and  
 235 relationship to the defendant. Race, sex, and date of birth  
 236 shall also be included in the demand if the public defender,  
 237 private counsel, or capital collateral regional counsel has such  
 238 information. Each person or agency notified under this  
 239 subsection shall, within 60 days after receipt of the written  
 240 demand, deliver to the records repository or, if the records are  
 241 confidential or exempt, to the clerk of the court in the county  
 242 in which the capital case was tried any additional public  
 243 records in the possession of the person or agency which pertain  
 244 to the case and shall certify that to the best of his or her  
 245 knowledge and belief all additional public records have been  
 246 delivered or, if no additional public records are found, shall  
 247 recertify that the public records previously delivered are  
 248 complete.

249 (b) Within 25 days after receiving the written demand, the  
 250 agency or person may file an objection in the trial court  
 251 alleging that the request is overly broad or unduly burdensome.

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252 Within 30 days after the filing of an objection, the trial court  
 253 shall hold a hearing and order an agency or person to produce  
 254 additional public records if it finds each of the following:

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

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

260 3. The additional public records sought are relevant to  
 261 the subject matter of a capital postconviction relief or appear  
 262 reasonably calculated to lead to the discovery of admissible  
 263 evidence in prosecuting such claim.

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

266 (c) This statute shall not be a basis for renewing  
 267 requests that have been initiated previously or for relitigating  
 268 issues pertaining to production of public records upon which a  
 269 court has ruled.

270 (d) If, on the effective date of this act, ~~October 1,~~  
 271 ~~1998,~~ the defendant had a postconviction ~~Rule 3.850~~ motion  
 272 denied and no postconviction ~~Rule 3.850~~ motion was pending, no  
 273 additional requests shall be made by capital collateral regional  
 274 counsel or contracted private counsel until a death warrant is  
 275 signed by the Governor and an execution is scheduled. Within 10  
 276 days of the signing of the death warrant, capital collateral  
 277 regional counsel or contracted private counsel may request of a  
 278 person or agency that the defendant has previously requested to  
 279 produce records any records previously requested to which no

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280 objection was raised or sustained, but which the agency has  
 281 received or produced since the previous request or which for any  
 282 reason the agency has in its possession and did not produce  
 283 within 10 days of the receipt of the previous notice or such  
 284 shorter time period ordered by the court to comply with the time  
 285 for the scheduled execution. The person or agency shall produce  
 286 the record or shall file in the trial court an affidavit stating  
 287 that it does not have the requested record or that the record  
 288 has been produced previously.

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

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

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

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

313 2. The regional or private counsel's affidavit identifies,  
 314 with specificity, those additional public records that are not  
 315 at the repository.

316 3. The additional public records sought are relevant to  
 317 the subject matter of a claim for capital postconviction relief  
 318 or appear reasonably calculated to lead to the discovery of  
 319 admissible evidence in prosecuting such claim.

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

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

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

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

335 (12) Sixty days after a capital sentence is carried out,

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336 60 days after a defendant is released from incarceration  
 337 following the granting of a pardon or reversal of the sentence,  
 338 or 60 days after the defendant has been resentenced to a term of  
 339 years, the Attorney General shall provide written notification  
 340 to the Secretary of State, who may then destroy the records held  
 341 by the records repository which pertain to that case.

342 (13) This section pertains only to the production of  
 343 records for capital postconviction defendants and does not  
 344 change or alter any time limitations provided by law governing  
 345 capital postconviction claims and actions. Furthermore, this  
 346 section does not affect, expand, or limit the production of  
 347 public records for any purposes other than use in a capital  
 348 postconviction proceeding. Nothing in this section constitutes  
 349 grounds to expand the time limitations or allow any pleading in  
 350 violation of chapter 924 or to stay an execution or death  
 351 warrant.

