

**CS/CS/SB 1110** by **CJ, TR, Evers**; (Similar to CS/CS/CS/H 0489) Railroad Police Officers

568106	A	S	RS	ACJ, Hays	Delete L.42 - 48:	04/04 04:03 PM
919748	SA	S L	RCS	ACJ, Hays	Delete L.42 - 48:	04/04 04:03 PM
494616	A	S	RCS	ACJ, Hays	Delete L.157 - 187.	04/04 04:03 PM

**CS/SB 1140** by **CJ, Stargel**; (Compare to CS/H 0049) Drug Paraphernalia

129396	A	S L	RCS	ACJ, Hays	Delete L.20:	04/04 04:03 PM
--------	---	-----	-----	-----------	--------------	----------------

**CS/SB 400** by **CJ, Dean**; (Identical to CS/H 0611) False Reports to Law Enforcement Officers

**CS/SB 1126** by **CJ, Joyner (CO-INTRODUCERS) Stargel**; (Similar to CS/H 0691) Unlawful Possession of the Personal Identification Information of Another Person

**CS/SB 1372** by **JU, Bradley**; (Similar to H 7035) Pretrial Detention

**SB 1750** by **Negron**; (Similar to CS/H 7083) Postconviction Capital Case Proceedings

159370	A	S L	WD	ACJ, Joyner	Delete L.117 - 282.	04/04 04:03 PM
935908	A	S L	WD	ACJ, Joyner	Delete L.117 - 281.	04/04 04:03 PM
128118	A	S L	RCS	ACJ, Joyner	Delete L.117 - 281.	04/04 04:03 PM

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**  
**APPROPRIATIONS SUBCOMMITTEE ON CRIMINAL AND**  
**CIVIL JUSTICE**  
**Senator Bradley, Chair**  
**Senator Joyner, Vice Chair**

**MEETING DATE:** Thursday, April 4, 2013  
**TIME:** 8:30 —10:00 a.m.  
**PLACE:** *Mallory Horne Committee Room, 37 Senate Office Building*

**MEMBERS:** Senator Bradley, Chair; Senator Joyner, Vice Chair; Senators Altman, Braynon, Clemens, Dean, Diaz de la Portilla, Flores, Garcia, Grimsley, Hays, Smith, and Soto

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>CS/CS/SB 1110</b> Criminal Justice / Transportation / Evers (Similar CS/CS/CS/H 489)	Railroad Police Officers; Requiring the Governor to appoint one or more persons as special officers for a railroad or other common carrier under certain circumstances; authorizing the railroad or common carrier to temporarily employ a person as a special officer; requiring the special officer to have the same training and certification as a law enforcement officer; providing that a Class I, Class II, or Class III railroad is considered an "employing agency" for purposes of ss. 943.13 and 943.135(1), F.S.; providing responsibility of certain costs, etc.  TR 03/14/2013 Fav/CS CJ 04/01/2013 Fav/CS ACJ 04/04/2013 Fav/CS AP	Fav/CS Yeas 12 Nays 0
2	<b>CS/SB 1140</b> Criminal Justice / Stargel (Compare CS/H 49)	Drug Paraphernalia; Prohibiting the retail sale of certain drug paraphernalia; providing criminal penalties; repealing provisions relating to the retail sale of certain smoking pipes and smoking devices, etc.  CJ 04/01/2013 Fav/CS ACJ 04/04/2013 Fav/CS AP	Fav/CS Yeas 11 Nays 1
3	<b>CS/SB 400</b> Criminal Justice / Dean (Identical CS/H 611)	False Reports to Law Enforcement Officers; Providing that it is a third degree felony to knowingly give false information to a law enforcement officer concerning the alleged commission of a crime if the defendant has previously been convicted of such offense and the information is communicated in writing, or, if the information is communicated orally, the information is corroborated in a specified manner, etc.  CJ 03/04/2013 Not Considered CJ 03/11/2013 Fav/CS JU 04/01/2013 Favorable ACJ 04/04/2013 Favorable AP	Favorable Yeas 12 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**Appropriations Subcommittee on Criminal and Civil Justice  
Thursday, April 4, 2013, 8:30 —10:00 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	<b>CS/SB 1126</b> Criminal Justice / Joyner (Similar CS/H 691)	Unlawful Possession of the Personal Identification Information of Another Person; Defining the term "personal identification information"; providing that it is unlawful for a person to intentionally or knowingly possess, without authorization, any personal identification information of another person; creating criminal penalties; providing that possession of identification information of multiple individuals gives rise to an inference of illegality; providing that certain specified persons are exempt from provisions regarding the unlawful possession of personal identification information of another person, etc.  CJ 04/01/2013 Fav/CS ACJ 04/04/2013 Favorable AP	Favorable Yeas 12 Nays 0
5	<b>CS/SB 1372</b> Judiciary / Bradley (Similar H 7035)	Pretrial Detention; Providing additional factors a court may consider when ordering pretrial detention, etc.  JU 03/12/2013 Fav/CS CJ 04/01/2013 Favorable ACJ 04/04/2013 Favorable AP	Favorable Yeas 12 Nays 0
6	<b>SB 1750</b> Negron (Similar H 7083, Compare H 4005, H 4057, HJR 7081, S 1022, Link SJR 1740)	Postconviction Capital Case Proceedings; Citing this act as the "Timely Justice Act;" providing that the capital collateral regional counsel and the attorneys appointed pursuant to law shall file only those postconviction or collateral actions authorized by statute; removing a request to the Supreme Court to adopt by rule the provisions that limit the time for postconviction proceedings in capital cases; providing procedures that apply if an inmate seeks both to dismiss a pending postconviction proceeding and to discharge collateral counsel, etc.  JU 04/01/2013 Favorable ACJ 04/04/2013 Fav/CS AP	Fav/CS Yeas 10 Nays 2

Other Related Meeting Documents

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

**BILL:** CS/CS/CS/SB 1110

**INTRODUCER:** Criminal Justice Appropriations Subcommittee, Criminal Justice Committee,  
Transportation Committee, and Senator Evers

**SUBJECT:** Railroad Police Officers

**DATE:** April 2, 2013                      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Price	Eichin	TR	<b>Fav/CS</b>
2.	Erickson	Cannon	CJ	<b>Fav/CS</b>
3.	Cantral	Sadberry	ACJ	<b>Fav/CS</b>
4.			AP	
5.				
6.				

**Please see Section VIII. for Additional Information:**

- A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes  
B. AMENDMENTS.....  Technical amendments were recommended  
 Amendments were recommended  
 Significant amendments were recommended

**I. Summary:**

CS/CS/CS/SB 1110 provides that, until the Governor appoints or rejects the appointment of a special officer, a common carrier may temporarily employ a person as a special officer if the person complies with minimum qualifications for employment as a law enforcement officer. Notwithstanding any other provision of law, a special officer shall be required to have the same training as a law enforcement officer in accordance with these minimum qualifications and specified continuing education and training. A Class I, Class II, or Class III railroad shall be considered an employing agency for purposes of these minimum qualifications and specified continuing education and training, and pay all costs associated with continuing education of employed special officers.

The bill has a small, negative fiscal impact. The Criminal Justice Impact Conference has not met to determine the fiscal impact of this bill on prison bed population. However, the Department of Corrections' staff analysis<sup>1</sup> shows no fiscal impact on prison bed population.

<sup>1</sup> Department of Corrections, Staff Analysis of SB 1110, on file with the Subcommittee on Criminal and Civil Justice Appropriations.

The bill adds “railroad special officer” (defined in the bill) to the list of officers and positions for which the felony or misdemeanor degree of any specified assault and battery offense is reclassified when committed upon a listed officer or person in a listed position.

Sections 943.085-943.255, F.S., deal with definitions of relevant terms in ch. 943, F.S., the Criminal Justice Standards and Training Commission (CJSTC), minimum qualifications for employment, officer certification, education and training, and other matters. The bill modifies definitions of “law enforcement officer” and “employing agency” to specify that, for purposes of these statutes *only*, the definition of “law enforcement officer” includes special officers employed by a Class I, Class II, or Class III railroad and appointed by the Governor and an “employing agency” includes a Class I, Class II, or Class III railroad that employs special officers appointed by the Governor.

This bill amends the following sections of the Florida Statutes: 354.01 and 784.07.

## II. Present Situation:

### Law Enforcement Officer Certification and Training

Section 943.10, F.S., provides the following definitions applicable to ch. 943, FS.:

- A “law enforcement officer” means any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition also includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.<sup>2</sup>
- An “employing agency” means 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 non-juvenile detention facility.<sup>3</sup>

The Criminal Justice Standards and Training Commission (CJSTC) 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. Currently, the CJSTC certifies a person for employment as a law enforcement officer if:

- The person complies with s. 943.13(1)-(10), F.S.; and

---

<sup>2</sup> Section 943.10(1), F.S.

<sup>3</sup> Section 943.10(4), F.S.

- The employing agency complies with s. 943.133(2) and (3), F.S.<sup>4</sup>

Section 943.13, F.S., requires every person employed or appointed as a law enforcement officer 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 processed fingerprints on file with the employing agency (an alternative is provided for private correctional officers);
- Pass a physical examination by a licensed physician, physician assistant, or certified advanced registered nurse practitioner, based on specifications established by the CJSTC;
- Have a good moral character as determined by a background investigation under procedures established by the CJSTC;
- Execute and submit to the employing agency an affidavit-of-applicant form, adopted by the CJSTC, attesting to his or her compliance with specified subsections of the statute.
- 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
- Comply with the continuing training or education requirements of s. 943.135, F.S.

The definition of the term “law enforcement officer” only includes those elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof. As such, persons employed by private entities (e.g., special officers appointed by the Governor pursuant to s. 354.01, F.S., including railroad police) cannot be certified by the CJSTC as “law enforcement officers.” Similarly, the definition of the term “employing agency” only includes agencies or units of government or any municipality or the state or any political subdivision thereof. It does not include private entities (e.g., Class I or Class I railroads that employ special officers pursuant to s. 354.01, F.S.)

### **Railroads and Special Officers**

According to the U.S. Surface Transportation Board (STB),<sup>5</sup> railroads are classified based on their annual operating revenues. The Class to which a railroad belongs is determined by comparing its adjusted operating revenues for three consecutive years to the following scale:

---

<sup>4</sup> Section 943.1395(1), F.S. 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>5</sup> The STB was created in the ICC Termination Act of 1995 and is the successor agency to the Interstate Commerce Commission. The STB is an economic regulatory agency that Congress charged with resolving railroad rate and service disputes and reviewing proposed railroad mergers. The STB is decisionally independent, although it is administratively affiliated with the Department of Transportation. *See* <http://www.stb.dot.gov/stb/about/overview.html>.

Class I - \$250 million or more;  
Class II - \$20 million or more;  
Class III - \$0 to \$20 million.<sup>6</sup>

Florida's rail system is comprised of 2,786 miles of mainline track, which are primarily owned by 15 operating line-haul railroads and terminal or switching companies (81 miles are owned by the State).<sup>7</sup> Florida's rail system includes two Class I railroads,<sup>8</sup> one Class II railroad,<sup>9</sup> eleven Class III railroads,<sup>10</sup> and one railroad specializing in switching and terminals.<sup>11</sup> The largest operator in Florida is CSX Transportation, which owns more than 53 percent of the statewide track mileage.<sup>12</sup>

Section 354.01, F.S., authorizes the appointment of "special officers," who are persons employed by railroads and other common carriers for the protection of the carrier's employees, passengers, freight, equipment, and properties. Appointments of special officers are made by the Governor, and applicants are required to meet the law enforcement qualifications and training requirements of s. 943.13(1)-(10), F.S.<sup>13</sup> Special officer arrest powers are generally limited in that they can arrest persons, on or off the railroad's property, so long as the violation occurred on the property.<sup>14</sup>

Special officers are required to provide a \$5,000 surety bond to the Governor for the faithful performance of their duties, and may be removed by the Governor at any time.<sup>15</sup> Special officers are paid by their employing carrier – not by the state or any county.<sup>16</sup>

While special officers are required to meet the minimum standards that apply to law enforcement officers, they are not certified law enforcement officers because they do not work for an

---

<sup>6</sup> The following formula is used to adjust a railroad's operating revenues to eliminate the effects of inflation: Current Year's Revenues X (1991 Avg. Index /Current Year's Avg. Index). The average index (deflator factor) is based on the annual average Railroad Freight Price Index for all commodities. *Frequently Asked Questions*, Surface Transportation Board, available at <http://www.stb.dot.gov/stb/faqs.html>.

<sup>7</sup> *The Florida Rail System Plan: Investment Element* (December 2010), p. 2-1, available at <http://www.dot.state.fl.us/rail/PlanDevel/Documents/FinalInvestmentElement/A-2010FLRailPlan-InvestmentElement.pdf>.

<sup>8</sup> *Id.* (CSX Transportation and Norfolk Southern Corporation).

<sup>9</sup> *Id.* (Florida East Coast Railway).

<sup>10</sup> *Id.* (Alabama and Gulf Coast Railway, AN Railway, Bay Line Railroad, First Coast Railroad, Florida West Coast Railroad, Florida Central Railroad, Florida Midland Railroad, Florida Northern Railroad, Georgia and Florida Railway, Seminole Gulf Railway, and South Central Florida Express).

<sup>11</sup> *Id.* (Talleyrand Terminal).

<sup>12</sup> *Id.*

<sup>13</sup> Section 354.01, F.S. The FDLE states that, currently, the Governor grants a commission to railroad police officers who have the arrest authority equivalent to that of a deputy sheriff. They are duly sworn officers on railroad property with full arrest powers and the authority to investigate crimes. According to the FDLE, the bill does not seek to expand the scope of their existing authority in any way. The FDLE further states that, while rail police currently meet or exceed all requirements for state certification as law enforcement officers, these police are not under the administrative oversight of the CJSTC. In addition, there are no continuing education and training requirements for these police. Analysis of SB 1110 (dated February 26, 2013), Florida Department of Law Enforcement (on file with the Committee on Criminal Justice). This analysis is further cited as "FDLE Analysis."

<sup>14</sup> *Id.*

<sup>15</sup> Sections 354.03 and 354.05, F.S.

<sup>16</sup> Section 354.04, F.S.

“employing agency” as defined in s. 943.10(4), F.S. Railroads and common carriers that employ special officers are not considered employing agencies because they are not governmental entities.

### **Reclassification of Assault and Battery Offenses Committed Against Specified Persons**

Section 784.07, F.S., reclassifies the misdemeanor or felony degree of assault and battery offenses committed upon the following types of employees or persons:

- A law enforcement officer;
- A firefighter;
- An emergency medical care provider;
- A traffic accident investigation officer;
- A nonsworn law enforcement agency employee certified as an agency inspector, a blood alcohol analyst, or a breath test operator while such employee is in uniform and engaged in processing, testing, evaluating, analyzing, or transporting a person who is detained or under arrest for DUI;
- A law enforcement explorer;
- A traffic infraction enforcement officer;
- A parking enforcement specialist;
- A person licensed as a security officer and wearing a uniform that bears at least one patch or emblem visible at all times that clearly identifies the employing agency and clearly identifies the person as a licensed security officer; and
- A security officer employed by the board of trustees of a community college.

Section 784.07, F.S., applies whenever any person is charged with knowingly committing an assault or battery upon one of these persons while that person is engaged in the lawful performance of his or her duties. The reclassification of degree of the offense depends on the assault or battery offense charged:

- 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 aggravated assault, from a third degree felony to a second degree felony, and any person convicted of aggravated assault upon a law enforcement officer is subject to a mandatory three-year minimum term of imprisonment.
- In the case of aggravated battery, from a second degree felony to a first degree felony, and any person convicted of aggravated battery of a law enforcement officer is subject to a mandatory five-year minimum term of imprisonment.

Further, if the person, during the commission of a battery subject to reclassification as a third degree felony, possessed:

- A firearm or destructive device, as defined, the person is subject to a mandatory minimum term of imprisonment of three years.

- A semiautomatic firearm and its high-capacity detachable box magazine, as defined, or a machine gun, as defined, the person is subject to a mandatory minimum term of imprisonment of eight years.

