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# **Criminal Justice Subcommittee**

**March 5, 2013**

**1:00 PM**

**404 HOB**

**Will W. Weatherford**  
**Speaker**

**Matt Gaetz**  
**Chair**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Criminal Justice Subcommittee

**Start Date and Time:** Tuesday, March 05, 2013 01:00 pm  
**End Date and Time:** Tuesday, March 05, 2013 04:00 pm  
**Location:** 404 HOB  
**Duration:** 3.00 hrs

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

HB 511 Assault or Battery on Utility Worker by Fullwood  
HB 571 Marshal of Supreme Court by Roberson, K.  
HB 611 False Reports to Law Enforcement Officers by Watson, C.  
HB 685 Parole Interview Dates for Certain Inmates by McBurney

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

PCB CRJS 13-04 -- Postconviction Capital Case Procedures  
PCB CRJS 13-05 -- Postconviction Capital Case Proceedings

**NOTICE FINALIZED on 03/01/2013 16:18 by hudson.jessica**



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 511 Assault or Battery on Utility Worker  
**SPONSOR(S):** Fullwood  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 344

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

**SUMMARY ANALYSIS**

Section 784.07, F.S., reclassifies the felony and misdemeanor degree of assault and battery offenses committed against law enforcement officers, firefighters, and other specified persons, as follows:

- In the case of assault, from a second degree misdemeanor to a first degree misdemeanor.
- In the case of battery, from a first degree misdemeanor to a third degree felony.
- In the case of an aggravated assault, from a third degree felony to a second degree felony.
- In the case of an aggravated battery, from a second degree felony to a first degree felony.

The bill amends s. 784.07, F.S., to add utility workers to the list of specified persons. As a result, a defendant who commits an assault or battery against a utility worker would be subject to the reclassified penalties described above.

The bill defines "utility worker" as a person who bears at least one patch or emblem that is visible at all times and that clearly identifies the employing or contracting utility and that clearly identifies the person as a utility worker under contract with or employed by an entity that owns, operates, leases, or controls a plant, property, or facility for the generation, transmission, or furnishing to or for the public of electricity, natural or manufactured gas, water, telephone, or communications service, including two or more utilities rendering joint service.

The Criminal Justice Impact Conference has not yet met to determine the prison bed impact of the bill. However, because the bill expands the application of s. 784.07, F.S., to include utility workers to the list of persons, which if assaulted or battered, result in a defendant being subject to the reclassified felony penalties, it may have a negative prison bed impact on the Department of Corrections.

Additionally, the bill reclassifies assault on a utility worker from a second to a first degree misdemeanor which may have a negative jail bed impact on local governments. However, the bill also reclassifies battery on a utility worker from a misdemeanor to a felony, which may have a positive jail bed impact.

The bill provides an effective date of October 1, 2013.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Assault**

An "assault," which is classified as a second degree misdemeanor,<sup>1</sup> occurs when a person intentionally and unlawfully threatens by word or act to do violence to another person, coupled with an apparent ability to commit violence, and an action which creates a well-founded fear in such other person that violence is imminent.<sup>2</sup>

An "aggravated assault," which is classified as a third degree felony,<sup>3</sup> is an assault:

- With a deadly weapon without intent to kill; or
- With an intent to commit a felony.<sup>4</sup>

##### **Battery**

A "battery," which is classified as a first degree misdemeanor,<sup>5</sup> occurs when a person actually and intentionally touches or strikes another person against their will or intentionally causes bodily harm to another person.<sup>6</sup>

An "aggravated battery," which is classified as a second degree felony,<sup>7</sup> occurs when a person, in committing battery:

- Intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement; or
- Uses a deadly weapon.<sup>8</sup>

##### **Penalty Enhancements for Assault and Battery under s. 784.07, F.S.**

Currently, s. 784.07, F.S., provides that when a person is charged with knowingly committing assault, aggravated assault, battery, or aggravated battery against a law enforcement officer,<sup>9</sup> firefighter,<sup>10</sup> emergency medical care provider,<sup>11</sup> traffic accident officer as described in s. 316.640, F.S.; nonsworn law enforcement agency employee certified as an agency inspector, blood alcohol analyst, or breath

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<sup>1</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>2</sup> Section 784.011, F.S.

<sup>3</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>4</sup> Section 784.021, F.S.

<sup>5</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>6</sup> Section 784.03(1)(a), F.S.

<sup>7</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>8</sup> Section 784.045(1)(b), F.S., states a person also commits aggravated battery if the person who was the victim of the battery was pregnant at the time of the offense and the offender knew or should have known that the victim was pregnant.

<sup>9</sup> Section 784.07, F.S., defines "law enforcement officer" to also include a correctional officer; a correctional probation officer; an auxiliary law enforcement officer, and an auxiliary correctional officer, as those terms are respectively defined in s. 943.10, F.S.; a county probation officer; an employee or agent of the Department of Corrections who supervises or provides services to inmates; an officer of the Parole Commission; and law enforcement personnel of the Fish and Wildlife Conservation Commission or the Department of Law Enforcement.

<sup>10</sup> Section 784.07(1)(b), F.S., defines "firefighter" as any person employed by any public employer of this state whose duty it is to extinguish fires; to protect life or property; or to enforce municipal, county, and state fire prevention codes, as well as any law pertaining to the prevention and control of fires.

<sup>11</sup> Section 784.07(10)(a), F.S., defines "emergency medical care provider" as an ambulance driver, emergency medical technician, paramedic, registered nurse, physician, or medical director as defined in s. 401.23; or any person authorized by an emergency medical service licensed under ch. 401, F.S., who is engaged in the performance of his or her duties. It also includes physicians, employees, agents, or volunteers of hospitals as defined in ch. 395, F.S., who are employed, under contract, or otherwise authorized by a hospital to perform duties directly associated with the care and treatment rendered by the hospital's emergency department or the security thereof.

test operator;<sup>12</sup> law enforcement explorer;<sup>13</sup> or public transit employee<sup>14</sup> who is engaged in the lawful performance of his or her duties, the offense is reclassified as follows:

- In the case of assault, from a second degree misdemeanor to a first degree misdemeanor.<sup>15</sup>
- In the case of battery, from a first degree misdemeanor to a third degree felony.<sup>16</sup>
- In the case of an aggravated assault, from a third degree felony to a second degree felony.<sup>17</sup>
- In the case of an aggravated battery, from a second degree felony to a first degree felony.<sup>18</sup>

Additionally, a person charged with a violation of s. 784.07, F.S., is not eligible for:

- Their adjudication of guilt to be withheld;
- Their sentence to be suspended or deferred;<sup>19</sup> or
- Statutory gain-time under s. 944.275, F.S., or any form of discretionary release, prior to serving the minimum sentence.<sup>20</sup>

#### *Effect of the Bill*

The bill amends s. 784.07, F.S., to add "utility worker" to the list of officers and persons described above. Thus, a defendant who commits an assault or battery offense against a utility worker will be subject to the reclassified penalties described above.

The bill defines "utility worker" as a person who bears at least one patch or emblem that is visible at all times and that clearly identifies the employing or contracting utility and that clearly identifies the person as a utility worker under contract with or employed by an entity that owns, operates, leases, or controls a plant, property, or facility for the generation, transmission, or furnishing to or for the public of electricity, natural or manufactured gas, water, telephone, or communications service, including two or more utilities rendering joint service.

The bill makes conforming changes to ss. 901.15, 943.051, 985.11, 985.644, and 921.0022, F.S., to correct terminology and statutory cites.

## **B. SECTION DIRECTORY:**

Section 1. Amends s. 784.07, F.S., relating to assault or battery of law enforcement officers, firefighters, emergency medical care providers, public transit employees or agents, or other specified officers; reclassification of offenses; minimum sentences.

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<sup>12</sup> Employee must be in uniform and engaged in processing, testing, evaluating, analyzing, or transporting a person who is detained or under arrest for DUI. Section 784.07(2), F.S.

<sup>13</sup> Section 784.07(1)(c), F.S., defines "law enforcement explorer" as any person who is a current member of a law enforcement agency's explorer program and who is performing functions other than those required to be performed by sworn law enforcement officers on behalf of a law enforcement agency while under the direct physical supervision of a sworn officer of that agency and wearing a uniform that bears at least one patch that clearly identifies the law enforcement agency that he or she represents.

<sup>14</sup> Section 784.07, F.S., defines "public transit employees or agents" as bus operators, train operators, revenue collectors, security personnel, equipment maintenance personnel, or field supervisors, who are employees or agents of a transit agency as described in s. 812.015(1)(l), F.S.

<sup>15</sup> Section 784.07(2)(a), F.S.

<sup>16</sup> Section 784.07(2)(b), F.S. Section 784.07(d), F.S., states that a person convicted of battery under s. 784.07(2)(b), F.S., is subject to mandatory minimum terms of imprisonment if during the commission of the offense, the person possessed a firearm or destructive device as defined in s. 790.001, F.S. (three-year mandatory minimum imprisonment); semiautomatic firearm and its high-capacity detachable box magazine, as defined in s. 775.087(3), F.S., or machine gun as defined in s. 790.001, F.S. (eight-year mandatory minimum imprisonment).

<sup>17</sup> Section 784.07(2)(c), F.S.

<sup>18</sup> Section 784.07(2)(d), F.S. 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>19</sup> Section 784.07, F.S., states that this is notwithstanding when a court may place a defendant on probation or community control under s. 948.01, F.S.

<sup>20</sup> This does not apply if the early release is as a result of pardon or executive clemency, or conditional medical release under s. 947.149, F.S.

Section 2. Amends s. 901.15, F.S., relating to when arrest by officer without warrant is lawful.

Section 3. Amends s. 943.051, F.S., relating to criminal justice information; collection and storage; fingerprinting.

Section 4. Amends s. 985.11, F.S., relating to fingerprinting and photographing.

Section 5. Amends s. 985.644, F.S., relating to departmental contracting powers; personnel standards and screening.

Section 6. Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.

Section 7. 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, because the bill expands the application of s. 784.07, F.S., to include utility workers to the list of persons, which if assaulted or battered, result in a defendant being subject to reclassified penalties, it may have a negative prison bed impact on the Department of Corrections.

### 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 reclassifies assault on a utility worker from a second to a first degree misdemeanor which may have a negative jail bed impact on local governments. However, the bill also reclassifies battery on a utility worker from a first degree misdemeanor to a third degree felony, which may have a positive jail bed impact.

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

None.

### D. FISCAL COMMENTS:

None.

### **III. COMMENTS**

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

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

This 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**



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1 A bill to be entitled  
 2 An act relating to assault or battery on a utility  
 3 worker; amending s. 784.07, F.S.; defining the term  
 4 "utility worker"; providing for reclassification of  
 5 certain offenses committed against a utility worker;  
 6 amending ss. 901.15, 943.051, 985.11, and 985.644,  
 7 F.S.; conforming provisions to changes made by the  
 8 act; reenacting and amending s. 921.0022(3)(d), (f),  
 9 and (g), F.S., relating to the offense severity  
 10 ranking chart of the Criminal Punishment Code, to  
 11 incorporate the amendment made to s. 784.07, F.S., in  
 12 references thereto; providing an effective date.

13  
 14 Be It Enacted by the Legislature of the State of Florida:

15  
 16 Section 1. Section 784.07, Florida Statutes, is amended to  
 17 read:

18 784.07 Assault or battery of law enforcement officers,  
 19 firefighters, emergency medical care providers, public transit  
 20 employees or agents, or other specified persons ~~officers~~;  
 21 reclassification of offenses; minimum sentences.-

22 (1) As used in this section, the term:

23 (a) "Emergency medical care provider" means an ambulance  
 24 driver, emergency medical technician, paramedic, registered  
 25 nurse, physician as defined in s. 401.23, medical director as  
 26 defined in s. 401.23, or any person authorized by an emergency  
 27 medical service licensed under chapter 401 who is engaged in the  
 28 performance of his or her duties. The term "emergency medical

29 care provider" also includes physicians, employees, agents, or  
 30 volunteers of hospitals as defined in chapter 395, who are  
 31 employed, under contract, or otherwise authorized by a hospital  
 32 to perform duties directly associated with the care and  
 33 treatment rendered by the hospital's emergency department or the  
 34 security thereof.

35 (b) "Firefighter" means any person employed by any public  
 36 employer of this state whose duty it is to extinguish fires; to  
 37 protect life or property; or to enforce municipal, county, and  
 38 state fire prevention codes, as well as any law pertaining to  
 39 the prevention and control of fires.

40 (c) "Law enforcement explorer" means any person who is a  
 41 current member of a law enforcement agency's explorer program  
 42 and who is performing functions other than those required to be  
 43 performed by sworn law enforcement officers on behalf of a law  
 44 enforcement agency while under the direct physical supervision  
 45 of a sworn officer of that agency and wearing a uniform that  
 46 bears at least one patch that clearly identifies the law  
 47 enforcement agency that he or she represents.

48 (d) "Law enforcement officer" includes a law enforcement  
 49 officer, a correctional officer, a correctional probation  
 50 officer, a part-time law enforcement officer, a part-time  
 51 correctional officer, an auxiliary law enforcement officer, and  
 52 an auxiliary correctional officer, as those terms are  
 53 respectively defined in s. 943.10, and any county probation  
 54 officer; an employee or agent of the Department of Corrections  
 55 who supervises or provides services to inmates; an officer of  
 56 the Parole Commission; a federal law enforcement officer as

57 defined in s. 901.1505; and law enforcement personnel of the  
 58 Fish and Wildlife Conservation Commission or the Department of  
 59 Law Enforcement.

60 (e) "Public transit employees or agents" means bus  
 61 operators, train operators, revenue collectors, security  
 62 personnel, equipment maintenance personnel, or field  
 63 supervisors, who are employees or agents of a transit agency as  
 64 described in s. 812.015(1)(1).

65 (f) "Utility worker" means a person who bears at least one  
 66 patch or emblem that is visible at all times and that clearly  
 67 identifies the employing or contracting utility and that clearly  
 68 identifies the person as a utility worker under contract with or  
 69 employed by an entity that owns, operates, leases, or controls a  
 70 plant, property, or facility for the generation, transmission,  
 71 or furnishing to or for the public of electricity, natural or  
 72 manufactured gas, water, telephone, or communications service,  
 73 including two or more utilities rendering joint service.

74 (2) Whenever any person is charged with knowingly  
 75 committing an assault or battery upon a law enforcement officer,  
 76 a firefighter, an emergency medical care provider, a traffic  
 77 accident investigation officer as described in s. 316.640, a  
 78 nonsworn law enforcement agency employee who is certified as an  
 79 agency inspector, a blood alcohol analyst, or a breath test  
 80 operator while such employee is in uniform and engaged in  
 81 processing, testing, evaluating, analyzing, or transporting a  
 82 person who is detained or under arrest for DUI, a law  
 83 enforcement explorer, a traffic infraction enforcement officer  
 84 as described in s. 316.640, a parking enforcement specialist as

85 | defined in s. 316.640, a person licensed as a security officer  
 86 | as defined in s. 493.6101 and wearing a uniform that bears at  
 87 | least one patch or emblem that is visible at all times that  
 88 | clearly identifies the employing agency and that clearly  
 89 | identifies the person as a licensed security officer, or a  
 90 | security officer employed by the board of trustees of a  
 91 | community college, or utility worker, while the officer,  
 92 | firefighter, emergency medical care provider, traffic accident  
 93 | investigation officer, traffic infraction enforcement officer,  
 94 | inspector, analyst, operator, law enforcement explorer, parking  
 95 | enforcement specialist, public transit employee or agent, ~~or~~  
 96 | security officer, or utility worker is engaged in the lawful  
 97 | performance of his or her duties, the offense for which the  
 98 | person is charged shall be reclassified as follows:

99 |       (a) In the case of assault, from a misdemeanor of the  
 100 | second degree to a misdemeanor of the first degree.

101 |       (b) In the case of battery, from a misdemeanor of the  
 102 | first degree to a felony of the third degree.

103 |       (c) In the case of aggravated assault, from a felony of  
 104 | the third degree to a felony of the second degree.

105 | Notwithstanding any other provision of law, any person convicted  
 106 | of aggravated assault upon a law enforcement officer shall be  
 107 | sentenced to a minimum term of imprisonment of 3 years.

108 |       (d) In the case of aggravated battery, from a felony of  
 109 | the second degree to a felony of the first degree.

110 | Notwithstanding any other provision of law, any person convicted  
 111 | of aggravated battery of a law enforcement officer shall be  
 112 | sentenced to a minimum term of imprisonment of 5 years.

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113 (3) Any person who is convicted of a battery under  
 114 paragraph (2)(b) and, during the commission of the offense, such  
 115 person possessed:

116 (a) A "firearm" or "destructive device" as those terms are  
 117 defined in s. 790.001, shall be sentenced to a minimum term of  
 118 imprisonment of 3 years.

119 (b) A semiautomatic firearm and its high-capacity  
 120 detachable box magazine, as defined in s. 775.087(3), or a  
 121 machine gun as defined in s. 790.001, shall be sentenced to a  
 122 minimum term of imprisonment of 8 years.

123  
 124 Notwithstanding s. 948.01, adjudication of guilt or imposition  
 125 of sentence shall not be suspended, deferred, or withheld, and  
 126 the defendant is not eligible for statutory gain-time under s.  
 127 944.275 or any form of discretionary early release, other than  
 128 pardon or executive clemency, or conditional medical release  
 129 under s. 947.149, prior to serving the minimum sentence.

130 Section 2. Subsection (15) of section 901.15, Florida  
 131 Statutes, is amended to read:

132 901.15 When arrest by officer without warrant is lawful.—A  
 133 law enforcement officer may arrest a person without a warrant  
 134 when:

135 (15) There is probable cause to believe that the person  
 136 has committed assault upon a law enforcement officer, a  
 137 firefighter, an emergency medical care provider, public transit  
 138 employees or agents, or other specified persons ~~officers~~ as set  
 139 forth in s. 784.07 or has committed assault or battery upon any  
 140 employee of a receiving facility as defined in s. 394.455 who is

141 engaged in the lawful performance of his or her duties.

142 Section 3. Paragraph (b) of subsection (3) of section  
143 943.051, Florida Statutes, is amended to read:

144 943.051 Criminal justice information; collection and  
145 storage; fingerprinting.—

146 (3)

147 (b) A minor who is charged with or found to have committed  
148 the following offenses shall be fingerprinted and the  
149 fingerprints shall be submitted to the department:

150 1. Assault, as defined in s. 784.011.

151 2. Battery, as defined in s. 784.03.

152 3. Carrying a concealed weapon, as defined in s.  
153 790.01(1).

154 4. Unlawful use of destructive devices or bombs, as  
155 defined in s. 790.1615(1).

156 5. Negligent treatment of children, as defined in former  
157 s. 827.05.

158 6. Assault or battery on a law enforcement officer, a  
159 firefighter, or other specified persons ~~officers~~, as defined in  
160 s. 784.07(2)(a) ~~and (b)~~.

161 7. Open carrying of a weapon, as defined in s. 790.053.

162 8. Exposure of sexual organs, as defined in s. 800.03.

163 9. Unlawful possession of a firearm, as defined in s.  
164 790.22(5).

165 10. Petit theft, as defined in s. 812.014(3).

166 11. Cruelty to animals, as defined in s. 828.12(1).

167 12. Arson, as defined in s. 806.031(1).

168 13. Unlawful possession or discharge of a weapon or

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169 | firearm at a school-sponsored event or on school property as  
 170 | defined in s. 790.115.

171 | Section 4. Paragraph (b) of subsection (1) of section  
 172 | 985.11, Florida Statutes, is amended to read:

173 | 985.11 Fingerprinting and photographing.—

174 | (1)

175 | (b) A child who is charged with or found to have committed  
 176 | one of the following offenses shall be fingerprinted, and the  
 177 | fingerprints shall be submitted to the Department of Law  
 178 | Enforcement as provided in s. 943.051(3)(b):

179 | 1. Assault, as defined in s. 784.011.

180 | 2. Battery, as defined in s. 784.03.

181 | 3. Carrying a concealed weapon, as defined in s.  
 182 | 790.01(1).

183 | 4. Unlawful use of destructive devices or bombs, as  
 184 | defined in s. 790.1615(1).

185 | 5. Negligent treatment of children, as defined in former  
 186 | s. 827.05.

187 | 6. Assault on a law enforcement officer, a firefighter, or  
 188 | other specified persons ~~officers~~, as defined in s. 784.07(2)(a).

189 | 7. Open carrying of a weapon, as defined in s. 790.053.

190 | 8. Exposure of sexual organs, as defined in s. 800.03.

191 | 9. Unlawful possession of a firearm, as defined in s.  
 192 | 790.22(5).

193 | 10. Petit theft, as defined in s. 812.014.

194 | 11. Cruelty to animals, as defined in s. 828.12(1).

195 | 12. Arson, resulting in bodily harm to a firefighter, as  
 196 | defined in s. 806.031(1).

197 13. Unlawful possession or discharge of a weapon or  
 198 firearm at a school-sponsored event or on school property as  
 199 defined in s. 790.115.

200  
 201 A law enforcement agency may fingerprint and photograph a child  
 202 taken into custody upon probable cause that such child has  
 203 committed any other violation of law, as the agency deems  
 204 appropriate. Such fingerprint records and photographs shall be  
 205 retained by the law enforcement agency in a separate file, and  
 206 these records and all copies thereof must be marked "Juvenile  
 207 Confidential." These records are not available for public  
 208 disclosure and inspection under s. 119.07(1) except as provided  
 209 in ss. 943.053 and 985.04(2), but shall be available to other  
 210 law enforcement agencies, criminal justice agencies, state  
 211 attorneys, the courts, the child, the parents or legal  
 212 custodians of the child, their attorneys, and any other person  
 213 authorized by the court to have access to such records. In  
 214 addition, such records may be submitted to the Department of Law  
 215 Enforcement for inclusion in the state criminal history records  
 216 and used by criminal justice agencies for criminal justice  
 217 purposes. These records may, in the discretion of the court, be  
 218 open to inspection by anyone upon a showing of cause. The  
 219 fingerprint and photograph records shall be produced in the  
 220 court whenever directed by the court. Any photograph taken  
 221 pursuant to this section may be shown by a law enforcement  
 222 officer to any victim or witness of a crime for the purpose of  
 223 identifying the person who committed such crime.

224 Section 5. Paragraph (a) of subsection (3) of section



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225 985.644, Florida Statutes, is amended to read:

226 985.644 Departmental contracting powers; personnel  
 227 standards and screening.—

228 (3)(a) All employees of the department and all personnel  
 229 of contract providers for any program for children, including  
 230 all owners, operators, employees, persons who have access to  
 231 confidential juvenile records, and volunteers, must complete:

232 1. A level 2 employment screening pursuant to chapter 435  
 233 before employment. The security background investigation  
 234 conducted under this section must ensure that, in addition to  
 235 the disqualifying offenses listed in s. 435.04, no person  
 236 subject to the background screening provisions of this section  
 237 has an arrest awaiting final disposition for, been found guilty  
 238 of, regardless of adjudication, or entered a plea of nolo  
 239 contendere or guilty to, or been adjudicated delinquent and the  
 240 record has not been sealed or expunged for, any offense  
 241 prohibited under the following provisions of state law or  
 242 similar laws of another jurisdiction:

243 a. Section 784.07, relating to assault or battery of law  
 244 enforcement officers, firefighters, emergency medical care  
 245 providers, public transit employees or agents, or other  
 246 specified persons ~~officers~~.

247 b. Section 817.568, relating to criminal use of personal  
 248 identification information.

249 2. A national criminal records check by the Federal Bureau  
 250 of Investigation every 5 years following the date of the  
 251 person's employment.

252 Section 6. Paragraphs (d), (f), and (g) of subsection (3)

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253 of section 921.0022, Florida Statutes, are amended to read:  
 254 921.0022 Criminal Punishment Code; offense severity  
 255 ranking chart.—

256 (3) OFFENSE SEVERITY RANKING CHART

257 (d) LEVEL 4

258

Florida Statute	Felony Degree	Description
316.1935(3) (a)	2nd	Driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
499.0051(1)	3rd	Failure to maintain or deliver pedigree papers.
499.0051(2)	3rd	Failure to authenticate pedigree papers.
499.0051(6)	2nd	Knowing sale or delivery, or possession with intent to sell, contraband prescription drugs.
517.07(1)	3rd	Failure to register securities.
517.12(1)	3rd	Failure of dealer, associated person, or issuer of securities to register.

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265	784.07(2)(b)	3rd	Battery of law enforcement officer, firefighter, etc.
266	784.074(1)(c)	3rd	Battery of sexually violent predators facility staff.
267	784.075	3rd	Battery on detention or commitment facility staff.
268	784.078	3rd	Battery of facility employee by throwing, tossing, or expelling certain fluids or materials.
269	784.08(2)(c)	3rd	Battery on a person 65 years of age or older.
270	784.081(3)	3rd	Battery on specified official or employee.
271	784.082(3)	3rd	Battery by detained person on visitor or other detainee.
272	784.083(3)	3rd	Battery on code inspector.
273	784.085	3rd	Battery of child by throwing, tossing, projecting, or expelling certain fluids or materials.

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274	787.03(1)	3rd	Interference with custody; wrongly takes minor from appointed guardian.
275	787.04(2)	3rd	Take, entice, or remove child beyond state limits with criminal intent pending custody proceedings.
276	787.04(3)	3rd	Carrying child beyond state lines with criminal intent to avoid producing child at custody hearing or delivering to designated person.
277	787.07	3rd	Human smuggling.
278	790.115(1)	3rd	Exhibiting firearm or weapon within 1,000 feet of a school.
279	790.115(2)(b)	3rd	Possessing electric weapon or device, destructive device, or other weapon on school property.
280	790.115(2)(c)	3rd	Possessing firearm on school property.
281	800.04(7)(c)	3rd	Lewd or lascivious exhibition; offender less than 18 years.
282	810.02(4)(a)	3rd	Burglary, or attempted burglary, of an

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283			unoccupied structure; unarmed; no assault or battery.
284	810.02(4)(b)	3rd	Burglary, or attempted burglary, of an unoccupied conveyance; unarmed; no assault or battery.
285	810.06	3rd	Burglary; possession of tools.
286	810.08(2)(c)	3rd	Trespass on property, armed with firearm or dangerous weapon.
287	812.014(2)(c)3.	3rd	Grand theft, 3rd degree \$10,000 or more but less than \$20,000.
288	812.014 (2)(c)4.-10.	3rd	Grand theft, 3rd degree, a will, firearm, motor vehicle, livestock, etc.
289	812.0195(2)	3rd	Dealing in stolen property by use of the Internet; property stolen \$300 or more.
290	817.563(1)	3rd	Sell or deliver substance other than controlled substance agreed upon, excluding s. 893.03(5) drugs.
291	817.568(2)(a)	3rd	Fraudulent use of personal identification information.

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292	817.625(2)(a)	3rd	Fraudulent use of scanning device or reencoder.
293	828.125(1)	2nd	Kill, maim, or cause great bodily harm or permanent breeding disability to any registered horse or cattle.
294	837.02(1)	3rd	Perjury in official proceedings.
295	837.021(1)	3rd	Make contradictory statements in official proceedings.
296	838.022	3rd	Official misconduct.
297	839.13(2)(a)	3rd	Falsifying records of an individual in the care and custody of a state agency.
298	839.13(2)(c)	3rd	Falsifying records of the Department of Children and Family Services.
299	843.021	3rd	Possession of a concealed handcuff key by a person in custody.
300	843.025	3rd	Deprive law enforcement, correctional, or correctional probation officer of means of protection or communication.
	843.15(1)(a)	3rd	Failure to appear while on bail for

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			felony (bond estreature or bond jumping).
301	847.0135(5)(c)	3rd	Lewd or lascivious exhibition using computer; offender less than 18 years.
302	874.05(1)	3rd	Encouraging or recruiting another to join a criminal gang.
303	893.13(2)(a)1.	2nd	Purchase of cocaine (or other s. 893.03(1)(a), (b), or (d), (2)(a), (2)(b), or (2)(c)4. drugs).
304	914.14(2)	3rd	Witnesses accepting bribes.
305	914.22(1)	3rd	Force, threaten, etc., witness, victim, or informant.
306	914.23(2)	3rd	Retaliation against a witness, victim, or informant, no bodily injury.
307	918.12	3rd	Tampering with jurors.
308	934.215	3rd	Use of two-way communications device to facilitate commission of a crime.
309			
310	(f)	LEVEL 6	
311			

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	Florida Statute	Felony Degree	Description
312	316.193(2)(b)	3rd	Felony DUI, 4th or subsequent conviction.
313	499.0051(3)	2nd	Knowing forgery of pedigree papers.
314	499.0051(4)	2nd	Knowing purchase or receipt of prescription drug from unauthorized person.
315	499.0051(5)	2nd	Knowing sale or transfer of prescription drug to unauthorized person.
316	775.0875(1)	3rd	Taking firearm from law enforcement officer.
317	784.021(1)(a)	3rd	Aggravated assault; deadly weapon without intent to kill.
318	784.021(1)(b)	3rd	Aggravated assault; intent to commit felony.
319	784.041	3rd	Felony battery; domestic battery by strangulation.
320	784.048(3)	3rd	Aggravated stalking; credible threat.