352 Section 8. Section 27.7091, Florida Statutes, is amended  
 353 to read:

354 27.7091 Legislative recommendations to Supreme Court;  
 355 postconviction proceedings; pro bono service credit.—In the  
 356 interest of promoting justice and integrity with respect to  
 357 capital collateral representation, the Legislature recommends  
 358 that the Supreme Court:

359 ~~(1) Adopt by rule the provisions of s. 924.055, which~~  
 360 ~~limit the time for postconviction proceedings in capital cases.~~

361 ~~(2) Award pro bono service credit for time spent by an~~  
 362 attorney in providing legal representation to an individual  
 363 sentenced to death in this state, regardless of whether the

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364 attorney receives compensation for such representation.  
 365 Section 9. Subsection (3) and paragraph (b) of subsection  
 366 (4) of section 27.711, Florida Statutes, is amended to read:  
 367 27.711 Terms and conditions of appointment of attorneys as  
 368 counsel in postconviction capital collateral proceedings.-  
 369 (3) An attorney appointed to represent a capital defendant  
 370 is entitled to payment of the fees set forth in this section  
 371 only upon full performance by the attorney of the duties  
 372 specified in this section and approval of payment by the trial  
 373 court, and the submission of a payment request by the attorney,  
 374 subject to the availability of sufficient funding specifically  
 375 appropriated for this purpose. ~~An attorney may not be~~  
 376 ~~compensated under this section for work performed by the~~  
 377 ~~attorney before July 1, 2003, while employed by the northern~~  
 378 ~~regional office of the capital collateral counsel.~~ The Chief  
 379 Financial Officer shall notify the executive director and the  
 380 court if it appears that sufficient funding has not been  
 381 specifically appropriated for this purpose to pay any fees which  
 382 may be incurred. The attorney shall maintain appropriate  
 383 documentation, including a current and detailed hourly  
 384 accounting of time spent representing the capital defendant. The  
 385 fee and payment schedule in this section is the exclusive means  
 386 of compensating a court-appointed attorney who represents a  
 387 capital defendant. When appropriate, a court-appointed attorney  
 388 must seek further compensation from the Federal Government, as  
 389 provided in 18 U.S.C. s. 3006A or other federal law, in habeas  
 390 corpus litigation in the federal courts.  
 391 (4) Upon approval by the trial court, an attorney

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392 appointed to represent a capital defendant under s. 27.710 is  
 393 entitled to payment of the following fees by the Chief Financial  
 394 Officer:

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

404  
 405 The hours billed by a contracting attorney under this subsection  
 406 may include time devoted to representation of the defendant by  
 407 another attorney who is qualified under s. 27.710 and who has  
 408 been designated by the contracting attorney to assist him or  
 409 her.

410 Section 10. Paragraph (d) of subsection (3) of section  
 411 119.011, Florida Statutes, is amended to read:

412 119.011 Definitions.—As used in this chapter, the term:

413 (3)

414 (d) The word "active" shall have the following meaning:

415 1. Criminal intelligence information shall be considered  
 416 "active" as long as it is related to intelligence gathering  
 417 conducted with a reasonable, good faith belief that it will lead  
 418 to detection of ongoing or reasonably anticipated criminal  
 419 activities.

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420 2. Criminal investigative information shall be considered  
 421 "active" as long as it is related to an ongoing investigation  
 422 which is continuing with a reasonable, good faith anticipation  
 423 of securing an arrest or prosecution in the foreseeable future.

424  
 425 Except as provided in this paragraph ~~In addition~~, criminal  
 426 intelligence and criminal investigative information shall be  
 427 considered "active" while such information is directly related  
 428 to pending prosecutions or appeals. With respect to capital  
 429 cases in which the defendant has been sentenced to death, upon  
 430 the imposition of the death sentence criminal intelligence and  
 431 criminal investigative information shall be considered not  
 432 "active." The word "active" shall not apply to information in  
 433 cases which are barred from prosecution under the provisions of  
 434 s. 775.15 or other statute of limitation.

435 Section 11. Section 922.095, Florida Statutes, is  
 436 reenacted to read:

437 922.095 Grounds for death warrant; limitations of  
 438 actions.—A person who is convicted and sentenced to death must  
 439 pursue all possible collateral remedies within the time limits  
 440 provided by statute. Failure to seek relief within the statutory  
 441 time limits constitutes grounds for issuance of a death warrant  
 442 under s. 922.052 or s. 922.14. Any claim not pursued within the  
 443 statutory time limits is barred. No claim filed after the time  
 444 required by law shall be grounds for a judicial stay of any  
 445 warrant.