Reclassifying an offense has the effect of increasing the maximum sentence that can be imposed for an offense. The maximum sentence that can be imposed for a criminal offense is generally based on the degree of the misdemeanor or felony. The maximum sentence for:

- A second degree misdemeanor is 60 days in a county jail.
- A first degree misdemeanor, one year in a county jail.
- A third degree felony, 5 years in state prison.
- A second degree felony, 15 years in state prison.
- A first degree felony, generally 30 years in state prison.<sup>17</sup>

Fines may also be imposed, and these fines escalate based on the degree of the offense.<sup>18</sup>

The offense severity ranking level of applicable reclassified felony offenses is as follows:

- Reclassified battery: Level 4.
- Reclassified aggravated assault: Level 6.
- Reclassified aggravated battery: Level 7.<sup>19</sup>

Additionally, s. 784.07, F.S., provides that adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, and the defendant is not eligible for statutory gain-time or any form of discretionary early release, other than pardon or executive clemency, or conditional medical release, prior to serving the minimum sentence.

### III. Effect of Proposed Changes:

**Section 1** amends s. 354.01, F.S., to provide that, until the Governor appoints or rejects the appointment of a special officer, a common carrier may temporarily employ a person as a special officer if the person complies with the qualification for employment as a law enforcement officer in s. 943.13, F.S. (minimum qualifications for employment or appointment). Notwithstanding any other provision of law, a special officer shall be required to have the same training as a law enforcement officer in accordance with s. 943.13, F.S., and s. 943.135(1), F.S. (continuing education and training). A Class I, Class II, or Class III railroad shall be considered an employing agency for purposes of s. 943.13, F.S., and s. 943.135(1), F.S., and shall pay all costs associated with continuing education of employed special officers.

**Section 2** amends s. 784.07, F.S., to define “railroad special officer” to mean a person employed by a Class I, Class II, or Class III railroad and appointed or pending appointment by the

<sup>17</sup> Section 775.082, F.S.

<sup>18</sup> Section 775.083, F.S.

<sup>19</sup> Section 921.0022, F.S. Sentence points accrue based upon the ranking of a non-capital felony offense with higher-level offenses accruing more sentence points than lower-ranking offenses. These points, along with points accrued for additional and prior offenses and other factors, are entered into a statutorily-derived mathematical calculation to determine the lowest possible sentence.

Governor pursuant to s. 354.01, F.S. The bill adds railroad special officer to the list of officers and positions for which the misdemeanor or felony degree of any specified assault and battery offense is reclassified when committed upon a listed officer or person in a listed position.

**Section 3** amends s. 943.10(1), F.S., to provide that, for purposes of ss. 943.085-943.255, F.S., *only*, the definition of “law enforcement officer” includes special officers employed by a Class I or Class II railroad and appointed by the Governor pursuant to s. 354.01, F.S. The bill also amends s. 943.10(4), F.S., to provide that, for purposes of ss. 943.085-943.255, F.S., *only*, the definition of “employing agency” also includes a Class I or Class II railroad that employs special officers pursuant to s. 354.01, F.S.<sup>20</sup>

#### IV. Constitutional Issues:

##### A. Municipality/County Mandates Restrictions:

None.

##### B. Public Records/Open Meetings Issues:

None.

##### C. Trust Funds Restrictions:

None.

#### V. Fiscal Impact Statement:

##### A. Tax/Fee Issues:

None.

##### B. Private Sector Impact:

The bill provides that a Class I, Class II, or Class III railroad that employs special officers incurs all costs associated continuing education of the employed special officers.

##### C. Government Sector Impact:

The FDLE stated that CS/SB 1110 would make railroad special officers eligible to receive monies from the Criminal Justice Standards and Training Trust Fund for advanced and specialized training that is delivered by Florida’s forty criminal justice training centers. This would be a recurring cost of approximately \$1,800 per year (based on the current disbursement amount of \$67 per officer with an officer count of 27) beginning in FY 2013-14 and continuing every year thereafter. This cost may increase or decrease depending on the availability of funds for disbursement to the training centers.<sup>21</sup>

<sup>20</sup> Class III railroads are not referenced. See “Technical Deficiencies” section of this analysis.

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

It is unclear if this analysis is equally applicable to CS/CS SB 1110. An FDLE analysis of CS/CS/SB 1110 was not available at the time this analysis was completed.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**Recommended CS/CS/CS by Criminal and Civil Justice Appropriations on April 4, 2013:**

The committee substitute:

- Removes certification for special officers who are temporarily employed with common carriers, in accordance with s. 943.13, F.S., and 943.135(1), F.S.
- Removes the amendments to s. 943.10, F.S., that revised the definitions of a “law enforcement officer” and “employing agency”.

**CS/CS by Criminal Justice on April 1, 2013:**

- Provides that, until the Governor appoints or rejects the appointment of a special officer, a common carrier may temporarily employ a person as a special officer if the person complies with the minimum qualifications for employment or appointment in s. 943.13, F.S.
- Provides that, notwithstanding any other provision of law, a special officer shall be required to have the same training and certification as a law enforcement officer in accordance with s. 943.13, F.S., and s. 943.135(1), F.S. (continuing education and training).
- Revises the definition of “railroad special officer” in s. 784.07, F.S. (reclassification of assault and battery offenses on specified officers and persons in specified positions) to mean a person employed by a Class I, Class II, or Class III railroad and appointed or pending appointment by the Governor pursuant to s. 354.01, F.S. (appointment of special officers).
- Reclassifies the misdemeanor or felony degree of specified assault and battery offenses committed upon “railroad special officers” (as defined).

**CS by Transportation on March 14, 2013:**

The CS requires a Class I or Class II railroad that employs special officers, as a non-public employing entity, to incur all costs associated with certification and continuing education of the employed special officers, thereby removing a conflict with existing law that prohibits such officers from receiving any fees from the state.

B. Amendments:

None.

---

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

---



568106

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
04/04/2013	.	
	.	
	.	
	.	

---

Appropriations Subcommittee on Criminal and Civil Justice (Hays)  
recommended the following:

**Senate Amendment**

Delete lines 42 - 48  
and insert:

shall have the same training as a law enforcement officer in  
accordance with s. 943.13 and s. 943.135(1). A Class I, Class  
II, or Class III railroad shall be considered an employing  
agency for purposes of s. 943.13 and s. 943.135(1), and shall  
pay all costs associated with the training and continuing  
education of employed special officers.



919748

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/04/2013	.	
	.	
	.	
	.	

---

Appropriations Subcommittee on Criminal and Civil Justice (Hays)  
recommended the following:

1           **Senate Substitute for Amendment (568106) (with title**  
2 **amendment)**

3  
4           Delete lines 42 - 48  
5 and insert:

6  
7           shall have the same training as a law enforcement officer in  
8 accordance with s. 943.13 and s. 943.135(1). A Class I, Class  
9 II, or Class III railroad shall be considered an employing  
10 agency for purposes of s. 943.13 and s. 943.135(1), and shall  
11 pay all costs associated with the training and continuing  
12 education of employed special officers.



919748

13  
14  
15  
16  
17  
18  
19

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete line 9

and insert:

training as a law enforcement officer



494616

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/04/2013	.	
	.	
	.	
	.	

Appropriations Subcommittee on Criminal and Civil Justice (Hays)  
recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 157 - 187.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete lines 16 - 22

and insert:

committed against a railroad special officer;  
providing an

By the Committees on Criminal Justice; and Transportation; and  
Senator Evers

591-03345-13

20131110c2

1 A bill to be entitled  
2 An act relating to railroad police officers; amending  
3 s. 354.01, F.S.; requiring the Governor to appoint one  
4 or more persons as special officers for a railroad or  
5 other common carrier under certain circumstances;  
6 authorizing the railroad or common carrier to  
7 temporarily employ a person as a special officer;  
8 requiring the special officer to have the same  
9 training and certification as a law enforcement  
10 officer; providing that a Class I, Class II, or Class  
11 III railroad is considered an "employing agency" for  
12 purposes of ss. 943.13 and 943.135(1), F.S.; providing  
13 responsibility of certain costs; amending s. 784.07,  
14 F.S.; defining the term "railroad special officer";  
15 providing for reclassification of certain offenses  
16 committed against a railroad special officer; amending  
17 s. 943.10, F.S.; including special officers employed  
18 by a railroad or other common carrier within the  
19 definition of "law enforcement officer" and including  
20 certain railroads within the definition of "employing  
21 agency" for purposes of specified provisions relating  
22 to law enforcement officer standards; providing an  
23 effective date.

24  
25 Be It Enacted by the Legislature of the State of Florida:

26  
27 Section 1. Section 354.01, Florida Statutes, is amended to  
28 read:  
29 354.01 Appointment of special officers.—Upon the

Page 1 of 7

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

591-03345-13

20131110c2

30 application of any railroad or other common carrier doing  
31 business in this state, the Governor shall appoint one or more  
32 persons who have met the law enforcement qualifications and  
33 training requirements of s. 943.13 ~~943.13(1)~~ ~~(10)~~ as special  
34 officers for the protection and safety of such carriers; their  
35 passengers and employees; and the property of such carriers,  
36 passengers, and employees. However, until the Governor has  
37 either appointed or rejected the appointment of the special  
38 officer, a common carrier may temporarily employ a person as a  
39 special officer if the person complies with the qualifications  
40 for employment as a law enforcement officer in s. 943.13.  
41 Notwithstanding any other provision of law, a special officer  
42 shall be required to have the same training and certification as  
43 a law enforcement officer in accordance with s. 943.13 and s.  
44 943.135(1) and a Class I, Class II, or Class III railroad shall  
45 be considered an employing agency for purposes of s. 943.13 and  
46 s. 943.135(1), and shall pay all costs associated with the  
47 certification and continuing education of employed special  
48 officers.

49 Section 2. Section 784.07, Florida Statutes, is amended to  
50 read:

51 784.07 Assault or battery of law enforcement officers,  
52 firefighters, emergency medical care providers, public transit  
53 employees or agents, or other specified officers;  
54 reclassification of offenses; minimum sentences.—

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

56 (a) "Emergency medical care provider" means an ambulance  
57 driver, emergency medical technician, paramedic, registered  
58 nurse, physician as defined in s. 401.23, medical director as

Page 2 of 7

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

591-03345-13 20131110c2

59 defined in s. 401.23, or any person authorized by an emergency  
 60 medical service licensed under chapter 401 who is engaged in the  
 61 performance of his or her duties. The term "emergency medical  
 62 care provider" also includes physicians, employees, agents, or  
 63 volunteers of hospitals as defined in chapter 395, who are  
 64 employed, under contract, or otherwise authorized by a hospital  
 65 to perform duties directly associated with the care and  
 66 treatment rendered by the hospital's emergency department or the  
 67 security thereof.

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

73 (c) "Law enforcement explorer" means any person who is a  
 74 current member of a law enforcement agency's explorer program  
 75 and who is performing functions other than those required to be  
 76 performed by sworn law enforcement officers on behalf of a law  
 77 enforcement agency while under the direct physical supervision  
 78 of a sworn officer of that agency and wearing a uniform that  
 79 bears at least one patch that clearly identifies the law  
 80 enforcement agency that he or she represents.

81 (d) "Law enforcement officer" includes a law enforcement  
 82 officer, a correctional officer, a correctional probation  
 83 officer, a part-time law enforcement officer, a part-time  
 84 correctional officer, an auxiliary law enforcement officer, and  
 85 an auxiliary correctional officer, as those terms are  
 86 respectively defined in s. 943.10, and any county probation  
 87 officer; an employee or agent of the Department of Corrections

591-03345-13 20131110c2

88 who supervises or provides services to inmates; an officer of  
 89 the Parole Commission; a federal law enforcement officer as  
 90 defined in s. 901.1505; and law enforcement personnel of the  
 91 Fish and Wildlife Conservation Commission or the Department of  
 92 Law Enforcement.

93 (e) "Public transit employees or agents" means bus  
 94 operators, train operators, revenue collectors, security  
 95 personnel, equipment maintenance personnel, or field  
 96 supervisors, who are employees or agents of a transit agency as  
 97 described in s. 812.015(1)(1).

98 (f) "Railroad special officer" means a person employed by a  
 99 Class I, Class II, or Class III railroad and appointed or  
 100 pending appointment by the Governor pursuant to s. 354.01.

101 (2) Whenever any person is charged with knowingly  
 102 committing an assault or battery upon a law enforcement officer,  
 103 a firefighter, an emergency medical care provider, a railroad  
 104 special officer, a traffic accident investigation officer as  
 105 described in s. 316.640, a nonsworn law enforcement agency  
 106 employee who is certified as an agency inspector, a blood  
 107 alcohol analyst, or a breath test operator while such employee  
 108 is in uniform and engaged in processing, testing, evaluating,  
 109 analyzing, or transporting a person who is detained or under  
 110 arrest for DUI, a law enforcement explorer, a traffic infraction  
 111 enforcement officer as described in s. 316.640, a parking  
 112 enforcement specialist as defined in s. 316.640, a person  
 113 licensed as a security officer as defined in s. 493.6101 and  
 114 wearing a uniform that bears at least one patch or emblem that  
 115 is visible at all times that clearly identifies the employing  
 116 agency and that clearly identifies the person as a licensed

591-03345-13 20131110c2

117 security officer, or a security officer employed by the board of  
 118 trustees of a community college, while the officer, firefighter,  
 119 emergency medical care provider, railroad special officer,  
 120 traffic accident investigation officer, traffic infraction  
 121 enforcement officer, inspector, analyst, operator, law  
 122 enforcement explorer, parking enforcement specialist, public  
 123 transit employee or agent, or security officer is engaged in the  
 124 lawful performance of his or her duties, the offense for which  
 125 the person is charged shall be reclassified as follows:

126 (a) In the case of assault, from a misdemeanor of the  
 127 second degree to a misdemeanor of the first degree.

128 (b) In the case of battery, from a misdemeanor of the first  
 129 degree to a felony of the third degree.

130 (c) In the case of aggravated assault, from a felony of the  
 131 third degree to a felony of the second degree. Notwithstanding  
 132 any other provision of law, any person convicted of aggravated  
 133 assault upon a law enforcement officer shall be sentenced to a  
 134 minimum term of imprisonment of 3 years.

135 (d) In the case of aggravated battery, from a felony of the  
 136 second degree to a felony of the first degree. Notwithstanding  
 137 any other provision of law, any person convicted of aggravated  
 138 battery of a law enforcement officer shall be sentenced to a  
 139 minimum term of imprisonment of 5 years.

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

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

Page 5 of 7

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

591-03345-13 20131110c2

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

150  
 151 Notwithstanding s. 948.01, adjudication of guilt or imposition  
 152 of sentence shall not be suspended, deferred, or withheld, and  
 153 the defendant is not eligible for statutory gain-time under s.  
 154 944.275 or any form of discretionary early release, other than  
 155 pardon or executive clemency, or conditional medical release  
 156 under s. 947.149, prior to serving the minimum sentence.

157 Section 3. Subsections (1) and (4) of section 943.10,  
 158 Florida Statutes, are amended to read:

159 943.10 Definitions; ss. 943.085-943.255.—The following  
 160 words and phrases as used in ss. 943.085-943.255 are defined as  
 161 follows:

162 (1) "Law enforcement officer" means any person who is  
 163 elected, appointed, or employed full time by any municipality or  
 164 the state or any political subdivision thereof; who is vested  
 165 with authority to bear arms and make arrests; and whose primary  
 166 responsibility is the prevention and detection of crime or the  
 167 enforcement of the penal, criminal, traffic, or highway laws of  
 168 the state. This definition includes all certified supervisory  
 169 and command personnel whose duties include, in whole or in part,  
 170 the supervision, training, guidance, and management  
 171 responsibilities of full-time law enforcement officers, part-  
 172 time law enforcement officers, or auxiliary law enforcement  
 173 officers but does not include support personnel employed by the  
 174 employing agency. For purposes of ss. 943.085-943.255 only, this

Page 6 of 7

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

591-03345-13

20131110c2

175 definition also includes special officers employed by a Class I  
176 or Class II railroad and appointed by the Governor pursuant to  
177 s. 354.01.

178 (4) "Employing agency" means any agency or unit of  
179 government or any municipality or the state or any political  
180 subdivision thereof, or any agent thereof, which has  
181 constitutional or statutory authority to employ or appoint  
182 persons as officers. The term also includes any private entity  
183 which has contracted with the state or county for the operation  
184 and maintenance of a nonjuvenile detention facility. For  
185 purposes of ss. 943.085-943.255 only, the term also includes a  
186 Class I or Class II railroad that employs special officers  
187 pursuant to s. 354.01.