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321	784.048 (5)	3rd	Aggravated stalking of person under 16.
322	784.07 (2) (c)	2nd	Aggravated assault on law enforcement officer, <u>firefighter, etc.</u>
323	784.074 (1) (b)	2nd	Aggravated assault on sexually violent predators facility staff.
324	784.08 (2) (b)	2nd	Aggravated assault on a person 65 years of age or older.
325	784.081 (2)	2nd	Aggravated assault on specified official or employee.
326	784.082 (2)	2nd	Aggravated assault by detained person on visitor or other detainee.
327	784.083 (2)	2nd	Aggravated assault on code inspector.
328	787.02 (2)	3rd	False imprisonment; restraining with purpose other than those in s. 787.01.
329	790.115 (2) (d)	2nd	Discharging firearm or weapon on school property.
330	790.161 (2)	2nd	Make, possess, or throw destructive device with intent to do bodily harm or

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			damage property.
331	790.164(1)	2nd	False report of deadly explosive, weapon of mass destruction, or act of arson or violence to state property.
332	790.19	2nd	Shooting or throwing deadly missiles into dwellings, vessels, or vehicles.
333	794.011(8)(a)	3rd	Solicitation of minor to participate in sexual activity by custodial adult.
334	794.05(1)	2nd	Unlawful sexual activity with specified minor.
335	800.04(5)(d)	3rd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender less than 18 years.
336	800.04(6)(b)	2nd	Lewd or lascivious conduct; offender 18 years of age or older.
337	806.031(2)	2nd	Arson resulting in great bodily harm to firefighter or any other person.
338	810.02(3)(c)	2nd	Burglary of occupied structure; unarmed; no assault or battery.
339			

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340	810.145(8)(b)	2nd	Video voyeurism; certain minor victims; 2nd or subsequent offense.
341	812.014(2)(b)1.	2nd	Property stolen \$20,000 or more, but less than \$100,000, grand theft in 2nd degree.
342	812.014(6)	2nd	Theft; property stolen \$3,000 or more; coordination of others.
343	812.015(9)(a)	2nd	Retail theft; property stolen \$300 or more; second or subsequent conviction.
344	812.015(9)(b)	2nd	Retail theft; property stolen \$3,000 or more; coordination of others.
345	812.13(2)(c)	2nd	Robbery, no firearm or other weapon (strong-arm robbery).
346	817.034(4)(a)1.	1st	Communications fraud, value greater than \$50,000.
347	817.4821(5)	2nd	Possess cloning paraphernalia with intent to create cloned cellular telephones.
	825.102(1)	3rd	Abuse of an elderly person or disabled adult.

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348	825.102(3)(c)	3rd	Neglect of an elderly person or disabled adult.
349	825.1025(3)	3rd	Lewd or lascivious molestation of an elderly person or disabled adult.
350	825.103(2)(c)	3rd	Exploiting an elderly person or disabled adult and property is valued at less than \$20,000.
351	827.03(2)(c)	3rd	Abuse of a child.
352	827.03(2)(d)	3rd	Neglect of a child.
353	827.071(2) & (3)	2nd	Use or induce a child in a sexual performance, or promote or direct such performance.
354	836.05	2nd	Threats; extortion.
355	836.10	2nd	Written threats to kill or do bodily injury.
356	843.12	3rd	Aids or assists person to escape.
357	847.011	3rd	Distributing, offering to distribute, or possessing with intent to distribute

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			obscene materials depicting minors.
358	847.012	3rd	Knowingly using a minor in the production of materials harmful to minors.
359	847.0135(2)	3rd	Facilitates sexual conduct of or with a minor or the visual depiction of such conduct.
360	914.23	2nd	Retaliation against a witness, victim, or informant, with bodily injury.
361	944.35(3)(a)2.	3rd	Committing malicious battery upon or inflicting cruel or inhuman treatment on an inmate or offender on community supervision, resulting in great bodily harm.
362	944.40	2nd	Escapes.
363	944.46	3rd	Harboring, concealing, aiding escaped prisoners.
364	944.47(1)(a)5.	2nd	Introduction of contraband (firearm, weapon, or explosive) into correctional facility.
365			

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366	951.22 (1)	3rd	Intoxicating drug, firearm, or weapon introduced into county facility.
367	(g) LEVEL 7		
368	Florida Statute	Felony Degree	Description
369	316.027(1) (b)	1st	Accident involving death, failure to stop; leaving scene.
370	316.193(3) (c) 2.	3rd	DUI resulting in serious bodily injury.
371	316.1935(3) (b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol vehicle with siren and lights activated.
372	327.35(3) (c) 2.	3rd	Vessel BUI resulting in serious bodily injury.
373	402.319(2)	2nd	Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.

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374	409.920 (2) (b) 1.a.	3rd	Medicaid provider fraud; \$10,000 or less.
375	409.920 (2) (b) 1.b.	2nd	Medicaid provider fraud; more than \$10,000, but less than \$50,000.
376	456.065 (2)	3rd	Practicing a health care profession without a license.
377	456.065 (2)	2nd	Practicing a health care profession without a license which results in serious bodily injury.
378	458.327 (1)	3rd	Practicing medicine without a license.
379	459.013 (1)	3rd	Practicing osteopathic medicine without a license.
380	460.411 (1)	3rd	Practicing chiropractic medicine without a license.
381	461.012 (1)	3rd	Practicing podiatric medicine without a license.
382	462.17	3rd	Practicing naturopathy without a license.
383			

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384	463.015 (1)	3rd	Practicing optometry without a license.
385	464.016 (1)	3rd	Practicing nursing without a license.
386	465.015 (2)	3rd	Practicing pharmacy without a license.
387	466.026 (1)	3rd	Practicing dentistry or dental hygiene without a license.
388	467.201	3rd	Practicing midwifery without a license.
389	468.366	3rd	Delivering respiratory care services without a license.
390	483.828 (1)	3rd	Practicing as clinical laboratory personnel without a license.
391	483.901 (9)	3rd	Practicing medical physics without a license.
392	484.013 (1) (c)	3rd	Preparing or dispensing optical devices without a prescription.
393	484.053	3rd	Dispensing hearing aids without a license.
	494.0018 (2)	1st	Conviction of any violation of ss. 494.001-494.0077 in which the total



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			money and property unlawfully obtained exceeded \$50,000 and there were five or more victims.
394	560.123(8)(b)1.	3rd	Failure to report currency or payment instruments exceeding \$300 but less than \$20,000 by a money services business.
395	560.125(5)(a)	3rd	Money services business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.
396	655.50(10)(b)1.	3rd	Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.
397	775.21(10)(a)	3rd	Sexual predator; failure to register; failure to renew driver's license or identification card; other registration violations.
398	775.21(10)(b)	3rd	Sexual predator working where children regularly congregate.
399	775.21(10)(g)	3rd	Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.

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400	782.051(3)	2nd	Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
401	782.07(1)	2nd	Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
402	782.071	2nd	Killing of a human being or viable fetus by the operation of a motor vehicle in a reckless manner (vehicular homicide).
403	782.072	2nd	Killing of a human being by the operation of a vessel in a reckless manner (vessel homicide).
404	784.045(1)(a)1.	2nd	Aggravated battery; intentionally causing great bodily harm or disfigurement.
405	784.045(1)(a)2.	2nd	Aggravated battery; using deadly weapon.
406	784.045(1)(b)	2nd	Aggravated battery; perpetrator aware victim pregnant.
407			

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408	784.048(4)	3rd	Aggravated stalking; violation of injunction or court order.
409	784.048(7)	3rd	Aggravated stalking; violation of court order.
410	784.07(2)(d)	1st	Aggravated battery on law enforcement officer, <u>firefighter, etc.</u>
411	784.074(1)(a)	1st	Aggravated battery on sexually violent predators facility staff.
412	784.08(2)(a)	1st	Aggravated battery on a person 65 years of age or older.
413	784.081(1)	1st	Aggravated battery on specified official or employee.
414	784.082(1)	1st	Aggravated battery by detained person on visitor or other detainee.
415	784.083(1)	1st	Aggravated battery on code inspector.
416	787.06(3)(a)	1st	Human trafficking using coercion for labor and services.
	787.06(3)(e)	1st	Human trafficking using coercion for labor and services by the transfer or

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			transport of any individual from outside Florida to within the state.
417	790.07(4)	1st	Specified weapons violation subsequent to previous conviction of s. 790.07(1) or (2).
418	790.16(1)	1st	Discharge of a machine gun under specified circumstances.
419	790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.
420	790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.
421	790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.
422	790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.
423	790.23	1st, PBL	Possession of a firearm by a person who qualifies for the penalty enhancements

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			provided for in s. 874.04.
424	794.08(4)	3rd	Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.
425	796.03	2nd	Procuring any person under 16 years for prostitution.
426	800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim less than 12 years of age; offender less than 18 years.
427	800.04(5)(c)2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender 18 years or older.
428	806.01(2)	2nd	Maliciously damage structure by fire or explosive.
429	810.02(3)(a)	2nd	Burglary of occupied dwelling; unarmed; no assault or battery.
430	810.02(3)(b)	2nd	Burglary of unoccupied dwelling; unarmed; no assault or battery.
431	810.02(3)(d)	2nd	Burglary of occupied conveyance;

			unarmed; no assault or battery.
432	810.02 (3) (e)	2nd	Burglary of authorized emergency vehicle.
433	812.014 (2) (a) 1.	1st	Property stolen, valued at \$100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft.
434	812.014 (2) (b) 2.	2nd	Property stolen, cargo valued at less than \$50,000, grand theft in 2nd degree.
435	812.014 (2) (b) 3.	2nd	Property stolen, emergency medical equipment; 2nd degree grand theft.
436	812.014 (2) (b) 4.	2nd	Property stolen, law enforcement equipment from authorized emergency vehicle.
437	812.0145 (2) (a)	1st	Theft from person 65 years of age or older; \$50,000 or more.
438	812.019 (2)	1st	Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.

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439	812.131(2)(a)	2nd	Robbery by sudden snatching.
440	812.133(2)(b)	1st	Carjacking; no firearm, deadly weapon, or other weapon.
441	817.234(8)(a)	2nd	Solicitation of motor vehicle accident victims with intent to defraud.
442	817.234(9)	2nd	Organizing, planning, or participating in an intentional motor vehicle collision.
443	817.234(11)(c)	1st	Insurance fraud; property value \$100,000 or more.
444	817.2341 (2)(b) & (3)(b)	1st	Making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity which are a significant cause of the insolvency of that entity.
445	825.102(3)(b)	2nd	Neglecting an elderly person or disabled adult causing great bodily harm, disability, or disfigurement.
446	825.103(2)(b)	2nd	Exploiting an elderly person or disabled adult and property is valued

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			at \$20,000 or more, but less than \$100,000.
447	827.03(2)(b)	2nd	Neglect of a child causing great bodily harm, disability, or disfigurement.
448	827.04(3)	3rd	Impregnation of a child under 16 years of age by person 21 years of age or older.
449	837.05(2)	3rd	Giving false information about alleged capital felony to a law enforcement officer.
450	838.015	2nd	Bribery.
451	838.016	2nd	Unlawful compensation or reward for official behavior.
452	838.021(3)(a)	2nd	Unlawful harm to a public servant.
453	838.22	2nd	Bid tampering.
454	847.0135(3)	3rd	Solicitation of a child, via a computer service, to commit an unlawful sex act.
455	847.0135(4)	2nd	Traveling to meet a minor to commit an unlawful sex act.



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872.06                    2nd    Abuse of a dead human body.

457

874.10                    1st, PBL    Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.

458

893.13(1)(c)1.        1st    Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.

459

893.13(1)(e)1.        1st    Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4., within 1,000 feet of property used for religious services or a specified business site.

460

893.13(4)(a)            1st    Deliver to minor cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs).

461

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462	893.135(1)(a)1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.
463	893.135 (1)(b)1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.
464	893.135 (1)(c)1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.
465	893.135(1)(d)1.	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.
466	893.135(1)(e)1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.
467	893.135(1)(f)1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.
468	893.135 (1)(g)1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.
469	893.135 (1)(h)1.a.	1st	Trafficking in gamma-hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.
	893.135 (1)(j)1.a.	1st	Trafficking in 1,4-Butanediol, 1 kilogram or more, less than 5 kilograms.

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470	893.135 (1)(k)2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.
471	893.1351(2)	2nd	Possession of place for trafficking in or manufacturing of controlled substance.
472	896.101(5)(a)	3rd	Money laundering, financial transactions exceeding \$300 but less than \$20,000.
473	896.104(4)(a)1.	3rd	Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.
474	943.0435(4)(c)	2nd	Sexual offender vacating permanent residence; failure to comply with reporting requirements.
475	943.0435(8)	2nd	Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
476	943.0435(9)(a)	3rd	Sexual offender; failure to comply with reporting requirements.
477			

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478	943.0435 (13)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
479	943.0435 (14)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
480	944.607 (9)	3rd	Sexual offender; failure to comply with reporting requirements.
481	944.607 (10) (a)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
482	944.607 (12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
483	944.607 (13)	3rd	Sexual offender; failure to report and reregister; failure to respond to address verification.
484	985.4815 (10)	3rd	Sexual offender; failure to submit to the taking of a digitized photograph.
	985.4815 (12)	3rd	Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.



COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 511 (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 McGhee offered the following:

4  
5       **Amendment (with title amendment)**

6       Remove lines 74-96 and insert:

7       (g) "Process server" means any person described in s.  
8       48.021.

9       (2) Whenever any person is charged with knowingly  
10       committing an assault or battery upon a law enforcement officer,  
11       a firefighter, an emergency medical care provider, a traffic  
12       accident investigation officer as described in s. 316.640, a  
13       nonsworn law enforcement agency employee who is certified as an  
14       agency inspector, a blood alcohol analyst, or a breath test  
15       operator while such employee is in uniform and engaged in  
16       processing, testing, evaluating, analyzing, or transporting a  
17       person who is detained or under arrest for DUI, a law  
18       enforcement explorer, a traffic infraction enforcement officer  
19       as described in s. 316.640, a parking enforcement specialist as  
20       defined in s. 316.640, a person licensed as a security officer

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 511 (2013)

Amendment No. 1

21 as defined in s. 493.6101 and wearing a uniform that bears at  
22 least one patch or emblem that is visible at all times that  
23 clearly identifies the employing agency and that clearly  
24 identifies the person as a licensed security officer, or a  
25 security officer employed by the board of trustees of a  
26 community college, utility worker, or process server, while the  
27 officer, firefighter, emergency medical care provider, traffic  
28 accident investigation officer, traffic infraction enforcement  
29 officer, inspector, analyst, operator, law enforcement explorer,  
30 parking enforcement specialist, public transit employee or  
31 agent, or security officer, utility worker, or process server is  
32 engaged in the lawful

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**T I T L E   A M E N D M E N T**

Remove lines 4-5 and insert:  
"utility worker" and "process server"; providing for  
reclassification of certain offenses committed against a utility  
worker or process server;





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 571 Marshal of Supreme Court  
**SPONSOR(S):** Roberson and others  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 496

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

### SUMMARY ANALYSIS

Section 25.271, F.S., specifies that the Marshal of the Florida Supreme Court (Court) is the conservator of the peace and authorizes the Marshal to apprehend, without a warrant, any person disturbing the peace without a warrant and deliver such person to an appropriate law enforcement officer. However, the Marshal's authority as conservator of the peace is limited to *the Court building or any building where the Court is sitting*.

Section 25.251, F.S., requires the Marshal and his or her assistants to successfully complete a minimum standards training program approved by the Criminal Justice Standards and Training Commission (CJSTC). Notably, the statute does not require the Marshal and his or her assistants to be certified officers (i.e., they do not have to meet *all* of the requirements in s. 943.13, F.S.).

The bill:

- Replaces the term "assistant" with the word "deputy;"
- Removes the language in s. 25.271, F.S., specifying that the Marshal and his or her assistants are conservators of the peace in the Court building, or in any building where the Court is sitting; and
- Creates a new subsection (3) in s. 25.251, F.S., specifying that the Marshal and his or her deputies are law enforcement officers of the state with statewide authority to bear arms and perform official duties for the Court.

As a result, the Marshal's jurisdiction will be statewide, and no longer limited to the Court building or buildings where the Court is sitting.

The bill also amends s. 25.251, F.S., to require the Marshal and his or her deputies to comply with the *all* of the requirements of s. 943.13, F.S., rather than the single requirement of successfully completing a CJSTC-approved basic training program. As a result, CJSTC will be required to certify the Marshal and his or her deputies as law enforcement officers.

According to the Office of the State Courts Administrator, the bill does not have a fiscal impact because it simply codifies the current hiring practice of the Court, which is to fill vacancies in the Marshal's Office with certified officers (i.e., persons who meet all of the requirements of s. 943.13, F.S.). Citing the same rationale, the Florida Department of Law Enforcement reports that the bill does not have a fiscal impact on the department.

The bill is effective upon becoming a law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Florida Supreme Court Marshal - Background**

Section 25.251, F.S., requires the Florida Supreme Court (Court) to appoint a Marshal. The Marshal is the custodian of the building and grounds of the Court,<sup>1</sup> which includes responsibility for Court security; custodianship of all Court property, buildings, and grounds maintenance; and the administration of Court building facilities.<sup>2</sup> The Marshal is also responsible for ensuring the execution of all the Court's orders throughout the state.<sup>3</sup>

##### **Florida Supreme Court Marshal – Training Requirements**

The Criminal Justice Standards and Training Commission (CJSTC), housed within the Florida Department of Law Enforcement (FDLE), establishes uniform minimum standards for the employment and training of full-time, part-time, and auxiliary law enforcement officers (LEOs). Currently, CJSTC must certify a person for employment as a LEO if:

- The person complies with s. 943.13(1)-(10), F.S., which requires every person employed or appointed as a LEO to:
  - Be at least 19 years of age;
  - Be a citizen of the United States;
  - Be a high school graduate or its "equivalent;"
  - Not have been convicted of any felony or of a misdemeanor involving perjury or a false statement, or have received a dishonorable discharge from any of the Armed Forces of the United States;
  - Have documentation of his or her fingerprints on file with the employing agency;
  - Pass a physical examination by a licensed physician, physician assistant, or certified advanced registered nurse practitioner, based on specifications established by CJSTC;
  - Have a good moral character as determined by a background investigation under procedures established by CJSTC;
  - Execute and submit to the employing agency an affidavit-of-applicant form, adopted by CJSTC, attesting to his or her compliance with s. 943.13(1)-(7), F.S.;
  - Complete a CJSTC-approved basic recruit training program for the applicable criminal justice discipline, unless exempt;
  - Achieve an acceptable score on the officer certification examination for the applicable criminal justice discipline; and
- The employing agency<sup>4</sup> complies with s. 943.133(2) and (3), F.S.<sup>5, 6</sup>

In 2005, FDLE determined that the Court was an "employing agency" for purposes of ch. 943, F.S.<sup>7</sup> However, s. 25.251, F.S., only requires the Marshal and his or her assistants to successfully complete a minimum standards training program approved by CJSTC - it does not require compliance with *all* of the

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<sup>1</sup> Section 25.271(1), F.S.

<sup>2</sup> <http://www.floridasupremecourt.org/about/marshal.shtml> (last visited on February 26, 2013).

<sup>3</sup> *Id.* Also see, s. 25.262, F.S.

<sup>4</sup> Section 943.10, F.S., defines the term "employing agency" as any agency or unit of government or any municipality or the state or any political subdivision thereof, or any agent thereof, which has constitutional or statutory authority to employ or appoint persons as officers. The term also includes any private entity which has contracted with the state or county for the operation and maintenance of a nonjuvenile detention facility.

<sup>5</sup> Section 943.133, F.S., sets forth the general responsibilities and requirements of employing agencies and specifies that an employing agency is responsible for the collection, verification, and maintenance of documentation establishing that an applicant complies with the requirements of s. 943.13, F.S.

<sup>6</sup> Section 943.1395(1), F.S.

<sup>7</sup> Florida Department of Law Enforcement Legal Memorandum re: Florida Supreme Court Marshal and Assistants, June 30, 2005 (on file with the Criminal Justice Subcommittee).

criteria in s. 943.13, F.S. As such, unless the Marshal or his or her assistants voluntarily elect to comply with all of the requirements of s. 943.13, F.S., CJSTC would not be able to certify them.

According to the Office of the State Courts Administrator (OSCA), the current practice of the Court is to fill vacancies in the Marshal's Office with certified officers (i.e., persons who meet all of the requirements of s. 943.13, F.S.).<sup>8</sup> Currently, the Marshal's Office employs 11 certified officers, 5 individuals who are certified armed security officers,<sup>9</sup> and 2 OPS certified officers.<sup>10</sup>

#### Effect of the Bill

The bill amends s. 25.251, F.S., to replace the term "assistant" with the word "deputy," and requires the Marshal and his or her deputies to comply with the *all* of the above-described requirements of s. 943.13, F.S. As a result, CJSTC will be required to certify such persons as law enforcement officers. These changes appear to codify the current hiring practices of the Marshal's Office.

#### **Florida Supreme Court Marshal – Jurisdiction**

In addition to being the custodian of the Court's building and grounds, s. 25.271, F.S., specifies that the Marshal is the conservator of the peace and authorizes the Marshal and his or her assistants to apprehend, without a warrant, any person disturbing the peace and deliver such person to an appropriate law enforcement officer. However, the Marshal's authority as conservator of the peace is limited to the Court building or any building where the Court is sitting.<sup>11</sup>

According to the Office of the State Courts Administrator (OSCA), the Marshal and his or her assistants are often called upon to escort and provide security for justices at locations outside of the Court building and outside of places where the Court may be sitting. However, the Marshal's Office does not have jurisdiction at these locations because the statute limits the jurisdiction of the Marshal's Office to only the Court building or in buildings where the Court is sitting.

#### Effect of the Bill

The bill removes language in s. 25.271, F.S., specifying that the Marshal and his or her assistants are conservators of the peace in the Court building, or in any building where the Court is sitting.

The bill creates a new subsection (3) in s. 25.251, F.S., which specifies that the Marshal and his or her deputies are law enforcement officers of the state with statewide authority to bear arms and perform official duties for the Court. In connection with those duties, the Marshal and his or her deputies may apprehend a person disturbing the peace without a warrant, and deliver such person to an appropriate law enforcement officer for further proceedings.

#### **B. SECTION DIRECTORY:**

Section 1. Amends s. 25.251, F.S., relating to Marshal of Supreme Court; appointment; training.

Section 2. Amends s. 25.271, F.S., relating to Custody of Supreme Court Building and grounds.

Section 3. The bill is effective upon becoming a law.

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<sup>8</sup> *Revised Proposed Legislative Issue*, Supreme Court Marshal Requirements and Authority, January 16, 2013 (on file with Criminal Justice Subcommittee).

<sup>9</sup> Chapter 493, F.S., provides requirements for the licensure of security officers.

<sup>10</sup> *Revised Proposed Legislative Issue*, Supreme Court Marshal Requirements and Authority, January 16, 2013 (on file with Criminal Justice Subcommittee).

<sup>11</sup> Section 25.271(2), F.S.

## 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:

According to OSCA, the bill does not have a fiscal impact because it simply codifies the current hiring practice of the Court, which is to fill vacancies in the Marshal's Office with certified officers (i.e., persons who meet all of the requirements of s. 943.13, F.S.). Citing the same rationale, FDLE reports that the bill does not have a fiscal impact on the department.

### 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 does not appear to have any 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 does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

#### 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

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A bill to be entitled  
 An act relating to the marshal of the Supreme Court;  
 amending s. 25.251, F.S.; revising terminology;  
 requiring the marshal and his or her deputies to  
 comply with specified requirements for law enforcement  
 officers; specifying that the marshal and his or her  
 deputies are law enforcement officers with statewide  
 authority to bear arms and perform official duties and  
 apprehend without warrant under certain conditions;  
 amending s. 25.271, F.S.; deleting provisions relating  
 to the marshal and his or her deputies being  
 conservators of the peace; providing an effective  
 date.

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

Section 1. Section 25.251, Florida Statutes, is amended to read:

25.251. Marshal of Supreme Court; appointment;  
qualification; authority training.-

(1) The Supreme Court shall appoint a marshal who shall hold office during the pleasure of the court.

(2) The marshal and his or her deputies must comply with s. 943.13 relating to requirements for law enforcement officers in this state ~~assistants shall attend and successfully complete a minimum standards training program approved by the Criminal Justice Standards and Training Commission within the Department of Law Enforcement.~~

29       (3) The marshal and his or her deputies shall be law  
 30 enforcement officers of the state with statewide authority to  
 31 bear arms and perform official duties for the Supreme Court and,  
 32 in connection with those duties, may apprehend without warrant a  
 33 person disturbing the peace and deliver that person to the  
 34 appropriate law enforcement officer of the municipality or  
 35 county in which further proceedings may be held according to  
 36 law.

37       Section 2. Section 25.271, Florida Statutes, is amended to  
 38 read:

39       25.271 Custody of Supreme Court Building and grounds.—

40       ~~(1)~~ The ~~said~~ marshal shall, under the direction of the  
 41 Supreme Court, be custodian of the Supreme Court Building and  
 42 grounds and shall keep the same clean, sanitary, and free of  
 43 trespassers and marauders and shall maintain the same in good  
 44 state of repair and cause the grounds to be beautified and  
 45 preserved against depredations and trespasses.

46       ~~(2) The marshal and his or her assistants shall be~~  
 47 ~~conservators of the peace in the Supreme Court Building, or in~~  
 48 ~~any building in which the Supreme Court is sitting, and shall~~  
 49 ~~apprehend without warrant any person disturbing the peace and~~  
 50 ~~deliver that person to the appropriate law enforcement officer~~  
 51 ~~of the municipality or county in which further proceedings may~~  
 52 ~~be held according to law.~~

53       Section 3. This act shall take effect upon becoming a law.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 571 (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                                    \_\_\_\_\_

1 Committee/Subcommittee hearing bill: Criminal Justice  
2 Subcommittee

3 Representative Roberson, K. offered the following:

4  
5 **Amendment (with title amendment)**

6 Remove lines 29-36 and insert:

7 (3) The marshal and his or her deputies shall be law  
8 enforcement officers as defined in s. 943.10(1), under the  
9 direction and control of the Supreme Court with full powers to  
10 bear arms and make arrests in accordance with the laws of this  
11 state. In performance of their official duties for the Supreme  
12 Court, they may apprehend without warrant a person disturbing  
13 the peace and deliver that person to the appropriate law  
14 enforcement officer of the municipality or county in which  
15 further proceedings may be held according to law. The powers  
16 granted in this section may be exercised only in furtherance of  
17 and in connection with performance of official duties for the  
18 Supreme Court.  
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Amendment No. 1

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**T I T L E   A M E N D M E N T**

Remove lines 7-9 and insert:  
deputies are law enforcement officers with full powers to bear  
arms and make arrests under certain conditions; limiting the use  
of those powers to performance of official duties for the  
Supreme Court;





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 611 False Reports to Law Enforcement Officers

**SPONSOR(S):** Watson, C.

**TIED BILLS:** IDEN./SIM. **BILLS:** SB 400

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

### SUMMARY ANALYSIS

Section 837.05(1), F.S., makes it a first degree misdemeanor, which is punishable by up to one year in county jail and a \$1,000 fine, for a person to knowingly give false information to a law enforcement officer concerning the alleged commission of any crime.

The bill amends s. 837.05(1), F.S., to make a second or subsequent violation a third degree felony, which is punishable by up to five years imprisonment and a \$5,000 fine. This will have an indeterminate prison bed impact and a positive jail bed impact.

The bill is effective on October 1, 2013.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

Section 837.05(1), F.S., makes it a first degree misdemeanor, which is punishable by up to one year in county jail and a \$1,000 fine,<sup>1</sup> for a person to knowingly give false information to any law enforcement concerning the alleged commission of any crime.<sup>2</sup>

##### **Effect of the Bill**

The bill amends s. 837.05(1), F.S., to make a second or subsequent violation a third degree felony, which is punishable by up to five years imprisonment and a \$5,000 fine.<sup>3</sup>

#### B. SECTION DIRECTORY:

Section 1. Amends s. 837.05, F.S., relating to false reports to law enforcement authorities.

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 (CJIC) has not met to determine the prison bed impact of this bill. However, during the 2012 legislative session, CJIC determined that HB 759, which is similar to this bill, would have an indeterminate prison bed impact due to the unknown number of persons convicted of second or subsequent violations of s. 837.05(1), 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 increases the criminal penalty for second or subsequent violations of s. 837.05(1), F.S., from a first degree misdemeanor to a third degree felony. As a result, the bill may have a positive jail bed impact on local governments.

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

None.

#### D. FISCAL COMMENTS:

None.

<sup>1</sup> Sections 775.082 and 775.083, F.S.

<sup>2</sup> Section 837.05(2), F.S., makes it a third degree felony for anyone to give false information to a law enforcement officer concerning the alleged commission of a capital felony.

<sup>3</sup> Sections 775.082 and 775.083, F.S.

### **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:**

The phrase "resulting in conviction" on lines 18 and 21-22 of the bill is unnecessary and not in conformity with other criminal statutes.

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

1                                   A bill to be entitled  
 2           An act relating to false reports to law enforcement  
 3           officers; amending s. 837.05, F.S.; increasing  
 4           criminal penalties for a second or subsequent  
 5           conviction of providing false information to a law  
 6           enforcement officer concerning the alleged commission  
 7           of a crime; providing an effective date.

8  
 9   Be It Enacted by the Legislature of the State of Florida:

10  
 11           Section 1. Section 837.05, Florida Statutes, is amended to  
 12   read:

13           837.05 False reports to law enforcement authorities.—

14           (1) Except as provided in subsection (2), a person who  
 15 ~~whoever~~ knowingly gives false information to a ~~any~~ law  
 16 enforcement officer concerning the alleged commission of any  
 17 crime, commits:

18           (a) For a first offense resulting in conviction, a  
 19 misdemeanor of the first degree, punishable as provided in s.  
 20 775.082 or s. 775.083.

21           (b) For a second or subsequent offense resulting in  
 22 conviction, a felony of the third degree, punishable as provided  
 23 in s. 775.082, s. 775.083, or s. 775.084.

24           (2) A person who ~~Whoever~~ knowingly gives false information  
 25 to a law enforcement officer concerning the alleged commission  
 26 of a capital felony, commits a felony of the third degree,  
 27 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

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

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 611 (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 \_\_\_\_\_

1 Committee/Subcommittee hearing bill: Criminal Justice

2 Subcommittee

3 Representative Watson, C. offered the following:

4

5 **Amendment (with title amendment)**

6 Remove lines 14-23 and insert:

7 (1) (a) Except as provided in paragraph (b) or subsection  
8 (2), a person who ~~whoever~~ knowingly gives false information to a  
9 ~~any~~ law enforcement officer concerning the alleged commission of  
10 any crime, commits a misdemeanor of the first degree, punishable  
11 as provided in s. 775.082 or s. 775.083.

12 (b) A person who commits a violation of paragraph (a)  
13 commits a felony of the third degree, punishable as provided in  
14 s. 775.082, s. 775.083, or s. 775.084, if the person has  
15 previously been convicted of a violation of paragraph (a) and  
16 subparagraph 1. or 2. applies:

17 1. The information the person gave to the law enforcement  
18 officer was communicated orally and the officer's account of  
19 that information is corroborated by:

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 611 (2013)

Amendment No. 1

20 (a) An audio recording or audio recording in a video of  
21 that information;

22 (b) A written or recorded statement made by the person who  
23 gave that information; or

24 (c) Another person who was present when that person gave  
25 that information to the officer and heard that information.

26 2. The information the person gave to the law enforcement  
27 officer was communicated in writing.