446 Section 12. Section 922.108, Florida Statutes, is  
 447 reenacted to read:



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448 922.108 Sentencing orders in capital cases.—The sentence  
 449 of death must not specify any particular method of execution.  
 450 The wording or form of the sentencing order shall not be grounds  
 451 for reversal of any sentence.

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

454 924.055 Postconviction review in capital cases;  
 455 legislative findings and intent.—

456 (1) It is the intent of the Legislature to reduce delays  
 457 in capital cases and to ensure that all appeals and  
 458 postconviction actions in capital cases are resolved within 8 ~~5~~  
 459 years after the date a sentence of death is imposed in the  
 460 circuit court. All capital postconviction actions must be filed  
 461 as early as possible after the imposition of a sentence of death  
 462 which may be during a direct appeal of the conviction and  
 463 sentence. A person sentenced to death or that person's capital  
 464 postconviction counsel must file any postconviction legal action  
 465 in compliance with the timeframes ~~statutes of limitation~~  
 466 established in s. 924.056 and elsewhere in this chapter. Except  
 467 as expressly allowed by s. 924.056(5), a person sentenced to  
 468 death or that person's capital postconviction counsel may not  
 469 file more than one postconviction action in a sentencing court  
 470 and one appeal therefrom to the Florida Supreme Court, unless  
 471 authorized by law.

472 (2) It is the further intent of the Legislature that no  
 473 state resources be expended in violation of this act. In the  
 474 event that any state employee or party contracting with the  
 475 state violates the provisions of this act, the Attorney General

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476 shall deliver to the Speaker of the House of Representatives and  
 477 the President of the Senate a copy of any court pleading or  
 478 order that describes or adjudicates a violation.

479 Section 14. Section 924.056, Florida Statutes, is amended  
 480 to read:

481 924.056 Commencement of capital postconviction actions for  
 482 which sentence of death is imposed on or after July 1, 2015  
 483 ~~January 14, 2000~~; limitations on actions.-

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

488 (a) Within 15 days after imposing a sentence of death, the  
 489 sentencing court shall appoint the appropriate office of the  
 490 capital collateral regional counsel or private postconviction  
 491 counsel, unless the defendant declines to accept postconviction  
 492 legal representation in which case the state shall not provide  
 493 postconviction legal representation. Within 30 days after the  
 494 appointment, the capital collateral regional counsel shall file  
 495 a notice of appearance in the trial court or a motion to  
 496 withdraw based on a conflict of interest or for good cause. The  
 497 court shall appoint private counsel pursuant to part IV of  
 498 chapter 27 in any case in which the capital collateral regional  
 499 counsel files a motion to withdraw, or otherwise informs the  
 500 court that the capital collateral regional counsel cannot comply  
 501 with the provisions of chapter 924 or in which the court  
 502 determines that the agency cannot comply with chapter 924 or  
 503 other applicable laws.

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504 (b) The defendant who accepts the appointment of  
 505 postconviction counsel must cooperate with and assist  
 506 postconviction counsel. If the sentencing court finds the  
 507 defendant is obstructing the postconviction process, the  
 508 defendant shall not be entitled to any further postconviction  
 509 legal representation provided by the state. Each attorney  
 510 participating in a capital case on behalf of a defendant must  
 511 provide all information pertaining to the capital case which the  
 512 attorney obtained during the representation of that defendant to  
 513 that defendant's capital postconviction counsel. Postconviction  
 514 counsel must maintain the confidentiality of any confidential  
 515 information received from any attorney for that defendant and is  
 516 subject to the same penalties as the providing attorney for  
 517 violating confidentiality. If the defendant requests without  
 518 good cause that any attorney appointed under this subsection be  
 519 removed or replaced, the court shall notify the defendant that  
 520 no further state resources may be expended for postconviction  
 521 representation for that defendant, unless the defendant  
 522 withdraws the request to remove or replace postconviction  
 523 counsel. If the defendant does not immediately withdraw his or  
 524 her request, then any appointed attorney must be removed from  
 525 the case and no further state resources may be expended for the  
 526 defendant's postconviction representation. The prosecuting  
 527 attorney and the defendant's trial counsel shall provide the  
 528 defendant or, if represented, the defendant's capital  
 529 postconviction counsel with copies of all pretrial and trial  
 530 discovery and all contents of the prosecuting attorney's file,  
 531 except for information that the prosecuting attorney has a legal

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532 right under state or federal law to withhold from disclosure.