188 Section 4. This act shall take effect July 1, 2013.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

BILL: CS/CS/SB 1140

INTRODUCER: Criminal Justice Appropriations Subcommittee, Criminal Justice Committee and Senator Stargel

SUBJECT: Drug Paraphernalia

DATE: April 2, 2013                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Cantral</u>	<u>Sadberry</u>	<u>ACJ</u>	<u>Fav/CS</u>
3.	_____	_____	<u>AP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

CS/SB 1140 makes it unlawful for a person to knowingly and willfully sell or offer for sale at retail certain drug paraphernalia, which are objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing cannabis, cocaine, hashish, hashish oil, or nitrous oxide into the human body. Pipes primarily made of briar, meerschaum, clay or corn cob are specifically excluded. A first violation is a first degree misdemeanor; a second or subsequent violation is a third degree felony.

The bill also repeals s. 569.0073, F.S. (providing that it is unlawful for a person to offer for sale certain smoking pipes and smoking devices unless the person has a retail tobacco products dealer permit and meets other specified criteria).

The bill has an indeterminate fiscal impact. On March 21, 2013, the Criminal Justice Impact Conference met and determined the bill has an indeterminate prison bed impact.

This bill substantially amends section 893.147 of the Florida Statutes. The bill also repeals section 569.0073, Florida Statutes.

## II. Present Situation:

### Drug Paraphernalia Laws

Smoking pipes and devices are commonly found at specialty stores that sell a variety of accessories associated with the use of illegal drugs.

Section 893.145, F.S., defines “drug paraphernalia” as all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, transporting, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this ch. 893, F.S., or s. 877.111, F.S. (prohibiting inhaling, etc. certain substances). Drug paraphernalia is deemed to be contraband which shall be subject to civil forfeiture. The term includes, but is not limited to a list of items specified in the definition. Relevant to the bill, the list includes objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing cannabis, cocaine, hashish, hashish oil, or nitrous oxide into the human body, such as:

- Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes, with or without screens, permanent screens, hashish heads, or punctured metal bowls.
- Water pipes.
- Carburetion tubes and devices.
- Smoking and carburetion masks.
- Chamber pipes.
- Carburetor pipes.
- Electric pipes.
- Air-driven pipes.
- Chillums.
- Bongs.
- Ice pipes or chillers.

A court, jury, or other authority, when determining in a criminal case whether an object constitutes drug paraphernalia, must consider specified facts surrounding the connection between the item and the individual arrested for possessing drug paraphernalia. A court or jury is required to consider a number of factors (in addition to other logically relevant factors) in determining whether an object is drug paraphernalia, such as proximity of the object in time and space to a controlled substance, the existence of residue of controlled substances on the object, and expert testimony concerning its use.<sup>1</sup>

It is a first degree misdemeanor<sup>2</sup> to use or possess drug paraphernalia to produce a controlled substance or introduce a controlled substance into the body,<sup>3</sup> or to advertise objects in a

---

<sup>1</sup> Section 893.146, F.S.

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

<sup>3</sup> Section 893.147(1), F.S.

publication when it is known or reasonable to know that the purpose is to promote the sale of such objects for use as drug paraphernalia.<sup>4</sup>

It is a third degree felony<sup>5</sup> to deliver, manufacture with intent to deliver, or possess with intent to deliver drug paraphernalia when it is known or reasonable to know that it will be used to produce a controlled substance or introduce a controlled substance into the body.<sup>6</sup>

It is also a third degree felony to use, possess with the intent to use, or manufacture with the intent to use drug paraphernalia when it is known or reasonable to know that it will be used to transport a controlled substance or contraband as defined in s. 932.701(2)(a)1, F.S.<sup>7</sup>

It is a second degree felony<sup>8</sup> to deliver drug paraphernalia to a minor when it is known or reasonable to know that it will be used to produce or introduce into the body a controlled substance.<sup>9</sup>

### **Other Restrictions on Smoking Pipes and Devices**

Section 569.0073, F.S., provides that it is a first degree misdemeanor for any person to offer for sale at retail any item listed in the bill as a smoking pipe and smoking device (such as a “bong”) unless such person:

- Has a retail tobacco products dealer permit under s. 569.003, F.S;
- Derives at least 75 percent of its annual gross revenues from the retail sale of cigarettes, cigars, and other tobacco products; or
- Derives no more than 25 percent of its annual gross revenues from the retail sale of items listed as “smoking pipes and smoking devices.”

The following “smoking pipes and smoking devices” are subject to the provisions of this statute:

- Metal, wooden, acrylic, glass, stone, plastic, or ceramic smoking pipes, with or without screens, permanent screens, or punctured metal bowls.
- Water pipes.
- Carburetion tubes and devices.
- Chamber pipes.
- Carburetor pipes.
- Electric pipes.
- Air-driven pipes.
- Chillums.
- Bongs.

---

<sup>4</sup> Section 893.147(5), F.S.

<sup>5</sup> A third degree felony is punishable by up to 5 years in state prison, a fine of up to \$5,000, or both. Sections 775.082 and 775.083, F.S.

<sup>6</sup> Section 893.147(2), F.S.

<sup>7</sup> Section 893.147(4), F.S.

<sup>8</sup> A second degree felony is punishable by up to 15 years in state prison, a fine of up to \$10,000, or both. Sections 775.082 and 775.083, F.S.

<sup>9</sup> Section 893.147(3), F.S.

- Ice pipes or chillers.

In the case of *Kelsher Enterprises, Inc. v. John R. Powell*,<sup>10</sup> a Leon County circuit court held that s. 569.0073, F.S., is facially constitutional. On a substantive due process challenge regarding the absence of an expressed scienter requirement, the court stated that without such a requirement, s. 569.0073, F.S., would violate substantive due process; however, the court inferred such a requirement so that the offense applies only to those persons who knowingly offer the prohibited items for retail sale without a permit or to those who have a permit but knowingly offer the items for sale without meeting the percentage requirements.

While the court found that s. 569.0073, F.S., gave no guidance on certain questions regarding its proper application, it did not find the statute to be unconstitutionally vague. The court indicated it was possible that the statute could be unconstitutionally applied but a person would be able to argue an unconstitutional application. However, since the court found an interpretation by which s. 569.0073, F.S., can be constitutionally applied, the statute is not facially unconstitutional.

### III. Effect of Proposed Changes:

The bill amends s. 893.147, F.S., to make it unlawful for a person to knowingly and willfully sell or offer for sale at retail certain drug paraphernalia, which are objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing cannabis, cocaine, hashish, hashish oil, or nitrous oxide into the human body. The specific items are:

- Metal, acrylic, glass, stone, plastic, or ceramic pipes, with or without screens, permanent screens, hashish heads, or punctured metal bowls.
- Water pipes.
- Carburetion tubes and devices.
- Smoking and carburetion masks.
- Chamber pipes.
- Carburetor pipes.
- Electric pipes.
- Air-driven pipes.
- Chillums.
- Bongs.
- Ice pipes or chillers

Pipes primarily made of briar, meerschaum, clay or corn cob are specifically excluded.

A first violation is a first degree misdemeanor; a second or subsequent violation is a third degree felony.

---

<sup>10</sup> Case No. 2010 CA 3043, Circuit Court of the Second Judicial Circuit (Leon County), “Final Summary Judgment for Defendant” (dated January 30, 2013) (on file with the Committee on Criminal Justice). According to Attorney General staff, the plaintiff has appealed the court’s order to the First District Court of Appeal.

The bill also repeals s. 569.0073, F.S. (providing that it is unlawful for a person to offer for sale certain smoking pipes and smoking devices unless the person has a retail tobacco products dealer permit and meets other specified criteria).

The effective date of the bill is October 1, 2013.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Retailers who knowingly and willfully sell the listed drug paraphernalia could face arrest and prosecution.

The Department of Business and Professional Regulation (DBPR) analyzed HB 49, which repeals s. 569.0073, F.S.<sup>11</sup> The DBPR states that 136 licensees will no longer need to buy tobacco permits if s. 569.0073, F.S., is repealed.

The DBPR further states that it is possible the criminal prohibition of the specified objects of drug paraphernalia “indicates intent to prohibit the sale of smoking pipes and devices by ‘head shops.’ However, it is possible the bill will also minimally impact other businesses that sell the kinds of smoking pipes and devices identified, but for purposes other than as drug paraphernalia. Such businesses might include estate auctioneers, antique dealers, pawn shops, flea markets, specialty gift shops and large retail stores.”<sup>12</sup>

In regard to the DBPR’s comment, staff notes that the listing of an object in s. 893.145, F.S., does not of itself make the listed object “drug paraphernalia.” Some of the objects listed have multiple uses or could be construed as applying to common items for sale

---

<sup>11</sup> Analysis of HB 49 (dated October 1, 2013), Department of Business and Professional Regulation. The original bill repeals this statute. The committee substitute for the bill amends the statute. *See* CS/HB 49.

<sup>12</sup> *Id.*

rather than items used in the drug trade. For example, “water pipes” could be construed as objects referred to in the drug trade as “water pipes” or pipes that convey water for household use, irrigation, and other recognized legitimate uses. However, the law provides that certain requirements must be met before a listed item can be determined to be “drug paraphernalia.”

In order for listed items to be “drug paraphernalia,” they must be equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, transporting, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of ch. 893, F.S., or s. 877.111, F.S. Additionally, the objects listed in the bill must be used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing cannabis, cocaine, hashish, hashish oil, or nitrous oxide into the human body. Further, the fact finder is required to consider a number of factors (in addition to other logically relevant factors) in determining whether an object is drug paraphernalia. Finally, the offense created by the bill involves *knowingly and willfully* selling or offering for sale at retail this drug paraphernalia.

**C. Government Sector Impact:**

The Criminal Justice Impact Conference, which provides the official estimate of the prison bed impact, if any, of legislation, estimated that the original bill would have an indeterminate prison bed impact. The committee substitute does not modify penalty provisions of the original bill.

According to the DBPR, as of July 1, 2012, there were 208 licensees that had tobacco permits solely for the purpose of complying with s. 569.0073, F.S. If this statute is repealed, 136 licensees will no longer be required to obtain a tobacco permit. The permits cost \$25 annually; therefore the state will have a revenue reduction of \$3,400 (\$25 x 136 licensees).<sup>13</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

---

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

**VIII. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**Recommended CS by Criminal and Civil Justice Appropriations on April 4, 2013:**

- Clarifies pipes primarily made of briar, meerschaum, clay or corn cob are excluded from the retail sale of drug paraphernalia as set forth in s. 893.145(12)(a)-(c) or (g)-(m), F.S.

**CS by Criminal Justice on April 1, 2013:**

Removes a section of the original bill that amended s. 569.006, F.S., to authorize the Division of Alcoholic Beverages and Tobacco to suspend or revoke the permit of a retail tobacco products dealer upon sufficient cause appearing of the violation of s. 893.147, F.S. (offense involving drug paraphernalia), by the dealer's agent or employee, and that also authorized the division to assess and accept administrative fines against the dealer for each violation.

- B. **Amendments:**

None.



129396

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/04/2013	.	
	.	
	.	
	.	

---

---

Appropriations Subcommittee on Criminal and Civil Justice (Hays)  
recommended the following:

**Senate Amendment**

Delete line 20  
and insert:  
pipe that is primarily made of briar, meerschaum, clay or corn  
cob.

By the Committee on Criminal Justice; and Senator Stargel

591-03349-13

20131140c1

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

A bill to be entitled

An act relating to drug paraphernalia; amending s. 893.147, F.S.; prohibiting the retail sale of certain drug paraphernalia; providing criminal penalties; repealing s. 569.0073, F.S., relating to the retail sale of certain smoking pipes and smoking devices; providing an effective date.

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

Section 1. Subsection (6) is added to section 893.147, Florida Statutes, to read:

893.147 Use, possession, manufacture, delivery, transportation, ~~or~~ advertisement, or retail sale of drug paraphernalia.—

(6) RETAIL SALE OF DRUG PARAPHERNALIA.—

(a) It is unlawful for a person to knowingly and willfully sell or offer for sale at retail any drug paraphernalia described in s. 893.145(12)(a)-(c) or (g)-(m), other than a wooden pipe.

(b) A person who violates paragraph (a) commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, and, upon a second or subsequent violation, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 2. Section 569.0073, Florida Statutes, is repealed.

Section 3. This act shall take effect July 1, 2013.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

BILL: CS/SB 400

INTRODUCER: Criminal Justice Committee and Senator Dean

SUBJECT: False Reports to Law Enforcement Officers

DATE: April 2, 2013                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<b>Favorable</b>
2.	<u>Shankle</u>	<u>Cibula</u>	<u>JU</u>	<b>Favorable</b>
3.	<u>Cantral</u>	<u>Sadberry</u>	<u>ACJ</u>	<b>Favorable</b>
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

CS/SB 400 increases the offense degree for knowingly giving false information to a law enforcement officer from a first degree misdemeanor to a third degree felony for a person previously convicted of knowingly giving false information to a law enforcement officer when one of two circumstances apply. In the first circumstance, the information the person gives the law enforcement officer is communicated orally and the officer's account of that information is corroborated by an audio recording, a video recording, a written or recorded statement made by the person who gave that information, or by another person who is present when officer receives the information and hears it. In the second circumstance, the information the person gives to the law enforcement officer is communicated in writing.

The fiscal impact of this bill is insignificant. The Criminal Justice Impact Conference met on February 27, 2013, and determined this bill has an insignificant fiscal impact on prison beds.

This bill substantially amends section 837.05, Florida Statutes.

## II. Present Situation:

### Recent Legislation Regarding False Information Reporting

The Senate Select Committee on Protecting Florida's Children was created on August 10, 2011, in the wake of the Casey Anthony verdict.<sup>1</sup> The committee was charged with examining the various policy options to further advance the protection of children and determine whether changes to current law were needed.

The committee identified the relevant laws on child abuse and providing false information in missing children investigations. The committee examined: chapter 827, F.S., relating to the abuse of children; s. 406.12, F.S., relating to the duty to report a death; and s. 837.055, F.S., relating to knowingly giving false information to a law enforcement officer during a missing person investigation. Particular attention was given to ss. 827.03<sup>2</sup> and 837.055, F.S.,<sup>3</sup> and their relationship to the circumstances in the Anthony case.

After reviewing these laws and receiving testimony from child abuse officials, law enforcement officials, prosecutors, and defense attorneys, the committee recommended amending s. 837.055, F.S., to make it a third degree felony to knowingly and willfully give false information to a law enforcement officer who is conducting a missing person investigation involving a child 16 years of age or younger with the intent to mislead the officer or impede the investigation and the child who is the subject of the investigation suffers great bodily harm, permanent disability, permanent disfigurement, or death.<sup>4</sup>

The Legislature passed CS/HB 37,<sup>5</sup> which enacted into law the changes to s. 837.055, F.S., recommended by the committee.

### False Information Reporting Under Section 837.05, F.S.

Although the Legislature amended s. 837.055, F.S., the statute under which Casey Anthony was convicted of providing false information to a law enforcement officer, Anthony was initially charged (by information) by the State Attorney with providing false information to a law

---

<sup>1</sup> A grand jury indicted Casey Anthony based on their determination of her alleged involvement in the death of her 2 year-old daughter, Caylee Anthony was charged with first degree murder, aggravated child abuse, aggravated manslaughter of a child, and providing false information to a law enforcement officer. She pled not guilty. On July 5, 2011, a jury found Anthony not guilty of all of the charges except the four counts of providing false information to a law enforcement officer in violation of s. 893.055, F.S. Anthony received a sentence of one year in jail and a \$1,000 fine for each count. See Senate Analysis of SB 858 by the Senate Committee on Criminal Justice (January 20, 2012), available at <http://www.flsenate.gov/Session/Bill/2012/0858> (last visited March 27, 2013). The Florida Fifth District Court of Appeal recently set aside two of Anthony's four convictions for providing false information because the court found those convictions violated double jeopardy principles. See *Anthony v. State*, 2013 WL 275533 (Fla. 5th DCA January 25, 2013).

<sup>2</sup> Section 827.03, F.S., punishes various acts of child abuse and neglect.

<sup>3</sup> Section 837.055(1), F.S., which was not altered by the 2012 legislative changes to s. 837.055, F.S. (described in the text of this analysis), provides that it was a first degree misdemeanor to knowingly and willfully give false information to a law enforcement officer who is conducting a missing person investigation or a felony criminal investigation with the intent to mislead the officer or impede the investigation.

<sup>4</sup> Senate Analysis of SB 858, *supra* note 1.