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**T I T L E   A M E N D M E N T**

32

Remove lines 3-7 and insert:

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officers; amending s. 837.05, F.S.; providing that it is a

34

third degree felony to knowingly give false information to

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a law enforcement officer concerning the alleged commission

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of a crime if the defendant has previously been convicted

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of this offense and the information, if communicated

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orally, is corroborated in a specified manner, or was

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communicated in writing; providing an effective date.

40





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 685 Parole Interview Dates for Certain Inmates  
**SPONSOR(S):** McBurney  
**TIED BILLS:** IDEN./SIM. BILLS: SB 742

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

### SUMMARY ANALYSIS

Currently, the Florida Parole Commission re-interviews parole eligible inmates to review the inmate's presumptive parole release date (PPRD). Generally, inmates are re-interviewed every two years. However, the statute provides for re-interviews every seven years if an inmate's PPRD is more than seven years from the date of the initial interview and if the inmate is serving a 25-year minimum mandatory sentence previously provided under s. 775.082, F.S., or the inmate was convicted of:

- Murder;
- Attempted murder;
- Sexual battery; or
- Attempted sexual battery.

This bill increases the intervals between parole interview dates from two to seven years for inmates convicted of:

- Kidnapping or attempted kidnapping; or
- Robbery, burglary of dwelling, burglary of a structure or conveyance, or breaking and entering, or an attempt thereof of any of these crimes, in which a human being is present and a sexual act is completed or attempted.

The Florida Parole Commission reports that the bill will not have a fiscal impact. Additionally, on February 27, 2013, the Criminal Justice Impact Conference determined that this bill would not have a prison bed impact.

The bill is effective on July 1, 2013.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

Parole is a discretionary prison release mechanism administered by the Florida Parole Commission (commission) through chs. 947, 948, and 949, F.S. An inmate who is granted parole is allowed to serve the remainder of his or her prison sentence outside of confinement according to terms and conditions established by the commission.<sup>1</sup> Parolees are supervised by Correctional Probation Officers employed by the Department of Corrections (DOC). Parole is not available for most crimes that were committed on or after October 1, 1983.<sup>2</sup> There is no parole eligibility for any crime committed on or after October 1, 1995.

The parole process begins with setting a presumptive parole release date (PPRD) by the commission after a hearing examiner reviews the inmate's file, conducts an initial interview with the inmate, and makes an initial recommendation to a panel of commissioners.<sup>3</sup> The PPRD is the tentative parole release date as determined by objective parole guidelines.<sup>4</sup> An inmate may request one review of the initial PPRD within 60 days after notification.<sup>5</sup> Otherwise, the PPRD is not reviewed until a hearing examiner holds subsequent interviews with the inmate.<sup>6</sup>

Subsequent interviews for review of the PPRD may be held every two or seven years depending on the offense the inmate was convicted of.<sup>7</sup> Generally, inmates are re-interviewed every two years.<sup>8</sup> However, s. 947.174(1)(b), F.S., provides for less frequent reviews if an inmate's PPRD is more than seven years from the date of the initial interview and if the inmate was convicted of: murder, attempted murder, sexual battery, or attempted sexual battery, or is serving a 25-year minimum mandatory sentence previously provided under s. 775.082, F.S. In such cases, the subsequent interviews may be conducted every seven years if the commission makes a written finding that it is not reasonable to expect that parole will be granted.<sup>9,10</sup>

Subsequent interviews are limited to determining whether or not information has been gathered that might affect the PPRD.<sup>11</sup> DOC is responsible for bringing to the attention of the commission any information that may be pertinent for review, such as an inmate's current progress reports, psychological reports, and disciplinary reports.<sup>12</sup>

After an interview is conducted the hearing examiner sends his or her report and recommendation to a panel of commissioners.<sup>13</sup> The inmate's case is then added to the docket of the next available parole

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<sup>1</sup> *Extended Interviews Detailed Analysis*, Florida Parole Commission, provided to House Committee Staff on February 18, 2013 (on file with the Criminal Justice Subcommittee).

<sup>2</sup> The exceptions are for capital felony murders committed prior to October 1, 1994, and capital felony sexual battery prior to October 1, 1995.

<sup>3</sup> Section 947.172, F.S.

<sup>4</sup> Section 947.005(8), F.S.

<sup>5</sup> Section 947.173(1), F.S.

<sup>6</sup> Section 947.174, F.S.

<sup>7</sup> *Id.*

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

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

<sup>10</sup> In addition, s. 947.16(4), F.S., provides that at the time of sentencing, a judge may enter an order to retain jurisdiction over an offender for review of a commission release order to grant parole. If the judge vacates the parole release order and denies the parole, the offender shall be re-interviewed by the commission every two or seven years as determined by the same criteria described in this cited paragraph.

<sup>11</sup> Section 947.174(1)(c), F.S.

<sup>12</sup> Section 947.174(3), F.S.

<sup>13</sup> Rule 23-21.0052, F.A.C.

hearing where the commission will hear public testimony and make a final decision regarding the PPRD recommendation. Inmates are not permitted to attend parole hearings.<sup>14</sup> At parole hearings, victims and their families, inmates' families, attorneys, law enforcement, and other interested parties may address the commission.<sup>15</sup>

The hearing examiner conducts a final interview of the inmate within 90 days of the PPRD in order to set an effective parole release date and to establish a parole release plan.<sup>16</sup> The commission is required to give notice to the sentencing court prior to this final interview.<sup>17</sup> If the court objects to the offender's release, the objection can be an exceptional circumstance under s. 947.173, F.S., which authorizes the commission to cancel the final interview and reset the case for future review.<sup>18</sup> If the court does not object and the final interview is held, the commission then holds a final public hearing at which it decides whether the inmate's parole release plan is satisfactory and whether to authorize the effective parole release date and enter a release order.<sup>19</sup>

### **Effect of the Bill**

As noted above, the commission re-interviews parole eligible inmates to review the inmate's PPRD. Generally, inmates are re-interviewed every two years. However, s. 947.174(1)(b), F.S., provides for re-interviews every seven years if an inmate's PPRD is more than seven years from the date of the initial interview and if the inmate is serving a 25-year minimum mandatory sentence under s. 775.082, F.S., or the inmate was convicted of:

- Murder;
- Attempted murder;
- Sexual battery; or
- Attempted sexual battery.

The bill amends ss. 947.16, 947.174, and 947.1745, F.S., to increase the intervals between parole interview dates from two to seven years for inmates convicted of:

- Kidnapping or attempted kidnapping; or
- Robbery, burglary of dwelling, burglary of a structure or conveyance, or breaking and entering, or an attempt thereof of any of these crimes, in which a human being is present and a sexual act is completed or attempted.

The bill reenacts s. 947.165, F.S., to incorporate the amendments to s. 947.1745, F.S.

### **B. SECTION DIRECTORY:**

Section 1. Amends s. 947.16, F.S., relating to eligibility for parole; initial parole interviews; powers and duties of commission.

Section 2. Amends s. 947.174, F.S., relating to subsequent interviews.

Section 3. Amends s. 947.1745, F.S., relating to establishment of effective parole release date.

Section 4. Reenacts s. 947.165, F.S., relating to objective parole guidelines.

Section 5. Provides an effective date of July 1, 2013.

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<sup>14</sup> Rule 23-21.004, F.A.C.

<sup>15</sup> The commission's Victims' Services unit provides advance notice to victims of upcoming parole proceedings. Section 947.06, F.S.

<sup>16</sup> Section 947.1745(1), F.S.

<sup>17</sup> Section 947.1745(6), F.S.

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

<sup>19</sup> Rule 23-21.015, F.A.C.

## 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:

On February 27, 2013, the Criminal Justice Impact Conference determined that this bill would not have a prison bed impact.

Additionally, the Florida Parole Commission reports that the bill will not have a fiscal impact.<sup>20</sup> The bill will also not affect the commission's workload because no interviews are being eliminated - only delayed.<sup>21</sup> The bill does not remove the inmate's limited due process rights or the mechanism for the inmate to request the commission to consider setting an earlier interview date which is currently in place.<sup>22</sup>

### 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 does not appear to have any 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:

This 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:

On June 1, 1997, the Legislature changed the frequency of subsequent parole interviews for certain prisoners from every two years to every five years.<sup>23</sup> According to the Third District Court of Appeal, the ex post facto clause was not violated by the retroactive application of this law as it applied to a limited number of inmates and was narrowly constructed.<sup>24</sup>

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<sup>20</sup> *Supra* note 1.

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

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

<sup>23</sup> Chapter 97-289, L.O.F.

<sup>24</sup> *Tuff v. State*, 732 So.2d 461 (3rd DCA 1999).

**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 parole interview dates for certain  
 3           inmates; amending ss. 947.16, 947.174, and 947.1745,  
 4           F.S.; extending from 2 years to 7 years the period  
 5           between parole interview dates for inmates convicted  
 6           of committing specified crimes; requiring a periodic  
 7           parole interview for an inmate convicted of kidnapping  
 8           or attempted kidnapping or robbery, burglary of a  
 9           dwelling, burglary of a structure or conveyance, or  
 10          breaking and entering, or the attempt thereof of any  
 11          of these crimes, in which a human being is present and  
 12          a sexual act is attempted or completed; reenacting s.  
 13          947.165(1), F.S., relating to objective parole  
 14          guidelines, to incorporate the amendment made by this  
 15          act to s. 947.1745, F.S., in a reference thereto;  
 16          providing an effective date.

17  
 18   Be It Enacted by the Legislature of the State of Florida:

19  
 20           Section 1. Paragraph (g) of subsection (4) of section  
 21   947.16, Florida Statutes, is amended to read:

22           947.16 Eligibility for parole; initial parole interviews;  
 23   powers and duties of commission.—

24           (4) A person who has become eligible for an initial parole  
 25   interview and who may, according to the objective parole  
 26   guidelines of the commission, be granted parole shall be placed  
 27   on parole in accordance with the provisions of this law; except  
 28   that, in any case of a person convicted of murder, robbery,

29 burglary of a dwelling or burglary of a structure or conveyance  
 30 in which a human being is present, aggravated assault,  
 31 aggravated battery, kidnapping, sexual battery or attempted  
 32 sexual battery, incest or attempted incest, an unnatural and  
 33 lascivious act or an attempted unnatural and lascivious act,  
 34 lewd and lascivious behavior, assault or aggravated assault when  
 35 a sexual act is completed or attempted, battery or aggravated  
 36 battery when a sexual act is completed or attempted, arson, or  
 37 any felony involving the use of a firearm or other deadly weapon  
 38 or the use of intentional violence, at the time of sentencing  
 39 the judge may enter an order retaining jurisdiction over the  
 40 offender for review of a commission release order. This  
 41 jurisdiction of the trial court judge is limited to the first  
 42 one-third of the maximum sentence imposed. When any person is  
 43 convicted of two or more felonies and concurrent sentences are  
 44 imposed, then the jurisdiction of the trial court judge as  
 45 provided herein applies to the first one-third of the maximum  
 46 sentence imposed for the highest felony of which the person was  
 47 convicted. When any person is convicted of two or more felonies  
 48 and consecutive sentences are imposed, then the jurisdiction of  
 49 the trial court judge as provided herein applies to one-third of  
 50 the total consecutive sentences imposed.

51 (g) The decision of the original sentencing judge or, in  
 52 her or his absence, the chief judge of the circuit to vacate any  
 53 parole release order as provided in this section is not  
 54 appealable. Each inmate whose parole release order has been  
 55 vacated by the court shall be reinterviewed within 2 years after  
 56 the date of receipt of the vacated release order and every 2

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57 | years thereafter, or earlier by order of the court retaining  
 58 | jurisdiction. However, each inmate whose parole release order  
 59 | has been vacated by the court and who has been:

- 60 |       1. Convicted of murder or attempted murder;
- 61 |       2. Convicted of sexual battery or attempted sexual  
 62 | battery; ~~or~~
- 63 |       3. Convicted of kidnapping or attempted kidnapping;
- 64 |       4. Convicted of robbery, burglary of a dwelling, burglary  
 65 | of a structure or conveyance, or breaking and entering, or the  
 66 | attempt thereof of any of these crimes, in which a human being  
 67 | is present and a sexual act is attempted or completed; or

68 |       ~~5.3.~~ Sentenced to a 25-year minimum mandatory sentence  
 69 | previously provided in s. 775.082,

70 |  
 71 | shall be reinterviewed once within 7 years after the date of  
 72 | receipt of the vacated release order and once every 7 years  
 73 | thereafter, if the commission finds that it is not reasonable to  
 74 | expect that parole would be granted during the following years  
 75 | and states the bases for the finding in writing. For an ~~any~~  
 76 | inmate who is within 7 years of his or her tentative release  
 77 | date, the commission may establish a reinterview date before  
 78 | ~~prior to~~ the 7-year schedule.

79 |       Section 2. Paragraph (b) of subsection (1) of section  
 80 | 947.174, Florida Statutes, is amended to read:

81 |       947.174 Subsequent interviews.—

82 |       (1)

83 |       (b) For any inmate convicted of murder or ~~or~~ attempted  
 84 | murder; sexual battery ~~or~~ sexual battery; kidnapping



85 or attempted kidnapping; or robbery, burglary of a dwelling,  
 86 burglary of a structure or conveyance, or breaking and entering,  
 87 or the attempt thereof of any of these crimes, in which a human  
 88 being is present and a sexual act is attempted or completed, or  
 89 any inmate who has been sentenced to a 25-year minimum mandatory  
 90 sentence previously provided in s. 775.082, and whose  
 91 presumptive parole release date is more than 7 years after the  
 92 date of the initial interview, a hearing examiner shall schedule  
 93 an interview for review of the presumptive parole release date.  
 94 The interview shall take place once within 7 years after the  
 95 initial interview and once every 7 years thereafter if the  
 96 commission finds that it is not reasonable to expect that parole  
 97 will be granted at a hearing during the following years and  
 98 states the bases for the finding in writing. For an ~~any~~ inmate  
 99 who is within 7 years of his or her tentative release date, the  
 100 commission may establish an interview date before the 7-year  
 101 schedule.

102 Section 3. Subsection (6) of section 947.1745, Florida  
 103 Statutes, is amended to read:

104 947.1745 Establishment of effective parole release date.—  
 105 If the inmate's institutional conduct has been satisfactory, the  
 106 presumptive parole release date shall become the effective  
 107 parole release date as follows:

108 (6) Within 90 days before the effective parole release  
 109 date interview, the commission shall send written notice to the  
 110 sentencing judge of any inmate who has been scheduled for an  
 111 effective parole release date interview. If the sentencing judge  
 112 is no longer serving, the notice must be sent to the chief judge

113 of the circuit in which the offender was sentenced. The chief  
 114 judge may designate any circuit judge within the circuit to act  
 115 in the place of the sentencing judge. Within 30 days after  
 116 receipt of the commission's notice, the sentencing judge, or the  
 117 designee, shall send to the commission notice of objection to  
 118 parole release, if the judge objects to such release. If there  
 119 is objection by the judge, such objection may constitute good  
 120 cause in exceptional circumstances as described in s. 947.173,  
 121 and the commission may schedule a subsequent review within 2  
 122 years, extending the presumptive parole release date beyond that  
 123 time. However, for an inmate who has been:

- 124 (a) Convicted of murder or attempted murder;
- 125 (b) Convicted of sexual battery or attempted sexual  
 126 battery; ~~or~~
- 127 (c) Convicted of kidnapping or attempted kidnapping;
- 128 (d) Convicted of robbery, burglary of a dwelling, burglary  
 129 of a structure or conveyance, or breaking and entering, or the  
 130 attempt thereof of any of these crimes, in which a human being  
 131 is present and a sexual act is attempted or completed; or
- 132 (e) ~~(e)~~ Sentenced to a 25-year minimum mandatory sentence  
 133 previously provided in s. 775.082,

134  
 135 the commission may schedule a subsequent review under this  
 136 subsection once every 7 years, extending the presumptive parole  
 137 release date beyond that time if the commission finds that it is  
 138 not reasonable to expect that parole would be granted at a  
 139 review during the following years and states the bases for the  
 140 finding in writing. For an ~~any~~ inmate who is within 7 years of

141 his or her release date, the commission may schedule a  
 142 subsequent review before ~~prior to~~ the 7-year schedule. With any  
 143 subsequent review the same procedure outlined above will be  
 144 followed. If the judge remains silent with respect to parole  
 145 release, the commission may authorize an effective parole  
 146 release date. This subsection applies if the commission desires  
 147 to consider the establishment of an effective release date  
 148 without delivery of the effective parole release date interview.  
 149 Notice of the effective release date must be sent to the  
 150 sentencing judge, and either the judge's response to the notice  
 151 must be received or the time period allowed for such response  
 152 must elapse before the commission may authorize an effective  
 153 release date.

154 Section 4. For the purpose of incorporating the amendment  
 155 made by this act to section 947.1745, Florida Statutes, in a  
 156 reference thereto, subsection (1) of section 947.165, Florida  
 157 Statutes, is reenacted to read:

158 947.165 Objective parole guidelines.-

159 (1) The commission shall develop and implement objective  
 160 parole guidelines which shall be the criteria upon which parole  
 161 decisions are made. The objective parole guidelines shall be  
 162 developed according to an acceptable research method and shall  
 163 be based on the seriousness of offense and the likelihood of  
 164 favorable parole outcome. The guidelines shall require the  
 165 commission to aggravate or aggregate each consecutive sentence  
 166 in establishing the presumptive parole release date. Factors  
 167 used in arriving at the salient factor score and the severity of  
 168 offense behavior category shall not be applied as aggravating

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169 | circumstances. If the sentencing judge files a written objection  
170 | to the parole release of an inmate as provided for in s.  
171 | 947.1745(6), such objection may be used by the commission as a  
172 | basis to extend the presumptive parole release date.

173 |         Section 5. This act shall take effect July 1, 2013.



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** PCB CRJS 13-04 Postconviction Capital Case Procedures  
**SPONSOR(S):** Criminal Justice Subcommittee  
**TIED BILLS:** PCB CRJS 13-05 **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee		Cunningham	<i>AM</i> Cunningham <i>SM</i>

**SUMMARY ANALYSIS**

This joint resolution proposes to amend Article V, Section 2 of the Florida Constitution, relating to the Supreme Court's authority to adopt rules of practice and procedure. The joint resolution amends the Florida Constitution to require the procedures for postconviction or collateral review of capital cases resulting in a sentence of death to be governed exclusively by, and to the extent provided by, general law.

The resolution does not alter the Supreme Court's authority to adopt rules of practice and procedure in other areas of the law.

The resolution also adds a new section to Article XII of the Florida Constitution specifying that the amendment to Section 2 of Article V (described above) will take effect July 1, 2015, and only applies to capital cases in which the conviction and sentence of death have been affirmed on direct appeal on or after July 1, 2015.

This joint resolution requires publication prior to the election. The Florida Department of State estimates that required publication of a proposed constitutional amendment costs \$106.14 per word. At 778 words, the estimated cost to publish the amendment is \$82,577. This must be paid regardless of whether the amendment passes, and would be payable in FY 2014-2015 from General Revenue.

If the joint resolution is passed by a 3/5 vote of both houses of the legislature, it will be submitted to the voters in the general election in November of 2014.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Florida Constitution - Rulemaking Authority**

Article V, Section 2 of the Florida Constitution, authorizes the Supreme Court to "adopt rules of practice and procedure in all courts . . ." The Florida Supreme Court has adopted rules of practice and procedure governing various subjects. For example, there are rules of civil procedure, rules of judicial administration, rules of criminal procedure, probate rules, and rules of juvenile procedure. The same section of the constitution authorizes the Legislature to repeal court rules of procedure with a 2/3 vote of the membership of both houses.

##### **Separation of Powers**

Unlike the federal constitution, the Florida constitution includes a specific provision pertaining to the separation of powers among the three branches of government. Article II, Section 3 of the Florida Constitution provides, "The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein." The Florida Supreme Court has held that it has exclusive authority to enact rules of practice and procedure in all courts. The Legislature's authority to enact substantive law is also exclusive.<sup>1</sup>

The Florida Supreme Court can protect itself against legislative encroachment on its procedural rulemaking authority by declaring legislative rulemaking enactments an unconstitutional violation of the separation of powers provision. The Legislature's means of shielding the substantive law it passes from alteration by court rule of procedure is by repealing the rule of procedure.<sup>2</sup> The constitution does not preclude the Florida Supreme Court from reenacting a rule that is similar or identical to one that the Legislature has repealed.<sup>3</sup>

##### **Distinguishing Substance from Procedure**

Generally speaking, "substantive law" involves matters of public policy affecting the authority of government and rights of citizens relating to life, liberty and property. Court "rules of practice and procedure" govern the administration of courts, and the behavior of litigants within a court proceeding.<sup>4</sup>

##### **Comparison with the Federal System**

Federal courts have acknowledged for some time that Congress has the authority to regulate matters of practice and procedure in the federal courts.<sup>5</sup> Congress delegated some of its rulemaking power to the Supreme Court of the United States in 1934 by passing the Rules Enabling Act,<sup>6</sup> which gave the Supreme Court the authority to promulgate rules of practice and procedure for federal courts.

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<sup>1</sup> See Art. III, Sec. 1, FLA. CONST.; *Allen v. Butterworth*, 756 So.2d 52 (Fla. 2000); *Johnson v. State*, 336 So.2d 93 (Fla. 1976).

<sup>2</sup> *Allen v. Butterworth*, 756 So.2d 52 (Fla. 2000).

<sup>3</sup> *Id.*

<sup>4</sup> In *Allen v. Butterworth*, the Florida Supreme Court referred to a discussion explaining the distinction between substance and procedure from Justice Adkins' concurring opinion in *In Re Rules of Criminal Procedure*, 272 So.2d 65, 66 (Fla. 1972):

Practice and procedure encompass the course, form, manner, means, method, mode, order, process or steps by which a party enforces substantive rights or obtains redress for their invasion. "Practice and procedure" may be described as the machinery of the judicial process as opposed to the product thereof. Examination of many authorities leads me to conclude that substantive law includes those rules and principles which fix and declare the primary rights of individuals as respects their persons and their property. As to the term "procedure," I conceive it to include the administration of the remedies available in cases of invasion of primary rights of individuals. The term "rules of practice and procedure" includes all rules governing the parties, their counsel and the Court throughout the progress of the case from the time of its initiation until final judgment and its execution.

<sup>5</sup> See, e.g., *Sibbach v. Wilson & Co.*, 312 U.S. 1 (1941); *Wayman v. Southard*, 23 U.S. 1 (1825).

<sup>6</sup> Pub. L. No. 73-415, (June 19, 1934). The current version of the Rules Enabling Act, as subsequently amended, is codified as 28 U.S.C. ss. 2071-2077.

Notwithstanding this delegation of authority, however, Congress plays a critical role in implementing any rule proposals offered by the Court. All rule proposals are subject to review by Congress and take effect only after the Supreme Court has presented them to Congress, and after Congress has had seven months to review proposed rules or changes.<sup>7</sup> Congress uses the review period to "make sure that the action under the delegation squares with the Congressional purpose."<sup>8</sup> In fact, the federal statute currently provides that "[s]uch rules shall not abridge, enlarge or modify any substantive right."<sup>9</sup>

Rules are proposed by the Judicial Conference of the United States and reviewed by the Supreme Court who, if they approve, forward them to Congress by May 1<sup>st</sup>.<sup>10</sup> If Congress does not reject, modify, or defer the rules, they take effect as a matter of law on December 1<sup>st</sup> of the year proposed.<sup>11</sup>

### **Comparison to Larger States**

The rulemaking provisions of the two states with populations larger than Florida—California and Texas—were examined to compare Florida's system with theirs. In both states, their legislatures play an active role in, and have the final word on, the shape of court rules.

In California, the state constitution specifically requires that "[t]he rules adopted shall not be inconsistent with statute."<sup>12</sup> As a result, rules of procedure that are inconsistent with statute are null and void.<sup>13</sup> They also have a committee responsible for promulgating rules called the "Judicial Council." However, the Judicial Council itself promulgates rules, and the state supreme court does not approve such rules.

In Texas, the state Supreme Court is responsible under the constitution to promulgate rules of civil procedure and rules for judicial administration that are not inconsistent with state law.<sup>14</sup> Although the Supreme Court has authority to promulgate such rules, they are subject to legislative control if the legislature chooses to exercise it.<sup>15</sup> Criminal rules of procedure are provided by statute.<sup>16</sup>

### **Effects of the Court's Rulemaking Authority on the Legislature**

The exclusive authority of the Florida Supreme Court over court practice and procedure has impacted the ability of the Legislature to address the time delays in the administration of the death penalty.<sup>17</sup> The Legislature currently has no authority to limit how many postconviction motions can be filed in a capital case and cannot limit the amount of time that a defendant has to file a motion.<sup>18</sup> In a special session held in 2000, the Legislature passed the Death Penalty Reform Act of 2000 (DPRA), which imposed a statute of limitations on postconviction death penalty appeals and provided that the postconviction process would begin while the case was on direct appeal – thereby moving up the start of that part of

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<sup>7</sup> See 28 U.S.C. s. 2074.

<sup>8</sup> *Sibbach*, 312 U.S. at 15.

<sup>9</sup> See 28 U.S.C. s. 2072(b).

<sup>10</sup> See 28 U.S.C. ss. 2073, 2074 and 2075. The Judicial Conference is chaired by the Chief Justice of the United States Supreme Court and consists of the chief judges of the 13 appellate circuits, the chief judge of the Court of International Trade, and other selected federal judges.

<sup>11</sup> See 28 U.S.C. s. 2074.

<sup>12</sup> Article VI, Sec. 6(d), CAL. CONST.

<sup>13</sup> California courts have stated that rules of procedure promulgated by their state Judicial Council are subordinate to statutes enacted by the Legislature; if the two conflict, either in letter or merely intent, the court rule is invalid. See *Cooper v. Westbrook Torrey Hills, LP*, 97 Cal.Rptr.2d 742 (Cal. App. 4 Dist. 2000); *In re Jermaine B.*, 26 Cal.Rptr.2d 612 (Cal. App. 3 Dist. 1994). This applies not only to statutes in effect when a rule was adopted, but also to statutes enacted subsequently. See *Trans-Action Commercial Investors, Ltd. v. Jelinek*, 70 Cal.Rptr.2d 449 (Cal. App. 1 Dist. 1997). Therefore, corrective legislation would effectively repeal an inconsistent court rule, and require the promulgation of a new rule of procedure consistent with the new statute.

<sup>14</sup> See Art. V, Sec. 31, TEX. CONST.

<sup>15</sup> See *Armadillo Bail Bonds v. State*, 802 S.W.2d 237 (Tex. Cr. App. 1990).

<sup>16</sup> See Art. V, Sec. 31, TEX. CONST.

<sup>17</sup> "Postconviction" motions are brought after the conviction and sentence have been affirmed on direct appeal or the time for filing an appeal has expired.

<sup>18</sup> See *Allen v. Butterworth*, 756 So.2d 52 (Fla. 2000).



the appeals process.<sup>19</sup> The statute of limitations in the DPRA provided that appeals filed after the deadline would be time-barred.<sup>20</sup> Shortly thereafter, the Florida Supreme Court found the DPRA unconstitutional.<sup>21</sup> The court held: “. . . we find that the DPRA is an unconstitutional encroachment on this Court's exclusive power to adopt rules for the practice and procedure in all courts.”<sup>22</sup> The court rejected the state's argument that if Congress has the authority to set a statute of limitations in death penalty postconviction motions, the Florida Legislature should also have the same authority.<sup>23</sup> The court noted that:

In Florida, article V, section 2(a) of the Florida Constitution grants this Court the exclusive authority to adopt rules of procedure. Consequently, the separation of powers argument raised in the present case would never be an issue in the federal system. Unlike the Florida Constitution, the federal constitution does not expressly grant the United States Supreme Court the power to adopt rules of procedure.<sup>24</sup>

### **Joint Resolution**

This joint resolution proposes amending Article V, Section 2 of the Florida Constitution relating to the Supreme Court's rulemaking authority. The joint resolution amends the Florida Constitution to require the procedures for postconviction or collateral review of capital cases resulting in a sentence of death to be governed exclusively by, and to the extent provided by, general law.

The joint resolution does not alter the Supreme Court's authority to authority to adopt rules of practice and procedure in other areas of the law.

The joint resolution also adds a new section to Article XII of the Florida Constitution specifying that the amendment to Section 2 of Article V (described above) will take effect July 1, 2015, and only applies to capital cases in which the conviction and sentence of death have been affirmed on direct appeal on or after July 1, 2015.

If the joint resolution is passed by a 3/5 vote of both houses of the legislature, it will be submitted to the voters in the general election in November of 2014.

### **B. SECTION DIRECTORY:**

This is a joint resolution, which is not divided by sections.

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

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

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

The joint resolution does not appear to have an impact on state government revenue.

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

This amendment requires publication prior to the election. The Florida Department of State estimates that required publication of a proposed constitutional amendment costs \$106.14 per

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<sup>19</sup> Chapter 2000-3, L.O.F. One of the clauses in the bill's preamble reads: "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, . . ."

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

<sup>21</sup> *See Allen v. Butterworth*, 756 So.2d 52 (Fla. 2000).

<sup>22</sup> *Id.* at 53.

<sup>23</sup> *See id.* at 63. The federal statute discussed was the Anti-Terrorism and Effective Death Penalty Act of 1996, Pub. L. 104-132.

<sup>24</sup> *Id.* at 63.

word. At 778 words, the estimated cost to publish the amendment is \$82,577. This must be paid regardless of whether the amendment passes, and would be payable in FY 2014-2015 from General Revenue.

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

1. Revenues:

The joint resolution does not appear to have an impact on local government revenue.

2. Expenditures:

The joint resolution does not appear to have an 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:

Not applicable because this resolution does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

This is a legislative joint resolution, which is one of the methods for proposing, approving or rejecting amendments to the Florida Constitution. The joint resolution requires passage by a three-fifths vote of the membership of each house of the Legislature. The proposed constitutional amendment must be submitted to the electors at the next general election held more than 90 days after the joint resolution is filed with the custodian of state records. If approved by a majority of the electors voting on the question, the proposed amendment will take effect July 1, 2015.

**B. RULE-MAKING AUTHORITY:**

The resolution does to appear to create an need to rulemaking or rulemaking authority.

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

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

1 House Joint Resolution

2 A joint resolution proposing an amendment to Section 2  
 3 of Article V and the creation of a new section to  
 4 Article XII of the State Constitution to require the  
 5 procedures for postconviction or collateral review of  
 6 capital cases resulting in a sentence of death to be  
 7 governed exclusively by, and to the extent provided  
 8 by, general law, and to provide and effective date.