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

539 (3)(a) With respect to all capital postconviction actions  
 540 commenced after the effective date of this act, a capital  
 541 postconviction action is not commenced until the defendant or  
 542 the defendant's postconviction counsel files a fully pled  
 543 postconviction action in the sentencing court or, as provided in  
 544 subsection (4), the Florida Supreme Court. For the purposes of  
 545 this subsection, a fully pled capital postconviction action is  
 546 one which complies with s. 924.058(2) ~~or any superseding rule~~  
 547 ~~adopted by the Florida Supreme Court~~. Except as provided by  
 548 subsection (4) or subsection (5), all capital postconviction  
 549 actions shall be barred unless they are commenced within 180  
 550 days after the filing of the appellant's initial brief in the  
 551 Florida Supreme Court on direct appeal of the defendant's  
 552 capital conviction and sentence. The fully pled postconviction  
 553 action must raise all cognizable claims that the defendant's  
 554 judgment or sentence was entered in violation of the  
 555 Constitution or laws of the United States or the Constitution or  
 556 the laws of the state, including any claim of ineffective  
 557 assistance of trial counsel, allegations of innocence, or that  
 558 the state withheld evidence favorable to the defendant. No claim  
 559 may be considered in such action which could have or should have

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560 | been raised before trial, at trial, or if preserved on direct  
 561 | appeal. For the purposes of this subsection, a capital  
 562 | postconviction action is not fully pled unless it satisfies the  
 563 | requirements of s. 924.058(2) ~~or any superseding rule of court.~~

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

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

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

579 |       (4) All capital postconviction actions raising any claim  
 580 | of ineffective assistance of direct appeal counsel are barred  
 581 | unless they are commenced in conformity with this subsection.  
 582 | The defendant or the defendant's capital postconviction counsel  
 583 | shall file an action in the Florida Supreme Court raising any  
 584 | claim of ineffective assistance of direct appeal counsel within  
 585 | 45 days after mandate issues affirming the death sentence in the  
 586 | direct appeal.

587 |       (5) Regardless of when a sentence is imposed, all

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

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

606 924.057 Limitation on postconviction cases in which the  
 607 death sentence was imposed before July 1, 2015 ~~January 14,~~  
 608 ~~2000~~.—This section shall govern all capital postconviction  
 609 actions in cases in which the trial court imposed the sentence  
 610 of death before the effective date of this act.

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

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

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

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

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

636 (4) In every capital case in which the trial court imposed  
 637 the sentence of death before the effective date of this act, a  
 638 capital postconviction action shall be barred unless it is  
 639 commenced on or before July 1, 2016 ~~January 8, 2001~~, or any  
 640 earlier date provided by ~~the rule or~~ law in effect immediately  
 641 prior to the effective date of this act.

642 Section 16. Section 924.058, Florida Statutes, is amended  
 643 to read:

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644 924.058 Capital postconviction claims.—This section shall  
 645 regulate the procedures in actions for capital postconviction  
 646 relief commencing after the effective date of this act ~~unless~~  
 647 ~~and until such procedures are revised by rule or rules adopted~~  
 648 ~~by the Florida Supreme Court which specifically reference this~~  
 649 ~~section.~~

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

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

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

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

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

669 (d) The nature of the relief sought;

670 (e) A fully detailed allegation of the factual basis for  
 671 any claim for which an evidentiary hearing is sought, A fully



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672 ~~detailed allegation of the factual basis for any claim of legal~~  
 673 ~~or constitutional error asserted,~~ including the attachment of  
 674 any document supporting the claim, the name and address of any  
 675 witness, the attachment of affidavits of the witnesses or a  
 676 proffer of the testimony; ~~and~~