<sup>5</sup> Chapter 2012-53, LO.F.

enforcement officer in violation of s. 837.05, F.S.<sup>6</sup> This statute provides that it is a first degree misdemeanor to knowingly give false information to a law enforcement officer concerning the alleged commission of a crime.

Staff did not find any Florida appellate case relevant to application of s. 837.05, F.S., in the context of providing false information to a law enforcement officer who is conducting a missing person investigation. However, the Florida Third District Court of Appeal, in reviewing a case involving a defendant convicted for giving false statements to police at a police station during a homicide investigation, stated, in dicta, that if the defendant “is guilty of an offense involving false statements, it must be an offense provided for in s. 837.012<sup>7</sup> or s. 837.05, Florida Statutes (1977).”<sup>8</sup>

### III. Effect of Proposed Changes:

The bill amends s. 837.05, F.S., to increase the offense degree for knowingly giving false information to a law enforcement officer from a first degree misdemeanor<sup>9</sup> to a third degree felony<sup>10</sup> for a person previously convicted of knowingly giving false information to a law enforcement officer when one of two circumstances applies. In the first circumstance, the information the person gives the law enforcement officer is communicated orally and the officer’s account of that information is corroborated by an audio recording, a video recording, a written or recorded statement made by the person who gave that information, or by another person who is present when officer receives the information and hears it. In the second circumstance, the information the person gives to the law enforcement officer is communicated in writing.

The bill takes effect October 1, 2013.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

The bill does not impact municipalities and counties under the requirements of Article VII, Section 18, of the Florida Constitution.

---

<sup>6</sup> Court documents on file with the Senate Committee on Criminal Justice.

<sup>7</sup> Section 837.012(1), F.S., provides that it is a first degree misdemeanor for a person to make a false statement, which he or she does not believe to be true, under oath, not in an official proceeding, in regard to any material matter. Section 837.05, F.S., does not contain any ‘oath’ requirement.

<sup>8</sup> *Schramm v. State*, 374 So.2d 1043, 1045 (Fla. 3rd DCA 1979) (footnotes omitted). The appellate court reversed Schramm’s conviction for a violation of s. 837.02, F.S. (perjury in an official proceeding).

<sup>9</sup> A first degree misdemeanor is punishable by up to a year in jail, a fine of up to \$1,000, or both. Sections 775.082 and 775.083, F.S.

<sup>10</sup> A third degree felony is punishable by up to 5 years in state prison, a fine of up to \$5,000, or both. Sections 775.082 and 775.083, F.S. However, if total sentence points scored under the Criminal Punishment Code are 22 points or fewer, the court must impose a nonstate prison sanction, unless the court makes written findings that this sanction could present a danger to the public. Section 775.082(10), F.S. The third degree felony created by the bill is not ranked in the offense severity ranking chart of the Criminal Punishment Code and is, therefore, ranked based on its degree as a Level 1 offense. Sections 921.0022, and 921.0023, F.S.

**B. Public Records/Open Meetings Issues:**

The bill does not raise public records or open meetings issues under the requirements of Article I, Section 24(a) and (b) of the Florida Constitution.

**C. Trust Funds Restrictions:**

The bill does not impact trust fund restrictions under the requirements of Article III, Section 19(f) of the Florida Constitution.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The fiscal impact of the bill is insignificant. The Criminal Justice Impact Conference, which provides the official estimate of the prison bed impact, if any, of legislation estimated that the original bill would have an insignificant prison bed impact due to low volume and the creation of an unranked third degree felony. Although CS/SB 400 differs substantially from the original bill, it also creates an unranked third degree felony and is more narrowly drawn than the original bill in regard to how this offense may be committed.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Criminal Justice on March 11, 2013:**

Increases the offense degree for knowingly giving false information to a law enforcement officer from a first degree misdemeanor to a third degree felony if one of two circumstances applies. In the first circumstance, the information the person gave to the law enforcement officer was communicated orally and the officer's account of that information is corroborated by an audio recording or audio recording in a video of that

---

information; a written or recorded statement made by the person who gave that information; or another person who was present when the person gave that information to the officer and heard that information. In the second circumstance, the information the person gave to the law enforcement officer was communicated in writing.

**B. Amendments:**

None.

By the Committee on Criminal Justice; and Senator Dean

591-02195-13

2013400c1

A bill to be entitled

An act relating to false reports to law enforcement officers; amending s. 837.05, F.S.; providing that it is a third degree felony to knowingly give false information to a law enforcement officer concerning the alleged commission of a crime if the defendant has previously been convicted of such offense and the information is communicated in writing, or, if the information is communicated orally, the information is corroborated in a specified manner; providing an effective date.

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

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

837.05 False reports to law enforcement authorities.—

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

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

1. The information the person gave to the law enforcement officer was communicated orally and the officer's account of

Page 1 of 2

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

591-02195-13

2013400c1

that information is corroborated by:

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

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

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

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

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

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

Page 2 of 2

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

BILL: CS/SB 1126

INTRODUCER: Criminal Justice Committee and Senator Joyner

SUBJECT: Unlawful Possession of the Personal Identification Information of Another Person

DATE: April 2, 2013

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	<b>Favorable</b>
2.	Cantral	Sadberry	ACJ	<b>Favorable</b>
3.			AP	
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

CS/SB 1126 provides that it is unlawful for a person to intentionally or knowingly possess, without authorization, certain personal identification information of another person in any form. It is a first degree misdemeanor if a person commits this offense and in doing so possesses the personal identification information of four or fewer persons. It is a third degree felony if the person commits this offense and in doing so possesses the personal identification information of five or more persons.

Proof that a person used or was in possession of the personal identification information of five or more individuals, unless satisfactorily explained, gives rise to an inference that the person who used or was in possession of the personal identification information did so knowingly and intentionally without authorization.

The bill has an indeterminate fiscal impact. On March 21, 2013, the Criminal Justice Impact Conference met and determined the bill has an insignificant prison bed impact.

The bill also provides a number of statutory exceptions so that innocuous conduct is not criminalized, such as parents possessing their child's social security number. Additionally, an

affirmative defense is provided in which the person possessing the personal identification information of another did so under the reasonable belief that the possession was authorized by law or by the consent of the other person, or obtained the information from a forum or resource that is open or available to the general public or from a public record.

This bill creates the following section of the Florida Statutes: 817.5685.

## II. Present Situation:

### **Criminal Possession of Another Individual's Personal Identification Information**

Section 817.568(2)(a), F.S., provides that it is a third degree felony<sup>1</sup> for any person to willfully and without authorization fraudulently use or possess with intent to fraudulently use, personal identification information concerning an individual without first obtaining that individual's consent. This person commits the offense of fraudulent use of personal identification information.

Section 817.568(1)(b), F.S., defines "authorization" as empowerment, permission, or competence to act.

Section 817.568(1)(d), F.S., defines "individual" as a single human being. It does not mean a firm, association of individuals, corporation, partnership, joint venture, sole proprietorship, or any other entity.

Section 817.568(1)(f), F.S., defines "personal identification information" as any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including any:

- Name, postal or electronic mail address, telephone number, social security number, date of birth, mother's maiden name, official state-issued or United States-issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number, Medicaid or food assistance account number, bank account number, credit or debit card number, or personal identification number or code assigned to the holder of a debit card by the issuer to permit authorized electronic use of such card;
- Unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;
- Unique electronic identification number, address, or routing code;
- Medical records;
- Telecommunication identifying information or access device; or
- Other number or information that can be used to access a person's financial resources.

---

<sup>1</sup> A third degree felony is punishable by up to 5 years in state prison, a fine of up to \$5,000, or both. Sections 775.082 and 775.083, F.S.

### III. Effect of Proposed Changes:

The bill creates s. 817.5685, F.S., which provides that it is unlawful for a person to intentionally or knowingly possess, without authorization, personal identification information of another person in any form including, but not limited to, mail, physical documents, identification cards, or information stored in digital form. It is a first degree misdemeanor if a person commits this offense and in doing so possesses the personal identification information of four or fewer persons. It is a third degree felony if the person commits this offense and in doing so possesses the personal identification information of five or more persons.

As used in this new section, the term “personal identification information” means a person’s social security number, official state-issued or United States-issued driver license or identification number, alien registration number, government passport number, employer or taxpayer identification number, Medicaid or food assistance account number, bank account number, credit or debit card number, and medical records. This definition of “personal identification information” encompasses fewer types of information than the definition of the same term in s. 817.568(1)(f), F.S.

Proof that a person used or was in possession of the personal identification information of five or more individuals, unless satisfactorily explained, gives rise to an inference that the person who used or was in possession of the personal identification information did so knowingly and intentionally without authorization.

The offense does not apply to any of the following persons:

- A person who is the parent or legal guardian of a child and who possesses the personal identification information of that child.
- A person who is the guardian of another person under ch. 744, F.S., and who is authorized to possess the personal identification information of that other person and make decisions regarding access to that personal identification information.
- An employee of a governmental agency who possesses the personal identification information of another person in the ordinary course of business.
- A person who is engaged in a lawful business and possesses the personal identification information of another person in the ordinary course of business.
- A person who finds a card or document issued by a governmental agency which contains the personal identification information of another person and who takes reasonably prompt action to return that card or document to its owner, to the governmental agency that issued the card or document, or to a law enforcement agency.

It is an affirmative defense to the alleged violation if the person who possesses the personal identification information of another person:

- Did so under the reasonable belief that such possession was authorized by law or by the consent of the other person; or
- Obtained that personal identification information from a forum or resource that is open or available to the general public or from a public record.

This new section does not preclude prosecution for the unlawful possession of personal identification information pursuant to s. 817.568, F.S., or any other law, including prosecution for the criminal use of personal identification information that was otherwise lawfully possessed.

The effective date of the bill is October 1, 2013.

#### IV. Constitutional Issues:

##### A. Municipality/County Mandates Restrictions:

None.

##### B. Public Records/Open Meetings Issues:

None.

##### C. Trust Funds Restrictions:

None.

##### D. Other Constitutional Issues:

In *Schmitt v. State*,<sup>2</sup> the Florida Supreme Court stated that “a due process violation occurs if a criminal statute’s means is not rationally related to its purposes and, as a result, it criminalizes innocuous conduct.”

The bill addresses this constitutional concern in a number of ways:

- The bill provides that a person must “intentionally or knowingly” possess, without authorization, personal identification information of another person.
- The definition of “personal identification information” relevant to the new offense is far more limited than the definition of that term in s. 817.568, F.S. The information covered by the definition in the bill is information to which relatively few persons would have access, unlike names, addresses, phone numbers, and birth dates.
- The bill creates a number of exceptions in which specified persons would not be subject to this offense, such as parents possessing their child’s social security number.
- The bill provides for an affirmative defense if the person who possesses the personal identification information of another person:
  - Did so under the reasonable belief that such possession was authorized by law or by the consent of the other person; or
  - Obtained that personal identification information from a forum or resource that is open or available to the general public or from a public record.

The bill provides that proof that a person used or was in possession of the personal identification information of five or more individuals, unless satisfactorily explained, gives rise to an inference that the person who used or was in possession of the personal

---

<sup>2</sup> 590 So.2d 404, 413 (Fla. 1991), *cert. denied*, 503 U.S. 964 (1992), citing Article I, Section 9, of the Florida Constitution.

identification information did so knowingly and intentionally without authorization. This inference is somewhat similar to stolen property inferences in s. 812.022, F.S. For example, s. 812.022(2), F.S., provides that, with the exception of dealer possession of stolen property (which is covered by a different inference), proof of possession of property recently stolen, unless satisfactorily explained, gives rise to an inference that the person in possession of the property knew or should have known that the property had been stolen. The Florida Supreme Court has held that this inference does not violate a defendant's due process rights or force a defendant to testify in violation of his or right against self-incrimination.<sup>3</sup>

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill has an indeterminate fiscal impact. The Criminal Justice Impact Conference, which provides the official estimate of the prison bed impact, if any, of legislation, estimates that the original bill will have an insignificant prison bed impact. The committee substitute does not change penalty provisions of the original bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Criminal Justice on April 1, 2013:**

Provides that proof that a person used or was in possession of the personal identification information of five or more individuals, unless satisfactorily explained, gives rise to an inference that the person who used or was in possession of the personal identification information did so knowingly and intentionally without authorization.

---

<sup>3</sup> *Edwards v. State*, 381 So.2d 696 (Fla. 1980).

B. Amendments:

None.

---

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

---

By the Committee on Criminal Justice; and Senator Joyner

591-03348-13

20131126c1

A bill to be entitled

An act relating to the unlawful possession of the personal identification information of another person; creating s. 817.5685, F.S.; defining the term "personal identification information"; providing that it is unlawful for a person to intentionally or knowingly possess, without authorization, any personal identification information of another person; creating criminal penalties; providing that possession of identification information of multiple individuals gives rise to an inference of illegality; providing that certain specified persons are exempt from provisions regarding the unlawful possession of personal identification information of another person; creating affirmative defenses; providing that the act does not preclude prosecution for the unlawful possession of personal identification information of another person under any other law; providing an effective date.

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

Section 1. Section 817.5685, Florida Statutes, is created to read:

817.5685 Unlawful possession of the personal identification information of another person.—

(1) As used in this section, the term "personal identification information" means a person's social security number, official state-issued or United States-issued driver

Page 1 of 3

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

591-03348-13

20131126c1

license or identification number, alien registration number, government passport number, employer or taxpayer identification number, Medicaid or food assistance account number, bank account number, credit or debit card number, and medical records.

(2) It is unlawful for a person to intentionally or knowingly possess, without authorization, the personal identification information of another person in any form, including, but not limited to, mail, physical documents, identification cards, or information stored in digital form.

(3) (a) A person who violates subsection (2) and in doing so possesses the personal identification information of four or fewer persons commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) A person who violates subsection (2) and in doing so possesses the personal identification information of five or more persons commits a felony of third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Proof that a person used or was in possession of the personal identification information of five or more individuals, unless satisfactorily explained, gives rise to an inference that the person who used or was in possession of the personal identification information did so knowingly and intentionally without authorization.

(4) Subsection (2) does not apply to:

(a) A person who is the parent or legal guardian of a child and who possesses the personal identification information of that child.

(b) A person who is the guardian of another person under chapter 744 and who is authorized to possess the personal

Page 2 of 3

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

591-03348-13

20131126c1

59 identification information of that other person and make  
60 decisions regarding access to that personal identification  
61 information.

62 (c) An employee of a governmental agency who possesses the  
63 personal identification information of another person in the  
64 ordinary course of business.

65 (d) A person who is engaged in a lawful business and  
66 possesses the personal identification information of another  
67 person in the ordinary course of business.

68 (e) A person who finds a card or document issued by a  
69 governmental agency which contains the personal identification  
70 information of another person and who takes reasonably prompt  
71 action to return that card or document to its owner, to the  
72 governmental agency that issued the card or document, or to a  
73 law enforcement agency.

74 (5) It is an affirmative defense to an alleged violation of  
75 subsection (2) if the person who possesses the personal  
76 identification information of another person:

77 (a) Did so under the reasonable belief that such possession  
78 was authorized by law or by the consent of the other person; or

79 (b) Obtained that personal identification information from  
80 a forum or resource that is open or available to the general  
81 public or from a public record.

82 (6) This section does not preclude prosecution for the  
83 unlawful possession of personal identification information  
84 pursuant to s. 817.568 or any other law, including prosecution  
85 for the criminal use of personal identification information that  
86 was otherwise lawfully possessed.

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

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

BILL: CS/SB 1372

INTRODUCER: Judiciary Committee and Senator Bradley

SUBJECT: Pretrial Detention

DATE: April 2, 2013

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	<b>Fav/CS</b>
2.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	<b>Favorable</b>
3.	<u>Sadberry</u>	<u>Sadberry</u>	<u>ACJ</u>	<b>Favorable</b>
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

CS/SB 1372 provides an additional factor for a court to consider in determining whether to order the pretrial detention of a criminal defendant.

The court may order pretrial detention if:

- The defendant was previously sentenced, as a prison releasee reoffender, habitual violent felony offender, three-time violent felony offender, or violent career criminal or the state attorney files a notice seeking that the defendant be sentenced as such;
- A substantial probability exists that the defendant committed the current crime charged; and
- The court finds that no conditions of release can reasonably protect the community from risk of physical harm or ensure the defendant's presence at trial.

The fiscal impact of the bill is indeterminate. The Criminal Justice Impact Conference met on March 21, 2013, and determined this bill has an insignificant impact on prison beds.

This bill substantially amends section 907.041, Florida Statutes.