9  
 10 Be It Resolved by the Legislature of the State of Florida:

11  
 12 That the following amendment to Section 2 of Article V and  
 13 the creation of a new section in Article XII of the State  
 14 Constitution are agreed to and shall be submitted to the  
 15 electors of this state for approval or rejection at the next  
 16 general election or at an earlier special election specifically  
 17 authorized by law for that purpose:

18 ARTICLE V  
 19 JUDICIARY

20 SECTION 2. Administration; practice and procedure.—

21 (a) The supreme court shall adopt rules for the practice  
 22 and procedure in all courts including the time for seeking  
 23 appellate review, the administrative supervision of all courts,  
 24 the transfer to the court having jurisdiction of any proceeding  
 25 when the jurisdiction of another court has been improvidently  
 26 invoked, and a requirement that no cause shall be dismissed  
 27 because an improper remedy has been sought. The supreme court  
 28 shall adopt rules to allow the court and the district courts of



57       Procedures for postconviction or collateral review of  
 58 capital cases resulting in a sentence of death.-The amendment to  
 59 Section 2 of Article V requiring the procedures for  
 60 postconviction or collateral review of capital cases resulting  
 61 in a sentence of death to be governed exclusively by, and to the  
 62 extent provided by, general law shall take effect July 1, 2015,  
 63 and shall only apply to capital cases in which the conviction  
 64 and sentence of death have been affirmed on direct appeal on or  
 65 after July 1, 2015.

66           BE IT FURTHER RESOLVED that the following statement be  
 67 placed on the ballot:

68                           CONSTITUTIONAL AMENDMENT

69                                   ARTICLE V, SECTION 2

70   ARTICLE XII

71           POSTCONVICTION DEATH PENALTY PROCEEDINGS.--Proposing an  
 72 amendment to the State Constitution requiring postconviction or  
 73 collateral review of capital cases resulting in a death sentence  
 74 to be governed exclusively by, and to the extent provided by,  
 75 general law.

76  
 77           Under the current constitution, only the Supreme Court can  
 78 adopt rules relating to the practice and procedure in courts.  
 79 This includes rules relating to postconviction or collateral  
 80 review of capital cases resulting in a death sentence. As such,  
 81 the procedures in such cases are governed by Florida Supreme  
 82 Court rule.

83

84 By this amendment, the procedures for postconviction or  
85 collateral review of capital cases resulting in a death sentence  
86 will be governed exclusively by, and to the extent provided by,  
87 general law.

88 A general law in Florida is enacted if passed by a majority  
89 of members voting in each of the two legislative chambers and  
90 then either signed by the Governor or, if vetoed by the  
91 Governor, then passed by a two-thirds vote of the members voting  
92 in each of the two legislative chambers.

93  
94 The proposed amendment takes effect July 1, 2015, and  
95 applies to capital cases in which the conviction and sentence of  
96 death have been affirmed on direct appeal on or after July 1,  
97 2015.

98



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB CRJS 13-05 Postconviction Capital Case Proceedings  
**SPONSOR(S):** Criminal Justice Subcommittee  
**TIED BILLS:** PCB CRJS 13-04 **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee		Cunningham <i>JC</i>	Cunningham <i>JC</i>

### SUMMARY ANALYSIS

Currently, Rules 3.811, 3.812, 3.850, 3.851, and 3.852 of the Florida Rules of Criminal Procedure, and Rule 9.142 of the Florida Rules of Appellate Procedure govern all state postconviction proceedings in capital cases.

The bill codifies the majority of the provisions of the rules identified above in their entirety. However, in an effort to make the capital postconviction process more efficient, the bill modifies provisions of the rules, adds new provisions to the rules, and creates new statutes addressing areas not currently contemplated by the rules. The bill:

- Sets standards for conflict of interest determinations;
- Bars courts from considering postconviction motions that are not fully pled or filed within statutorily established timeframes;
- Prohibits courts from granting extensions of time at various stages of the postconviction process;
- Shortens timeframes relating to case management conferences and postconviction motion amendments;
- Establishes timeframes in which the Florida Supreme Court must hear oral arguments;
- Requires the Florida Supreme Court to rule on an appeal of an initial or successive postconviction motion within 180 days after oral arguments have concluded; and
- Creates reporting requirements that hold courts accountable for delays in the postconviction process.

The bill also removes the court's authorization to appoint a public defender, private attorney, or a registry attorney to represent a death-sentenced person in clemency proceedings in instances where the application for clemency is filed on or after July 1, 2013.

The bill eliminates the registry attorney "pilot program" and reestablishes the capital collateral regional counsel (CCRC) in the northern region of the state.

Due to the nuances of capital cases and the multitude of agencies and personnel involved (e.g., judges, clerks, CCRC, public defenders, registry attorneys, Attorney General staff, etc.), it is difficult to precisely quantify the costs associated with Florida's capital postconviction process. 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. However, to the extent that the bill's provisions shorten the postconviction process, they will likely result in a cost savings to the state. Reestablishing the CCRC in the northern region will likely have a negative fiscal impact. See fiscal section.

This bill is tied to and is contingent upon the voter's approval of HJR xxx, which amends Article V, Section 2 of the Florida Constitution to require the procedures for postconviction or collateral review of capital cases resulting in a sentence of death be governed by, and to the extent provided by, general law.

The "procedural" portions of the bill take effect July 1, 2015, contingent on voter approval of HJR xxx in the general election of 2014. Other portions of the bill are effective July 1, 2013.



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Death Row Statistics**

Florida is currently one of 33 states that impose the death penalty.<sup>1</sup> As of March 3, 2013, there were 404 people on death row in Florida – more than any other state aside from California.<sup>2</sup> On average, Florida death row inmates spend 13.22 years on death row prior to execution.<sup>3</sup> Of the 404 inmates on death row, 155 have been in custody for more than 20 years, and ten have been on death row for more than 35 years.<sup>4</sup> Between 1976-2012, Florida executed 74 inmates.<sup>5</sup> During the same period, Texas executed 492 inmates, Virginia executed 109 inmates, and Oklahoma executed 102 inmates.<sup>6</sup> Florida executed two death row inmates in 2011, and three in 2012.<sup>7</sup>

##### **Capital Cases – Direct Appeal**

A defendant who is convicted of a crime and sentenced to death automatically receives a direct appeal of his or her conviction and sentence to the Florida Supreme Court.<sup>8</sup> During the direct appeal, the defendant is represented by the public defender's office, if the defendant is indigent, or by a private attorney. Matters which are raised on direct appeal include evidentiary rulings made by the trial court during the course of the defendant's trial, and other matters objected to during the course of the trial such as the jury instructions, prosecutorial misconduct, and procedural rulings made by the trial court.

The Florida Supreme Court must render a judgment within two years of the filing of the notice of appeal.<sup>9</sup> 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>10</sup> If the United States Supreme Court denies the case, the direct appeal has concluded, and the defendant may begin state postconviction proceedings.

##### **State Postconviction Proceedings**

Rules 3.811, 3.812, 3.850, 3.851, and 3.852 of the Florida Rules of Criminal Procedure, and Rule 9.142 of the Florida Rules of Appellate Procedure govern all state postconviction proceedings initiated by death row inmates challenging a conviction and/or death sentence. Unlike a direct appeal, which challenges the legal errors apparent from the trial transcripts or record on appeal, state postconviction proceedings are designed to address claims which are "collateral" to what transpired in the trial court (e.g., claims that the defendant's trial counsel was ineffective, claims of newly discovered evidence, or claims that the prosecution failed to disclose exculpatory evidence). Since the consideration of these claims often require new fact finding, postconviction motions are filed in the trial court which sentenced

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<sup>1</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 March 3, 2013).

<sup>2</sup> California has 724 inmates on death row. *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 March 3, 2013). *Also see*, <http://www.dc.state.fl.us/activeinmates/deathrowroster.asp> (last visited on March 3, 2013).

<sup>3</sup> <http://www.dc.state.fl.us/oth/deathrow/index.html#Statistics> (last visited on March 3, 2013).

<sup>4</sup> <http://www.dc.state.fl.us/activeinmates/deathrowroster.asp> (last visited on March 3, 2013).

<sup>5</sup> <http://www.dc.state.fl.us/oth/deathrow/index.html#Statistics> (last visited on March 3, 2013).

<sup>6</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 March 3, 2013).

<sup>7</sup> *Id.*

<sup>8</sup> Section 921.141(4), F.S.; Art. 5, Sec. 3, Fla. Const.; Fla. R. App. Proc. 9.030(a)(1)(A)(i).

<sup>9</sup> Section 921.141(4), F.S.

<sup>10</sup> 28 U.S.C. s. 1257; Sup. Ct. R. 13.

the defendant to death. Appeals from the grant or denial of postconviction relief are to the Florida Supreme Court. A detailed review of how state postconviction proceedings are currently conducted follows.

#### 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>11</sup> to represent the inmate during postconviction proceedings.<sup>12</sup> If the regional counsel 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>13</sup> to represent the inmate in postconviction proceedings.<sup>14</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>15</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>16</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>17</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>18</sup>

#### Public Records

Rule 3.852 of the Florida Rules of Criminal Procedure establishes the timeframes and procedures that apply to the production of capital postconviction public records. The rule requires the Attorney General (AG), within 15 days after receiving notification of the Florida Supreme Court's mandate affirming the sentence of death, to file a written notice of the mandate with the trial court and serve a copy of it on:

- The state attorney who prosecuted the case;
- The Department of Corrections (DOC); and
- The defendant's trial counsel.<sup>19,20</sup>

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<sup>11</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 person in the state courts, federal courts in this state, the United States Court of Appeals for the Eleventh Circuit, and the United States Supreme Court. Each regional office is administered by a regional counsel. Section 27.701(1), F.S.

<sup>12</sup> Fla. R. Crim. Proc. 3.851(b)(1).

<sup>13</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>14</sup> Fla. R. Crim. Proc. 3.851(b)(1); sections. 27.701(2), 27.703(1), and 27.710(5), F.S.

<sup>15</sup> Fla. R. Crim. Proc. 3.851(c)(4).

<sup>16</sup> Fla. R. Crim. Proc. 3.851(c)(1).

<sup>17</sup> Fla. R. Crim. Proc. 3.851(c)(2).

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

<sup>19</sup> Fla. R. Crim. Proc. 3.852(d)(1).

<sup>20</sup> The original of all notices, requests, or objections filed under Rule 3.852 must be filed with the clerk of the trial court. Copies must be served on the trial court, the AG, the state attorney, postconviction counsel, and any affected person or agency, unless otherwise required by this section. Service must be made pursuant to Florida Rule of Criminal Procedure 3.030. In all instances requiring written notification or request, the party who has the obligation of providing a notification or request shall provide proof of receipt. Fla. R. Crim. Proc. 3.852(c).

The notice to the state attorney and to DOC must direct them to submit public records to the records repository within 90 days after receipt of the notice.<sup>21</sup> The notice to the state attorney must also direct the state attorney to notify each law enforcement agency involved in the investigation of the capital case to submit public records to the records repository<sup>22</sup> within 90 days of receiving the notice.<sup>23</sup>

Within 90 days of receiving the AG's notice of the mandate, the state attorney and the defendant's trial counsel must provide the AG with the name and address of any person or agency that has public records or information pertinent to the case which has not previously been provided to defendant's postconviction counsel.<sup>24</sup> Within 15 days of receiving this information, the AG must notify the additional persons or agencies that they are required to copy, index, and deliver to the records repository all public records pertaining to the case that are in their possession.<sup>25</sup> The additional entities have 90 days from the receipt of the AG's notice to produce the records.<sup>26,27</sup>

Records delivered to the repository that are confidential or exempt pursuant to s. 119.07(1), F.S., or Art. I, Sec. 24(a) of the Florida Constitution must be separately contained, without being redacted, and sealed.<sup>28</sup> The outside of the container must clearly identify:

- That the public record is confidential or exempt;
- That the seal may not be broken without an order from the trial court; and
- The nature of the public records and the legal basis for the exemption.<sup>29</sup>

Upon court order, sealed containers must be shipped to the clerk of the court and may only be opened by the trial court in camera.<sup>30</sup>

Within 240 days after postconviction counsel is appointed, retained, or appear pro bono, counsel must send a written demand for additional public records to each entity described above.<sup>31</sup> Within 90 days of an entity receiving such demand, the entity must deliver to the records repository any additional public records in the entity's possession that pertain to the case, and certify that all such records have been provided (or that records previously provided were complete).<sup>32</sup> The entity may object to the demand for additional public records within 60 days of receiving the demand.<sup>33</sup> In such instances, the trial court must hold a hearing and rule within 30 days of the filing of the objection.<sup>34</sup> The court must order an entity to produce additional public records if the court determines each of the following exists:

- Postconviction counsel has made a timely and diligent search;
- Postconviction counsel's written demand identifies, with specificity, those additional public records that are not at the records repository;

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<sup>21</sup> Fla. R. Crim. Proc. 3.852(d)(2) and (3), and (e)(2) and (3).

<sup>22</sup> Section 27.7081, F.S., requires the Secretary of State to establish and maintain a records repository for the purpose of archiving capital postconviction public records.

<sup>23</sup> Fla. R. Crim. Proc. 3.852(e)(1) and (4).

<sup>24</sup> Fla. R. Crim. Proc. 3.852(d)(2) and (3).

<sup>25</sup> Fla. R. Crim. Proc. 3.852(d)(4).

<sup>26</sup> Fla. R. Crim. Proc. 3.852(e)(5).

<sup>27</sup> Persons and agencies required to produce records pursuant to Rule 3.852 must bear the costs of doing so, must provide written notification of compliance to the AG, and certify that to the best of their knowledge, all public records in their possession have been copied, indexed, and delivered to the records repository. Fla. R. Crim. Proc. 3.852(e).

<sup>28</sup> Fla. R. Crim. Proc. 3.852(f)(1).

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

<sup>30</sup> The moving party bears the costs associated with the transportation and inspection of the records by the trial court. Fla. R. Crim. Proc. 3.852(f)(2).

<sup>31</sup> If counsel was appointed before October 1, 2001, counsel must submit the demand within 90 days of appointment, etc. Fla. R. Crim. Proc. 3.852(g)(1).

<sup>32</sup> Fla. R. Crim. Proc. 3.852(g)(2).

<sup>33</sup> Fla. R. Crim. Proc. 3.852(g)(3).

<sup>34</sup> *Id.*

- The additional public records sought are relevant to the subject matter of a postconviction proceeding under Rule 3.851, or appear reasonably calculated to lead to the discovery of admissible evidence; and
- The additional public records request is not overly broad or unduly burdensome.<sup>35</sup>

Postconviction counsel that seeks to obtain public records in addition to those described above must file an affidavit in the trial court which:

- Attests that postconviction counsel has made a timely and diligent search of the records repository;
- Identifies with specificity those public records not at the records repository;
- Establishes that the additional public records are either relevant to the subject matter of the postconviction proceeding or are reasonably calculated to lead to the discovery of admissible evidence; and
- Must be served on the AG, state attorney, and any affected person or agency.<sup>36</sup>

Within 30 days of the filing of the affidavit, the trial court must order a person or agency to produce additional public records, but only if the court finds:

- Postconviction counsel has made a timely and diligent search of the records repository;
- Postconviction counsel's affidavit identifies with specificity those additional public records that are not at the records repository;
- The additional public records sought are either relevant to the subject matter of a capital postconviction proceeding or appear reasonably calculated to lead to the discovery of admissible evidence; and
- The additional records request is not overly broad or unduly burdensome.<sup>37</sup>

In any capital postconviction public records proceeding, the trial court may:

- Compel or deny disclosure of records;
- Conduct an in-camera inspection;
- Extend established timeframes upon a showing of good cause;
- Impose sanctions upon any party, person, or agency affected by this section including initiating contempt proceedings, taxing expenses, extending time, ordering facts to be established, and granting other relief; and
- Resolve any dispute unless jurisdiction is in an appellate court.<sup>38</sup>

Any objections or motions to compel production of public records must be filed within 30 days after the end of the production time period provided.<sup>39</sup> Counsel for the party objecting or moving to compel must file a copy of the objection or motion directly with the trial court, which must hold a hearing on the objection or motion on an expedited basis.<sup>40</sup> The trial court may order mediation for any controversy as to public records production in accordance with Florida Rules of Civil Procedure 1.700, 1.710, 1.720, 1.730, or the trial court may refer any such controversy to a magistrate in accordance with Florida Rule of Civil Procedure 1.490.<sup>41</sup>

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

Any person sentenced to death whose judgment of conviction and sentence have been affirmed on direct appeal may file an initial Rule 3.851 motion, under oath, seeking postconviction relief.<sup>42</sup> This

<sup>35</sup> *Id.*

<sup>36</sup> Fla. R. Crim. Proc. 3.852(i)(1).

<sup>37</sup> Fla. R. Crim. Proc. 3.852(i)(2).

<sup>38</sup> Fla. R. Crim. Proc. 3.852(k).

<sup>39</sup> Fla. R. Crim. Proc. 3.852(l)(2).

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

<sup>41</sup> Fla. R. Crim. Proc. 3.852(l)(3).

<sup>42</sup> Fla. R. Crim. Proc. 3.851.

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 (90 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>43</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>44</sup>

A 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>45</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>46</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>47</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>48</sup> Fundamental error can be raised at any time,<sup>49</sup> including to collaterally attack a conviction or sentence in postconviction proceedings.<sup>50</sup>

Timely filed motions may be amended or supplemented outside of the one-year time limit.<sup>51</sup> To accomplish this, the movant must file a motion to amend no later than 30 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>52</sup> If the motion is allowed, the state has 20 days after the amended motion is filed to file an amended answer.<sup>53</sup>

#### Contents of an Initial Postconviction Motion

An initial postconviction motion 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;

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

<sup>44</sup> Fla. R. Crim. Proc. 3.851(d)(5).

<sup>45</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>46</sup> Fla. R. Crim. Proc. 3.851(d)(2).

<sup>47</sup> *Miller*, 926 So.2d at 1261.

<sup>48</sup> *Id.* Fundamental error can never be found harmless. *Johnson v. State*, 460 So.2d 954, 958 (Fla. 5th DCA 1984).

<sup>49</sup> *Moore v. State*, 924 So.2d 840, 841 (Fla. 4th DCA 2006).

<sup>50</sup> *Johnson*, 460 So.2d at 958.

<sup>51</sup> Fla. R. Crim. Proc. 3.851(d)(4) and (f)(4).

<sup>52</sup> Fla. R. Crim. Proc. 3.851(f)(4).

<sup>53</sup> *Id.*

- 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>54</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>55</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>56</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>57</sup> The state has 60 days from the filing of the initial postconviction motion to file its answer.<sup>58</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>59</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>60</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>61</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>62</sup>

The movant must support the motion with specific factual allegations;<sup>63</sup> conclusory allegations will not justify an evidentiary hearing.<sup>64</sup>

When an evidentiary hearing is held, the court must immediately request a transcript of the hearing at its conclusion.<sup>65</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;

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Bryant v. State*, 901 So.2d 810, 819 (Fla. 2005).

<sup>58</sup> Fla. R. Crim. Proc. 3.851(f)(3)(A).

<sup>59</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>60</sup> *Id.*

<sup>61</sup> Fla. R. Crim. Proc. 3.851(f)(5)(C).

<sup>62</sup> *Johnson v. State*, 904 So.2d 400, 403 (Fla. 2005).

<sup>63</sup> *Id.* at 404 (citing *Thompson v. State*, 759 So.2d 650, 659 (Fla. 2000)).

<sup>64</sup> *Id.* (citing *Kennedy v. State*, 547 So.2d 912, 913 (Fla. 1989)).

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

- 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>66</sup>

Either party may move for a rehearing within 15 days of the rendition of the court's order on the postconviction motion.<sup>67</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>68</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>69</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>70</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>71</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>72</sup>

The state has 20 days from the filing of a successive motion to file its answer.<sup>73</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>74</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>75</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; or<sup>76</sup>

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<sup>66</sup> *Id.*

<sup>67</sup> Fla. R. Crim. Proc. 3.851(f)(7).

<sup>68</sup> *Id.*

<sup>69</sup> Fla. R. App. Proc. 9.110(b), Fla. R. App. Proc. 9.140(b)(1)(D) and (b)(3).

<sup>70</sup> 28 U.S.C. s. 1257.

<sup>71</sup> Fla. R. Crim. Proc. 3.851(e)(2).

<sup>72</sup> *Id.*

<sup>73</sup> Fla. R. Crim. Proc. 3.851(f)(3)(B).

<sup>74</sup> Fla. R. Crim. Proc. 3.851(f)(5)(B).

<sup>75</sup> *Id.*

<sup>76</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 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).

- The motion raises claims that have already been asserted and adjudicated on the merits in a previous Rule 3.851 proceeding.<sup>77</sup>

If, however, the court determines that an evidentiary hearing should be held, the hearing should be scheduled and held within 60 days.<sup>78</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>79</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>80</sup> The rules relating to motions for rehearing and appealing an initial postconviction motion also apply to successive motions.<sup>81</sup>

### Appeal to the Florida Supreme Court

#### *Postconviction Motions*

Any party to a Rule 3.851 motion may appeal a trial court's final order to the Florida Supreme Court (Court) by filing a notice of appeal with the trial clerk within 30 days of the rendition of the order.<sup>82</sup> When the notice of appeal is filed, the Court's chief justice directs the appropriate chief judge of the circuit court to monitor the preparation of the complete record<sup>83</sup> for timely filing in the Court.<sup>84</sup>

After the record is filed, the clerk establishes a briefing schedule that gives the defendant 30 days to serve an initial brief.<sup>85</sup> The answer brief must be served within 20 days after service of the initial brief, and the reply brief, if any, must be served within 20 days after service of the answer brief. The cross reply brief, if any, must be served within 20 days thereafter.<sup>86</sup> If any brief is delinquent, an order to show cause may be issued,<sup>87</sup> and sanctions may be imposed.<sup>88</sup> Oral argument is scheduled after the filing of the defendant's reply brief.<sup>89</sup> The rules do not prescribe when the Court must rule on the appeal.

#### *Petitions for Extraordinary Relief*

Petitions for extraordinary relief are generally treated as original proceedings.<sup>90</sup> Such petitions must be in the form prescribed by Rule 9.100 of the Rules of Appellate Procedure, may include supporting documents, and must include in the statement of facts:

- The date and nature of the lower tribunal's order sought to be reviewed;
- The name of the lower tribunal rendering the order;
- The nature, disposition, and dates of all previous court proceedings;
- If a previous petition was filed, the reason the claim in the present petition was not raised previously; and

<sup>77</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>78</sup> Fla. R. Crim. Proc. 3.851(f)(5)(B).

<sup>79</sup> Fla. R. Crim. Proc. 3.851(f)(5)(C).

<sup>80</sup> Fla. R. Crim. Proc. 3.851(f)(5)(D).

<sup>81</sup> Fla. R. Crim. Proc. 3.851(f)(7) and (8).

<sup>82</sup> Fla. R. Crim. Proc. 3.851(f)(8).

<sup>83</sup> The complete record in a death penalty appeal includes all items required by Rule 9.200 of the Florida Rules of Appellate Procedure and by any order issued by the Court. In any appeal following the initial direct appeal, the record that is electronically transmitted must begin with the most recent mandate issued by the Court, or the most recent filing not already electronically transmitted in a prior record in the event the preceding appeal was disposed of without a mandate, and excludes any materials already transmitted to the Court as the record in any prior appeal. Fla. R. App. Proc. 9.142(a)(1)(B).

<sup>84</sup> Fla. R. App. Proc. 9.142(a)(1).

<sup>85</sup> Fla. R. App. Proc. 9.142(a)(2).

<sup>86</sup> *Id.*

<sup>87</sup> Pursuant to Fla. R. Crim. Proc. 3.840.

<sup>88</sup> Fla. R. App. Proc. 1.942(a)(3).

<sup>89</sup> Fla. R. App. Proc. 1.942(a)(4).

<sup>90</sup> Fla. R. App. Proc. 1.942(b)(1).



- The nature of the relief sought.<sup>91</sup>

Petitions seeking a belated appeal must include a detailed allegation of the specific acts, sworn to by the petitioner or petitioner's counsel, that constitute the basis for entitlement to belated appeal, including:

- Whether petitioner requested counsel to proceed with the appeal and the date of any such request;
- Whether counsel misadvised the petitioner as to the availability of appellate review or the filing of the notice of appeal; or
- Whether there were circumstances unrelated to counsel's action or inaction, including names of individuals involved and dates of the occurrences, that were beyond the petitioner's control and otherwise interfered with the petitioner's ability to file a timely appeal.<sup>92</sup>

A petition for belated appeal may not be filed more than one year after the expiration of time for filing the notice of appeal from a final order denying Rule 3.851 relief, unless it alleges under oath with a specific factual basis that the petitioner:

- Was unaware an appeal had not been timely filed, was not advised of the right to an appeal, was misadvised as to the rights to an appeal, or was prevented from timely filing a notice of appeal due to circumstances beyond the petitioner's control; and
- Could not have ascertained such facts by the exercise of due diligence.<sup>93</sup>

A petition for belated appeal may never be filed more than two years after the expiration of time for filing the notice of appeal.<sup>94</sup>

A petition alleging ineffective assistance of direct appeal counsel must include detailed allegations of the specific acts that constitute the alleged ineffective assistance of counsel and must be filed simultaneously with the initial brief in the appeal from the lower tribunal's order on the defendant's application for postconviction relief.<sup>95</sup>

*Petitions Seeking Review of Nonfinal Orders in Death Penalty Postconviction Proceedings*

Petitions seeking review of nonfinal orders in postconviction proceedings are generally treated as original proceedings, and must be filed within 30 days of rendition of the nonfinal order to be reviewed.<sup>96</sup> Either party to the proceeding may file a petition, but must serve it on the opposing party and the judge who issued the nonfinal order being reviewed.<sup>97</sup>

The petition must be in the form prescribed by Rule 9.100 of the Florida Rules of Appellate Procedure and must contain:

- The basis for invoking the jurisdiction of the court;
- The date and nature of the order sought to be reviewed;
- The name of the lower tribunal rendering the order;
- The name, disposition, and dates of all previous trial, appellate, and postconviction proceedings relating to the conviction and death sentence that are the subject of the proceedings in which the order sought to be reviewed was entered;
- The facts on which the petitioner relies, with references to the appropriate pages of the supporting appendix;

<sup>91</sup> Fla. R. App. Proc. 1.942(b)(2).

<sup>92</sup> Fla. R. App. Proc. 1.942(b)(3)(A).

<sup>93</sup> Fla. R. App. Proc. 1.942(b)(3)(B).

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

<sup>95</sup> Fla. R. App. Proc. 1.942(b)(4).

<sup>96</sup> Fla. R. App. Proc. 1.942(c)(2) and (c)(3)(A).

<sup>97</sup> Fla. R. App. Proc. 1.942(c)(3).

- Argument in support of the petition, including an explanation of why the order departs from the essential requirements of law and how the order may cause material injury for which there is no adequate remedy on appeal, and appropriate citations of authority; and
- The nature of the relief sought.<sup>98</sup>

The petition must be accompanied by an appendix<sup>99</sup> containing the portions of the record necessary for a determination of the issues presented.<sup>100</sup>

If the petition demonstrates a preliminary basis for relief or a departure from the essential requirements of law that may cause material injury for which there is no adequate remedy by appeal, the Court may issue an order directing the respondent to show cause, within the time set by the Court, why relief should not be granted.<sup>101</sup> No response is permitted unless ordered by the Court.<sup>102</sup> Within 20 days after service of the response or such other time set by the Court, the petitioner may serve a reply, which may not exceed 15 pages in length, and supplemental appendix.<sup>103</sup>

A stay of proceedings is not automatic - the party seeking a stay must petition the Court for a stay.<sup>104</sup> During the pendency of a review of a nonfinal order, unless a stay is granted by the Court, the lower tribunal may proceed with all matters, except that the lower tribunal may not render a final order disposing of the cause pending review of the nonfinal order.<sup>105</sup>

**Inmate's Motion to Dismiss Postconviction Proceedings and to Discharge Postconviction Counsel**

An inmate may file a motion to dismiss pending postconviction proceedings and to discharge postconviction counsel pro se.<sup>106</sup> In such instances, the clerk must serve copies of the motion on counsel of record for both the inmate and the state, and counsel of record may file responses within 10 days.<sup>107</sup>

The trial judge must review the motion and the responses and schedule a hearing, at which the inmate, collateral counsel, and the state must be present.<sup>108</sup> At the hearing, the judge must examine the inmate and hear the arguments of the inmate, postconviction counsel, and the state. If the judge concludes that there are reasonable grounds to believe the inmate is not mentally competent, no fewer than two or more than three qualified experts shall be appointed to examine the inmate.<sup>109</sup> The experts must file reports with the trial court setting forth their findings. The trial court must then conduct an evidentiary hearing and enter an order setting forth findings of competency or incompetency.<sup>110</sup>

If the inmate is found to be incompetent, the trial court must deny the motion without prejudice.<sup>111</sup> If the inmate is found to be competent, the trial court must conduct a complete inquiry to determine whether the inmate knowingly, freely and voluntarily wants to dismiss pending postconviction proceedings and discharge postconviction counsel.<sup>112</sup>

<sup>98</sup> Fla. R. App. Proc. 1.942(c)(4).

<sup>99</sup> As prescribed by Fla. R. App. Proc. 9.220.

<sup>100</sup> Fla. R. App. Proc. 1.942(c)(5).

<sup>101</sup> Fla. R. App. Proc. 1.942(c)(6).

<sup>102</sup> Fla. R. App. Proc. 1.942(c)(7).

<sup>103</sup> Fla. R. App. Proc. 1.942(c)(8).

<sup>104</sup> Fla. R. App. Proc. 1.942(c)(9).

<sup>105</sup> *Id.*

<sup>106</sup> Fla. R. Crim. Proc. 3.851(i)(2).

<sup>107</sup> *Id.*

<sup>108</sup> Fla. R. Crim. Proc. 3.851(i)(3).

<sup>109</sup> Fla. R. Crim. Proc. 3.851(i)(4).

<sup>110</sup> *Id.*

<sup>111</sup> Fla. R. Crim. Proc. 3.851(i)(5).

<sup>112</sup> Fla. R. Crim. Proc. 3.851(i)(6).