677 (f) A fully detailed allegation as to the basis for any  
 678 purely legal or constitutional claim for which an evidentiary  
 679 hearing is not required and the reason that this claim could not  
 680 have been or was not raised on direct appeal; and

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

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

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

694 Section 17. Section 924.0585, Florida Statutes, is created  
 695 to read:

696 924.0585 Capital postconviction actions; conflicts of  
 697 interest.—In any capital postconviction proceeding in which it  
 698 is alleged that there is a conflict of counsel, the court shall  
 699 hold a hearing within 30 days of such allegation to determine

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700 | whether an actual conflict exists and whether such conflict will  
 701 | adversely affect a defendant's lawyer's performance. An actual  
 702 | conflict of interest exists when an attorney actively represents  
 703 | conflicting interests. To demonstrate an actual conflict, the  
 704 | defendant must identify specific evidence suggesting that his or  
 705 | her interests were or may be compromised. A possible,  
 706 | speculative, or merely hypothetical conflict is insufficient to  
 707 | support an allegation that a conflict of interest exists. The  
 708 | court must rule within 10 days of the conclusion of the hearing.

709 | Section 18. Section 924.059, Florida Statutes, is amended  
 710 | to read:

711 | 924.059 Time limitations and judicial review in capital  
 712 | postconviction actions.—This section shall regulate the  
 713 | procedures in actions for capital postconviction relief  
 714 | commencing after the effective date of this act ~~unless and until~~  
 715 | ~~such procedures are revised by rule or rules adopted by the~~  
 716 | ~~Florida Supreme Court which specifically reference this section.~~

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

721 | (2) Within 30 days after the state files its answer, the  
 722 | sentencing court shall conduct a hearing to determine if an  
 723 | evidentiary hearing is required, if a hearing has been requested  
 724 | by the defendant or the defendant's capital postconviction  
 725 | counsel. Within 30 days thereafter, the court shall rule whether  
 726 | an evidentiary hearing is required and, if so, shall schedule an  
 727 | evidentiary hearing to be held within 90 days. If the court

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728 determines that the defendant's capital postconviction action is  
 729 legally insufficient or the action, files, and records in the  
 730 case show that the defendant is not entitled to relief, the  
 731 court shall, within 45 days thereafter, deny the action, setting  
 732 forth a detailed rationale therefore, and attaching or  
 733 referencing such portions of the record as are necessary to  
 734 allow for meaningful appellate review.

735 (3) Within 10 days after the order scheduling an  
 736 evidentiary hearing, the defendant or the defendant's capital  
 737 postconviction counsel shall disclose the names and addresses of  
 738 any potential witnesses not previously disclosed, with their  
 739 affidavits or a proffer of their testimony. Upon receipt of the  
 740 defendant's disclosure, the state shall have 10 days within  
 741 which to provide reciprocal disclosure. If the defendant intends  
 742 to offer expert testimony of his or her mental status, the state  
 743 shall be entitled to have the defendant examined by an expert of  
 744 its choosing. ~~All of the defendant's mental status claims shall~~  
 745 ~~be deemed denied as a matter of law if the defendant fails to~~  
 746 ~~cooperate with the state's expert.~~ Reports provided by expert  
 747 witnesses shall be disclosed by opposing counsel upon receipt.

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

754 (5) An appeal may be taken to the Supreme Court of Florida  
 755 within 15 days from the entry of a final order on a capital

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756 postconviction action. No interlocutory appeal shall be  
 757 permitted. ~~No motion for rehearing shall be permitted.~~ The clerk  
 758 of the court shall promptly serve upon all parties a copy of the  
 759 final order.

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

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

779 (b) In instances where the Florida Supreme Court does not  
 780 comply with paragraph (a), the Chief Justice of the Florida  
 781 Supreme Court shall, within 10 days after the expiration of the  
 782 180 day deadline, submit a report to the Speaker of the Florida  
 783 House of Representatives and the President of the Florida Senate

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784 explaining why a decision was not timely rendered. The Chief  
 785 Justice shall submit a report to the Speaker of the Florida  
 786 House of Representatives and the President of the Florida Senate  
 787 every thirty days thereafter in which a decision is not rendered  
 788 explaining the reasons therefore.