## II. Present Situation:

### Pretrial Release in the Constitution

Article I, Section 14, of the Florida Constitution provides, in part:

Unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a crime or violation of a municipal or county ordinance shall be entitled to pretrial release on reasonable conditions. If no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained.

### Florida Law on Pretrial Release

Florida law provides a presumption in favor of release on nonmonetary conditions for a defendant pending trial.<sup>1</sup> The presumption applies unless the person is charged with a dangerous crime, including:

- Arson;
- Aggravated assault;
- Aggravated battery;
- Illegal use of explosives;
- Child abuse or aggravated child abuse;
- Abuse, or aggravated abuse of an elderly person or disabled adult;
- Aircraft piracy;
- Kidnapping;
- Homicide;
- Manslaughter;
- Sexual battery;
- Robbery;
- Carjacking;
- Sexual offenses against children;
- Burglary of a dwelling;
- Stalking and aggravated stalking;
- Domestic violence;
- Home invasion robbery;
- Terrorism;
- Manufacturing of controlled substances; or
- Attempting or conspiring to commit any of these crimes.<sup>2</sup>

---

<sup>1</sup> Section 907.041(3), F.S.

<sup>2</sup> Section 907.041(4)(a), F.S.

A court must impose monetary conditions upon the pretrial release of a defendant charged with one of the enumerated dangerous crimes if the court finds that monetary conditions are necessary to:

- Assure the presence of the defendant at criminal proceedings including trial;
- Protect the community from the risk of physical harm; or
- Ensure the integrity of the judicial process.<sup>3</sup>

Section 907.041(4)(c), F.S., authorizes the court to order pretrial detention of the defendant if the court finds a substantial probability that:

- The defendant previously violated conditions of release and no other conditions of release are reasonably likely to assure the defendant's presence at court proceedings.
- The defendant attempted to, or has engaged in witness, juror, or judicial officer tampering and no condition of release will reasonably prevent the defendant from obstructing the judicial process.
- The defendant is charged with, and a substantial probability exists that the defendant committed the crime of trafficking in controlled substances, and that no conditions of release will reasonably assure the defendant's presence at court proceedings.
- The defendant is charged with, and a substantial probability exists that the defendant committed DUI manslaughter, and the defendant poses a threat of harm to the community as evidenced through other driving violations, including driving while with a suspended license.
- The defendant poses a threat of harm to the community, which the court can glean from the dangerous nature of the present crime itself.
- The defendant was on probation, parole, or other release for a dangerous crime at the time of the current offense.
- The defendant violated a condition of pretrial release or bond, and the court finds that no conditions of release can reasonably protect the community from risk of physical harm or assure the presence of the defendant at court proceedings.

The court is required to hold a pretrial detention hearing within 5 days after the pretrial detention filing by the state attorney.<sup>4</sup> The burden of proof is on the state attorney to demonstrate the need for pretrial detention.<sup>5</sup>

## **Enhanced Penalties**

### ***Prison Release Reoffender***

A state attorney can seek enhanced sentencing of a defendant whom the court designates as a prison releasee reoffender.<sup>6</sup> To establish a defendant as a prison releasee reoffender, the prosecutor must show:

---

<sup>3</sup> Section 907.041(3)(a), F.S.

<sup>4</sup> Section 907.041(4)(f), F.S.

<sup>5</sup> Section 907.041(4)(g), F.S.

<sup>6</sup> Section 775.082(9)(a)3., F.S.

- The defendant committed or attempted to commit certain crimes. These include the crimes of treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery or robbery; arson; kidnapping; aggravated assault with a deadly weapon, battery, or stalking; aircraft piracy; and felonies involving physical force;<sup>7</sup> and
- The defendant attempted or committed the crime within 3 years after release from incarceration at a state correctional facility or while incarcerated at or as an escapee from a state correctional facility.<sup>8</sup>

Enhanced sentencing requires the court to sentence the defendant to the maximum prison sentence provided in law for a criminal charge.<sup>9</sup> A court sentencing a prison releasee reoffender must impose the following sentence:

- For a life felony, life imprisonment.
- For a first degree felony, 30 years imprisonment.
- For a second degree felony, 15 years imprisonment.
- For a third degree felony, 5 years imprisonment.<sup>10</sup>

### ***Habitual Felony Offender***

The court can sentence a defendant as a habitual felony offender if the defendant has two or more prior felony convictions and committed the current felony:

- While serving a sentence, in prison or while under state supervision; or
- Within 5 years after the date of conviction of the last prior felony or 5 years after release from a sentence or state supervision.

The court can impose an extended term of sentencing as follows:

- For a first degree or life felony, life imprisonment.
- For a second degree felony, up to 30 years imprisonment.
- For a third degree felony, up to 10 years imprisonment.<sup>11</sup>

### ***Habitual Violent Felony Offender***

The court can sentence a defendant as a habitual violent felony offender if the defendant has a current felony charge and was previously convicted of a qualifying felony or an attempt or conspiracy to commit a qualifying felony. Prior qualifying felony convictions include convictions for crimes such as arson, sexual battery, robbery, kidnapping, aggravated abuse of a child or an elderly or disabled person, murder, manslaughter, armed burglary, or aggravated battery or stalking.

---

<sup>7</sup> Section 775.082(9)(a)1., F.S.

<sup>8</sup> Section 775.082(9)(a)2., F.S.

<sup>9</sup> Section 775.082(3), F.S. provides: Unless otherwise designated in law, for a first degree felony, imprisonment may not exceed 30 years, unless law provides for a life felony, in which case, a term of up to life imprisonment. For a second degree felony, a term of up to 15 years and for a third degree felony, a term of up to 5 years.

<sup>10</sup> Section 775.082(9)(a)3., F.S.

<sup>11</sup> Section 775.084(4)(a), F.S.

For the court to designate a defendant as a habitual violent felony offender, the defendant must have committed the current felony:

- While serving a prison sentence or while under state supervision; or
- Within 5 years after the date of the prior conviction or release from a prison sentence or state supervision.

The court may impose an extended term of sentencing as follows:

- For a first degree or life felony, life imprisonment and no eligibility for release for 15 years.
- For a second degree felony, for up to 30 years, and no eligibility for release for 10 years.
- For a third degree felony, for up to 10 years, and no eligibility for release for 5 years.<sup>12</sup>

### ***Three-time Violent Felony Offender***

The court must sentence a defendant as a three-time violent felony offender if:

- The defendant has been previously convicted of committing or attempting to commit, two or more qualifying felony offenses as an adult. The offenses include arson; sexual battery; robbery; kidnapping; murder; manslaughter; aggravated battery or stalking; and carjacking;<sup>13</sup> and
- At the time of the current offense, the defendant was serving a prison sentence or other sentence; or
- The defendant committed the current offense within 5 years after the conviction of the most recent qualifying offense or within 5 years after release from a prison sentence or state supervision.<sup>14</sup>

The court must impose a mandatory minimum term of imprisonment for a three-time violent felony offender as follows:

- For a life felony, life imprisonment.
- For a first degree felony, 30 years imprisonment.
- For a second degree felony, 15 years imprisonment.
- For a third degree felony, 5 years imprisonment.<sup>15</sup>

### ***Violent Career Criminal***

A violent career criminal is a defendant with three or more previous adult qualifying convictions.<sup>16</sup> The court must impose imprisonment for a violent career criminal who:

---

<sup>12</sup> Section 775.084(4)(b), F.S.

<sup>13</sup> Section 775.084(1)(c)1., F.S.

<sup>14</sup> Section 775.084(1)(c)2., F.S.

<sup>15</sup> Section 775.084(4)(c), F.S.

<sup>16</sup> Section 775.084(1)(d), F.S.

- Previously served in a state or federal correctional facility; and
- Commits a qualifying offense while serving a prison sentence, other sentence, or while under state supervision; or
- Commits a qualifying offense within 5 years after the conviction of another qualifying felony.<sup>17</sup>

Qualifying convictions include forcible felonies; aggravated stalking; aggravated abuse against children, elderly persons, or disabled adults; lewd or lascivious battery, molestation, conduct, or exhibition; or escape.<sup>18</sup>

The court must impose a mandatory minimum term of imprisonment for a three-time violent felony offender as follows:

- For a life felony or a first degree felony, life imprisonment.
- For a second degree felony, up to 40, and no less than 30 years imprisonment.
- For a third degree felony, up to 15 years, and no less than 10 years imprisonment.<sup>19</sup>

### **III. Effect of Proposed Changes:**

This bill provides an additional basis for the court to consider in determining whether to order pretrial detention.

The bill authorizes the court to order pretrial detention if:

- The defendant has been previously sentenced as a prison releasee reoffender, habitual violent felony offender, a three-time violent felony offender, or a violent career criminal or the state attorney files a notice seeking that the defendant be sentenced as one of these offenders; and
- A substantial probability exists that the defendant committed the current crime charged; and
- The court finds no conditions of release to reasonably protect the community from risk of physical harm or assure the defendant's presence at trial.

The provisions of this bill are permissive. Due to the nature of the circumstances surrounding this type of defendant's criminal record, a court may be authorized to order pretrial detention under other existing laws.

The bill takes effect July 1, 2013.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

---

<sup>17</sup> Section 775.084(1)(d)2. and 3., F.S.

<sup>18</sup> Section 775.084(1)(d)1., F.S.

<sup>19</sup> Section 775.084(4)(d), F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The fiscal impact of the bill is indeterminate. The Criminal Justice Impact Conference discussed this bill on March 21, 2013, and determined that there will be an insignificant impact on prison beds if this bill becomes law.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Judiciary on March 12, 2013:**

The committee substitute clarifies that:

- The sentence that may serve as the basis for pretrial detention of a defendant is a previous sentence as a prison releasee reoffender, habitual violent felony offender, three-time violent felony offender, or violent career criminal.
- The offense referred to for purposes of the substantial probability standard is the current offense.

B. Amendments:

None.

---

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

---

By the Committee on Judiciary; and Senator Bradley

590-02287-13

20131372c1

A bill to be entitled

An act relating to pretrial detention; amending s. 907.041, F.S.; providing additional factors a court may consider when ordering pretrial detention; providing an effective date.

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

Section 1. Paragraph (c) of subsection (4) of section 907.041, Florida Statutes, is amended to read:

907.041 Pretrial detention and release.—

(4) PRETRIAL DETENTION.—

(c) The court may order pretrial detention if it finds a substantial probability, based on a defendant's past and present patterns of behavior, the criteria in s. 903.046, and any other relevant facts, that any of the following circumstances exists:

1. The defendant has previously violated conditions of release and that no further conditions of release are reasonably likely to assure the defendant's appearance at subsequent proceedings;

2. The defendant, with the intent to obstruct the judicial process, has threatened, intimidated, or injured any victim, potential witness, juror, or judicial officer, or has attempted or conspired to do so, and that no condition of release will reasonably prevent the obstruction of the judicial process;

3. The defendant is charged with trafficking in controlled substances as defined by s. 893.135, that there is a substantial probability that the defendant has committed the offense, and that no conditions of release will reasonably assure the

Page 1 of 3

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

590-02287-13

20131372c1

defendant's appearance at subsequent criminal proceedings; ~~or~~

4. The defendant is charged with DUI manslaughter, as defined by s. 316.193, and that there is a substantial probability that the defendant committed the crime and that the defendant poses a threat of harm to the community; conditions that would support a finding by the court pursuant to this subparagraph that the defendant poses a threat of harm to the community include, but are not limited to, any of the following:

a. The defendant has previously been convicted of any crime under s. 316.193, or of any crime in any other state or territory of the United States that is substantially similar to any crime under s. 316.193;

b. The defendant was driving with a suspended driver's license when the charged crime was committed; or

c. The defendant has previously been found guilty of, or has had adjudication of guilt withheld for, driving while the defendant's driver's license was suspended or revoked in violation of s. 322.34;

5. The defendant poses the threat of harm to the community. The court may so conclude, if it finds that the defendant is presently charged with a dangerous crime, that there is a substantial probability that the defendant committed such crime, that the factual circumstances of the crime indicate a disregard for the safety of the community, and that there are no conditions of release reasonably sufficient to protect the community from the risk of physical harm to persons; ~~or~~

6. The defendant was on probation, parole, or other release pending completion of sentence or on pretrial release for a dangerous crime at the time the current offense was committed;

Page 2 of 3

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

590-02287-13

20131372c1

59 ~~or~~

60 7. The defendant has violated one or more conditions of  
61 pretrial release or bond for the offense currently before the  
62 court and the violation, in the discretion of the court,  
63 supports a finding that no conditions of release can reasonably  
64 protect the community from risk of physical harm to persons or  
65 assure the presence of the accused at trial; or

66 8.a. The defendant has previously been sentenced pursuant  
67 to s. 775.082(9) or s. 775.084 as a prison releasee reoffender,  
68 habitual violent felony offender, three-time violent felony  
69 offender, or violent career criminal, or the state attorney  
70 files a notice seeking that the defendant be sentenced pursuant  
71 to s. 775.082(9) or s. 775.084, as a prison releasee reoffender,  
72 habitual violent felony offender, three-time violent felony  
73 offender, or violent career criminal;

74 b. There is a substantial probability that the defendant  
75 committed the current offense; and

76 c. There are no conditions of release that can reasonably  
77 protect the community from risk of physical harm or ensure the  
78 presence of the accused at trial.

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

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

BILL: CS/SB 1750

INTRODUCER: Senator Negron

SUBJECT: Postconviction Capital Case Proceedings

DATE: April 2, 2013                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	<b>Favorable</b>
2.	<u>Harkness</u>	<u>Sadberry</u>	<u>ACJ</u>	<b>Fav/CS</b>
3.	_____	_____	<u>AP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

CS/SB 1750 is the implementing legislation for SJR 1740. That joint resolution authorizes the Legislature, by general law, to govern the postconviction or collateral review of capital cases resulting in a death sentence.

Accordingly, this bill provides procedures to replace court rules governing postconviction or collateral review of capital cases. The purpose of the new procedures is to streamline and further expediency for the postconviction or collateral review of capital cases. The bill also recreates the Capital Collateral Regional Counsel for the Northern Region of Florida, and eliminates the registry attorney pilot program.

This bill has a mixed but indeterminate fiscal impact. Provisions to shorten the postconviction process and reduce the time inmates spend on death row will have a positive fiscal impact and save state dollars. Provisions to terminate the registry attorney pilot program and reestablish the CCRC in the northern region will cost \$423,338 in recurring general revenue funds in Fiscal Year 2013-2014.

If SJR 1740 passes both houses of the Legislature and is approved by the voters at the 2014 General Election, the provisions in this bill relating to policies and procedures in capital cases will take effect July 1, 2015. All other provisions take effect July 1, 2013.

This bill substantially amends the following sections of the Florida Statutes: 27.702, 27.703, 27.708, 27.7081, 27.7091, 27.711, 922.095, 924.055, 924.056, 924.057, 924.058, and 924.059.

This bill creates the following sections of the Florida Statutes: 924.0581, 924.0585, 924.0591, 924.0592, 924.0593, and 924.0594.

This bill repeals section 27.701(2), Florida Statutes.

This bill reenacts section 922.108, Florida Statutes.

## II. Present Situation:

### Florida State Constitution

The State Constitution grants the Supreme Court jurisdiction over all aspects of practice and procedure in state courts. The constitutional authority includes jurisdiction over the administration of capital cases.

Section 2, Article V of the State Constitution provides, in part:

Administration; practice and procedure.—

(a) The supreme court shall adopt rules for the practice and procedure in all courts including the time for seeking appellate review, the administrative supervision of all courts, the transfer to the court having jurisdiction of any proceeding when the jurisdiction of another court has been improvidently invoked, and a requirement that no cause shall be dismissed because an improper remedy has been sought. ... Rules of court may be repealed by general law enacted by two-thirds vote of the membership of each house of the legislature.

### Current Death Row Statistics

Florida is one of 33 states that impose the death penalty.<sup>1</sup> As of April 2, 2013, 406 people were on death row in Florida, more than any other state except California.<sup>2</sup> On average, Florida death row inmates spend 13.22 years on death row before execution.<sup>3</sup> Of the 406 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

---

<sup>1</sup> The other states are Alabama, Arizona, Arkansas, California, Colorado, Delaware, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, 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).

<sup>2</sup> California has 724 inmates on death row. *Facts About the Death Penalty* (updated December 28, 2012), Death Penalty Information Center. Available at: [www.deathpenaltyinfo.org/FactSheet.pdf](http://www.deathpenaltyinfo.org/FactSheet.pdf). See also: <http://www.dc.state.fl.us/activeinmates/deathrowroster.asp> (last visited on March 25, 2013).