If the trial court determines that the inmate has made the decision to dismiss pending postconviction proceedings and discharge collateral counsel knowingly, freely, and voluntarily, the court must enter an order dismissing all pending postconviction proceedings and discharging collateral counsel.<sup>113</sup> If the trial court determines that the opposite is true, it must enter an order denying the motion without prejudice.<sup>114</sup>

If the trial court grants the motion:

- A copy of the motion, the order, and the transcript of the hearing or hearings conducted on the motion shall be electronically forwarded to the clerk of the Florida Supreme Court within 30 days; and
- Discharged counsel shall, within 10 days after issuance of the order, file with the clerk of the circuit court two copies of a notice seeking review in the Florida Supreme Court, and must, within 20 days after the filing of the transcript, serve an initial brief.<sup>115</sup>

If the trial court denies the motion, the inmate may seek review as prescribed by Florida Rule of Appellate Procedure 9.142(b).<sup>116</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>117</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>118</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.
- 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>119</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>120</sup> If the motion, files, and records in the case conclusively show that the movant is not entitled to relief, the motion may be

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<sup>113</sup> Fla. R. Crim. Proc. 3.851(i)(7).

<sup>114</sup> *Id.*

<sup>115</sup> Both the inmate and the state may serve responsive briefs. Fla. R. Crim. Proc. 3.851(i)(8). *Also see*, Fla. R. App. Proc.

9.142(d)(2)(A).

<sup>116</sup> Fla. R. Crim. Proc. 3.851(i)(9).

<sup>117</sup> Fla. R. Crim. Proc. 3.851(d)(4).

<sup>118</sup> Fla. R. Crim. Proc. 3.851 (comment).

<sup>119</sup> Fla. R. Crim. Proc. 3.851(h).

<sup>120</sup> Fla. R. Crim. Proc. 3.851(h)(5).

denied without an evidentiary hearing.<sup>121</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>122</sup>

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>123</sup> A copy of the final order must immediately be electronically transmitted to the Florida Supreme Court and to the attorneys of record.<sup>124</sup> The record must also be sent to the Florida Supreme Court—electronically, where possible.<sup>125</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>126</sup>

### Execution

An inmate's death sentence may not be carried out until the Governor issues a death warrant.<sup>127</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>128</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>129</sup>

An inmate's death sentence will be carried out by lethal injection unless the inmate requests to be executed by electrocution.<sup>130</sup> The warden of the state prison designates the executioner.<sup>131</sup> The warden (or a deputy) must be present at the execution and must select twelve individuals to witness the execution.<sup>132</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>133</sup> Immediately before the inmate's execution, the death warrant must be read to the inmate.<sup>134</sup> The physician must announce when death has been inflicted.<sup>135</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>136</sup>

Sixty days after a capital sentence is carried out, after a defendant is released from incarceration following the granting of a pardon or reversal of the sentence, or after a defendant has been

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<sup>121</sup> Fla. R. Crim. Proc. 3.851(h)(6).

<sup>122</sup> *Id.*

<sup>123</sup> Fla. R. Crim. Proc. 3.851(h)(8).

<sup>124</sup> *Id.*

<sup>125</sup> Fla. R. Crim. Proc. 3.851(h)(9).

<sup>126</sup> *See* 28 U.S.C. ss. 2161-2166.

<sup>127</sup> Section 922.052(1), F.S.

<sup>128</sup> Section 922.095, F.S.

<sup>129</sup> Section 922.052(1), F.S.

<sup>130</sup> Section 922.105, F.S.

<sup>131</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>132</sup> Section 922.11, F.S.

<sup>133</sup> *Id.*

<sup>134</sup> Section 922.10, F.S.

<sup>135</sup> Section 922.11(2), F.S.

<sup>136</sup> Section 922.12, F.S.

resentenced to a term of years, the AG must provide written notification of this occurrence to the Secretary of State.<sup>137</sup> After the expiration of the 60 days, the Secretary of State may destroy the copies of the public records held by the records repository that pertain to that case, unless an objection to the destruction is filed in the trial court and served upon the Secretary of State. If an objection is served, the records shall not be destroyed until a final disposition of the objection.<sup>138</sup>

### **Clemency**

Clemency is an act of mercy that absolves the individual upon whom it is bestowed from all or any part of the punishment that the law imposed.<sup>139</sup> Types of clemency include pardons, commutation of sentence, remission of fines or forfeitures, restoration of the authority to possess a firearm, and restoration of civil rights.<sup>140</sup>

The Governor and members of the Cabinet collectively are the Board of Executive Clemency. Pursuant to the Florida Constitution, the Governor has the power to grant clemency with the consent of at least two Cabinet members.<sup>141</sup> The Florida Parole Commission acts as the agent of the Board of Executive Clemency in determining whether offenders are eligible for clemency, investigating clemency applications, conducting hearings when required, and making recommendations to the Board.<sup>142</sup>

Currently, ss. 27.40, 27.51, 27.511, 27.5303, and 27.5304, F.S., authorize the trial court to appoint a public defender, private attorney, or a registry attorney to represent a person who has been convicted and sentenced to death in clemency proceedings.

### **Death Penalty Reform Efforts**

As noted above, as of March 3, 2013, there were 404 people on death row in Florida.<sup>143</sup> On average, Florida death row inmates spend 13.22 years on death row prior to execution.<sup>144</sup> Of the 404 inmates on death row, 155 have been in custody for more than 20 years, and ten inmates have been on death row for more than 35 years.<sup>145</sup>

The capital postconviction process has often been cited as one of the areas that causes the most delays in capital cases.<sup>146</sup> There are several reasons for this - delays can result from litigation over public records requests, or from sentencing courts which may not hear or rule on postconviction motions for several months, or sometimes years. Postconviction attorneys often amend their motions to introduce new claims, which, if allowed, requires additional time to investigate and respond to. Sometimes these motions improperly attempt to revisit issues that were or could have been resolved at trial or during the first appeal.

In a 1998 Florida Supreme Court opinion reviewing the death penalty of an inmate convicted in 1974, Justice Wells strongly expressed his position that the process needs to be changed, stating that,

... I do again state my view that such an extended time period to finally adjudicate these cases is totally unacceptable and is this Court's and the State's prime responsibility to

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<sup>137</sup> Fla. R. Crim. Proc. 3.852(m).

<sup>138</sup> *Id.*

<sup>139</sup> Rule 1, Rules of Executive Clemency. March 9, 2011.

<sup>140</sup> Section 940.01, F.S. Also see Rule 4 I., Rules of Executive Clemency. March 9, 2011.

<sup>141</sup> Article IV, Section 8(a), FLA. CONST.

<sup>142</sup> Annual Report 2009-2010. Florida Parole Commission, p. 23.

<sup>143</sup> California has 724 inmates on death row. *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 March 3, 2013). *Also see*, <http://www.dc.state.fl.us/activeinmates/deathrowroster.asp> (last visited on March 3, 2013).

<sup>144</sup> <http://www.dc.state.fl.us/oth/deathrow/index.html#Statistics> (last visited on March 3, 2013).

<sup>145</sup> <http://www.dc.state.fl.us/activeinmates/deathrowroster.asp> (last visited on March 3, 2013).

<sup>146</sup> *See, In Rule of Criminal Procedure 3.851 (Collateral Relief after Death Sentence Has Been Imposed)*, 626 So.2d. 198, 199 (Fla. 1993)(stating that the Supreme Court Committee on Postconviction Relief in Capital Cases was created because of the substantial delays in the death penalty postconviction relief process).

correct. (citation omitted). . . . The courts and the State must be able to do better, and any explanation of why we are unable to do so is insufficient.<sup>147</sup>

Numerous reforms have been made over the years in an effort to improve the capital postconviction process. In 1993, the Florida Supreme Court created Rule 3.851 of the Florida Rules of Criminal Procedure and adopted the recommendation of the "Florida Supreme Court Committee on Postconviction Relief" to require that postconviction motions be filed within one-year from the date the direct appeal became final.<sup>148</sup> In March of 1999, Chief Justice Harding established by administrative order a Supreme Court Committee on Postconviction Relief in Capital Cases (the "Morris Committee"), to assist the Court in identifying inherent delays in the current postconviction process and recommend improvements.<sup>149</sup> While the Court was considering the Morris Committee's report, the Florida Legislature passed the Death Penalty Reform Act of 2000.

### **Death Penalty Reform Act of 2000**

During a special session in January of 2000, the Legislature passed the Death Penalty Reform Act (DPRA).<sup>150</sup> DPRA made a number of significant statutory changes to the capital postconviction process. However, on April 14, 2000, the Florida Supreme Court struck down the majority of the provisions of DPRA based on a separation of powers claim.<sup>151,152</sup> Specifically, the Court held that that the "DPRA is an unconstitutional encroachment on the Court's exclusive power to 'adopt rules for the practice and procedure in all courts.'"<sup>153</sup> The Court held that the provisions of the DPRA were "procedural" (rather than substantive) and ruled that because the constitution gives the court the authority to adopt rules of practice and procedure, the Legislature was not permitted to act in this area.

The Court rejected the state's argument that the deadlines for filing postconviction motions in DPRA were statutes of limitations which are substantive. The Court stated that Florida Rule of Criminal Procedure 3.850 is a "procedural vehicle for the collateral remedy otherwise available by a writ of habeas corpus"<sup>154</sup> and further held that:

Due to the constitutional and quasi-criminal nature of habeas proceedings and the fact that such proceedings are the primary avenue through which convicted defendants are able to challenge the validity of a conviction and sentence, we hold that article V, section 2(a) of the Florida Constitution grants this Court the exclusive authority to set deadlines for postconviction motions.<sup>155</sup>

### **2001 Florida Supreme Court Rule Revisions**

Shortly after the DPRA was held unconstitutional, the Florida Supreme Court made a variety of revisions to the rules applicable to postconviction proceedings in capital cases. For example:

- Rule 3.851(b) was added to ensure appointment of postconviction counsel upon the Florida Supreme Court's issuance of mandate on direct appeal.
- Rule 3.851(c) was added to provide for, among other things, the assignment of a qualified judge within 30 days after mandate issues on direct appeal and status conferences every 90 days after the assignment until the evidentiary hearing has been completed or the motion has been

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<sup>147</sup> *Knight v. State*, 746 So.2d 42, 439-440 (Fla. 1998).

<sup>148</sup> *In Rule of Criminal Procedure 3.851 (Collateral Relief after Death Sentence Has Been Imposed)*, 626 So.2d. 198 (Fla. 1993).

<sup>149</sup> *Amendments to Florida Rules Criminal Procedure 3.851, 3.852, and 3.993*, 772 So.2d 488 (Fla. 2000).

<sup>150</sup> Chapter 2000-3, L.O.F.

<sup>151</sup> Article II, Section 3 of the Florida Constitution provides, "The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein." Further, Article V, Section 2 authorizes the Florida Supreme Court to "adopt rules of practice and procedure in all courts . . ." This same section of the constitution authorizes the Legislature to repeal court rules of procedure with a 2/3 vote of the membership of both houses.

<sup>152</sup> *Allen v. Butterworth*, 756 So.2d 52, 59 (Fla. 2000).

<sup>153</sup> *Id.* at 54.

<sup>154</sup> *Id.* at 61 (citations omitted).

<sup>155</sup> *Id.* at 62.

ruled on without a hearing. These status conferences are intended to provide a forum for the timely resolution of public records issues and other preliminary matters.

- Rule 3.851(f) was added to set forth general procedures relating to evidentiary hearings. Most significantly, to require an evidentiary hearing on claims listed in an initial motion as requiring a factual determination. The Court has identified the failure to hold evidentiary hearings on initial motions as a major cause of delay in the capital postconviction process and has determined that, in most cases, requiring an evidentiary hearing on initial motions presenting factually based claims will avoid this cause of delay.<sup>156</sup>

### **Effect of the Bill**

This bill is tied to and is contingent upon the voter's approval of HJR xxxx, which amends Article V, Section 2 of the Florida Constitution to require the procedures for postconviction or collateral review of capital cases resulting in a sentence of death to be governed by, and to the extent provided by, general law. This addresses the separation of powers concerns that were raised by the DPRA.

The bill codifies the majority of the provisions contained in Rules 3.811, 3.812, 3.850, 3.851, and 3.852 of the Florida Rules of Criminal Procedure, and Rule 9.142 of the Florida Rules of Appellate Procedure, all of which are described in detail above. The bill also creates new statutes related to capital postconviction proceedings that contain provisions not currently addressed in court rules.

### **Whereas Clauses**

The bill is cited as the "Timely Justice Act of 2013" and provides the following whereas clauses:

- 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;
- 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;
- WHEREAS, in order to ensure the fair, just, and humane administration of capital punishment, it is necessary for the Legislature to comprehensively address the processes by which an offender sentenced to death may pursue postconviction and collateral review of the judgment and the sentence of death;
- 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;
- 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 on the court's "exclusive power to 'adopt rules for the practice and procedure in all courts;'"
- WHEREAS, the Constitution of the State of Florida has been amended to require postconviction and collateral review of capital cases resulting in a sentence of death to be governed by, and to the extent provided by, general law;
- WHEREAS, provisions of the Death Penalty Reform Act of 2000 which were held unconstitutional may now be reenacted, while other provisions can be modified, and new provisions added to ensure a prompt and efficient administration of justice following any sentence of death.

### **Legislative Intent**

The DPRA amended s. 924.055, F.S., to provide that it was the Legislature's intent to "reduce delays in capital cases and to ensure that all appeals and postconviction actions in capital cases are resolved within 5 years after the date a sentence of death is imposed in the circuit court." The section also provided the following legislative intent:

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<sup>156</sup> *Amendments to Florida Rules of Criminal Procedure 3.851, 3.852 and 3.993*, 772 So.2d 488, 491 (Fla. 2000).

- All postconviction actions should be filed as early as possible after imposition of the death sentence, which may be during a direct appeal of the conviction and sentence;
- No death-sentenced person or that person's capital postconviction counsel should file more than one postconviction action in a sentencing court and one appeal therefrom to the Florida Supreme Court;
- No state resources be expended in violation of DPRA; and
- The AG must deliver to the Speaker of the House of Representatives and the President of the Senate a copy of any court pleading or order that describes or adjudicates a violation of DPRA by any state employee or party contracting with the state.

The bill amends s. 924.055, F.S., to specify that it is the Legislature's intent to "reduce delays in capital cases and to ensure that all postconviction actions in capital cases are resolved as quickly as possible after the date a sentence of death is imposed in the circuit court." The bill removes obsolete intent language relating to postconviction actions being filed during a direct appeal.

#### State Postconviction Death Penalty Proceedings

The bill amends ss. 27.703, 924.056, 924.058, F.S., to codify the majority of Rules 3.811, 3.812, 3.850, 3.851, and 3.852 of the Florida Rules of Criminal Procedure, and Rule 9.142 of the Florida Rules of Appellate Procedure. The significant differences between the current rules and the bill are outlined below.

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

- The bill amends s. 924.056, F.S., to require the CCRC to file a notice of appearance in the trial court or a motion to withdraw based on an actual conflict of interest or some other legal ground within 30 days of being appointed by the Florida Supreme Court (the rule requires such notice or motion to be filed within 30 days of the issuance of the mandate affirming a judgment and sentence of death on direct appeal).
- The bill adds new language to s. 924.056, F.S., specifying that if the defendant requests without good cause that an appointed attorney be removed or replaced, the court must notify the defendant that no further state resources will be expended for postconviction representation, unless the defendant withdraws his or her request.

#### *Conflicts of Interest*

- The bill amends ss. 27.703 and 924.056, F.S., to require the court to conduct a hearing in accordance with s. 924.059, F.S. (created by the bill), if postconviction counsel alleges a conflict of interest.
- The bill creates s. 924.059, F.S., to require the court to hold a hearing within 30 days of an allegation that there is a conflict of interest with postconviction counsel to determine whether an actual conflict exists, and whether such conflict will adversely affect a defendant's lawyer's performance. An actual conflict exists when an attorney actively represents conflicting interests. To demonstrate an actual conflict, the defendant must identify specific evidence suggesting that his or her interests may be compromised. A possible, speculative, or merely hypothetical conflict is insufficient to support an allegation that a conflict of interest exists. The bill requires the court to rule within 10 days of the conclusion of the hearing.

#### *Public Records*

The bill codifies Rule 3.852 of the Florida Rules of Criminal Procedure, which specifically relates to public records in capital postconviction proceedings, in s. 27.7081, F.S. The bill retains language currently in s. 27.7081, F.S., requiring the Secretary of State to establish and maintain a public records repository for the purpose of archiving capital postconviction public records.

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

- As noted above, any person sentenced to death whose judgment of conviction and sentence have been affirmed on direct appeal may file an initial postconviction motion within one year after the inmate's judgment and sentence become final. Rule 3.851 of the Florida Rules of



Criminal Procedure specifies that an extension of time may be granted by the Florida Supreme Court if the inmate's counsel makes a showing of good cause for counsel's inability to file the postconviction pleadings within the one-year period. The bill does not authorize any extension of time.

- Rule 3.851 of the Florida Rules of Criminal Procedure permits a postconviction motion to be amended within 30 days of a scheduled evidentiary hearing upon motion and good cause shown. The bill amends s. 924.056, F.S., to prohibit a postconviction motion from being amended beyond the one-year time period established for the filing of the motion, and to require court approval.

#### *Contents of an Initial Postconviction Motion*

- Rule 3.851 of the Florida Rules of Criminal Procedure requires a defendant's initial postconviction motion to include certain information. The bill amends s. 924.056, F.S., to add the following to the list of information that an initial postconviction motion must include:
  - Whether a previous postconviction motion has been filed and, if so, the disposition of all previous claims raised in postconviction litigation and the reasons claims in the present postconviction motion were not raised in the previous motion.
- The bill also specifies that postconviction motions must be *fully pled* and raise all cognizable claims that the defendant's judgment or sentence was entered in violation of the Constitution or laws of the United States or the Constitution or laws of Florida (including any claim of ineffective assistance of trial or direct appeal counsel, allegations of innocence, or that the state withheld evidence favorable to the defendant).
- Rule 3.851 of the Florida Rules of Criminal Procedure allows a postconviction motion to include claims that could have or should have been raised at trial or on direct appeal if explained in a memorandum of law. The bill bars such claims altogether.
- The bill prohibits a postconviction motion from including a claim of ineffective assistance of postconviction counsel.

#### *Discovery and Evidentiary Hearing*

- Rule 3.851 of the Florida Rules of Criminal Procedure requires the court to hold a case management conference within 90 days of the filing of the state's answer. The bill amends s. 924.056, F.S., to change the timeframe to within 30 days of the filing of the state's answer.
- Rule 3.851 of the Florida Rules of Criminal Procedure authorizes the court to extend the time for holding an evidentiary hearing for 90 days if good cause is shown. The bill does not contain such a provision.
- The bill adds a provision to s. 924.056, F.S., specifying that if the court determines that an evidentiary hearing is not necessary and that the defendant's postconviction motion is legally insufficient or that the motion, files, and records show that the defendant is not entitled to relief, the court must, within 30 days of the conclusion of the case management conference, deny the postconviction motion. The court must include a detailed rationale therefore and attach or reference the portions of the record that will allow for meaningful appellate review of the order denying relief.
- Rule 3.851 of the Florida Rules of Criminal Procedure provides that an appeal of a court's ruling on an initial postconviction motion may be filed within 30 days of the entry of the order. The bill changes this timeframe to within 15 days of the entry of the order, and specifies that interlocutory appeals are prohibited.

#### *Successive Motions*

The bill creates s. 924.058, F.S., which addresses the procedures relating to successive postconviction motions.

- Rule 3.851 of the Florida Rules of Criminal Procedure does not contain any time limitations on the filing of successive postconviction motions. The bill bars successive postconviction motions unless fully pled and filed within 90 days:

- After the facts giving rise to the claim were discovered or should have been discovered with the exercise of due diligence; or
- After the fundamental constitutional right asserted was established and held to apply retroactively.
- The bill prohibits successive postconviction motions from being filed or considered if filed beyond the timelines described above unless it alleges that postconviction counsel, through neglect, failed to file the motion.
- The bill bars successive postconviction motion claims that could have or should have been raised at trial, on direct appeal, or in the initial postconviction motion.
- The bill prohibits a successive postconviction motion from including a claim of ineffective assistance of postconviction counsel.
- Rule 3.851 of the Florida Rules of Criminal Procedure permits a successive postconviction motion to be amended within 30 days of a scheduled evidentiary hearing upon motion and good cause shown. The bill prohibits a successive postconviction motion from being amended beyond the time period established for the filing of the successive motion, and requires court approval.
- Rule 3.851 of the Florida Rules of Criminal Procedure requires the court to hold a case management conference within 90 days of the filing of the state's answer to a successive postconviction motion. The bill amends s. 924.056, F.S., to change the timeframe to within 30 days of the filing of the state's answer.
- The bill adds a provision to s. 924.056, F.S., specifying that if the court determines that an evidentiary hearing is not necessary and that the defendant's successive postconviction motion is legally insufficient or that the motion, files, and records show that the defendant is not entitled to relief, the court must, within 30 days of the conclusion of the case management conference, deny the successive postconviction motion. The court must include a detailed rationale therefore and attach or reference the portions of the record that will allow for meaningful appellate review of the order denying relief.
- Rule 3.851 of the Florida Rules of Criminal Procedure provides that an appeal of a court's ruling on a successive postconviction motion may be filed within 30 days of the entry of the order. The bill changes this timeframe to within 15 days of the entry of the order, and specifies that interlocutory appeals are prohibited.

#### *Appeal to the Florida Supreme Court*

The bill creates s. 924.0581, F.S., which establishes the procedures that must be followed when an initial or successive postconviction motion is appealed to the Florida Supreme Court. The majority of the provisions of s. 924.0581, F.S., mirror those found in Rule 9.142 of the Florida Rules of Appellate Procedure.

- The bill includes a provision in s. 924.0581, F.S., that requires the Court, in instances where the lower court denied the initial or successive motion without an evidentiary hearing, to review the case to determine whether the lower court correctly resolved the case without a hearing. If the Court determines that a hearing should have been held, the Court may remand the case for such hearing. The lower court must schedule such hearing within 30 days of the Court's order and conclude the hearing within 90 days of scheduling. The Florida Rules of Appellate Procedure does not contain a similar provision.
- Rule 9.142 of the Florida Rules of Appellate Procedure establishes timeframes in which briefs must be filed, and specifies that if a brief is delinquent, an order to show cause can be issued and sanctions may be imposed. The bill provides that a brief submitted after the timeframes is barred and cannot be heard.
- Rule 9.142 of the Florida Rules of Appellate Procedure does not establish a specific timeframe in which the Court must hear oral argument - only that oral argument be scheduled after the filing of the defendant's reply brief. The bill requires oral arguments to be scheduled within 30 days after the filing of the defendant's reply brief.
- Rule 9.142 of the Florida Rules of Appellate Procedure does not establish a timeframe in which the Court must ultimately rule on an appeal of an initial or successive postconviction motion. The

bill requires the Court to rule within 180 days after oral arguments have concluded, and specifies that if the Court affirms a denial of an action for postconviction relief, the Governor may proceed to issue a warrant for execution.

- In instances in which the Court does not rule within 180 days of oral arguments, the bill requires the Chief Justice of the Court to, within 10 days after the expiration of the 180-day deadline, submit a report to the Legislature explaining why a decision was not timely rendered. Such report must be submitted every 30 days thereafter in which a decision is not rendered.

#### Reporting Requirements

The bill creates s. 924.0585, F.S., requiring the Court to annually report to the Legislature the status of each capital case in which a postconviction action has been filed that has been pending for more than three years. The report must include the name of the state court judge assigned to the case. This section of statute also specifies that in any capital postconviction action in which it has been determined that an attorney of record was ineffective, the court making such determination must furnish a copy of the findings of ineffectiveness to the Florida Bar for appropriate disciplinary action. The Florida Bar must submit an annual report to the Legislature listing the names of the attorneys found ineffective, the findings of the court, and the disciplinary action taken, if any. If no disciplinary action was taken, the report must specify why. The bill prohibits attorneys deemed ineffective in a capital case from representing capital defendants for five years.

The bill also bars postconviction actions filed in violation of established time limits, specifies that all claims raised in such actions are waived, and prohibits a court from hearing such actions. The bill requires the AG to deliver to the Governor and the Legislature a copy of any pleading or order that alleges or adjudicates any claim filed in violation of the established time limits.

#### Applicability

The bill includes language in ss. 924.056, 924.058, 924.0581, and 924.0592, F.S., clarifying that the statutes apply to postconviction proceedings in every capital case in which the conviction and sentence of death have been affirmed on direct appeal on or after July 1, 2015.

The bill amends s. 924.057, F.S., to specify that postconviction proceedings in every capital case in which the conviction and sentence of death have been affirmed on direct appeal *before* July 1, 2015, will be governed by the rules and laws in effect immediately prior to the effective date of the bill. The bill removes obsolete provisions (created by the DPRA) specifying otherwise.

#### Conforming Changes

The bill makes a variety of technical changes correcting statutory cross-references and obsolete references to the Florida Rules of Criminal Procedure.

#### Northern Region of the Capital Collateral Regional Counsel

Although s. 27.701, F.S., provides for three capital collateral regional offices, legislation passed in 2003 created a pilot program using a registry of attorneys instead of the capital collateral regional counsel in the northern region of the state.<sup>157</sup> The pilot program was extended indefinitely in 2004.<sup>158</sup> The bill amends ss. 27.701, 27.702, and 27.7091, F.S., to eliminate the "pilot program" and reestablish the capital collateral regional counsel in the northern region of the state.

#### Clemency

As noted above, ss. 27.40, 27.51, 27.511, 27.5303, and 27.5304, F.S., authorize the court to appoint a public defender, private attorney, or a registry attorney to represent a person who has been convicted and sentenced to death in clemency proceedings. The bill amends these sections of statute to remove this authorization in instances where the application for clemency is filed on or after July 1, 2013, by a person who has been convicted and sentenced to death.

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<sup>157</sup> Chapter 2003-399, L.O.F.

<sup>158</sup> Chapter 2004-240, L.O.F.

### Severability

The bill contains a severability clause specifying that if any provision of the act or the application thereof is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application.

### Effective Dates

The "procedural" portions of the bill take effect July 1, 2015, contingent on voter approval of HJR xxxx in the general election of 2014. Other portions of the bill are effective July 1, 2013.

## B. SECTION DIRECTORY:

Section 1. Entitles the bill the "Timely Justice Act of 2013."

Section 2. Amends s. 27.40, F.S., relating to court-appointed counsel; circuit registries; minimum requirements; appointment by court.

Section 3. Amends s. 27.51, F.S., relating to duties of public defender.

Section 4. Amends s. 27.51, F.S., relating to duties of public defender.

Section 5. Amends s. 27.511, F.S., relating to offices of criminal conflict and civil regional counsel; legislative intent; qualifications; appointment; duties.

Section 6. Amends s. 27.511, F.S., relating to offices of criminal conflict and civil regional counsel; legislative intent; qualifications; appointment; duties.

Section 7. Amends s. 27.5305, F.S., relating to public defenders; criminal conflict and civil regional counsel; conflict of interest.

Section 8. Amends s. 27.5304, F.S., relating to private court-appointed counsel; compensation; notice.

Section 9. Repeals subsection (2) of s. 27.701, F.S., relating to capital collateral regional counsel.

Section 10. Reenacts s. 27.702, F.S., relating to duties of the capital collateral regional counsel; reports.

Section 11. Amends s. 27.702, F.S., relating to duties of the capital collateral regional counsel; reports.

Section 12. Amends s. 27.703, F.S., relating to conflict of interest and substitute counsel.

Section 13. Amends s. 27.708, F.S., relating to access to prisoners; compliance with the Florida Rules of Criminal Procedure; records requests.

Section 14. Amends s. 27.7081, F.S., relating to capital postconviction public records production.

Section 15. Amends s. 27.7091, F.S., relating to legislative recommendations to Supreme Court; postconviction proceedings; pro bono service credit.

Section 16. Amends s. 27.711, F.S., relating to terms and conditions of appointment of attorneys as counsel in postconviction capital collateral proceedings.

Section 17. Amends s. 27.711, F.S., relating to terms and conditions of appointment of attorneys as counsel in postconviction capital collateral proceedings.

Section 18. Amends s. 922.095, F.S., relating to grounds for death warrant; limitations of actions.

Section 19. Amends s. 922.108, F.S., relating to sentencing orders in capital cases.

Section 20. Amends s. 924.055, F.S., relating to postconviction review in capital cases; legislative findings and intent.

Section 21. Amends s. 924.056, F.S., relating to Commencement of capital postconviction actions for which sentence of death is imposed on or after January 14, 2000; limitations on actions.

Section 22. Amends s. 924.057, F.S., relating to limitation on postconviction cases in which the death sentence was imposed before January 14, 2000.

Section 23. Amends s. 924.058, F.S., relating to capital postconviction claims.

Section 24. Creates s. 924.0581, F.S., relating to capital postconviction appeals to the Florida Supreme Court.

Section 25. Creates s. 922.108, F.S., relating to capital postconviction proceedings; reporting requirements.

Section 26. Amends s. 924.0585, F.S., relating to relating to capital postconviction proceedings; reporting requirements.

Section 27. Amends s. 924.059, F.S., relating to time limitations and judicial review in capital postconviction actions.

Section 28. Creates s. 924.0591, F.S., relating to incompetence to proceed in capital postconviction proceedings.

Section 29. Creates s. 924.0592, F.S., relating to capital postconviction proceedings after a death warrant has been issued.

Section 30. Creates s. 924.0593, F.S., relating to insanity at the time of execution.

Section 31. Creates s. 924.0594, F.S., relating to dismissal of postconviction proceedings.

Section 32. Provides a severability clause.

Section 33. Provides effective dates.

## **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 an impact on local government revenues.

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Due to the nuances of capital cases and the multitude of agencies and personnel involved (e.g., judges, clerks, CCRC, public defenders, registry attorneys, AG staff, etc.), it is difficult to precisely quantify the costs associated with Florida's capital postconviction process. 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>159</sup>

Capital Postconviction Proceedings

The bill codifies many of the current procedures that relate to capital postconviction proceedings. However, the bill modifies the rules or creates provisions designed to make the postconviction process more efficient. For example, the bill:

- Sets standards for conflict of interest determinations;
- Bars postconviction motions that are not filed within statutorily established timeframes or that are not fully pled;
- Prohibits courts from granting extensions of time at various stages of the postconviction process;
- Shortens timeframes relating to case management conferences and the amendment of postconviction motions;
- Establishes timeframes in which the Florida Supreme Court must hear oral arguments;
- Requires the Florida Supreme Court to rule on an appeal of an initial or successive postconviction motion within 180 days after oral arguments have concluded; and
- Creates reporting requirements that hold courts accountable for delays in the postconviction process.