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

797 (9) The Florida Supreme Court shall annually report to the  
 798 Speaker of the Florida House of Representatives and the  
 799 President of the Florida Senate the status of each capital case  
 800 in which a postconviction action has been filed that has been  
 801 pending for more than three years. The report must include the  
 802 name of the state court judge involved in the case.

803 (10) (a) In any capital postconviction proceeding in which  
 804 it has been determined that an attorney of record was  
 805 ineffective, the court making such determination shall furnish a  
 806 copy of the findings of ineffectiveness to the Florida Bar for  
 807 any appropriate disciplinary action. The Florida Bar shall  
 808 submit an annual report to the Speaker of the Florida House of  
 809 Representatives and the President of the Florida Senate listing  
 810 the names of attorneys found ineffective, the findings of the  
 811 court, and detailing what disciplinary action, if any, was taken

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812 by the Florida Bar. If no disciplinary action was taken, the  
 813 report shall specify why no action was taken. An attorney that  
 814 has been deemed ineffective in a capital case is ineligible to  
 815 represent capital case defendants for 5 years.

816 Section 19. Section 924.395, Florida Statutes, is amended  
 817 to read:

818 924.395 Sanctions.—

819 (1) The Legislature strongly encourages the courts,  
 820 through their inherent powers and pursuant to this section, to  
 821 impose sanctions against any person within the court's  
 822 jurisdiction who is found by a court, in a capital  
 823 postconviction proceeding or appeal therefrom, to have:

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

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

829 (c) Improperly withheld evidence or testimony; or

830 (d) Adversely affected the orderly administration of  
 831 justice.

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

835 (a) Dismissal of a pleading;

836 (b) Disciplinary sanctions;

837 (c) A fine; and

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

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840 (e) Raised a claim identical to one previously decided by  
 841 the court.

842 (3) Upon the effective date of this act, the chief judge of  
 843 each judicial circuit shall, on a quarterly basis, submit a  
 844 report to the Division of Retirement within the Florida  
 845 Department of Management Services listing the name of every  
 846 circuit judge that has not ruled on a capital postconviction  
 847 motion within 90 days of the circuit judge's decision that an  
 848 evidentiary hearing on the motion is not necessary or, if an  
 849 evidentiary hearing is ordered, upon conclusion of the hearing.  
 850 The report shall include the presiding circuit judge's name,  
 851 case number, the date the relevant motion was filed, and the  
 852 date of the evidentiary hearing, if applicable. For each year a  
 853 circuit judge appears on the report, such judge will lose one  
 854 year of credible service in the Florida Retirement System.

855 Section 20. If any provision of this act or the  
 856 application thereof to any person or circumstance is held  
 857 invalid, the invalidity does not affect other provisions or  
 858 applications of the act which can be given effect without the  
 859 invalid provision or application, and to this end the provisions  
 860 of this act are declared severable.

861 Section 21. This act shall take effect July 1, 2015,  
 862 contingent upon voter approval of HJR xxxx in the General  
 863 Election of 2014.



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# **Criminal Justice Subcommittee**

**Thursday, February 7, 2013**

**2:00 PM**

**404 HOB**

**Addendum A**



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House Joint Resolution

A joint resolution proposing an amendment to Sections 2 and 3 of Article V of the State Constitution to prohibit a court from requiring or authorizing collateral or postconviction judicial review of a capital case except as provided for by general law, and providing that the supreme court's jurisdiction of collateral and postconviction review of a prisoner's capital case expire five years from the date the supreme court has issued a mandate affirming such prisoner's judgment and sentence of death on direct appeal.