<sup>3</sup> Florida Department of Corrections, *Death Row Fact Sheet*. Available at: <http://www.dc.state.fl.us/oth/deathrow/index.html#Statistics> (last visited on April 2, 2013).

<sup>4</sup> Florida Department of Corrections, *Death Row Fact Sheet*. Available at: <http://www.dc.state.fl.us/activeinmates/deathrowroster.asp> (last visited on March 25, 2013).

<sup>5</sup> Florida Department of Corrections, *Death Row Fact Sheet*. Available at: <http://www.dc.state.fl.us/oth/deathrow/index.html#Statistics> (last visited on March 25, 2013).

executed 492 inmates, Virginia executed 109 inmates, and Oklahoma executed 102 inmates.<sup>6</sup> Florida executed 2 death row inmates in 2011 and 3 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 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 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 appeal, the direct appeal has concluded, and the defendant may begin state postconviction proceedings.

### **Rules of Procedure Governing State Postconviction Proceedings**

The court rules committees of The Florida Bar, separated by subject area, submit proposals to the Florida Supreme Court on new rules of procedure and amendments to existing rules.<sup>11</sup> The Florida Supreme Court then adopts or rejects the proposals submitted by each Court Rules Committee. Rules of procedure apply to the areas of appellate, civil, criminal, family, judicial administration, juvenile, probate, small claims, and traffic court practice.<sup>12</sup>

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 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 that 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

---

<sup>6</sup> Death Penalty Information Center, *Facts About the Death Penalty* (December 28, 2012), Available at: [www.deathpenaltyinfo.org/FactSheet.pdf](http://www.deathpenaltyinfo.org/FactSheet.pdf) (last visited on March 25, 2013).

<sup>7</sup> Florida Department of Corrections, *Death Row Fact Sheet*. Available at: <http://www.dc.state.fl.us/oth/deathrow/index.html#Statistics> (last visited March 25, 2013).

<sup>8</sup> Section 921.141(4), F.S.; Art. 5, Sec. 3, FLA. CONST.; and 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; and Sup. Ct. R. 13.

<sup>11</sup> See, i.e., the Florida Bar website page on the Appellate Court Rules Committee, at:

<http://www.floridabar.org/DIVEXE/BD/CMStanding.nsf/2021e58ed0c7505585256e45004b060d/15e0fcc0829efd6585256c5b00554844!OpenDocument> (last visited March 22, 2013).

<sup>12</sup> Online at:

<http://www.floridabar.org/tfb/TFBLegalRes.nsf/basic+view/E1A89A0DC5248D1785256B2F006CCCEE?OpenDocument#FLORIDA%20RULES%20OF%20PROCEDURE%3A> (last visited March 22, 2013).

exculpatory evidence). Because the consideration of these claims often require new fact finding, postconviction motions are filed in the trial court that sentenced the defendant to death. Appeals from the grant or denial of postconviction relief are filed with the Florida Supreme Court. A detailed review of state postconviction proceedings 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>13</sup> to represent the inmate during postconviction proceedings.<sup>14</sup> If the regional counsel has a conflict of interest and the postconviction judge accepts his or her 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>15</sup> to represent the inmate in postconviction proceedings.<sup>16</sup>

Within 45 days after appointment, 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.

Within 30 days after 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. Within 90 days after 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, is completed; or
- Any pending 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:

---

<sup>13</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>14</sup> Fla. R. Crim. Proc. 3.851(b)(1).

<sup>15</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>16</sup> Fla. R. Crim. Proc. 3.851(b)(1); ss. 27.701(2), 27.703(1), and 27.710(5), F.S.

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

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

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

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 after receiving the notice.<sup>23</sup>

Within 90 days after 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 after 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 Article I, Section 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>

---

<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)(3).

<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).

Within 240 days after postconviction counsel is appointed, retained, or appears pro bono, counsel must send a written demand for additional public records to each entity described above.<sup>31</sup> Within 90 days after an entity receives 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 after receiving the demand.<sup>33</sup> In such instances, the trial court must hold a hearing and rule within 30 days after 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;
- 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 who 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 after 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

---

<sup>31</sup> If counsel was appointed before October 1, 2001, counsel must submit the demand within 90 days after appointment. 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.*

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

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

- 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 motion must be filed within 1 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 1-year time limit.<sup>44</sup>

A motion filed after the 1-year time limit will not be entertained unless the movant alleges that:

<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(a).

<sup>43</sup> Fla. R. Crim. P. 3.851(d)(1)(A) and (B).

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

- 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 1-year time limit by the exercise of due diligence;<sup>45</sup>
- The fundamental constitutional right asserted was not established within the 1-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 if 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;
- A detailed allegation of the factual basis for any claim for which an evidentiary hearing is sought; and

---

<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, the party, or counsel at the time of trial, and it must appear that the movant or his/her counsel could not have known them by being diligent; and (2) the newly discovered evidence must be of such nature that it would probably result in 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), quoting *Jones v. State*, 591 So. 2d 911, 915 (Fla. 1991).

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

<sup>47</sup> *Miller*, 926 So. 2d at 1261, quoting *Brown v. State*, 124 So. 2d 481, 484 (Fla. 1960).

<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 (5) and (f)(4).

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

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

- 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 state has 60 days from the filing of the initial postconviction motion to file its answer.<sup>57</sup>

### **Discovery and the Evidentiary Hearing**

Within 90 days after the state files 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>58</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>59</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>60</sup>

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

- 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>61</sup>

The movant must support the motion with specific factual allegations.<sup>62</sup> Conclusory allegations will not justify an evidentiary hearing.<sup>63</sup>

<sup>54</sup> Fla. R. Crim. P. 3.851(e)(1).

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

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

<sup>57</sup> Fla. R. Crim. Proc. 3.851(f)(3)(A).

<sup>58</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>59</sup> *Id.*

<sup>60</sup> Fla. R. Crim. Proc. 3.851(f)(5)(C).

<sup>61</sup> *Johnson v. State*, 904 So. 2d 400, 403 (Fla. 2005).

<sup>62</sup> *Id.* at 404 (citing *Thompson v. State*, 759 So. 2d 650, 659 (Fla. 2000)).

<sup>63</sup> *Id.* (citing *Kennedy v. State*, 547 So. 2d 912, 913 (Fla. 1989)).

When an evidentiary hearing is held, the court must immediately request a transcript of the hearing at its conclusion.<sup>64</sup> Within 30 days after receiving the transcript, the court must render its order, including:

- A ruling on each claim considered at the evidentiary hearing and all other claims asserted in the motion;
- Detailed findings of fact and conclusions of law with respect to each claim; and
- Attached or referenced portions of the record as are necessary for meaningful appellate review.<sup>65</sup>

Either party may move for a rehearing within 15 days after the rendition of the court's order on the postconviction motion.<sup>66</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>67</sup>

The movant may appeal the court's decision to the Florida Supreme Court within 30 days after the date the court rendered its order on the postconviction motion.<sup>68</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>69</sup> If the United States Supreme Court declines review or affirms the lower's court decision, the postconviction appeal is complete.

### **Successive Motions**

If the state court previously ruled on a postconviction motion, a motion filed thereafter challenging the same judgment and sentence is considered a "successive motion."<sup>70</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>71</sup>

The state has 20 days after the filing of a successive motion to file its answer.<sup>72</sup>

---

<sup>64</sup> Fla. R. Crim. Proc. 3.851(f)(5)(D).

<sup>65</sup> *Id.*

<sup>66</sup> Fla. R. Crim. Proc. 3.851(f)(7).

<sup>67</sup> *Id.*

<sup>68</sup> Fla. R. App. Proc. 9.110(b), Fla. R. App. Proc. 9.140(b)(1)(D) and (b)(3).

<sup>69</sup> 28 U.S.C. s. 1257.

<sup>70</sup> Fla. R. Crim. Proc. 3.851(e)(2).

<sup>71</sup> *Id.*

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>73</sup> As with initial postconviction motions, the court may dispose of any successive motion without holding an evidentiary hearing if the motion, files, and records in the case conclusively show that the movant is not entitled to any relief.<sup>74</sup> Additionally, the court may dismiss successive motions without an evidentiary hearing if:

- The movant does not provide a reason for failing to raise the successive claims in his/her previous Rule 3.851 motion; or<sup>75</sup>
- The motion raises claims that have already been asserted and adjudicated on the merits in a previous Rule 3.851 proceeding.<sup>76</sup>

If, however, the court determines that an evidentiary hearing should be held, the hearing should be scheduled and held within 60 days.<sup>77</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>78</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>79</sup> The rules relating to motions for rehearing and appealing an initial postconviction motion also apply to successive motions.<sup>80</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 after the rendition of the order.<sup>81</sup> When the notice of appeal is filed, the Court's chief justice directs the appropriate

---

<sup>72</sup> Fla. R. Crim. Proc. 3.851(f)(3)(B).

<sup>73</sup> Fla. R. Crim. Proc. 3.851(f)(5)(B).

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

<sup>75</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).

<sup>76</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>77</sup> Fla. R. Crim. Proc. 3.851(f)(5)(B).

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

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

<sup>80</sup> Fla. R. Crim. Proc. 3.851(f)(7) and (8).

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

chief judge of the circuit court to monitor the preparation of the complete record<sup>82</sup> for timely filing in the Court.<sup>83</sup>

After the record is filed, the clerk establishes a briefing schedule that gives the defendant 30 days to serve an initial brief.<sup>84</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. If any brief is delinquent, an order to show cause may be issued,<sup>85</sup> and sanctions may be imposed.<sup>86</sup> Oral argument is scheduled after the filing of the defendant's reply brief.<sup>87</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>88</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
- The nature of the relief sought.<sup>89</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>90</sup>

---

<sup>82</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>83</sup> Fla. R. App. Proc. 9.142(a)(1).

<sup>84</sup> Fla. R. App. Proc. 9.142(a)(2).

<sup>85</sup> Pursuant to Fla. R. Crim. Proc. 3.840.

<sup>86</sup> Fla. R. App. Proc. 9.142(a)(3).

<sup>87</sup> Fla. R. App. Proc. 9.142(a)(4).

<sup>88</sup> Fla. R. App. Proc. 9.142(b)(1).

<sup>89</sup> Fla. R. App. Proc. 9.142(b)(2).

<sup>90</sup> Fla. R. App. Proc. 9.142(b)(3)(A).

A petition for belated appeal may not be filed more than 1 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>91</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>92</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. Such petitions must be filed within 30 days after rendition of the nonfinal order to be reviewed.<sup>93</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>94</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;
- 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>95</sup>

The petition must be accompanied by an appendix<sup>96</sup> containing the portions of the record necessary for a determination of the issues presented.<sup>97</sup>

<sup>91</sup> Fla. R. App. Proc. 9.142(b)(3)(B).

<sup>92</sup> Fla. R. App. Proc. 9.142(b)(4).

<sup>93</sup> Fla. R. App. Proc. 9.142(c)(2) and (c)(3)(A).

<sup>94</sup> Fla. R. App. Proc. 9.142(c)(3).

<sup>95</sup> Fla. R. App. Proc. 9.142(c)(4).

<sup>96</sup> As prescribed by Fla. R. App. Proc. 9.220.

<sup>97</sup> Fla. R. App. Proc. 9.142(c)(5).

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>98</sup> No response is permitted unless ordered by the Court.<sup>99</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>100</sup>

A stay of proceedings is not automatic - the party seeking a stay must petition the Court for a stay.<sup>101</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>102</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>103</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>104</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>105</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>106</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>107</sup>

If the inmate is found to be incompetent, the trial court must deny the motion without prejudice.<sup>108</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>109</sup>

---

<sup>98</sup> Fla. R. App. Proc. 9.142(c)(6).

<sup>99</sup> Fla. R. App. Proc. 9.142(c)(7).

<sup>100</sup> Fla. R. App. Proc. 9.142(c)(8).

<sup>101</sup> Fla. R. App. Proc. 9.142(c)(9).

<sup>102</sup> *Id.*

<sup>103</sup> Fla. R. Crim. Proc. 3.851(i)(2).

<sup>104</sup> *Id.*

<sup>105</sup> Fla. R. Crim. Proc. 3.851(i)(3).

<sup>106</sup> Fla. R. Crim. Proc. 3.851(i)(4).

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

<sup>108</sup> Fla. R. Crim. Proc. 3.851(i)(5).

<sup>109</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>110</sup> If the trial court determines that the opposite is true, it must enter an order denying the motion without prejudice.<sup>111</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>112</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>113</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 1-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>114</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>115</sup>

Once the 1-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.

---

<sup>110</sup> Fla. R. Crim. Proc. 3.851(i)(7).

<sup>111</sup> *Id.*

<sup>112</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>113</sup> Fla. R. Crim. Proc. 3.851(i)(9).

<sup>114</sup> Fla. R. Crim. Proc. 3.851(d)(4).

<sup>115</sup> Fla. R. Crim. Proc. 3.851 (comment).

- 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>116</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>117</sup> If the motion, files, and records in the case conclusively show that the movant is not entitled to relief, the motion may be denied without an evidentiary hearing.<sup>118</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>119</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>120</sup> A copy of the final order must immediately be electronically transmitted to the Florida Supreme Court and to the attorneys of record.<sup>121</sup> The record must also be sent to the Florida Supreme Court, electronically, if possible.<sup>122</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.

### **Execution**

An inmate's death sentence may not be carried out until the Governor issues a death warrant.<sup>123</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>124</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>125</sup>

---

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

<sup>117</sup> Fla. R. Crim. Proc. 3.851(h)(5).

<sup>118</sup> Fla. R. Crim. Proc. 3.851(h)(6).

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

<sup>120</sup> Fla. R. Crim. Proc. 3.851(h)(8).

<sup>121</sup> *Id.*

<sup>122</sup> Fla. R. Crim. Proc. 3.851(h)(9).

<sup>123</sup> Section 922.052(1), F.S.

<sup>124</sup> Section 922.095, F.S.

<sup>125</sup> Section 922.052(1), F.S.

An inmate's death sentence will be carried out by lethal injection unless the inmate requests to be executed by electrocution.<sup>126</sup> The warden of the state prison designates the executioner.<sup>127</sup> The warden (or a deputy) must be present at the execution and must select twelve individuals to witness the execution.<sup>128</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>129</sup> Immediately before the inmate's execution, the death warrant must be read to the inmate.<sup>130</sup> The physician must announce when death has occurred.<sup>131</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>132</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 resentenced to a term of years, the AG must provide written notification of this occurrence to the Secretary of State.<sup>133</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 may not be destroyed until a final disposition of the objection.<sup>134</sup>

### **Death Penalty Reform Efforts**

The capital postconviction process has often been cited as one of the areas that causes the most delays in capital cases.<sup>135</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, require 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,

---

<sup>126</sup> Section 922.105, F.S.

<sup>127</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>128</sup> Section 922.11(1) and (2), F.S.

<sup>129</sup> Section 922.11(2), F.S.

<sup>130</sup> Section 922.10, F.S.

<sup>131</sup> Section 922.11(2), F.S.

<sup>132</sup> Section 922.12, F.S.

<sup>133</sup> Fla. R. Crim. Proc. 3.852(m).

<sup>134</sup> *Id.*

<sup>135</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).

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 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>136</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 1-year after the date the direct appeal became final.<sup>137</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>138</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>139</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>140, 141</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>142</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>143</sup> and further held that:

<sup>136</sup> *Knight v. State*, 746 So. 2d 423, 439-440 (Fla. 1998). (Wells, J. concurring).

<sup>137</sup> *In Rule of Criminal Procedure 3.851 (Collateral Relief after Death Sentence Has Been Imposed)*, 626 So. 2d. 198 (Fla. 1993).

<sup>138</sup> *Amendments to Florida Rules Criminal Procedure 3.851, 3.852, and 3.993*, 772 So. 2d 488 (Fla. 2000).

<sup>139</sup> Chapter 2000-3, L.O.F.

<sup>140</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>141</sup> *Allen v. Butterworth*, 756 So. 2d 52, 59 (Fla. 2000).

<sup>142</sup> *Id.* at 54.

<sup>143</sup> *Id.* at 61 (citations omitted).

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>144</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 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>145</sup>

### **III. Effect of Proposed Changes:**

#### **Policies and Procedures in Postconviction Capital Collateral Cases**

This bill is the implementing legislation for SJR 1740. That joint resolution authorizes the Legislature, by general law, to govern the postconviction or collateral review of capital cases resulting in a death sentence.