To the extent that these provisions shorten the postconviction process, they will likely result in a cost savings to the state.

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. To the extent the bill shortens the postconviction process and thereby the time an inmate spends on death row prior to execution, the bill would have a positive fiscal impact on DOC.

Clemency

Currently, the court is authorized to appoint a public defender, private attorney, or a registry attorney to represent a person who has been convicted and sentenced to death in clemency proceedings. Section

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<sup>159</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 March 3, 2013).

27.5304, F.S., requires appointed attorney to be allowed compensation, not to exceed \$1,000, for attorney's fees and costs incurred in representing the defendant in clemency proceedings. Such compensation is paid out of General Revenue from funds budgeted to DOC.

The bill removes the court's authorization to appoint a public defender, private attorney, or a registry attorney to represent a person who has been convicted and sentenced to death in clemency proceedings in instances where the application for clemency is filed on or after July 1, 2013. This will likely result in a savings to DOC and the public defenders.

#### Capital Collateral Regional Counsel

The bill eliminates the registry attorney "pilot program" and reestablishes the CCRC in the northern region of the state.

For FY 13/14, the base budget for the Middle and Southern Region CCRC offices is \$7,020,537. In FY 2011/2012, the Department of Financial Services spent \$1.6 million compensating registry attorneys, who are paid based on the amounts set forth in s. 27.711, F.S. (note that this figure represents the amount paid to registry attorneys appointed in postconviction proceedings throughout the state, not just those in the northern region).

Reestablishing the CCRC in the northern region will likely have a negative fiscal impact on state government expenditures. However, to what extent is unknown.

### **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 postconviction capital case  
 3 proceedings; naming the act the "Timely Justice Act of  
 4 2013;" amending s. 27.40, F.S.; removing the  
 5 requirement that counsel be appointed in clemency  
 6 proceedings filed by persons sentenced to death;  
 7 amending s. 27.51, F.S.; removing the trial court's  
 8 authority to appoint the public defender to represent  
 9 a person sentenced to death in clemency proceedings;  
 10 amending s. 27.51, F.S.; replacing a reference to a  
 11 rule of criminal procedure with a reference to a  
 12 statute; amending s. 27.511, F.S.; removing the trial  
 13 court's authority to appoint the office of criminal  
 14 conflict and civil regional counsel or other attorney  
 15 to represent a person sentenced to death in clemency  
 16 proceedings; amending s. 27.511, F.S.; replacing a  
 17 reference to a rule of criminal procedure with a  
 18 reference to a statute; amending s. 27.5303, F.S.;  
 19 removing a court's authority to appoint the public  
 20 defender or other attorney to represent a person  
 21 sentenced to death in clemency proceedings; amending  
 22 s. 27.5304, F.S., specifying that a person may be  
 23 compensated for representing a person sentenced to  
 24 death who submits an application for executive  
 25 clemency before July 1, 2013; repealing s. 27.701(2),  
 26 F.S.; reestablishing the northern region Capital  
 27 Collateral Regional Counsel; reenacting s. 27.702,  
 28 F.S.; requiring attorneys to file only those



29 postconviction actions authorized by statute; amending  
 30 s. 27.702, F.S.; reestablishing the northern region  
 31 Capital Collateral Regional Counsel; amending s.  
 32 27.703, F.S.; requiring the court to hold a hearing  
 33 when a conflict of interest in a postconviction  
 34 capital case proceeding is alleged; amending s.  
 35 27.708, F.S.; specifying that postconviction capital  
 36 case attorneys comply with statutory requirements;  
 37 amending s. 27.7081, F.S.; establishing procedures for  
 38 public records production in postconviction capital  
 39 cases proceedings; amending s. 27.7091, F.S.; deleting  
 40 language recommending that the Florida Supreme Court  
 41 adopt certain rules relating to postconviction capital  
 42 case proceedings; amending s. 27.711, F.S.; deleting  
 43 obsolete language relating to the northern regional  
 44 office of the capital collateral regional counsel;  
 45 amending s. 27.711, F.S., removing references to rules  
 46 of criminal procedure that relate to postconviction  
 47 capital case proceedings; amending s. 922.095, F.S.;  
 48 specifying that postconviction claims in capital cases  
 49 that aren't pursued within statutory time limits are  
 50 barred; reenacting s. 922.108, F.S.; specifying that  
 51 sentence of death may not specify any particular  
 52 method of execution; amending s. 924.055, F.S.;  
 53 providing legislative intent regarding postconviction  
 54 proceedings in capital cases; amending s. 924.056,  
 55 F.S.; establishing procedures for initial  
 56 postconviction motions in capital cases; amending s.

57 924.057, F.S.; providing that postconviction  
 58 proceedings in capital cases in which conviction and  
 59 sentence of death have been affirmed on direct appeal  
 60 before July 1, 2015, are governed by the rules and  
 61 laws in effect prior to the effective date of this  
 62 act; amending s. 924.058, F.S.; establishing  
 63 procedures for successive postconviction motions in  
 64 capital cases; creating s. 924.0581, F.S.;

65 establishing procedures the appeal of capital case  
 66 postconviction motions to the Florida Supreme Court;  
 67 creating s. 924.0585, F.S.; requiring the Florida  
 68 Supreme Court to annually report certain information  
 69 regarding capital postconviction cases to the  
 70 legislature; requiring courts to report specified  
 71 findings of ineffective assistance of counsel to the  
 72 Florida Bar; requiring the Florida Bar to annual  
 73 report to the legislature certain information abuse  
 74 attorney found ineffective; amending s. 924.0585,  
 75 F.S.; specifying that capital postconviction actions  
 76 filed in violation of statutory timeframes are barred  
 77 and claims raised therein waived; amending s. 924.059,  
 78 F.S.; requiring the court to hold a hearing when a  
 79 conflict of interest in a postconviction capital case  
 80 proceeding is alleged; providing timeframes relating  
 81 to such hearing; creating s. 924.0591, F.S.;

82 establishing procedures for capital case  
 83 postconviction proceedings where prisoner is  
 84 incompetent to proceed; creating s. 924.0592, F.S.;

85 establishing procedures for capital case  
 86 postconviction proceedings after a death warrant has  
 87 been issued; creating s. 924.0593, F.S.; establishing  
 88 procedures for capital case postconviction proceedings  
 89 where prisoner is insane at the time of execution;  
 90 creating s. 924.0595, F.S.; establishing procedures  
 91 for capital case postconviction proceedings where  
 92 prisoner seeks to dismiss postconviction proceedings  
 93 and postconviction counsel; providing s severability  
 94 clause; providing an effective date.

96 WHEREAS, it is in the best interest of the administration  
 97 of justice that a sentence of death ordered by a court of this  
 98 state be carried out in a manner that is fair, just, and humane  
 99 and that conforms to constitutional requirements, and

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

105 WHEREAS, in order to ensure the fair, just, and humane  
 106 administration of capital punishment, it is necessary for the  
 107 Legislature to comprehensively address the processes by which an  
 108 offender sentenced to death may pursue postconviction and  
 109 collateral review of the judgment and the sentence of death, and

110 WHEREAS, the Death Penalty Reform Act of 2000, chapter  
 111 2000-3, Laws of Florida, was designed to accomplish these

112 objectives and was passed by the Legislature and approved by the  
 113 Governor of Florida in January of 2000, and

114 WHEREAS, the Death Penalty Reform Act of 2000, chapter  
 115 2000-3, Laws of Florida, was declared unconstitutional by the  
 116 Florida Supreme Court three months after becoming a law in Allen  
 117 v. Butterworth, 756 So.2d 52 (Fla. 2000), as being an  
 118 encroachment on the court's "exclusive power to 'adopt rules for  
 119 the practice and procedure in all courts,'" and

120 WHEREAS, the Constitution of the State of Florida has been  
 121 amended to require postconviction and collateral review of  
 122 capital cases resulting in a sentence of death to be governed  
 123 by, and to the extent provided by, general law, and

124 WHEREAS, provisions of the Death Penalty Reform Act of 2000  
 125 which were held unconstitutional may now be reenacted, while  
 126 other provisions can be modified, and new provisions added to  
 127 ensure a prompt and efficient administration of justice  
 128 following any sentence of death, NOW, THEREFORE,

129

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

131

132 Section 1. This act may be cited as the Timely Justice Act  
 133 of 2013.

134 Section 2. Effective July 1, 2013, subsection (1) of  
 135 section 27.40, Florida Statutes, is amended to read:

136 27.40 Court-appointed counsel; circuit registries; minimum  
 137 requirements; appointment by court.—

138 (1) Counsel shall be appointed to represent any individual  
 139 in a criminal or civil proceeding entitled to court-appointed

140 counsel under the Federal or State Constitution or as authorized  
 141 by general law. Such proceedings do not include proceedings for  
 142 relief by executive clemency in which the application for  
 143 executive clemency was filed by a person who has been convicted  
 144 and sentenced to death on or after July 1, 2013. The court shall  
 145 appoint a public defender to represent indigent persons as  
 146 authorized in s. 27.51. The office of criminal conflict and  
 147 civil regional counsel shall be appointed to represent persons  
 148 in those cases in which provision is made for court-appointed  
 149 counsel but the public defender is unable to provide  
 150 representation due to a conflict of interest or is not  
 151 authorized to provide representation.

152 Section 3. Effective July 1, 2013, paragraph (a) of  
 153 subsection (5) of section 27.51, Florida Statutes, is amended to  
 154 read:

155 27.51 Duties of public defender.—

156 (5)(a) When direct appellate proceedings prosecuted by a  
 157 public defender on behalf of an accused and challenging a  
 158 judgment of conviction and sentence of death terminate in an  
 159 affirmance of such conviction and sentence, whether by the  
 160 Florida Supreme Court or by the United States Supreme Court or  
 161 by expiration of any deadline for filing such appeal in a state  
 162 or federal court, the public defender shall notify the accused  
 163 of his or her rights pursuant to Rule 3.850, Florida Rules of  
 164 Criminal Procedure, including any time limits pertinent thereto,  
 165 and shall advise such person that representation in any  
 166 collateral proceedings is the responsibility of the capital  
 167 collateral regional counsel. The public defender shall then

168 forward all original files on the matter to the capital  
 169 collateral regional counsel, retaining such copies for his or  
 170 her files as may be desired. However, for clemency applications  
 171 pending or filed before July 1, 2013, the trial court shall  
 172 retain the power to appoint the public defender or other  
 173 attorney not employed by the capital collateral regional counsel  
 174 to represent such person in proceedings for relief by executive  
 175 clemency pursuant to ss. 27.40 and 27.5303.

176 Section 4. Paragraph (a) of subsection (5) of section  
 177 27.51, Florida Statutes, as amended by this act, is amended to  
 178 read:

179 27.51 Duties of public defender.-

180 (5) (a) When direct appellate proceedings prosecuted by a  
 181 public defender on behalf of an accused and challenging a  
 182 judgment of conviction and sentence of death terminate in an  
 183 affirmance of such conviction and sentence, whether by the  
 184 Florida Supreme Court or by the United States Supreme Court or  
 185 by expiration of any deadline for filing such appeal in a state  
 186 or federal court, the public defender shall notify the accused  
 187 of his or her rights pursuant to s. 924.056~~Rule 3.850, Florida~~  
 188 ~~Rules of Criminal Procedure~~, including any time limits pertinent  
 189 thereto, and shall advise such person that representation in any  
 190 collateral proceedings is the responsibility of the capital  
 191 collateral regional counsel. The public defender shall then  
 192 forward all original files on the matter to the capital  
 193 collateral regional counsel, retaining such copies for his or  
 194 her files as may be desired. However, for clemency applications  
 195 pending or filed before July 1, 2013, the trial court shall

196 retain the power to appoint the public defender or other  
 197 attorney not employed by the capital collateral regional counsel  
 198 to represent such person in proceedings for relief by executive  
 199 clemency pursuant to ss. 27.40 and 27.5303.

200 Section 5. Effective July 1, 2013, subsection (9) of  
 201 section 27.511, Florida Statutes, is amended to read:

202 27.511 Offices of criminal conflict and civil regional  
 203 counsel; legislative intent; qualifications; appointment;  
 204 duties.—

205 (9) When direct appellate proceedings prosecuted by the  
 206 office of criminal conflict and civil regional counsel on behalf  
 207 of an accused and challenging a judgment of conviction and  
 208 sentence of death terminate in an affirmance of such conviction  
 209 and sentence, whether by the Supreme Court or by the United  
 210 States Supreme Court or by expiration of any deadline for filing  
 211 such appeal in a state or federal court, the office of criminal  
 212 conflict and civil regional counsel shall notify the accused of  
 213 his or her rights pursuant to Rule 3.850, Florida Rules of  
 214 Criminal Procedure, including any time limits pertinent thereto,  
 215 and shall advise such person that representation in any  
 216 collateral proceedings is the responsibility of the capital  
 217 collateral regional counsel. The office of criminal conflict and  
 218 civil regional counsel shall forward all original files on the  
 219 matter to the capital collateral regional counsel, retaining  
 220 such copies for his or her files as may be desired or required  
 221 by law. However, for clemency applications pending or filed  
 222 before July 1, 2013, the trial court shall retain the power to  
 223 appoint the office of criminal conflict and civil regional

224 counsel or other attorney not employed by the capital collateral  
 225 regional counsel to represent such person in proceedings for  
 226 relief by executive clemency pursuant to ss. 27.40 and 27.5303.

227 Section 6. Subsection (9) of section 27.511, Florida  
 228 Statutes, as amended by this act, is amended to read:

229 27.511 Offices of criminal conflict and civil regional  
 230 counsel; legislative intent; qualifications; appointment;  
 231 duties.—

232 (9) When direct appellate proceedings prosecuted by the  
 233 office of criminal conflict and civil regional counsel on behalf  
 234 of an accused and challenging a judgment of conviction and  
 235 sentence of death terminate in an affirmance of such conviction  
 236 and sentence, whether by the Supreme Court or by the United  
 237 States Supreme Court or by expiration of any deadline for filing  
 238 such appeal in a state or federal court, the office of criminal  
 239 conflict and civil regional counsel shall notify the accused of  
 240 his or her rights pursuant to s. 924.056~~Rule 3.850, Florida~~  
 241 ~~Rules of Criminal Procedure~~, including any time limits pertinent  
 242 thereto, and shall advise such person that representation in any  
 243 collateral proceedings is the responsibility of the capital  
 244 collateral regional counsel. The office of criminal conflict and  
 245 civil regional counsel shall forward all original files on the  
 246 matter to the capital collateral regional counsel, retaining  
 247 such copies for his or her files as may be desired or required  
 248 by law. However, for clemency applications pending or filed  
 249 before July 1, 2013, the trial court shall retain the power to  
 250 appoint the office of criminal conflict and civil regional  
 251 counsel or other attorney not employed by the capital collateral



252 regional counsel to represent such person in proceedings for  
 253 relief by executive clemency pursuant to ss. 27.40 and 27.5303.

254 Section 7. Effective July 1, 2013, subsection (4) of  
 255 section 27.5303, Florida Statutes, is amended to read:

256 27.5303 Public defenders; criminal conflict and civil  
 257 regional counsel; conflict of interest.—

258 (4) (a) If a defendant is convicted and the death sentence  
 259 is imposed, the appointed attorney shall continue representation  
 260 through appeal to the Supreme Court. The attorney shall be  
 261 compensated as provided in s. 27.5304. If the attorney first  
 262 appointed is unable to handle the appeal, the court shall  
 263 appoint another attorney and that attorney shall be compensated  
 264 as provided in s. 27.5304.

265 (b) The public defender or an attorney appointed pursuant  
 266 to this section may be appointed by the court rendering the  
 267 judgment imposing the death penalty to represent an indigent  
 268 defendant who, before July 1, 2013, has an application for  
 269 executive clemency pending or has applied for executive clemency  
 270 as relief from the execution of the judgment imposing the death  
 271 penalty.

272 (c) When the appointed attorney in a capital case has  
 273 completed the duties imposed by this section, the attorney shall  
 274 file a written report in the trial court stating the duties  
 275 performed by the attorney and apply for discharge.

276 Section 8. Effective July 1, 2013, subsection (5) of  
 277 section 27.5304, Florida Statutes, is amended to read:

278 27.5304 Private court-appointed counsel; compensation;  
 279 notice.—

280 (5) The compensation for representation in a criminal  
 281 proceeding shall not exceed the following:  
 282 1. For misdemeanors and juveniles represented at the trial  
 283 level: \$1,000.  
 284 2. For noncapital, nonlife felonies represented at the  
 285 trial level: \$2,500.  
 286 3. For life felonies represented at the trial level:  
 287 \$3,000.  
 288 4. For capital cases represented at the trial level:  
 289 \$15,000. For purposes of this subparagraph, a "capital case" is  
 290 any offense for which the potential sentence is death and the  
 291 state has not waived seeking the death penalty.  
 292 5. For representation on appeal: \$2,000.  
 293 (b) If a death sentence is imposed and affirmed on appeal  
 294 to the Supreme Court, the appointed attorney shall be allowed  
 295 compensation, not to exceed \$1,000, for attorney fees and costs  
 296 incurred in representing the defendant as to an application for  
 297 executive clemency submitted before July 1, 2013, with  
 298 compensation to be paid out of general revenue from funds  
 299 budgeted to the Department of Corrections.  
 300 Section 9. Effective July 1, 2013, subsection (2) of  
 301 section 27.701, Florida Statutes, is repealed.  
 302 Section 10. Subsection (1) of section 27.702, Florida  
 303 Statutes, is reenacted to read:  
 304 27.702 Duties of the capital collateral regional counsel;  
 305 reports.—  
 306 (1) The capital collateral regional counsel shall  
 307 represent each person convicted and sentenced to death in this

308 | state for the sole purpose of instituting and prosecuting  
 309 | collateral actions challenging the legality of the judgment and  
 310 | sentence imposed against such person in the state courts,  
 311 | federal courts in this state, the United States Court of Appeals  
 312 | for the Eleventh Circuit, and the United States Supreme Court.  
 313 | The capital collateral regional counsel and the attorneys  
 314 | appointed pursuant to s. 27.710 shall file only those  
 315 | postconviction or collateral actions authorized by statute. The  
 316 | three capital collateral regional counsel's offices shall  
 317 | function independently and be separate budget entities, and the  
 318 | regional counsel shall be the office heads for all purposes. The  
 319 | Justice Administrative Commission shall provide administrative  
 320 | support and service to the three offices to the extent requested  
 321 | by the regional counsel. The three regional offices shall not be  
 322 | subject to control, supervision, or direction by the Justice  
 323 | Administrative Commission in any manner, including, but not  
 324 | limited to, personnel, purchasing, transactions involving real  
 325 | or personal property, and budgetary matters.

326 |       Section 11. Effective July 1, 2013, paragraph (b) of  
 327 | subsection (4) of section 27.702, Florida Statutes, is amended  
 328 | to read:

329 |       27.702 Duties of the capital collateral regional counsel;  
 330 | reports.—

331 |       (4)

332 |       (b) Each capital collateral regional counsel ~~and each~~  
 333 | ~~attorney participating in the pilot program in the northern~~  
 334 | ~~region pursuant to s. 27.701(2)~~ shall provide a quarterly report  
 335 | to the President of the Senate and the Speaker of the House of

336 Representatives which details the number of hours worked by  
 337 investigators and legal counsel per case and the amounts per  
 338 case expended during the preceding quarter in investigating and  
 339 litigating capital collateral cases.

340 Section 12. Section 27.703, Florida Statutes, is amended  
 341 to read:

342 27.703 Conflict of interest and substitute counsel.—

343 (1) The capital collateral regional counsel shall not  
 344 accept an appointment or take any other action that will create  
 345 a conflict of interest. If, at any time during the  
 346 representation of a person, the capital collateral regional  
 347 counsel alleges ~~determines~~ that the continued representation of  
 348 that person creates a conflict of interest, the sentencing court  
 349 shall hold a hearing in accordance with s. 924.059 to determine  
 350 if an actual conflict exists. If the court determines that an  
 351 actual conflict exists and that such conflict will adversely  
 352 affect the capital collateral regional counsel's performance,  
 353 the court shall, ~~upon application by the regional counsel,~~  
 354 designate another regional counsel. If the replacement regional  
 355 counsel alleges that a conflict of interest exists, the  
 356 sentencing court shall hold a hearing in accordance with s.  
 357 924.059 to determine if an actual conflict exists. If the court  
 358 determines that an actual conflict exists and that such conflict  
 359 will adversely affect the replacement regional counsel's  
 360 performance, the court shall ~~and, only if a conflict exists~~  
 361 ~~with the other two counsel,~~ appoint one or more members of The  
 362 Florida Bar to represent the person ~~one or more of such persons.~~

363 (2) Appointed counsel shall be paid from funds

364 appropriated to the Chief Financial Officer. The hourly rate may  
 365 not exceed \$100. However, all appointments of private counsel  
 366 under this section shall be in accordance with ss. 27.710 and  
 367 27.711.

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

373 Section 13. Subsection (2) of section 27.708, Florida  
 374 Statutes, is amended to read:

375 27.708 Access to inmates ~~prisoners; compliance with the~~  
 376 ~~Florida Rules of Criminal Procedure;~~ records requests.-

377 (2) The capital collateral regional counsel and contracted  
 378 private counsel must timely comply with all statutory  
 379 requirements ~~provisions of the Florida Rules of Criminal~~  
 380 ~~Procedure~~ governing collateral review of capital cases.

381 Section 14. Section 27.7081, Florida Statutes, is amended  
 382 to read:

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

385 27.7081 Capital postconviction public records production.-

386 (1) DEFINITIONS - As used in this section, the term:

387 (a) "Trial court" means:

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

390 2. If a motion for postconviction relief in a capital case  
 391 has been filed and a different judge has already been assigned

392 to that motion, the judge who is assigned to rule on that  
 393 motion.

394 (b) "Public records" has the same meaning as provided in s.  
 395 119.011.

396 (c) "Collateral counsel" means a capital collateral  
 397 regional counsel from one of the three regions in Florida, a  
 398 private attorney who has been appointed to represent a capital  
 399 defendant for postconviction litigation, or a private attorney  
 400 who has been hired by the capital defendant or who has agreed to  
 401 work pro bono for a capital defendant for postconviction  
 402 litigation.

403 (d) "Agency" has the same meaning as provided in s.  
 404 119.011.

405 (2) APPLICABILITY AND SCOPE - This section only applies to  
 406 the production of public records for capital postconviction  
 407 defendants and does not change or alter the time periods  
 408 specified in s. 924.056 or s. 924.058. Furthermore, this section  
 409 does not affect, expand, or limit the production of public  
 410 records for any purposes other than use in a proceeding held  
 411 pursuant to s. 924.056 or s. 924.058. This section shall not be  
 412 a basis for renewing public records requests that have been  
 413 initiated previously or for relitigating issues pertaining to  
 414 production of public records upon which a court has ruled prior  
 415 to July 1, 2015. Public records requests made in postconviction  
 416 proceedings in capital cases in which the conviction and  
 417 sentence of death have been affirmed on direct appeal before  
 418 July 1, 2015, shall be governed by the rules and laws in effect  
 419 immediately prior to the effective date of this act.

420       (3) RECORDS REPOSITORY - The Secretary of State shall  
 421 establish and maintain a records repository for the purpose of  
 422 archiving capital postconviction public records as provided for  
 423 in this section.

424       (4) FILING AND SERVICE

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

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

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

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

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

441       (a) Within 15 days after receiving written notification of  
 442 the Supreme Court of Florida's mandate affirming the sentence of  
 443 death, the attorney general shall file with the trial court a  
 444 written notice of the mandate and serve a copy of it upon the  
 445 state attorney who prosecuted the case, the Department of  
 446 Corrections, and the defendant's trial counsel. The notice to  
 447 the state attorney shall direct the state attorney to submit

448 public records to the records repository within 90 days after  
 449 receipt of written notification and to notify each law  
 450 enforcement agency involved in the investigation of the capital  
 451 offense to submit public records to the records repository  
 452 within 90 days after receipt of written notification. The notice  
 453 to the Department of Corrections shall direct the department to  
 454 submit public records to the records repository within 90 days  
 455 after receipt of written notification.

456 (b) Within 90 days after receiving written notification of  
 457 issuance of the Supreme Court of Florida's mandate affirming a  
 458 death sentence, the state attorney shall provide written  
 459 notification to the attorney general of the name and address of  
 460 any additional person or agency that has public records  
 461 pertinent to the case.

462 (c) Within 90 days after receiving written notification of  
 463 issuance of the Supreme Court of Florida's mandate affirming a  
 464 death sentence, the defendant's trial counsel shall provide  
 465 written notification to the attorney general of the name and  
 466 address of any person or agency with information pertinent to  
 467 the case which has not previously been provided to collateral  
 468 counsel.

469 (d) Within 15 days after receiving written notification of  
 470 any additional person or agency pursuant to paragraphs (b) or  
 471 (c), the attorney general shall notify all persons or agencies  
 472 identified pursuant to paragraphs (b) or (c) that these persons  
 473 or agencies are required by law to copy, index, and deliver to  
 474 the records repository all public records pertaining to the case  
 475 that are in their possession. The person or agency shall bear



476 | the costs related to copying, indexing, and delivering the  
 477 | records.

478 | (6) ACTION UPON RECEIPT OF NOTICE OF MANDATE

479 | (a) Within 15 days after receipt of a written notice of the  
 480 | mandate from the attorney general, the state attorney shall  
 481 | provide written notification to each law enforcement agency  
 482 | involved in the specific case to submit public records to the  
 483 | records repository within 90 days after receipt of written  
 484 | notification. A copy of the notice shall be served upon the  
 485 | defendant's trial counsel.

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

497 | (c) Within 90 days after receipt of written notification of  
 498 | the mandate from the attorney general, the Department of  
 499 | Corrections shall copy, index, and deliver to the records  
 500 | repository all public records determined by the department to be  
 501 | relevant to the subject matter of a proceeding under s. 924.056  
 502 | or s. 924.058, unless such copying, indexing, and delivering  
 503 | would be unduly burdensome. The department shall bear the costs.

504 The secretary of the department shall provide written  
 505 notification to the attorney general of compliance with this  
 506 paragraph certifying that, to the best of the secretary of the  
 507 department's knowledge or belief, all such public records in the  
 508 possession of the secretary of the department have been copied,  
 509 indexed, and delivered to the records repository.

510 (d) Within 90 days after receipt of written notification of  
 511 the mandate from the state attorney, a law enforcement agency  
 512 shall copy, index, and deliver to the records repository all  
 513 public records which were produced in the investigation or  
 514 prosecution of the case. Each agency shall bear the costs. The  
 515 chief law enforcement officer of each law enforcement agency  
 516 shall provide written notification to the attorney general of  
 517 compliance with this paragraph including certifying that, to the  
 518 best of the chief law enforcement officer's knowledge or belief,  
 519 all such public records in possession of the agency or in  
 520 possession of any employee of the agency, have been copied,  
 521 indexed, and delivered to the records repository.

522 (e) Within 90 days after receipt of written notification of  
 523 the mandate from the attorney general, each additional person or  
 524 agency identified pursuant to paragraphs (5)(b) or (5)(c) shall  
 525 copy, index, and deliver to the records repository all public  
 526 records which were produced during the prosecution of the case.  
 527 The person or agency shall bear the costs. The person or agency  
 528 shall provide written notification to the attorney general of  
 529 compliance with this subdivision and shall certify, to the best  
 530 of the person or agency's knowledge and belief, all such public  
 531 records in the possession of the person or agency have been

532 copied, indexed, and delivered to the records repository.

533 (7) EXEMPT OR CONFIDENTIAL PUBLIC RECORDS

534 (a) Any public records delivered to the records repository  
 535 pursuant to this section that are confidential or exempt from  
 536 the requirements of s. 119.07(1) or article I, section 24(a),  
 537 Florida Constitution, must be separately contained, without  
 538 being redacted, and sealed. The outside of the container must  
 539 clearly identify that the public record is confidential or  
 540 exempt and that the seal may not be broken without an order of  
 541 the trial court. The outside of the container must identify the  
 542 nature of the public records and the legal basis for the  
 543 exemption.

544 (b) Upon the entry of an appropriate court order, sealed  
 545 containers subject to an inspection by the trial court shall be  
 546 shipped to the clerk of court. The containers may be opened only  
 547 for inspection by the trial court in camera. The moving party  
 548 shall bear all costs associated with the transportation and  
 549 inspection of such records by the trial court. The trial court  
 550 shall perform the unsealing and inspection without ex parte  
 551 communications and in accord with procedures for reviewing  
 552 sealed documents.

553 (8) DEMAND FOR ADDITIONAL PUBLIC RECORDS

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

559 (b) Within 90 days of receipt of the written demand, each

560 person or agency notified under this subsection shall deliver to  
 561 the records repository any additional public records in the  
 562 possession of the person or agency that pertain to the case and  
 563 shall certify to the best of the person or agency's knowledge  
 564 and belief that all additional public records have been  
 565 delivered to the records repository or, if no additional public  
 566 records are found, shall recertify that the public records  
 567 previously delivered are complete.

568 (c) Within 60 days of receipt of the written demand, any  
 569 person or agency may file with the trial court an objection to  
 570 the written demand described in paragraph (a). The trial court  
 571 shall hold a hearing and issue a ruling within 30 days after the  
 572 filing of any objection, ordering a person or agency to produce  
 573 additional public records if the court determines each of the  
 574 following exists:

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

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

580 3. The additional public records sought are relevant to the  
 581 subject matter of a postconviction proceeding under s. 924.056  
 582 or s. 924.058, or appear reasonably calculated to lead to the  
 583 discovery of admissible evidence.

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

586 (9) LIMITATION ON POSTPRODUCTION REQUEST FOR ADDITIONAL  
 587 RECORDS

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

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

593 2. Identifies with specificity those public records not at  
 594 the records repository; and

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

599 4. Shall be served in accord with subsection (4).

600 (b) Within 30 days after the affidavit of collateral  
 601 counsel is filed, the trial court shall order a person or agency  
 602 to produce additional public records only upon finding each of  
 603 the following:

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

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

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

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

615 (10) Collateral counsel shall provide the personnel,

616 supplies, and any necessary equipment to copy records held at  
 617 the records repository.