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

That the following amendment to Sections 2 and 3 of Article V of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE V

SECTION 2. Administration; practice and procedure.—

(a) The supreme court shall adopt rules for the practice and procedure in all courts including the time for seeking appellate review, the administrative supervision of all courts, the transfer to the court having jurisdiction of any proceeding when the jurisdiction of another court has been improvidently invoked, and a requirement that no cause shall be dismissed

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29 | because an improper remedy has been sought. The supreme court  
 30 | shall adopt rules to allow the court and the district courts of  
 31 | appeal to submit questions relating to military law to the  
 32 | federal Court of Appeals for the Armed Forces for an advisory  
 33 | opinion. Rules of court may be repealed by general law enacted  
 34 | by two-thirds vote of the membership of each house of the  
 35 | legislature.

36 |        (b) Notwithstanding (a) of this section, postconviction or  
 37 | collateral review of capital cases resulting in a sentence of  
 38 | death shall be governed exclusively by, and to the extent  
 39 | provided by, general law.

40 |        ~~(c)~~ ~~(b)~~ The chief justice of the supreme court shall be  
 41 | chosen by a majority of the members of the court; shall be the  
 42 | chief administrative officer of the judicial system; and shall  
 43 | have the power to assign justices or judges, including  
 44 | consenting retired justices or judges, to temporary duty in any  
 45 | court for which the judge is qualified and to delegate to a  
 46 | chief judge of a judicial circuit the power to assign judges for  
 47 | duty in that circuit.

48 |        ~~(d)~~ ~~(e)~~ A chief judge for each district court of appeal  
 49 | shall be chosen by a majority of the judges thereof or, if there  
 50 | is no majority, by the chief justice. The chief judge shall be  
 51 | responsible for the administrative supervision of the court.

52 |        ~~(e)~~ ~~(d)~~ A chief judge in each circuit shall be chosen from  
 53 | among the circuit judges as provided by supreme court rule. The  
 54 | chief judge shall be responsible for the administrative  
 55 | supervision of the circuit courts and county courts in his  
 56 | circuit.

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57 SECTION 3. Supreme court.—

58 (a) ORGANIZATION.—The supreme court shall consist of seven  
 59 justices. Of the seven justices, each appellate district shall  
 60 have at least one justice elected or appointed from the district  
 61 to the supreme court who is a resident of the district at the  
 62 time of the original appointment or election. Five justices  
 63 shall constitute a quorum. The concurrence of four justices  
 64 shall be necessary to a decision. When recusals for cause would  
 65 prohibit the court from convening because of the requirements of  
 66 this section, judges assigned to temporary duty may be  
 67 substituted for justices.

68 (b) JURISDICTION.—The supreme court:

69 (1)a. Shall hear appeals from final judgments of trial  
 70 courts imposing the death penalty and from decisions of district  
 71 courts of appeal declaring invalid a state statute or a  
 72 provision of the state constitution.

73 b. Notwithstanding any other provision of this  
 74 constitution, shall have jurisdiction of collateral or  
 75 postconviction review of a capital case resulting in a sentence  
 76 of death for eight years from the date the supreme court issued  
 77 the mandate affirming the judgment and sentence on direct  
 78 appeal. In the event of more than one direct appeal affirming a  
 79 death sentence, the date of issuance of the supreme court  
 80 decision on the initial direct appeal shall commence the time  
 81 for the supreme court's jurisdiction. Any postconviction or  
 82 collateral motion in a capital case where a death sentence was  
 83 affirmed on direct appeal which is pending for any reason,  
 84 including but not limited to when remanded to the lower court

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85 for further proceedings, shall be deemed denied in all state  
 86 courts upon the expiration of the supreme court's jurisdiction.  
 87 In any case where the Attorney General appeals a trial court's  
 88 order setting aside a judgment or sentence of death from a  
 89 postconviction or collateral motion in a capital case in which  
 90 the death sentence has been affirmed on direct appeal, such  
 91 order setting aside the judgment or sentence of death shall be  
 92 null and void unless affirmed by the supreme court within the  
 93 period of their jurisdiction set forth in this section.

94 (2) When provided by general law, shall hear appeals from  
 95 final judgments entered in proceedings for the validation of  
 96 bonds or certificates of indebtedness and shall review action of  
 97 statewide agencies relating to rates or service of utilities  
 98 providing electric, gas, or telephone service.