Accordingly, this bill provides procedures to replace court rules governing postconviction or collateral review of capital cases. The purpose of the new procedures is to streamline and further expediency for the postconviction or collateral review of capital cases.

#### **Capital Collateral Regional Counsel (CCRC)**

The bill eliminates the registry attorney "pilot program," originally established in 1993, and reestablishes the CCRC in the northern region of the state. The Florida Legislature initiated the pilot program as a replacement to the northern region CCRC.

---

<sup>144</sup> *Id.* at 62.

<sup>145</sup> *Amendments to Florida Rules of Criminal Procedure 3.851, 3.852 and 3.993*, 772 So. 2d 488, 491 (Fla. 2000).

### **Postconviction and Collateral Review of Sentences in Capital Cases**

The bill amends ss. 27.703, 924.056, and 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, as they relate to collateral review in capital cases. Differences are indicated below.

### **Public Records**

This bill revises s. 27.7081, F.S., by incorporating the substance of Rule 3.852 of the Florida Rules of Criminal Procedure, which addresses public records in capital postconviction proceedings. The bill retains the provision in s. 27.7081, F.S., which requires the Secretary of State to establish and maintain a public records repository to archive capital postconviction public records.

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

The bill revises 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 other legal ground within 30 days after appointment by the Florida Supreme Court. This departs from Rule 3.851(b)(2) of the Florida Rules of Criminal Procedure, which requires the notice or motion to be filed within 30 days after the issuance of the mandate affirming a judgment and death sentence on direct appeal. The court may not hear motions to withdraw after the 30 days.

The bill specifies that if the defendant requests the court to remove or replace an attorney without good cause, the court must notify the defendant that no further state resources will be expended on representation unless the request is withdrawn.

This bill establishes a more active role for the court in conflict of interest situations. If the CCRC alleges the existence of a conflict of interest in a case, the court must hold a hearing to confirm an actual conflict. If the court confirms the conflict of interest, the court will designate another regional counsel. If regional counsel asserts a conflict of interest, the court will hold another conflict of interest hearing, and appoint a registry attorney if the court finds that an actual conflict exists which will adversely affect the replacement regional counsel's representation.

This bill requires the defendant's trial counsel to produce all information relating to the defendant's case within 45 days after appointment of postconviction counsel.

### **Form and Content of Postconviction Motions and Time Limits**

The defendant must file all postconviction motions within 1 year of final judgment and sentence. Rule 3.851 of the Florida Rules of Criminal Procedure authorizes an extension of time past the 1 year limit upon a showing of good cause. The bill does not authorize extensions except in limited circumstances.

The bill requires concurrent filings of petitions for extraordinary relief before the Florida Supreme Court with the initial brief in the appeal of the trial court's order on the initial motion

for postconviction relief. If the Governor signs a death warrant before the 1 year time limit expires for postconviction motions, the Florida Supreme Court will grant a stay of execution upon request to allow motions to be heard.

The bill requires all postconviction motions to be fully pled. Such motions may not exceed 75 pages in length, exclusive of attachments.

Rule 3.851 of the Florida Rules of Criminal Procedure permits a postconviction motion to be amended within 30 days after a scheduled evidentiary hearing upon a showing of good cause. This bill prohibits the defendant or defense counsel from:

- Raising a claim that trial counsel could have raised, or if properly preserved, counsel could have raised on direct appeal of the judgment and sentence. Rule 3.851 of the Florida Rules of Criminal Procedure permits claims that could have been raised at trial or on direct appeal.
- Raising a claim of ineffective assistance of collateral postconviction counsel.
- Amending a motion without court approval. The state must respond to an approved amended filing within 20 days. No amended filings can exceed the 1 year time limit.

### **Judicial Appointment and Status Conferences**

Within 30 days after the issuance of mandate, the chief judge must assign the case to a judge qualified to conduct capital proceedings. The judge must hold a status conference within 90 days after being assigned to the case and at least by the end of every 90 days until the evidentiary hearing is completed. Attorneys may appear electronically, and the defendant's presence is not required.

### **Evidentiary Hearings**

This bill shortens the timeline for filings, responses, and issuance of court orders.

Section 924.055(1), F.S., requires postconviction actions to be resolved within 5 years of sentence. This bill instead requires resolution as quickly as possible.

The clerk must immediately deliver to the chief judge or other assigned judge all motions filed in a postconviction proceeding.

The state must file its answer within 60 days after the filing of an initial postconviction motion. The trial court must hold a case management conference within 30 days after the filing of the state. At the conference, the court must schedule an evidentiary hearing on claims raised by the defendant that require a factual determination, to be held within 90 days. If the court determines that an evidentiary hearing is unnecessary, the court shall within 30 days after the case management conference, deny the motion and provide a written rationale. The trial court must immediately order a hearing transcript after an evidentiary hearing, and the transcript must be filed within 30 days. Within 30 days after receipt of the transcript, the court must issue an order, which is considered the final order for purposes of appeal.

Motions for rehearing must be made within 15 days after the trial court order, and a response must be filed within 10 days. The trial court must issue an order on the motion for rehearing within 15 days after the response. A petitioner may file a notice of appeal with the Florida Supreme Court within 15 days after the final order. This bill prohibits interlocutory appeals.

### **Successive Motions**

The bill creates s. 924.058, F.S., to address 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 after 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 after 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 after 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 after 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 after the entry of the order. The bill changes this timeframe to within 15 days after the entry of the order, and prohibits interlocutory appeals.

## **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., which 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 after the Court's order and conclude the hearing within 90 days after 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 after 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., to bar postconviction actions filed in violation of established time limits, specify that all claims raised in these actions are waived, and prohibit a court from hearing these 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.

## **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 bill specifies 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.

Therefore, the revisions to policy and procedure in capital cases take effect July 1, 2015, contingent on voter approval of SJR 1740 in the general election of 2014. Other provisions in the bill, removing right to counsel in clemency proceedings, eliminating the registry attorney pilot program in capital cases and reinstating the Capital Collateral Regional Counsel in the Northern region of Florida take effect July 1, 2013.

## **Section Directory**

**Section 1.** Entitles the bill the “Timely Justice Act of 2013.”

**Section 2.** Amends s. 27.701, F.S., relating to capital collateral regional counsel.

**Section 3.** Reenacts s. 27.702, F.S., relating to duties of the capital collateral regional counsel; reports.

**Section 4.** Amends s. 27.702, F.S., relating to duties of the capital collateral regional counsel; reports.

**Section 5.** Amends s. 27.703, F.S., relating to conflict of interest and substitute counsel.

**Section 6.** Amends s. 27.708, F.S., relating to access to prisoners; compliance with the Florida Rules of Criminal Procedure; records requests.

**Section 7.** Amends s. 27.7081, F.S., relating to capital postconviction public records production.

**Section 8.** Amends s. 27.7091, F.S., relating to legislative recommendations to Supreme Court; postconviction proceedings; pro bono service credit.

**Section 9.** Amends s. 27.711, F.S., relating to terms and conditions of appointment of attorneys as counsel in postconviction capital collateral proceedings.

**Section 10.** Amends s. 27.711, F.S., relating to terms and conditions of appointment of attorneys as counsel in postconviction capital collateral proceedings.

**Section 11.** Amends s. 922.095, F.S., relating to grounds for death warrant; limitations of actions.

**Section 12.** Amends s. 922.108, F.S., relating to sentencing orders in capital cases.

**Section 13.** Amends s. 924.055, F.S., relating to postconviction review in capital cases; legislative findings and intent.

**Section 14.** 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 15.** Amends s. 924.057, F.S., relating to limitation on postconviction cases in which the death sentence was imposed before January 14, 2000.

**Section 16.** Amends s. 924.058, F.S., relating to capital postconviction claims.

**Section 17.** Creates s. 924.0581, F.S., relating to capital postconviction appeals to the Florida Supreme Court.

**Section 18.** Creates s. 924.0585, F.S., relating to capital postconviction proceedings; reporting requirements.

**Section 19.** Amends s. 924.0585, F.S., relating to capital postconviction proceedings; reporting requirements.

**Section 20.** Amends s. 924.059, F.S., relating to time limitations and judicial review in capital postconviction actions.

**Section 21.** Creates s. 924.0591, F.S., relating to incompetence to proceed in capital postconviction proceedings.

**Section 22.** Creates s. 924.0592, F.S., relating to capital postconviction proceedings after a death warrant has been issued.

**Section 23.** Creates s. 924.0593, F.S., relating to insanity at the time of execution.

**Section 24.** Creates s. 924.0594, F.S., relating to dismissal of postconviction proceedings.

**Section 25.** Provides a severability clause.

**Section 26.** Provides effective dates.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. **Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

**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.

### **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).

According the bill analysis for SPB 7050, reestablishing the CCRC in the northern region will have an estimated fiscal impact of \$423,338 in recurring general revenue in Fiscal Year 2013-2014.<sup>146</sup> This estimate assumes staffing for 4 full-time equivalent (FTE) positions – an interim director (who will serve as first chair), a second attorney (who will serve as second chair), an investigator, and a support staff. The estimate includes funding for routine expenses, such as telephones, office supplies, building rental, and data communication. The estimate also includes funding for due process-related expenses, such as expert witness fees, and funding for court transcripts.<sup>147</sup>

### **VI. Technical Deficiencies:**

None.

### **VII. Related Issues:**

None.

---

<sup>146</sup> This fiscal impact is predicated on the assumption that the newly-formed northern regional office will be assigned new cases as they are handed down by the courts after July 1, 2013; currently assigned cases will continue to be handled by registry attorneys. According to the Justice Administrative Commission, the northern region registry received 5 new cases in Fiscal Year 2010-2011, 3 new cases in Fiscal Year 2011-2012, and 3 new cases in the first half of Fiscal Year 2012-2013.

<sup>147</sup> Information contained in this portion of the bill analysis is from the analysis for SPB 7050 by the Senate Committee on Appropriations (Mar. 28, 2013) (on file with the Senate Committee on Appropriations).

**VIII. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**Recommended CS by Criminal and Civil Justice Appropriations on April 4, 2013:**

The amendment removes the bill's provisions which eliminated the requirement for the court to appoint counsel to represent defendants in clemency proceedings. Specifically, the committee substitute does the following:

- Removes section 2, s. 27.40, F.S. relating to court-appointed counsel; circuit registries; minimum requirements; appointment by court.
- Removes section 3, s. 27.51, F.S., relating to duties of public defender.
- Removes section 4, s. 27.51, F.S., relating to duties of public defender.
- Removes section 5, s. 27.511, F.S., relating to offices of criminal conflict and civil regional counsel; legislative intent; qualifications; appointment; duties.
- Removes section 6, s. 27.511, F.S., relating to offices of criminal conflict and civil regional counsel; legislative intent; qualifications; appointment; duties.
- Removes section 7, s. 27.5305, F.S., relating to public defenders; criminal conflict and civil regional counsel; conflict of interest.
- Removes section 8, s. 27.5304, F.S., relating to private court-appointed counsel; compensation; notice.
- Renumbers the remaining sections of the bill.

- B. **Amendments:**

None.



159370

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/04/2013	.	
	.	
	.	
	.	

---

Appropriations Subcommittee on Criminal and Civil Justice  
(Joyner) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 117 - 282.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete lines 3 - 6

and insert:

proceedings; providing a short title; repealing s.

27.701(2), F.S.,



935908

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/04/2013	.	
	.	
	.	
	.	

---

---

Appropriations Subcommittee on Criminal and Civil Justice  
(Joyner) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 117 - 281.

===== T I T L E   A M E N D M E N T =====

And the title is amended as follows:

Delete lines 2 - 6

and insert:

proceedings; providing a short title; repealing s.

27.701(2), F.S.,



128118

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/04/2013	.	
	.	
	.	
	.	

---

Appropriations Subcommittee on Criminal and Civil Justice  
(Joyner) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 117 - 281.

===== T I T L E A M E N D M E N T =====

And the title is amended as follows:

Delete lines 3 - 6

and insert:

proceedings; providing a short title; repealing s.

27.701(2), F.S.,

By Senator Negron

32-01271A-13

20131750\_\_

1 A bill to be entitled  
 2 An act relating to postconviction capital case  
 3 proceedings; providing a short title; amending ss.  
 4 27.40, 27.51, 27.511, 27.5303, and 27.5304, F.S.;  
 5 removing the right to have appointed counsel in  
 6 clemency proceedings; repealing s. 27.701(2), F.S.,  
 7 relating to the pilot project for capital  
 8 representation; amending s. 27.702, F.S.; providing  
 9 that the capital collateral regional counsel and the  
 10 attorneys appointed pursuant to law shall file only  
 11 those postconviction or collateral actions authorized  
 12 by statute; amending s. 27.703, F.S.; providing that  
 13 if the collateral counsel believes continued  
 14 representation of a person creates a conflict of  
 15 interest, the court shall hold a hearing to determine  
 16 if a conflict actually exists; amending s. 27.708,  
 17 F.S.; directing capital collateral counsel to comply  
 18 with statutory requirements rather than rules of  
 19 court; amending s. 27.7081, F.S., relating to public  
 20 records; defining terms; describing access to public  
 21 records; proscribing procedures to obtain relevant  
 22 records; amending s. 27.7091, F.S.; removing a request  
 23 to the Supreme Court to adopt by rule the provisions  
 24 that limit the time for postconviction proceedings in  
 25 capital cases; amending s. 27.711, F.S.; revising  
 26 provisions to conform to changes made by the act;  
 27 amending s. 922.095, F.S.; providing that any  
 28 postconviction claim not pursued within the statutory  
 29 time limits is barred; reenacting s. 922.108, F.S.,

Page 1 of 61

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

32-01271A-13

20131750\_\_

30 relating to sentencing orders in capital cases;  
 31 amending s. 924.055, F.S.; providing legislative  
 32 intent; directing courts to expedite postconviction  
 33 proceedings; amending s. 924.056, F.S.; providing that  
 34 the section governs all postconviction proceedings in  
 35 every capital case in which the conviction and  
 36 sentence of death have been affirmed on direct appeal  
 37 on or after a specified date; providing for the  
 38 appointment of postconviction counsel; amending  
 39 s.924.057, F.S.; providing that the section governs  
 40 all postconviction proceeding to capital  
 41 postconviction actions brought before a specified  
 42 date; making technical changes; amending s. 924.058,  
 43 F.S.; providing that the section regulates procedures  
 44 in actions involving successive postconviction motions  
 45 in all postconviction proceedings in capital cases  
 46 affirmed on or after a specified date; creating s.  
 47 924.0581, F.S.; providing that the section governs  
 48 capital postconviction appeals to the Florida Supreme  
 49 Court in every capital case in which the conviction  
 50 and sentence of death have been affirmed on direct  
 51 appeal on or after a specified date; creating s.  
 52 924.0585, F.S.; requiring the Florida Supreme Court to  
 53 annually report to the Speaker of the Florida House of  
 54 Representatives and the President of the Florida  
 55 Senate concerning the status of each capital case in  
 56 which a postconviction action has been filed that has  
 57 been pending for more than 3 years; amending s.  
 58 924.059, F.S.; providing procedures to resolve

Page 2 of 61

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

32-01271A-13

20131750\_\_

59 conflicts of interest in capital postconviction  
 60 proceedings; creating s. 924.0591, F.S.; providing  
 61 that a death-sentenced inmate pursuing collateral  
 62 relief who is found by the court to be mentally  
 63 incompetent shall not be proceeded against; providing  
 64 procedures for competency examinations and hearings;  
 65 creating s. 924.0592, F.S.; providing that the section  
 66 governs all postconviction proceedings in every  
 67 capital case in which the conviction and sentence of  
 68 death have been affirmed on direct appeal on or after  
 69 a specified date and in which a death warrant has been  
 70 issued; creating s. 924.0593, F.S.; governing  
 71 procedures relating to claims of insanity at the time  
 72 of execution; creating s. 924.0594, F.S.; providing  
 73 procedures that apply if an inmate seeks both to  
 74 dismiss a pending postconviction proceeding and to  
 75 discharge collateral counsel; providing for  
 76 severability; providing for a contingent effective  
 77 date.