618 (11) AUTHORITY OF THE COURT - In proceedings under this  
 619 section the trial court may:

620 (a) Compel or deny disclosure of records;

621 (b) Conduct an in-camera inspection;

622 (c) Extend the times in this section upon a showing of good  
 623 cause;

624 (d) Impose sanctions upon any party, person, or agency  
 625 affected by this section including initiating contempt  
 626 proceedings, taxing expenses, extending time, ordering facts to  
 627 be established, and granting other relief; and

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

630 (12) SCOPE OF PRODUCTION AND RESOLUTION OF PRODUCTION  
 631 ISSUES

632 (a) Unless otherwise limited, the scope of production under  
 633 any part of this section shall be that the public records sought  
 634 are not privileged or immune from production and are either  
 635 relevant to the subject matter of a postconviction proceeding  
 636 under s. 924.056 or s. 924.058 or are reasonably calculated to  
 637 lead to the discovery of admissible evidence.

638 (b) Any objections or motions to compel production of  
 639 public records pursuant to this section shall be filed within 30  
 640 days after the end of the production time period provided by  
 641 this section. Counsel for the party objecting or moving to  
 642 compel shall file a copy of the objection or motion directly  
 643 with the trial court. The trial court shall hold a hearing on

644 the objection or motion on an expedited basis.

645 (c) The trial court may order mediation for any controversy  
 646 as to public records production pursuant to this section in  
 647 accord with Florida Rules of Civil Procedure 1.700, 1.710,  
 648 1.720, 1.730, or the trial court may refer any such controversy  
 649 to a magistrate in accord with Florida Rule of Civil Procedure  
 650 1.490.

651 (13) DESTRUCTION OF RECORDS REPOSITORY RECORDS - Sixty days  
 652 after a capital sentence is carried out, after a defendant is  
 653 released from incarceration following the granting of a pardon  
 654 or reversal of the sentence, or after a defendant has been  
 655 resentenced to a term of years, the attorney general shall  
 656 provide written notification of this occurrence to the secretary  
 657 of state. After the expiration of the 60 days, the secretary of  
 658 state may then destroy the copies of the records held by the  
 659 records repository that pertain to that case, unless an  
 660 objection to the destruction is filed in the trial court and  
 661 served upon the secretary of state. If no objection has been  
 662 served within the 60-day period, the records may then be  
 663 destroyed. If an objection is served, the records shall not be  
 664 destroyed until a final disposition of the objection.

665 Section 15. Effective July 1, 2013, section 27.7091,  
 666 Florida Statutes, is amended to read:

667 27.7091 Legislative recommendations to Supreme Court;  
 668 postconviction proceedings; pro bono service credit.—In the  
 669 interest of promoting justice and integrity with respect to  
 670 capital collateral representation, the Legislature recommends  
 671 that the Supreme Court+

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

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

678 Section 16. Effective July 1, 2013, subsection (3) of  
 679 section 27.711, Florida Statutes, is amended to read:

680 27.711 Terms and conditions of appointment of attorneys as  
 681 counsel in postconviction capital collateral proceedings.—

682 (3) An attorney appointed to represent a capital defendant  
 683 is entitled to payment of the fees set forth in this section  
 684 only upon full performance by the attorney of the duties  
 685 specified in this section and approval of payment by the trial  
 686 court, and the submission of a payment request by the attorney,  
 687 subject to the availability of sufficient funding specifically  
 688 appropriated for this purpose. ~~An attorney may not be~~  
 689 ~~compensated under this section for work performed by the~~  
 690 ~~attorney before July 1, 2003, while employed by the northern~~  
 691 ~~regional office of the capital collateral counsel.~~ The Chief  
 692 Financial Officer shall notify the executive director and the  
 693 court if it appears that sufficient funding has not been  
 694 specifically appropriated for this purpose to pay any fees which  
 695 may be incurred. The attorney shall maintain appropriate  
 696 documentation, including a current and detailed hourly  
 697 accounting of time spent representing the capital defendant. The  
 698 fee and payment schedule in this section is the exclusive means  
 699 of compensating a court-appointed attorney who represents a



700 capital defendant. When appropriate, a court-appointed attorney  
 701 must seek further compensation from the Federal Government, as  
 702 provided in 18 U.S.C. s. 3006A or other federal law, in habeas  
 703 corpus litigation in the federal courts.

704 Section 17. Paragraph (b) of subsection (4) of section  
 705 27.711, Florida Statutes, is amended to read:

706 27.711 Terms and conditions of appointment of attorneys as  
 707 counsel in postconviction capital collateral proceedings.—

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

712 (b) The attorney is entitled to \$100 per hour, up to a  
 713 maximum of \$20,000, after timely filing in the trial court the  
 714 capital defendant's complete original motion for postconviction  
 715 relief ~~under the Florida Rules of Criminal Procedure~~. The motion  
 716 must raise all issues to be addressed by the trial court.

717 However, an attorney is entitled to fees under this paragraph if  
 718 the court schedules a hearing on a matter that makes the filing  
 719 of the original motion for postconviction relief unnecessary or  
 720 if the court otherwise disposes of the case.

721  
 722 The hours billed by a contracting attorney under this subsection  
 723 may include time devoted to representation of the defendant by  
 724 another attorney who is qualified under s. 27.710 and who has  
 725 been designated by the contracting attorney to assist him or  
 726 her.

727 Section 18. Section 922.095, Florida Statutes, is amended

728 to read:

729 922.095 Grounds for death warrant; limitations of  
 730 actions.—A person who is convicted and sentenced to death must  
 731 pursue all possible collateral remedies within the time limits  
 732 provided by statute. Failure to seek relief within the statutory  
 733 time limits constitutes grounds for issuance of a death warrant  
 734 under s. 922.052 or s. 922.14. Any postconviction claim not  
 735 pursued within the statutory time limits is barred. No  
 736 postconviction claim filed after the time required by law shall  
 737 be grounds for a judicial stay of any warrant.

738 Section 19. Section 922.108, Florida Statutes, is  
 739 reenacted to read:

740 922.108 Sentencing orders in capital cases.—The sentence  
 741 of death must not specify any particular method of execution.  
 742 The wording or form of the sentencing order shall not be grounds  
 743 for reversal of any sentence.

744 Section 20. Section 924.055, Florida Statutes, is amended  
 745 to read:

746 924.055 Postconviction review in capital cases;  
 747 legislative findings and intent.—

748 (1) It is the intent of the Legislature to reduce delays  
 749 in capital cases and to ensure that all ~~appeals and~~  
 750 postconviction actions in capital cases are resolved as quickly  
 751 as possible ~~within 5 years~~ after the date a sentence of death is  
 752 imposed in the circuit court. ~~All capital postconviction actions~~  
 753 ~~must be filed as early as possible after the imposition of a~~  
 754 ~~sentence of death which may be during a direct appeal of the~~  
 755 ~~conviction and sentence.~~ A person sentenced to death or that

756 person's capital postconviction counsel must file any  
 757 postconviction ~~legal~~ action in compliance with the timeframes  
 758 ~~statutes of limitation~~ established in s. 924.056, s. 924.058,  
 759 and elsewhere in this chapter. Except as expressly allowed by s.  
 760 924.058 ~~s. 924.056(5)~~, a person sentenced to death or that  
 761 person's capital postconviction counsel may not file more than  
 762 one postconviction action in a sentencing court and one appeal  
 763 therefrom to the Florida Supreme Court, unless authorized by  
 764 law.

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

772 Section 21. Section 924.056, Florida Statutes, is amended  
 773 to read:

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

776 924.056 Capital postconviction proceedings.— This section  
 777 governs all postconviction proceedings in every capital case in  
 778 which the conviction and sentence of death have been affirmed on  
 779 direct appeal on or after July 1, 2015.

780 (1) APPOINTMENT OF POSTCONVICTION COUNSEL

781 (a) Upon the issuance of the mandate affirming a judgment  
 782 and sentence of death on direct appeal, the Supreme Court of  
 783 Florida shall at the same time issue an order appointing the

784 appropriate office of the Capital Collateral Regional Counsel.

785 (b) Within 30 days of being appointed, the regional counsel  
786 shall file a notice of appearance in the trial court or a motion  
787 to withdraw based on an actual conflict of interest or some  
788 other legal ground. Motions to withdraw filed more than 30 days  
789 after being appointed shall not be entertained unless based on  
790 an actual conflict of interest.

791 (c) The court shall conduct a hearing in accordance with s.  
792 924.059 if the regional counsel's motion to withdraw is based on  
793 an actual conflict. If the regional counsel files a motion to  
794 withdraw based on any other legal ground, the chief judge or  
795 assigned judge shall rule on the motion within 15 days of the  
796 filling of the motion. If the court determines that new  
797 postconviction counsel should be appointed, the court shall  
798 appoint another regional counsel and, only if a conflict exists  
799 with the replacement regional counsel, appoint new  
800 postconviction counsel from the statewide registry of attorneys  
801 compiled and maintained by the Justice Administrative Commission  
802 pursuant to s. 27.710.

803 (d) If the defendant requests without good cause that any  
804 attorney appointed under this subsection be removed or replaced,  
805 the court shall notify the defendant that no further state  
806 resources may be expended for postconviction representation for  
807 that defendant, unless the defendant withdraws the request to  
808 remove or replace postconviction counsel. If the defendant does  
809 not withdraw his or her request, then any appointed attorney  
810 must be removed from the case and no further state resources may  
811 be expended for the defendant's postconviction representation.

812 (2) PRELIMINARY PROCEDURES

813 (a) Within 30 days of the issuance of mandate affirming a  
 814 judgment and sentence of death on direct appeal, the chief judge  
 815 shall assign the case to a judge qualified under the Rules of  
 816 Judicial Administration to conduct capital proceedings.

817 (b) The assigned judge shall conduct a status conference no  
 818 later than 90 days after the judicial assignment, and shall hold  
 819 status conferences at least every 90 days thereafter until the  
 820 evidentiary hearing has been completed or the postconviction  
 821 motion has been ruled on without a hearing. The attorneys, with  
 822 leave of the trial court, may, with leave of the court, appear  
 823 electronically at the status conferences. Requests to appear  
 824 electronically shall be liberally granted. Pending motions,  
 825 disputes involving public records, or any other matters ordered  
 826 by the court shall be heard at the status conferences. The  
 827 inmate's presence is not required at status conferences held  
 828 pursuant to this paragraph.

829 (c) Within 45 days of appointment of postconviction  
 830 counsel, the defendant's trial counsel shall provide to  
 831 postconviction counsel all information pertaining to the  
 832 defendant's capital case which was obtained during the  
 833 representation of the defendant. Postconviction counsel shall  
 834 maintain the confidentiality of all confidential information  
 835 received.

836 (3) TIME LIMITATIONS ON FILING A POSTCONVICTION MOTION

837 (a) Any postconviction motion must be filed by the inmate  
 838 within one year after the judgment and sentence become final.  
 839 For the purposes of this subsection, a judgment is final:

840 1. Upon the expiration of the time permitted to file in the  
 841 United States Supreme Court a petition for writ of certiorari  
 842 seeking review of the Supreme Court of Florida decision  
 843 affirming a judgment and sentence of death; or

844 2. Upon the disposition of the petition for writ of  
 845 certiorari by the United States Supreme Court, if filed.

846 (b) No postconviction motion shall be filed or considered  
 847 pursuant to this subsection if filed beyond the time limitation  
 848 provided in paragraph (a) unless it alleges:

849 1. The facts on which the motion is predicated were unknown  
 850 to the movant or the movant's attorney and could not have been  
 851 ascertained by the exercise of due diligence;

852 2. The fundamental constitutional right asserted was not  
 853 established within the period provided for in paragraph (a) and  
 854 has been held to apply retroactively; or

855 3. Postconviction counsel, through neglect, failed to file  
 856 the motion.

857 (c) All petitions for extraordinary relief in which the  
 858 Supreme Court of Florida has original jurisdiction, including  
 859 petitions for writs of habeas corpus, shall be filed  
 860 simultaneously with the initial brief filed on behalf of the  
 861 death-sentenced inmate in the appeal of the circuit court's  
 862 order on the initial motion for postconviction relief filed  
 863 under this subsection.

864 (d) The time limitation provided in paragraph (a) is  
 865 established with the understanding that each inmate sentenced to  
 866 death will have counsel assigned and available to begin  
 867 addressing the inmate's postconviction issues within the time

868 specified in this subsection. Should the governor sign a death  
 869 warrant before the expiration of the time limitation provided in  
 870 paragraph (a), the Supreme Court of Florida, on a defendant's  
 871 request, will grant a stay of execution to allow any  
 872 postconviction relief motions to proceed in a timely manner.

873 (4) CONTENTS OF A POSTCONVICTION MOTION

874 (a) No state court shall consider a postconviction motion  
 875 unless the motion is fully pled. For the purposes of this  
 876 subsection, a fully pled postconviction motion is one which  
 877 complies with paragraph (b). The fully pled postconviction  
 878 motion must raise all cognizable claims that the defendant's  
 879 judgment or sentence was entered in violation of the  
 880 Constitution or laws of the United States or the Constitution or  
 881 the laws of the state, including any claim of ineffective  
 882 assistance of trial counsel or direct appeal counsel,  
 883 allegations of innocence, or that the state withheld evidence  
 884 favorable to the defendant.

885 (b) The defendant's postconviction motion shall be filed  
 886 under oath and shall be fully pled to include:

887 1. The judgment or sentence under attack and the court  
 888 which rendered the same;

889 2. A statement of each issue raised on appeal and the  
 890 disposition thereof;

891 3. Whether a previous postconviction motion has been filed  
 892 and, if so, the disposition of all previous claims raised in  
 893 postconviction litigation; if a previous motion or motions have  
 894 been filed, the reason or reasons the claim or claims in the  
 895 present motion were not raised in the former motion or motions;

896        4. The nature of the relief sought;  
 897        5. A fully detailed allegation of the factual basis for  
 898 any claim for which an evidentiary hearing is sought, including  
 899 the attachment of any document supporting the claim, the name  
 900 and address of any witness, the attachment of affidavits of the  
 901 witnesses or a proffer of the testimony;

902        6. A fully detailed allegation as to the basis for any  
 903 purely legal or constitutional claim for which an evidentiary  
 904 hearing is not required and the reason that this claim could not  
 905 have been or was not raised on direct appeal; and

906        7. A concise memorandum of applicable case law as to each  
 907 claim asserted.

908        (c) A postconviction motion and memorandum of law filed  
 909 under this subsection shall not exceed 75 pages exclusive of the  
 910 attachments. Attachments shall include, but are not limited to,  
 911 the judgment and sentence. The memorandum of law shall set forth  
 912 the applicable case law supporting the granting of relief as to  
 913 each separately pled claim.

914        (d) Claims raised in a postconviction motion that could  
 915 have or should have been raised at trial and, if properly  
 916 preserved, on direct appeal of the judgment and sentence, are  
 917 barred.

918        (e) A postconviction motion may not include a claim of  
 919 ineffective assistance of collateral postconviction counsel.

920        (f) A postconviction motion may not be amended without  
 921 court approval. In no instance shall such motion be amended  
 922 beyond the time limitations provided by subsection (3) for the  
 923 filing of a postconviction motion. If amendment is allowed, the



924 state shall file an amended answer within 20 days after the  
 925 amended motion is filed.

926 (g) Any postconviction motion that does not comply with any  
 927 requirement in this subsection shall not be considered in any  
 928 state court.

929 (5) PROCEDURE; EVIDENTIARY HEARING; DISPOSITION

930 (a) All pleadings in a postconviction proceeding shall be  
 931 filed with the clerk of the trial court and served on the  
 932 assigned judge, opposing party, and the attorney general. The  
 933 clerk shall immediately deliver to the chief judge or the  
 934 assigned judge any motion filed in a postconviction proceeding  
 935 along with the court file.

936 (b) If the defendant intends to offer expert testimony of  
 937 his or her mental status in a postconviction proceeding, the  
 938 state shall be entitled to have the defendant examined by its  
 939 own mental health expert. If the defendant fails to cooperate  
 940 with the state's expert, the trial court may, in its discretion,  
 941 proceed as provided in rule 3.202(e) of the Florida Rules of  
 942 Criminal Procedure. Reports provided to either party by an  
 943 expert witness shall be disclosed to opposing counsel upon  
 944 receipt.

945 (c) The state shall file its answer within 60 days of the  
 946 filing of an initial postconviction motion. The answer and  
 947 accompanying memorandum of law shall not exceed 75 pages,  
 948 exclusive of attachments and exhibits. The answer shall address  
 949 the legal sufficiency of any claim in the motion, respond to the  
 950 allegations of the motion, address any procedural bars, and  
 951 state the reasons that an evidentiary hearing is or is not

952 required. As to any claims of legal insufficiency or procedural  
 953 bar, the state shall include a short statement of any applicable  
 954 case law.

955 (d) No later than 30 days after the state files its answer  
 956 to an initial motion, the trial court shall hold a case  
 957 management conference. At the case management conference, both  
 958 parties shall disclose all documentary exhibits that they intend  
 959 to offer at the evidentiary hearing, provide an exhibit list of  
 960 all such exhibits, and exchange a witness list with the names  
 961 and addresses of any potential witnesses. All expert witnesses  
 962 shall be specifically designated on the witness list, and copies  
 963 of all expert reports shall be attached. At the case management  
 964 conference, the trial court shall:

965 1. Schedule an evidentiary hearing, to be held within 90  
 966 days, on claims listed by the defendant as requiring a factual  
 967 determination;

968 2. Hear argument on any purely legal claims not based of  
 969 disputed facts; and

970 3. Resolve disputes arising from the exchange of  
 971 information under this paragraph.

972 (e) If the court determines that an evidentiary hearing is  
 973 not necessary and that the defendant's postconviction motion is  
 974 legally insufficient or that the motion, files, and records in  
 975 the case show that the defendant is not entitled to relief, the  
 976 court shall, within 30 days of the conclusion of the case  
 977 management conference, deny the motion, setting forth a detailed  
 978 rationale therefore, and attaching or referencing such portions  
 979 of the record as are necessary to allow for meaningful appellate

980 review.

981 (f) Immediately following an evidentiary hearing, the trial  
 982 court shall order a transcript of the hearing which shall be  
 983 filed within 30 days. Within 30 days of receipt of the  
 984 transcript, the court shall render its order, ruling on each  
 985 claim considered at the evidentiary hearing and all other claims  
 986 raised in the postconviction motion, making detailed findings of  
 987 fact and conclusions of law with respect to each claim, and  
 988 attaching or referencing such portions of the record as are  
 989 necessary to allow for meaningful appellate review. The order  
 990 issued after the evidentiary hearing shall resolve all the  
 991 claims raised in the postconviction motion and shall be  
 992 considered the final order for purposes of appeal. The clerk of  
 993 the trial court shall promptly serve upon the parties and the  
 994 attorney general a copy of the final order, with a certificate  
 995 of service.

996 (g) Motions for rehearing shall be filed within 15 days of  
 997 the rendition of the trial court's order and a response thereto  
 998 filed within 10 days thereafter. The trial court's order  
 999 disposing of the motion for rehearing shall be rendered no later  
 1000 than 15 days after the response is filed.

1001 (h) An appeal may be taken by filing a notice to appeal  
 1002 with the Florida Supreme Court within 15 days of the entry of a  
 1003 final order on a capital postconviction motion. No interlocutory  
 1004 appeal shall be permitted.

1005 Section 22. Section 924.057, Florida Statutes, is amended  
 1006 to read:

1007 924.057 ~~Limitation on~~ Capital postconviction proceedings

1008 in cases in which the conviction and sentence of death were  
 1009 affirmed on direct appeal before July 1, 2015. ~~January 14,~~  
 1010 ~~2000. This section shall govern all capital postconviction~~  
 1011 ~~actions in cases in which the trial court imposed the sentence~~  
 1012 ~~of death before the effective date of this act.~~

1013 (1) Nothing in this act shall expand any right or time  
 1014 period allowed for the prosecution of capital postconviction  
 1015 claims in any case in which a postconviction action was  
 1016 commenced or should have been commenced prior to the effective  
 1017 date of this act.

1018 (2) Postconviction proceedings in every capital case in  
 1019 which the conviction and sentence of death have been affirmed on  
 1020 direct appeal before July 1, 2015, shall be governed by the  
 1021 rules and laws in effect immediately prior to the effective date  
 1022 of this act.

1023 ~~(2) Except as provided in s. 924.056(5), in every case in~~  
 1024 ~~which mandate has issued in the Florida Supreme Court concluding~~  
 1025 ~~at least one capital postconviction action in the state court~~  
 1026 ~~system, a successive capital postconviction action shall be~~  
 1027 ~~barred on the effective date of this act, unless the rules or~~  
 1028 ~~law in effect immediately prior to the effective date of this~~  
 1029 ~~act permitted the successive postconviction action, in which~~  
 1030 ~~case the action shall be barred on the date provided in~~  
 1031 ~~subsection (4).~~

1032 ~~(3) All capital postconviction actions pending on the~~  
 1033 ~~effective date of this act shall be barred, and shall be~~  
 1034 ~~dismissed with prejudice, unless fully pled in substantial~~  
 1035 ~~compliance with s. 924.058, or with any superseding order or~~

1036 ~~rule, on or before:~~

1037 ~~(a) The time in which the action would be barred by this~~  
 1038 ~~section if the action had not begun prior to the effective date~~  
 1039 ~~of this act, or~~

1040 ~~(b) Any earlier date provided by the rules or law, or~~  
 1041 ~~court order, in effect immediately prior to the effective date~~  
 1042 ~~of this act.~~

1043 ~~(4) In every capital case in which the trial court imposed~~  
 1044 ~~the sentence of death before the effective date of this act, a~~  
 1045 ~~capital postconviction action shall be barred unless it is~~  
 1046 ~~commenced on or before January 8, 2001, or any earlier date~~  
 1047 ~~provided by the rule or law in effect immediately prior to the~~  
 1048 ~~effective date of this act.~~

1049 Section 23. Section 924.058, Florida Statutes, is amended  
 1050 to read:

1051 (Substantial rewording of section. See s. 924.058, F.S., for  
 1052 present text.)

1053 924.058 Successive postconviction motions.— This section  
 1054 governs successive postconviction motions in all postconviction  
 1055 proceedings in every capital case in which the conviction and  
 1056 sentence of death have been affirmed on direct appeal on or  
 1057 after July 1, 2015. A postconviction motion is successive if a  
 1058 state court has previously ruled on a postconviction motion  
 1059 challenging the same judgment and sentence.

1060 (1) TIME LIMITATIONS ON FILING A SUCCESSIVE POSTCONVICTION  
 1061 MOTION

1062 (a) A successive postconviction motion is barred unless  
 1063 commenced by filing a fully pled successive postconviction

1064 motion within 90 days:  
 1065 1. After the facts giving rise to the claim were discovered  
 1066 or should have been discovered with the exercise of due  
 1067 diligence; or  
 1068 2. After the fundamental constitutional right asserted was  
 1069 established and held to apply retroactively.  
 1070 (b) No successive postconviction motion shall be filed or  
 1071 considered pursuant to this subsection if filed beyond the time  
 1072 limitation provided in paragraph (a) unless it alleges that  
 1073 postconviction counsel, through neglect, failed to file the  
 1074 motion.  
 1075 (2) CONTENTS OF A SUCCESSIVE POSTCONVICTION MOTION  
 1076 (a) No state court shall consider a successive  
 1077 postconviction motion unless the motion is fully pled. For the  
 1078 purposes of this subsection, a fully pled successive  
 1079 postconviction motion includes:  
 1080 1. All of the pleading requirements of an initial  
 1081 postconviction motion under s. 924.056;  
 1082 2. The disposition of all previous claims raised in  
 1083 postconviction proceedings and the reason or reasons the claim  
 1084 or claims raised in the present motion were not raised in the  
 1085 former motion or motions;  
 1086 3. If based upon newly discovered evidence, Brady v.  
 1087 Maryland, 373 U.S. 83 (1963), or Giglio v. United States, 405  
 1088 U.S. 150 (1972), the following:  
 1089 a. The names, addresses, and telephone numbers of all  
 1090 witnesses supporting the claim;  
 1091 b. A statement that the witness will be available, should

1092 an evidentiary hearing be scheduled, to testify under oath to  
 1093 the facts alleged in the motion or affidavit;

1094 c. If evidentiary support is in the form of documents,  
 1095 copies of all documents shall be attached, including any  
 1096 affidavits obtained; and

1097 d. As to any witness or document listed in the motion or  
 1098 attachment to the motion, a statement of the reason why the  
 1099 witness or document was not previously available.

1100 (b) A successive postconviction motion and memorandum of  
 1101 law filed under this subsection shall not exceed 25 pages  
 1102 exclusive of the attachments. Attachments shall include, but are  
 1103 not limited to, the judgment and sentence. The memorandum of law  
 1104 shall set forth the applicable case law supporting the granting  
 1105 of relief as to each separately pled claim.

1106 (c) Claims raised in a successive postconviction motion  
 1107 that could have or should have been raised at trial, on direct  
 1108 appeal of the judgment and sentence, if properly preserved, and  
 1109 in the initial postconviction motion, are barred.

1110 (d) A successive postconviction motion may not include a  
 1111 claim of ineffective assistance of collateral postconviction  
 1112 counsel.

1113 (e) A successive postconviction motion may not be amended  
 1114 without court approval. In no instance shall such motion be  
 1115 amended beyond the time limitations provided by subsection (1)  
 1116 for the filing of a successive postconviction motion. If  
 1117 amendment is allowed, the state shall file an amended answer  
 1118 within 20 days after the amended motion is filed.

1119 (f) Any successive postconviction motion that does not

1120 comply with any requirement in this subsection shall not be  
 1121 considered in any state court.

1122 (3) PROCEDURE; EVIDENTIARY HEARING; DISPOSITION

1123 (a) If the defendant intends to offer expert testimony of  
 1124 his or her mental status in a successive postconviction motion  
 1125 proceeding, the state shall be entitled to have the defendant  
 1126 examined by its own mental health expert. If the defendant fails  
 1127 to cooperate with the state's expert, the trial court may, in  
 1128 its discretion, proceed as provided in rule 3.202(e) of the  
 1129 Florida Rules of Criminal Procedure. Reports provided to either  
 1130 party by an expert witness shall be disclosed to opposing  
 1131 counsel upon receipt.

1132 (b) The state shall file its answer within 20 days of the  
 1133 filing of a successive postconviction motion. The answer shall  
 1134 not exceed 25 pages, exclusive of attachments and exhibits. The  
 1135 answer shall address the legal sufficiency of any claim in the  
 1136 motion, respond to the allegations of the motion, address any  
 1137 procedural bars, and state the reasons that an evidentiary  
 1138 hearing is or is not required. As to any claims of legal  
 1139 insufficiency or procedural bar, the answer shall include a  
 1140 short statement of any applicable case law.

1141 (c) No later than 30 days after the state files its answer  
 1142 to a successive postconviction motion, the trial court shall  
 1143 hold a case management conference. At the case management  
 1144 conference, both parties shall disclose all documentary exhibits  
 1145 that they intend to offer at the evidentiary hearing, provide an  
 1146 exhibit list of all such exhibits, and exchange a witness list  
 1147 with the names and addresses of any potential witnesses. All



1148 expert witnesses shall be specifically designated on the witness  
 1149 list, and copies of all expert reports shall be attached. At the  
 1150 case management conference, the trial court shall:

1151 1. Schedule an evidentiary hearing, to be held within 90  
 1152 days, on claims listed by the defendant as requiring a factual  
 1153 determination;

1154 2. Hear argument on any purely legal claims not based of  
 1155 disputed facts; and

1156 3. Resolve disputes arising from the exchange of  
 1157 information under this paragraph.

1158 (d) If the court determines that an evidentiary hearing is  
 1159 not necessary and that the defendant's successive postconviction  
 1160 motion is legally insufficient or that the motion, files, and  
 1161 records in the case show that the defendant is not entitled to  
 1162 relief, the court shall, within 30 days of the conclusion of the  
 1163 case management conference, deny the motion, setting forth a  
 1164 detailed rationale therefore, and attaching or referencing such  
 1165 portions of the record as are necessary to allow for meaningful  
 1166 appellate review.

1167 (e) Immediately following an evidentiary hearing, the trial  
 1168 court shall order a transcript of the hearing which shall be  
 1169 filed within 30 days. Within 30 days of receipt of the  
 1170 transcript, the court shall render its order, ruling on each  
 1171 claim considered at the evidentiary hearing and all other claims  
 1172 raised in the successive postconviction motion, making detailed  
 1173 findings of fact and conclusions of law with respect to each  
 1174 claim, and attaching or referencing such portions of the record  
 1175 as are necessary to allow for meaningful appellate review. The

1176 order issued after the evidentiary hearing shall resolve all the  
 1177 claims raised in the successive postconviction motion and shall  
 1178 be considered the final order for purposes of appeal. The clerk  
 1179 of the trial court shall promptly serve upon the parties and the  
 1180 attorney general a copy of the final order, with a certificate  
 1181 of service.

1182 (f) Motions for rehearing shall be filed within 15 days of  
 1183 the rendition of the trial court's order and a response thereto  
 1184 filed within 10 days thereafter. The trial court's order  
 1185 disposing of the motion for rehearing shall be rendered no later  
 1186 than 15 days after the response is filed.

1187 (g) An appeal may be taken by filing a notice to appeal  
 1188 with the Florida Supreme Court within 15 days of the entry of a  
 1189 final order on a capital postconviction motion. No interlocutory  
 1190 appeal shall be permitted.

1191 Section 24. Section 924.0581, Florida Statutes, is created  
 1192 to read:

1193 924.0581 Capital postconviction appeals to the Florida  
 1194 Supreme Court.—This section governs capital postconviction  
 1195 appeals to the Florida Supreme Court in every capital case in  
 1196 which the conviction and sentence of death have been affirmed on  
 1197 direct appeal on or after July 1, 2015.

1198 (1) INITIAL AND SUCCESSIVE POSTCONVICTION MOTION APPEALS

1199 (a) When the notice of appeal is filed in the Florida  
 1200 Supreme Court, the chief justice shall direct the appropriate  
 1201 chief judge of the circuit court to monitor the preparation of  
 1202 the complete record for timely filing in the Florida Supreme  
 1203 Court.