99 (3) May review any decision of a district court of appeal  
 100 that expressly declares valid a state statute, or that expressly  
 101 construes a provision of the state or federal constitution, or  
 102 that expressly affects a class of constitutional or state  
 103 officers, or that expressly and directly conflicts with a  
 104 decision of another district court of appeal or of the supreme  
 105 court on the same question of law.

106 (4) May review any decision of a district court of appeal  
 107 that passes upon a question certified by it to be of great  
 108 public importance, or that is certified by it to be in direct  
 109 conflict with a decision of another district court of appeal.

110 (5) May review any order or judgment of a trial court  
 111 certified by the district court of appeal in which an appeal is  
 112 pending to be of great public importance, or to have a great

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113 effect on the proper administration of justice throughout the  
 114 state, and certified to require immediate resolution by the  
 115 supreme court.

116 (6) May review a question of law certified by the Supreme  
 117 Court of the United States or a United States Court of Appeals  
 118 which is determinative of the cause and for which there is no  
 119 controlling precedent of the supreme court of Florida.

120 (7) May issue writs of prohibition to courts and all writs  
 121 necessary to the complete exercise of its jurisdiction.

122 (8) May issue writs of mandamus and quo warranto to state  
 123 officers and state agencies.

124 (9) May, or any justice may, issue writs of habeas corpus  
 125 returnable before the supreme court or any justice, a district  
 126 court of appeal or any judge thereof, or any circuit judge.

127 (10) Shall, when requested by the attorney general  
 128 pursuant to the provisions of Section 10 of Article IV, render  
 129 an advisory opinion of the justices, addressing issues as  
 130 provided by general law.

131 (c) CLERK AND MARSHAL.—The supreme court shall appoint a  
 132 clerk and a marshal who shall hold office during the pleasure of  
 133 the court and perform such duties as the court directs. Their  
 134 compensation shall be fixed by general law. The marshal shall  
 135 have the power to execute the process of the court throughout  
 136 the state, and in any county may deputize the sheriff or a  
 137 deputy sheriff for such purpose.

138  
 139 BE IT FURTHER RESOLVED that the following statement be  
 140 placed on the ballot:

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CONSTITUTIONAL AMENDMENT

ARTICLE V, SECTIONS 2 AND 3

POSTCONVICTION DEATH PENALTY PROCEEDINGS.--Proposing an amendment to the State Constitution requiring postconviction or collateral review of capital cases resulting in a death sentence to be governed exclusively by, and to the extent provided by, general law.

Under the current constitution, only the Supreme Court can adopt rules relating to the practice and procedure in courts. This includes rules relating to the postconviction or collateral review of capital cases resulting in a death sentence. As such, the timeframes for filing motions in such cases are governed by Supreme Court rule.

By this amendment, postconviction or collateral review of capital cases resulting in a death sentence will be governed exclusively by, and to the extent provided by, general law.

In short, a general law in Florida is enacted if passed by a majority of members voting in each of the two legislative chambers and then either signed by the Governor or, if vetoed by the Governor, then passed by a two-thirds vote of the members voting in each of the two legislative chambers.

The proposal also expires the Supreme Court's jurisdiction to review postconviction or collateral proceedings in a capital case resulting in a death sentence eight years from the date the

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169 Supreme Court issues a mandate affirming the judgment and  
 170 sentence on direct appeal. In the event of more than one direct  
 171 appeal affirming a death sentence, the date of issuance of the  
 172 supreme court decision on the initial direct appeal commences  
 173 the time for the supreme court's jurisdiction. The proposal  
 174 specifies that a postconviction or collateral motion in a  
 175 capital case where a death sentence was affirmed on direct  
 176 appeal which is pending for any reason is deemed denied in all  
 177 state courts upon the expiration of the supreme court's  
 178 jurisdiction. Additionally, in any case where the Attorney  
 179 General appeals a trial court's order setting aside a judgment  
 180 or death sentence from a postconviction or collateral motion in  
 181 a capital case in which the death sentence has been affirmed on  
 182 direct appeal, the order is null and void unless affirmed by the  
 183 supreme court within the period of their jurisdiction.