1204        (b) The complete record in a death penalty appeal shall  
 1205 include transcripts of all proceedings conducted in the lower  
 1206 court, all items required by rule 9.200 of the Florida Rules of  
 1207 Appellate Procedure, and any item listed in any order issued by  
 1208 the Florida Supreme Court. The record shall begin with the most  
 1209 recent mandate issued by the Florida Supreme Court; or, in the  
 1210 event the preceding appeal was disposed of without a mandate,  
 1211 the most recent filing not already transmitted to the Florida  
 1212 Supreme Court in a prior record. The record shall exclude any  
 1213 materials already transmitted to the Florida Supreme Court as  
 1214 the record in any prior appeal.

1215        (c) The Florida Supreme Court shall take judicial notice of  
 1216 the appellate records in all prior appeals and writ proceedings  
 1217 involving a challenge to the same judgment of conviction and  
 1218 sentence of death. Appellate records subject to judicial notice  
 1219 under section shall not be duplicated in the record transmitted  
 1220 for the appeal under review.

1221        (d) If the sentencing court has denied the initial or  
 1222 successive postconviction motion without an evidentiary hearing,  
 1223 the Florida Supreme Court shall initially review the case to  
 1224 determine whether the trial court correctly resolved the  
 1225 defendant's claims without an evidentiary hearing. If the  
 1226 Florida Supreme Court determines an evidentiary hearing should  
 1227 have been held, the court may remand the case for an evidentiary  
 1228 hearing. Jurisdiction shall be relinquished to the trial court  
 1229 for the purpose of conducting an evidentiary hearing on any  
 1230 issues identified in the Florida Supreme Court's order. The  
 1231 trial court must schedule an evidentiary hearing within 30 days

1232 of the Florida Supreme Court's order and conclude the hearing  
 1233 within 90 days of scheduling. Upon conclusion of the  
 1234 evidentiary hearing, the record shall be supplemented with the  
 1235 hearing transcript.

1236 (e) The defendant has 30 days from the date the record is  
 1237 filed to file an initial brief. The answer brief must be filed  
 1238 within 20 days after filing of the initial brief. The reply  
 1239 brief, if any, must be filed within 20 days after filing of the  
 1240 answer brief. The cross-reply brief, if any, shall be filed  
 1241 within 20 days thereafter. A brief submitted after these time  
 1242 periods is barred and shall not be heard.

1243 (f) Oral arguments shall be scheduled within 30 days after  
 1244 the filing of the defendant's replay brief.

1245 (g)1. The Florida Supreme Court shall render its decision  
 1246 within 180 days after oral arguments have concluded. If a denial  
 1247 of an action for postconviction relief is affirmed, the Governor  
 1248 may proceed to issue a warrant for execution.

1249 2. In instances where the Florida Supreme Court does not  
 1250 comply with subparagraph 1., the Chief Justice of the Florida  
 1251 Supreme Court shall, within 10 days after the expiration of the  
 1252 180 day deadline, submit a report to the Speaker of the Florida  
 1253 House of Representatives and the President of the Florida Senate  
 1254 explaining why a decision was not timely rendered. The Chief  
 1255 Justice shall submit a report to the Speaker of the Florida  
 1256 House of Representatives and the President of the Florida Senate  
 1257 every thirty days thereafter in which a decision is not rendered  
 1258 explaining the reasons therefore.

1259 (2) PETITIONS FOR EXTRAORDINARY RELIEF

1260        (a) Review proceedings under this subsection shall be  
 1261 treated as original proceedings under rule 9.100 of the Rules of  
 1262 Appellate Procedure, except as otherwise provided in this  
 1263 subsection.

1264        (b) A petition for extraordinary relief shall be in the  
 1265 form prescribed by rule 9.100 of the Rules of Appellate  
 1266 Procedure, may include supporting documents, and shall recite in  
 1267 the statement of facts:

1268            1. The date and nature of the lower tribunal's order sought  
 1269 to be reviewed;

1270            2. The name of the lower tribunal rendering the order;

1271            3. The nature, disposition, and dates of all previous court  
 1272 proceedings;

1273            4. if a previous petition was filed, the reason the claim  
 1274 in the present petition was not raised previously; and

1275            5. The nature of the relief sought.

1276        (c) 1. A petition for belated appeal shall include a  
 1277 detailed allegation of the specific acts sworn to by the  
 1278 petitioner or petitioner's counsel that constitute the basis for  
 1279 entitlement to belated appeal, including whether petitioner  
 1280 requested counsel to proceed with the appeal and the date of any  
 1281 such request, whether counsel misadvised the petitioner as to  
 1282 the availability of appellate review or the filing of the notice  
 1283 of appeal, or whether there were circumstances unrelated to  
 1284 counsel's action or inaction, including names of individuals  
 1285 involved and dates of the occurrences, that were beyond the  
 1286 petitioner's control and otherwise interfered with the  
 1287 petitioner's ability to file a timely appeal.

1288 2. A petition for belated appeal shall not be filed more  
 1289 than 1 year after the expiration of time for filing the notice  
 1290 of appeal from a final order denying relief pursuant to s.  
 1291 924.056 or s. 924.058, unless it alleges under oath with a  
 1292 specific factual basis that the petitioner:

1293 a. Was unaware an appeal had not been timely filed, was not  
 1294 advised of the right to an appeal, was misadvised as to the  
 1295 rights to an appeal, or was prevented from timely filing a  
 1296 notice of appeal due to circumstances beyond the petitioner's  
 1297 control; and

1298 b. Could not have ascertained such facts by the exercise of  
 1299 due diligence.

1300 (d) A petition alleging ineffective assistance of appellate  
 1301 counsel must include detailed allegations of the specific acts  
 1302 that constitute the alleged ineffective assistance of counsel on  
 1303 direct appeal and must be filed simultaneously with the initial  
 1304 brief in the appeal from the lower tribunal's final order  
 1305 denying relief pursuant to s. 924.056 or s. 924.058.

1306 (3) PETITIONS SEEKING RELIEF OF NONFINAL ORDERS IN DEATH  
 1307 PENALTY POSTCONVICTION PROCEEDINGS

1308 (a) This subsection applies to proceedings that invoke the  
 1309 jurisdiction of the supreme court for review of nonfinal orders  
 1310 issued in postconviction proceedings following the imposition of  
 1311 the death penalty. Review of such proceedings shall be treated  
 1312 as original proceedings under rule 9.100 of the Rules of  
 1313 Appellate Procedure, except as otherwise provided in this  
 1314 subsection.

1315 (b) Jurisdiction of the Florida Supreme Court shall be

1316 invoked by filing a petition with the clerk of the Florida  
 1317 Supreme Court within 30 days of rendition of the nonfinal order  
 1318 to be reviewed. A copy of the petition shall be served on the  
 1319 opposing party and furnished to the judge who issued the order  
 1320 to be reviewed. Either party to the death penalty postconviction  
 1321 proceedings may seek review under this subsection.

1322 (c) The petition shall be in the form prescribed by rule  
 1323 9.100 of the Rules of Appellate Procedure, and shall contain

- 1324 1. The basis for invoking the jurisdiction of the court;
- 1325 2. The date and nature of the order sought to be reviewed;
- 1326 3. The name of the lower tribunal rendering the order;
- 1327 4. The name, disposition, and dates of all previous trial,

1328 appellate, and postconviction proceedings relating to the  
 1329 conviction and death sentence that are the subject of the  
 1330 proceedings in which the order sought to be reviewed was  
 1331 entered;

1332 5. The facts on which the petitioner relies, with  
 1333 references to the appropriate pages of the supporting appendix;

1334 6. Argument in support of the petition, including an  
 1335 explanation of why the order departs from the essential  
 1336 requirements of law and how the order may cause material injury  
 1337 for which there is no adequate remedy on appeal, and appropriate  
 1338 citations of authority; and

1339 7. The nature of the relief sought.

1340 (d) The petition shall be accompanied by an appendix, as  
 1341 prescribed by rule 9.220 of the Rules of Appellate Proecdure,  
 1342 which shall contain the portions of the record necessary for a  
 1343 determination of the issues presented.

1344 (e) If the petition demonstrates a preliminary basis for  
 1345 relief or a departure from the essential requirements of law  
 1346 that may cause material injury for which there is no adequate  
 1347 remedy by appeal, the court may issue an order directing the  
 1348 respondent to show cause, within the time set by the court, why  
 1349 relief should not be granted. No response shall be permitted  
 1350 unless ordered by the court. Within 20 days after service of the  
 1351 response or such other time set by the court, the petitioner may  
 1352 serve a reply, which shall not exceed 15 pages in length, and  
 1353 supplemental appendix.

1354 (f) A stay of proceedings under this subsection is not  
 1355 automatic. The party seeking a stay must petition the Florida  
 1356 Supreme Court for a stay of proceedings. During the pendency of  
 1357 a review of a nonfinal order, unless a stay is granted by the  
 1358 Florida Supreme Court, the lower tribunal may proceed with all  
 1359 matters, except that the lower tribunal may not render a final  
 1360 order disposing of the cause pending review of the nonfinal  
 1361 order.

1362 (g) The parties may not file any other pleadings, motions,  
 1363 replies, or miscellaneous papers without leave of court.

1364 (h) Seeking review under this subsection shall not extend  
 1365 the time limitations in s. 924.056, s. 924.058, or s. 27.7081.

1366 Section 25. Effective July 1, 2013, section 924.0585,  
 1367 Florida Statutes, is created to read:

1368 924.0585 Capital postconviction proceedings; reporting  
 1369 requirements.—

1370 (1) The Florida Supreme Court shall annually report to the  
 1371 Speaker of the Florida House of Representatives and the



1372 President of the Florida Senate the status of each capital case  
 1373 in which a postconviction action has been filed that has been  
 1374 pending for more than three years. The report must include the  
 1375 name of the state court judge involved in the case.

1376 (2) In any capital postconviction proceeding in which it  
 1377 has been determined that an attorney of record was ineffective,  
 1378 the court making such determination shall furnish a copy of the  
 1379 findings of ineffectiveness to the Florida Bar for any  
 1380 appropriate disciplinary action. The Florida Bar shall submit an  
 1381 annual report to the Speaker of the Florida House of  
 1382 Representatives and the President of the Florida Senate listing  
 1383 the names of attorneys found ineffective, the findings of the  
 1384 court, and detailing what disciplinary action, if any, was taken  
 1385 by the Florida Bar. If no disciplinary action was taken, the  
 1386 report shall specify why no action was taken. An attorney that  
 1387 has been deemed ineffective in a capital case is ineligible to  
 1388 represent capital case defendants for 5 years.

1389 Section 26. Section 924.0585, Florida Statutes, as created  
 1390 by this act, is amended to read:

1391 924.0585 Capital postconviction proceedings; reporting  
 1392 requirements.—

1393 (3) A capital postconviction action filed in violation of  
 1394 the time limitations provided by statute is barred, and all  
 1395 claims raised therein are waived. A state court shall not  
 1396 consider any capital postconviction action filed in violation of  
 1397 s. 924.056 or s. 924.058. The Attorney General shall deliver to  
 1398 the Governor, the President of the Senate, and the Speaker of  
 1399 the House of Representatives a copy of any pleading or order

1400 that alleges or adjudicates any violation of this provision.

1401 Section 27. Section 924.059, Florida Statutes, is amended  
1402 to read:

1403 (Substantial rewording of section. See s. 924.059, F.S., for  
1404 present text.)

1405 924.059 Conflicts of interest in capital postconviction  
1406 proceedings.—In any capital postconviction proceeding in which  
1407 it is alleged that there is a conflict of interest with  
1408 postconviction counsel, the court shall hold a hearing within 30  
1409 days of such allegation to determine whether an actual conflict  
1410 exists and whether such conflict will adversely affect a  
1411 defendant's lawyer's performance. An actual conflict of  
1412 interest exists when an attorney actively represents conflicting  
1413 interests. To demonstrate an actual conflict, the defendant must  
1414 identify specific evidence suggesting that his or her interests  
1415 were or may be compromised. A possible, speculative, or merely  
1416 hypothetical conflict is insufficient to support an allegation  
1417 that a conflict of interest exists. The court must rule within  
1418 10 days of the conclusion of the hearing.

1419 Section 28. Section 924.0591, Florida Statutes, is created  
1420 to read:

1421 924.0591 Incompetence to proceed in capital postconviction  
1422 proceedings.—

1423 (1) A death-sentenced inmate pursuing collateral relief who  
1424 is found by the court to be mentally incompetent shall not be  
1425 proceeded against if there are factual matters at issue, the  
1426 development or resolution of which require the inmate's input.  
1427 However, all collateral relief issues that involve only matters

1428 of record and claims that do not require the inmate's input  
 1429 shall proceed in collateral proceedings notwithstanding the  
 1430 inmate's incompetency.

1431 (2) If, at any stage of a postconviction proceeding, the  
 1432 court determines that there are reasonable grounds to believe  
 1433 that a death-sentenced inmate is incompetent to proceed and that  
 1434 factual matters are at issue, the development or resolution of  
 1435 which require the inmate's input, a judicial determination of  
 1436 incompetency is required.

1437 (3) Collateral counsel may file a motion for competency  
 1438 determination and an accompanying certificate of counsel that  
 1439 the motion is made in good faith and on reasonable grounds to  
 1440 believe that the death-sentenced inmate is incompetent to  
 1441 proceed. The motion and certificate shall replace the signed  
 1442 oath by the inmate that otherwise must accompany a  
 1443 postconviction motion filed under s. 924.056 and s. 924.058.

1444 (4) The motion for competency examination shall be in  
 1445 writing and shall allege with specificity the factual matters at  
 1446 issue and the reason that a competency consultation with the  
 1447 inmate is necessary with respect to each factual matter  
 1448 specified. To the extent that it does not invade the lawyer-  
 1449 client privilege with collateral counsel, the motion shall  
 1450 contain a recital of the specific observations of, and  
 1451 conversations with, the death-sentenced inmate that have formed  
 1452 the basis of the motion.

1453 (5) If the court finds that there are reasonable grounds to  
 1454 believe that a death-sentenced inmate is incompetent to proceed  
 1455 in a postconviction proceeding in which factual matters are at

1456 issue, the development or resolution of which require the  
 1457 inmate's input, the court shall order the inmate examined by no  
 1458 more than 3, nor fewer than 2, experts before setting the matter  
 1459 for a hearing. The court may seek input from the death-sentenced  
 1460 inmate's counsel and the state attorney before appointment of  
 1461 the experts.

1462 (6) The order appointing experts shall:

1463 (a) Identify the purpose of the evaluation and specify the  
 1464 area of inquiry that should be addressed;

1465 (b) Specify the legal criteria to be applied; and

1466 (c) Specify the date by which the report shall be submitted  
 1467 and to whom it shall be submitted.

1468 (7) Counsel for both the death-sentenced inmate and the  
 1469 state may be present at the examination, which shall be  
 1470 conducted at a date and time convenient for all parties and the  
 1471 Department of Corrections.

1472 (8) On appointment by the court, the experts shall examine  
 1473 the death-sentenced inmate with respect to the issue of  
 1474 competence to proceed, as specified by the court in its order  
 1475 appointing the experts to evaluate the inmate, and shall  
 1476 evaluate the inmate as ordered.

1477 (a) The experts first shall consider factors related to the  
 1478 issue of whether the death-sentenced inmate meets the criteria  
 1479 for competence to proceed, that is, whether the inmate has  
 1480 sufficient present ability to consult with counsel with a  
 1481 reasonable degree of rational understanding and whether the  
 1482 inmate has a rational as well as factual understanding of the  
 1483 pending collateral proceedings.

1484 (b) In considering the issue of competence to proceed, the  
 1485 experts shall consider and include in their report:

1486 1. The inmate's capacity to understand the adversary nature  
 1487 of the legal process and the collateral proceedings;

1488 2. The inmate's ability to disclose to collateral counsel  
 1489 facts pertinent to the postconviction proceeding at issue; and

1490 3. Any other factors considered relevant by the experts and  
 1491 the court as specified in the order appointing the experts.

1492 (c) Any written report submitted by an expert shall:

1493 1. Identify the specific matters referred for evaluation;

1494 2. Describe the evaluative procedures, techniques, and  
 1495 tests used in the examination and the purpose or purposes for  
 1496 each;

1497 3. State the expert's clinical observations, findings, and  
 1498 opinions on each issue referred by the court for evaluation, and  
 1499 indicate specifically those issues, if any, on which the expert  
 1500 could not give an opinion; and

1501 4. Identify the sources of information used by the expert  
 1502 and present the factual basis for the expert's clinical findings  
 1503 and opinions.

1504 (9) If the experts find that the death-sentenced inmate is  
 1505 incompetent to proceed, the experts shall report on any  
 1506 recommended treatment for the inmate to attain competence to  
 1507 proceed. In considering the issues relating to treatment, the  
 1508 experts shall report on:

1509 (a) The mental illness or mental retardation causing the  
 1510 incompetence;

1511 (b) The treatment or treatments appropriate for the mental

1512 illness or mental retardation of the inmate and an explanation  
 1513 of each of the possible treatment alternatives in order of  
 1514 choices; and

1515 (c) The likelihood of the inmate attaining competence under  
 1516 the treatment recommended, an assessment of the probable  
 1517 duration of the treatment required to restore competence, and  
 1518 the probability that the inmate will attain competence to  
 1519 proceed in the foreseeable future.

1520 (10) Within 30 days after the experts have completed their  
 1521 examinations of the death-sentenced inmate, the court shall  
 1522 schedule a hearing on the issue of the inmate's competence to  
 1523 proceed.

1524 (11) If, after a hearing, the court finds the inmate  
 1525 competent to proceed, or, after having found the inmate  
 1526 incompetent, finds that competency has been restored, the court  
 1527 shall enter its order so finding and shall proceed with a  
 1528 postconviction motion. The inmate shall have 60 days to amend  
 1529 his or her postconviction motion only as to those issues that  
 1530 the court found required factual consultation with counsel.

1531 (12) If the court does not find the inmate incompetent, the  
 1532 order shall contain:

- 1533 (a) Findings of fact relating to the issues of competency;
- 1534 (b) Copies of the reports of the examining experts; and
- 1535 (c) Copies of any other psychiatric, psychological, or  
 1536 social work reports submitted to the court relative to the  
 1537 mental state of the death-sentenced inmate.

1538 (13) If the court finds the inmate incompetent or finds the  
 1539 inmate competent subject to the continuation of appropriate

1540 treatment, the court shall follow the procedures set forth in  
 1541 rule 3.212(c) of the Florida Rules of Criminal Procedure, except  
 1542 that, to the extent practicable, any treatment shall take place  
 1543 at a custodial facility under the direct supervision of the  
 1544 Department of Corrections.

1545 Section 29. Section 924.0592, Florida Statutes, is created  
 1546 to read:

1547 924.0592 Capital postconviction proceedings after a death  
 1548 warrant has been issued.--This section governs all  
 1549 postconviction proceedings in every capital case in which the  
 1550 conviction and sentence of death have been affirmed on direct  
 1551 appeal on or after July 1, 2015, and in which a death warrant  
 1552 has been issued.

1553 (1) Upon issuance of a death warrant pursuant to s. 922.052  
 1554 or s. 922.14, the issuing entity shall notify the chief judge of  
 1555 the circuit that sentenced the inmate to death. The chief judge  
 1556 shall assign the case to a judge qualified under the Rules of  
 1557 Judicial Administration to conduct capital cases immediately  
 1558 upon receipt of such notification.

1559 (2) Postconviction proceedings after a death warrant has  
 1560 been issued shall take precedence over all other cases. The  
 1561 assigned judge shall make every effort to resolve scheduling  
 1562 conflicts with other cases including cancellation or  
 1563 rescheduling of hearings or trials and requesting senior judge  
 1564 assistance.

1565 (3) The time limitations provided in s. 924.056 and s.  
 1566 924.058 do not apply after a death warrant has been issued. All  
 1567 postconviction motions filed after a death warrant has been

1568 issued shall be heard expeditiously considering the time  
 1569 limitations set by the date of execution and the time required  
 1570 for appellate review.

1571 (4) The location of any hearings after a death warrant is  
 1572 issued shall be determined by the trial judge considering the  
 1573 availability of witnesses or evidence, the security problems  
 1574 involved in the case, and any other factor determined by the  
 1575 trial court.

1576 (5) All postconviction motions filed after a death warrant  
 1577 is issued shall be considered successive motions and subject to  
 1578 the content requirement of s. 924.058.

1579 (6) The assigned judge shall schedule a case management  
 1580 conference as soon as reasonably possible after receiving  
 1581 notification that a death warrant has been issued. During the  
 1582 case management conference the court shall set a time for filing  
 1583 a postconviction motion, shall schedule a hearing to determine  
 1584 whether an evidentiary hearing should be held, and shall hear  
 1585 arguments on any purely legal claims not based on disputed  
 1586 facts. If the postconviction motion, files, and records in the  
 1587 case conclusively show that the movant is entitled to no relief,  
 1588 the motion may be denied without an evidentiary hearing. If the  
 1589 trial court determines that an evidentiary hearing should be  
 1590 held, the court shall schedule the hearing to be held as soon as  
 1591 reasonably possible considering the time limitations set by the  
 1592 date of execution and the time required for appellate review.

1593 (7) The assigned judge shall require all proceedings  
 1594 conducted pursuant to this section to be reported using the most  
 1595 advanced and accurate technology available in general use at the



1596 location of the hearing. The proceedings shall be transcribed  
 1597 expeditiously considering the time limitations set by the  
 1598 execution date.

1599 (8) The court shall obtain a transcript of all proceedings  
 1600 conducted pursuant to this section and shall render its order in  
 1601 accordance with s. 924.056(5)(e) as soon as possible after the  
 1602 hearing is concluded. A copy of the final order shall be  
 1603 electronically transmitted to the Supreme Court of Florida and  
 1604 to the attorneys of record. The record shall be immediately  
 1605 delivered to the clerk of the Supreme Court of Florida by the  
 1606 clerk of the trial court or as ordered by the assigned judge.  
 1607 The record shall also be electronically transmitted if the  
 1608 technology is available. A notice of appeal shall not be  
 1609 required to transmit the record.

1610 Section 30. Section 924.0593, Florida Statutes, is created  
 1611 to read:

1612 924.0593 Insanity at the time of execution.—

1613 (1) A person under sentence of death shall not be executed  
 1614 while insane to be executed. A person under sentence of death is  
 1615 insane for purposes of execution if the person lacks the mental  
 1616 capacity to understand the fact of the impending execution and  
 1617 the reason for it.

1618 (2) No motion for a stay of execution pending hearing,  
 1619 based on grounds of the inmate's insanity to be executed, shall  
 1620 be entertained by any court until such time as the Governor of  
 1621 Florida has held appropriate proceedings for determining the  
 1622 issue pursuant to s. 922.07.

1623 (3)(a) On determination of the Governor of Florida,

1624 subsequent to the signing of a death warrant for an inmate under  
 1625 sentence of death and pursuant to s. 922.07, that the inmate is  
 1626 sane to be executed, counsel for the inmate may move for a stay  
 1627 of execution and a hearing based on the inmate's insanity to be  
 1628 executed. The motion:

1629 1. Shall be filed in the circuit court of the circuit in  
 1630 which the execution is to take place and shall be heard by one  
 1631 of the judges of that circuit or such other judge as shall be  
 1632 assigned by the chief justice of the Florida Supreme Court to  
 1633 hear the motion. The state attorney of the circuit shall  
 1634 represent the State of Florida in any proceedings held on the  
 1635 motion; and

1636 2. Shall be in writing and shall contain a certificate of  
 1637 counsel that the motion is made in good faith and on reasonable  
 1638 grounds to believe that the prisoner is insane to be executed.

1639 (b) Counsel for the inmate shall file, along with the  
 1640 motion, all reports of experts that were submitted to the  
 1641 governor pursuant to s. 922.07. If any of the evidence is not  
 1642 available to counsel for the inmate, counsel shall attach to the  
 1643 motion an affidavit so stating, with an explanation of why the  
 1644 evidence is unavailable.

1645 (c) Counsel for the inmate and the state may submit such  
 1646 other evidentiary material and written submissions including  
 1647 reports of experts on behalf of the inmate that are relevant to  
 1648 determination of the issue.

1649 (d) A copy of the motion and all supporting documents shall  
 1650 be served on the Florida Department of Legal Affairs and the  
 1651 state attorney of the circuit in which the motion has been

1652 filed.  
 1653 (4) If the circuit judge, upon review of the motion and  
 1654 submissions, has reasonable grounds to believe that the inmate  
 1655 is insane to be executed, the judge shall grant a stay of  
 1656 execution and may order further proceedings which may include a  
 1657 hearing.

1658 (5) Any hearing on the inmate's insanity to be executed  
 1659 shall not be a review of the governor's determination, but shall  
 1660 be a hearing de novo. At the hearing, the issue the court must  
 1661 determine whether the inmate presently meets the criteria for  
 1662 insanity at time of execution, that is, whether the prisoner  
 1663 lacks the mental capacity to understand the fact of the pending  
 1664 execution and the reason for it.

1665 (6) The court may do any of the following as may be  
 1666 appropriate and adequate for a just resolution of the issues  
 1667 raised:

- 1668 (a) Require the presence of the inmate at the hearing;
- 1669 (b) Appoint no more than 3 disinterested mental health
- 1670 experts to examine the inmate with respect to the criteria for
- 1671 insanity to be executed and to report their findings and
- 1672 conclusions to the court; or

1673 (c) Enter such other orders as may be appropriate to  
 1674 effectuate a speedy and just resolution of the issues raised.

1675 (7) At hearings held pursuant to this section, the court  
 1676 may admit such evidence as the court deems relevant to the  
 1677 issues, including but not limited to the reports of expert  
 1678 witnesses, and the court shall not be strictly bound by the  
 1679 rules of evidence.

1680 (8) If, at the conclusion of the hearing, the court finds,  
 1681 by clear and convincing evidence, that the inmate is insane to  
 1682 be executed, the court shall enter its order continuing the stay  
 1683 of the death warrant; otherwise, the court shall deny the motion  
 1684 and enter its order dissolving the stay of execution.

1685 Section 31. Section 924.0594, Florida Statutes, is created  
 1686 to read:

1687 924.0594 Dismissal of postconviction proceedings.—This  
 1688 section applies only when an inmate seeks both to dismiss a  
 1689 pending postconviction proceedings and to discharge collateral  
 1690 counsel.

1691 (1) If an inmate files a motion to dismiss a pending  
 1692 postconviction motion and to discharge collateral counsel pro  
 1693 se, the Clerk of the Court shall serve copies of the motion on  
 1694 counsel of record for both the inmate and the state. Counsel of  
 1695 record may file responses within 10 days.

1696 (2) The trial judge shall review the motion and the  
 1697 responses and schedule a hearing. The inmate, collateral  
 1698 counsel, and the state shall be present at the hearing.

1699 (3) The judge shall examine the inmate at the hearing and  
 1700 shall hear argument of the inmate, collateral counsel, and the  
 1701 state. No fewer than 2 or more than 3 qualified experts shall be  
 1702 appointed to examine the inmate if the judge concludes that  
 1703 there are reasonable grounds to believe the inmate is not  
 1704 mentally competent for purposes of this section. The experts  
 1705 shall file reports with the court setting forth their findings.  
 1706 Thereafter, the court shall conduct an evidentiary hearing and  
 1707 enter an order setting forth findings of competency or

1708 incompetency.  
 1709 (4) If the inmate is found to be incompetent for purposes  
 1710 of this section, the court shall deny the motion without  
 1711 prejudice.  
 1712 (5) If the inmate is found to be competent for purposes of  
 1713 this section, the court shall conduct a complete  
 1714 (Durocher/Faretta) inquiry to determine whether the inmate  
 1715 knowingly, freely and voluntarily wants to dismiss pending  
 1716 postconviction proceedings and discharge collateral counsel.  
 1717 (6) If the court determines that the inmate has made the  
 1718 decision to dismiss pending postconviction proceedings and  
 1719 discharge collateral counsel knowingly, freely, and voluntarily,  
 1720 the court shall enter an order dismissing all pending  
 1721 postconviction proceedings and discharging collateral counsel.  
 1722 If the court determines that the inmate has not made the  
 1723 decision to dismiss pending postconviction proceedings and  
 1724 discharge collateral counsel knowingly, freely, and voluntarily,  
 1725 the court shall enter an order denying the motion without  
 1726 prejudice.  
 1727 (7) If the court denies the motion, the inmate may seek  
 1728 review pursuant to s. 924.0581(2). If the court grants the  
 1729 motion:  
 1730 (a) A copy of the motion, the order, and the transcript of  
 1731 the hearing or hearings conducted on the motion shall be  
 1732 forwarded to the Clerk of the Supreme Court of Florida within 30  
 1733 days; and  
 1734 (b) Discharged counsel shall, within 10 days after issuance  
 1735 of the order, file with the clerk of the circuit court two

1736 copies of a notice seeking review in the Supreme Court of  
 1737 Florida, and shall, within 20 days after the filing of the  
 1738 transcript, serve an initial brief. Both the inmate and the  
 1739 state may serve responsive briefs.

1740 (8) (a) Within 10 days of the rendition of an order granting  
 1741 a inmate's motion to discharge counsel and dismiss the motion  
 1742 for postconviction relief, discharged counsel must file with the  
 1743 clerk of the circuit court a notice seeking review in the  
 1744 Florida Supreme Court.

1745 (b) The circuit judge presiding over the motion to dismiss  
 1746 and discharge counsel shall order a transcript of the hearing to  
 1747 be prepared and filed with the clerk of the circuit court no  
 1748 later than 25 days from rendition of the final order. Within 30  
 1749 days of the granting of a motion to dismiss and discharge  
 1750 counsel, the clerk of the circuit court shall forward a copy of  
 1751 the motion, order, and transcripts of all hearings held on the  
 1752 motion to the clerk of the Florida Supreme Court.

1753 (c) Within 20 days of the filing of the record in the  
 1754 Florida Supreme Court, discharged counsel shall serve an initial  
 1755 brief. Both the state and the prisoner may serve responsive  
 1756 briefs. All briefs must be served and filed as prescribed by  
 1757 rule 9.210 of the Rules of Appellate Procedure.

1758 (d) The Florida Supreme Court shall rule on the motion  
 1759 within 60 days of the last brief filing deadline.

1760 Section 32. If any provision of this act or the  
 1761 application thereof to any person or circumstance is held  
 1762 invalid, the invalidity does not affect other provisions or  
 1763 applications of the act which can be given effect without the

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1764 | invalid provision or application, and to this end the provisions  
1765 | of this act are declared severable.

1766 |       Section 33. Except as otherwise provided herein, this act  
1767 | shall take effect July 1, 2015, contingent upon voter approval  
1768 | of HJR xxxx in the General Election of 2014.

1769