78  
 79 WHEREAS, it is in the best interest of the administration  
 80 of justice that a sentence of death ordered by a court of this  
 81 state be carried out in a manner that is fair, just, and humane  
 82 and that conforms to constitutional requirements, and

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

Page 3 of 61

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

32-01271A-13

20131750\_\_

88 WHEREAS, in order to ensure the fair, just, and humane  
 89 administration of capital punishment, it is necessary for the  
 90 Legislature to comprehensively address the processes by which an  
 91 offender sentenced to death may pursue postconviction and  
 92 collateral review of the judgment and the sentence of death, and

93 WHEREAS, the Death Penalty Reform Act of 2000, chapter  
 94 2000-3, Laws of Florida, was designed to accomplish these  
 95 objectives and was passed by the Legislature and approved by the  
 96 Governor of Florida in January of 2000, and

97 WHEREAS, the Death Penalty Reform Act of 2000, chapter  
 98 2000-3, Laws of Florida, was declared unconstitutional by the  
 99 Florida Supreme Court three months after becoming a law in *Allen*  
 100 *v. Butterworth*, 756 So.2d 52 (Fla. 2000), as being an  
 101 encroachment on the court's "exclusive power to 'adopt rules for  
 102 the practice and procedure in all courts,'" and

103 WHEREAS, the Constitution of the State of Florida has been  
 104 amended to require postconviction and collateral review of  
 105 capital cases resulting in a sentence of death to be governed  
 106 by, and to the extent provided by, general law, and

107 WHEREAS, provisions of the Death Penalty Reform Act of 2000  
 108 which were held unconstitutional may now be reenacted, while  
 109 other provisions can be modified, and new provisions added to  
 110 ensure a prompt and efficient administration of justice  
 111 following any sentence of death, NOW, THEREFORE,

112  
 113 Be It Enacted by the Legislature of the State of Florida:

114  
 115 Section 1. This act may be cited as the "Timely Justice  
 116 Act."

Page 4 of 61

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

32-01271A-13 20131750\_\_

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

119 27.40 Court-appointed counsel; circuit registries; minimum  
120 requirements; appointment by court.—

121 (1) Counsel shall be appointed to represent any individual  
122 in a criminal or civil proceeding entitled to court-appointed  
123 counsel under the Federal or State Constitution or as authorized  
124 by general law. Such proceedings do not include proceedings for  
125 relief by executive clemency in which the application for  
126 executive clemency was filed on or after July 1, 2013. The court  
127 shall appoint a public defender to represent indigent persons as  
128 authorized in s. 27.51. The office of criminal conflict and  
129 civil regional counsel shall be appointed to represent persons  
130 in those cases in which provision is made for court-appointed  
131 counsel but the public defender is unable to provide  
132 representation due to a conflict of interest or is not  
133 authorized to provide representation.

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

137 27.51 Duties of public defender.—

138 (5) (a) When direct appellate proceedings prosecuted by a  
139 public defender on behalf of an accused and challenging a  
140 judgment of conviction and sentence of death terminate in an  
141 affirmance of such conviction and sentence, whether by the  
142 Florida Supreme Court or by the United States Supreme Court or  
143 by expiration of any deadline for filing such appeal in a state  
144 or federal court, the public defender shall notify the accused  
145 of his or her rights pursuant to Rule 3.850, Florida Rules of

32-01271A-13 20131750\_\_

146 Criminal Procedure, including any time limits pertinent thereto,  
147 and shall advise such person that representation in any  
148 collateral proceedings is the responsibility of the capital  
149 collateral regional counsel. The public defender shall then  
150 forward all original files on the matter to the capital  
151 collateral regional counsel, retaining such copies for his or  
152 her files as may be desired. However, for clemency applications  
153 pending or filed before July 1, 2013, the trial court shall  
154 retain the power to appoint the public defender or other  
155 attorney not employed by the capital collateral regional counsel  
156 to represent such person in proceedings for relief by executive  
157 clemency pursuant to ss. 27.40 and 27.5303.

158 Section 4. Paragraph (a) of subsection (5) of section  
159 27.51, Florida Statutes, as amended by this act, is amended to  
160 read:

161 27.51 Duties of public defender.—

162 (5) (a) When direct appellate proceedings prosecuted by a  
163 public defender on behalf of an accused and challenging a  
164 judgment of conviction and sentence of death terminate in an  
165 affirmance of such conviction and sentence, whether by the  
166 Florida Supreme Court or by the United States Supreme Court or  
167 by expiration of any deadline for filing such appeal in a state  
168 or federal court, the public defender shall notify the accused  
169 of his or her rights pursuant to ~~s. 924.056 Rule 3.850, Florida~~  
170 ~~Rules of Criminal Procedure,~~ including any time limits pertinent  
171 thereto, and shall advise such person that representation in any  
172 collateral proceedings is the responsibility of the capital  
173 collateral regional counsel. The public defender shall then  
174 forward all original files on the matter to the capital

32-01271A-13 20131750\_\_  
 175 collateral regional counsel, retaining such copies for his or  
 176 her files as may be desired. However, for clemency applications  
 177 pending or filed before July 1, 2013, the trial court shall  
 178 retain the power to appoint the public defender or other  
 179 attorney not employed by the capital collateral regional counsel  
 180 to represent such person in proceedings for relief by executive  
 181 clemency pursuant to ss. 27.40 and 27.5303.

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

184 27.511 Offices of criminal conflict and civil regional  
 185 counsel; legislative intent; qualifications; appointment;  
 186 duties.—

187 (9) When direct appellate proceedings prosecuted by the  
 188 office of criminal conflict and civil regional counsel on behalf  
 189 of an accused and challenging a judgment of conviction and  
 190 sentence of death terminate in an affirmance of such conviction  
 191 and sentence, whether by the Supreme Court or by the United  
 192 States Supreme Court or by expiration of any deadline for filing  
 193 such appeal in a state or federal court, the office of criminal  
 194 conflict and civil regional counsel shall notify the accused of  
 195 his or her rights pursuant to Rule 3.850, Florida Rules of  
 196 Criminal Procedure, including any time limits pertinent thereto,  
 197 and shall advise such person that representation in any  
 198 collateral proceedings is the responsibility of the capital  
 199 collateral regional counsel. The office of criminal conflict and  
 200 civil regional counsel shall forward all original files on the  
 201 matter to the capital collateral regional counsel, retaining  
 202 such copies for his or her files as may be desired or required  
 203 by law. However, for clemency applications pending or filed

32-01271A-13 20131750\_\_  
 204 before July 1, 2013, the trial court shall retain the power to  
 205 appoint the office of criminal conflict and civil regional  
 206 counsel or other attorney not employed by the capital collateral  
 207 regional counsel to represent such person in proceedings for  
 208 relief by executive clemency pursuant to ss. 27.40 and 27.5303.

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

211 27.511 Offices of criminal conflict and civil regional  
 212 counsel; legislative intent; qualifications; appointment;  
 213 duties.—

214 (9) When direct appellate proceedings prosecuted by the  
 215 office of criminal conflict and civil regional counsel on behalf  
 216 of an accused and challenging a judgment of conviction and  
 217 sentence of death terminate in an affirmance of such conviction  
 218 and sentence, whether by the Supreme Court or by the United  
 219 States Supreme Court or by expiration of any deadline for filing  
 220 such appeal in a state or federal court, the office of criminal  
 221 conflict and civil regional counsel shall notify the accused of  
 222 his or her rights pursuant to s. 924.056 ~~Rule 3.850, Florida~~  
 223 ~~Rules of Criminal Procedure,~~ including any time limits pertinent  
 224 thereto, and shall advise such person that representation in any  
 225 collateral proceedings is the responsibility of the capital  
 226 collateral regional counsel. The office of criminal conflict and  
 227 civil regional counsel shall forward all original files on the  
 228 matter to the capital collateral regional counsel, retaining  
 229 such copies for his or her files as may be desired or required  
 230 by law. However, for clemency applications pending or filed  
 231 before July 1, 2013, the trial court shall retain the power to  
 232 appoint the office of criminal conflict and civil regional

32-01271A-13 20131750\_\_  
 233 counsel or other attorney not employed by the capital collateral  
 234 regional counsel to represent such person in proceedings for  
 235 relief by executive clemency pursuant to ss. 27.40 and 27.5303.

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

238 27.5303 Public defenders; criminal conflict and civil  
 239 regional counsel; conflict of interest.—

240 (4) (a) If a defendant is convicted and the death sentence  
 241 is imposed, the appointed attorney shall continue representation  
 242 through appeal to the Supreme Court. The attorney shall be  
 243 compensated as provided in s. 27.5304. If the attorney first  
 244 appointed is unable to handle the appeal, the court shall  
 245 appoint another attorney and that attorney shall be compensated  
 246 as provided in s. 27.5304.

247 (b) The public defender or an attorney appointed pursuant  
 248 to this section may be appointed by the court rendering the  
 249 judgment imposing the death penalty to represent an indigent  
 250 defendant who, before July 1, 2013, has an application for  
 251 executive clemency pending or has applied for executive clemency  
 252 as relief from the execution of the judgment imposing the death  
 253 penalty.

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

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

260 27.5304 Private court-appointed counsel; compensation;  
 261 notice.—

32-01271A-13 20131750\_\_  
 262 (5) The compensation for representation in a criminal  
 263 proceeding shall not exceed the following:

264 (a)1. For misdemeanors and juveniles represented at the  
 265 trial level: \$1,000.

266 2. For noncapital, nonlife felonies represented at the  
 267 trial level: \$2,500.

268 3. For life felonies represented at the trial level:  
 269 \$3,000.

270 4. For capital cases represented at the trial level:  
 271 \$15,000. For purposes of this subparagraph, a "capital case" is  
 272 any offense for which the potential sentence is death and the  
 273 state has not waived seeking the death penalty.

274 5. For representation on appeal: \$2,000.

275 (b) If a death sentence is imposed and affirmed on appeal  
 276 to the Supreme Court, the appointed attorney shall be allowed  
 277 compensation, not to exceed \$1,000, for attorney fees and costs  
 278 incurred in representing the defendant as to an application for  
 279 executive clemency submitted before July 1, 2013, with  
 280 compensation to be paid out of general revenue from funds  
 281 budgeted to the Department of Corrections.

282 Section 9. Effective July 1, 2013, subsection (2) of  
 283 section 27.701, Florida Statutes, is repealed.

284 Section 10. Subsection (1) of section 27.702, Florida  
 285 Statutes, is amended to read:

286 27.702 Duties of the capital collateral regional counsel;  
 287 reports.—

288 (1) The capital collateral regional counsel shall represent  
 289 each person convicted and sentenced to death in this state for  
 290 the sole purpose of instituting and prosecuting collateral

32-01271A-13

20131750

291 actions challenging the legality of the judgment and sentence  
 292 imposed against such person in the state courts, federal courts  
 293 in this state, the United States Court of Appeals for the  
 294 Eleventh Circuit, and the United States Supreme Court. ~~The~~  
 295 ~~capital collateral regional counsel and the attorneys appointed~~  
 296 ~~pursuant to s. 27.710 shall file only those postconviction or~~  
 297 ~~collateral actions authorized by statute.~~ The three capital  
 298 collateral regional counsel's offices shall function  
 299 independently and be separate budget entities, and the regional  
 300 counsel shall be the office heads for all purposes. The Justice  
 301 Administrative Commission shall provide administrative support  
 302 and service to the three offices to the extent requested by the  
 303 regional counsel. The three regional offices shall not be  
 304 subject to control, supervision, or direction by the Justice  
 305 Administrative Commission in any manner, including, but not  
 306 limited to, personnel, purchasing, transactions involving real  
 307 or personal property, and budgetary matters.

308 Section 11. Effective July 1, 2013, paragraph (b) of  
 309 subsection (4) of section 27.702, Florida Statutes, is amended  
 310 to read:

311 27.702 Duties of the capital collateral regional counsel;  
 312 reports.-

313 (4)

314 (b) Each capital collateral regional counsel ~~and each~~  
 315 ~~attorney participating in the pilot program in the northern~~  
 316 ~~region pursuant to s. 27.701(2)~~ shall provide a quarterly report  
 317 to the President of the Senate and the Speaker of the House of  
 318 Representatives which details the number of hours worked by  
 319 investigators and legal counsel per case and the amounts per

32-01271A-13

20131750

320 case expended during the preceding quarter in investigating and  
 321 litigating capital collateral cases.

322 Section 12. Section 27.703, Florida Statutes, is reenacted  
 323 to read:

324 27.703 Conflict of interest and substitute counsel.-

325 (1) The capital collateral regional counsel shall not  
 326 accept an appointment or take any other action that will create  
 327 a conflict of interest. If, at any time during the  
 328 representation of a person, the capital collateral regional  
 329 counsel alleges ~~determines~~ that the continued representation of  
 330 that person creates a conflict of interest, the sentencing court  
 331 shall hold a hearing in accordance with s. 924.059 to determine  
 332 if an actual conflict exists. If the court determines that an  
 333 actual conflict exists and that such conflict will adversely  
 334 affect the capital collateral regional counsel's performance,  
 335 the court shall, upon application by the regional counsel,  
 336 designate another regional counsel. If the replacement regional  
 337 counsel alleges that a conflict of interest exists, the  
 338 sentencing court shall hold a hearing in accordance with s.  
 339 924.059 to determine if an actual conflict exists. If the court  
 340 determines that an actual conflict exists and that such conflict  
 341 will adversely affect the replacement regional counsel's  
 342 performance, the court shall and, only if a conflict exists with  
 343 the other two counsel, appoint one or more members of The  
 344 Florida Bar to represent the person ~~one or more of such persons.~~

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

32-01271A-13

20131750\_\_

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

354 Section 13. Section 27.708, Florida Statutes, is amended to  
 355 read:

356 27.708 Access to inmates prisoners; compliance with the  
 357 Florida Rules of Criminal Procedure; records requests.-

358 (1) Each capital collateral regional counsel and his or her  
 359 assistants may inquire of all persons sentenced to death who are  
 360 incarcerated and tender them advice and counsel at any  
 361 reasonable time, but this section does not apply with respect to  
 362 persons who are represented by other counsel.

363 (2) The capital collateral regional counsel and contracted  
 364 private counsel must timely comply with all statutory  
 365 requirements provisions of the Florida Rules of Criminal  
 366 Procedure governing collateral review of capital cases.

367 (3) Except as provided in s. 27.7081, the capital  
 368 collateral regional counsel or contracted private counsel shall  
 369 not make any public records request on behalf of his or her  
 370 client.

371 Section 14. Section 27.7081, Florida Statutes, is amended  
 372 to read:

373 (Substantial rewording of section.

374 See s. 27.7081, F.S., for present text.)

375 27.7081 Capital postconviction public records production.-

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

377 (a) "Agency" has the same meaning as provided in s.

32-01271A-13

20131750\_\_

378 119.011.

379 (b) "Collateral counsel" means a capital collateral  
 380 regional counsel from one of the three regions in Florida, a  
 381 private attorney who has been appointed to represent a capital  
 382 defendant for postconviction litigation, or a private attorney  
 383 who has been hired by the capital defendant or who has agreed to  
 384 work pro bono for a capital defendant for postconviction  
 385 litigation.

386 (c) "Public records" has the same meaning as provided in s.  
 387 119.011.

388 (d) "Trial court" means:

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

391 2. If a motion for postconviction relief in a capital case  
 392 has been filed and a different judge has already been assigned  
 393 to that motion, the judge who is assigned to rule on that  
 394 motion.

395 (2) APPLICABILITY AND SCOPE.-This section only applies to  
 396 the production of public records for capital postconviction  
 397 defendants and does not change or alter the time periods  
 398 specified in s. 924.056 or s. 924.058. Furthermore, this section  
 399 does not affect, expand, or limit the production of public  
 400 records for any purposes other than use in a proceeding held  
 401 pursuant to s. 924.056 or s. 924.058. This section shall not be  
 402 a basis for renewing public records requests that have been  
 403 initiated previously or for relitigating issues pertaining to  
 404 production of public records upon which a court has ruled prior  
 405 to July 1, 2015. Public records requests made in postconviction  
 406 proceedings in capital cases in which the conviction and

32-01271A-13 20131750  
 407 sentence of death have been affirmed on direct appeal before  
 408 July 1, 2015, shall be governed by the rules and laws in effect  
 409 immediately prior to the effective date of this act.

410 (3) RECORDS REPOSITORY.—The Secretary of State shall  
 411 establish and maintain a records repository for the purpose of  
 412 archiving capital postconviction public records as provided for  
 413 in this section.

414 (4) FILING AND SERVICE.—

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

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

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

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

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

431 (a) Within 15 days after receiving written notification of  
 432 the Supreme Court of Florida's mandate affirming the sentence of  
 433 death, the Attorney General shall file with the trial court a  
 434 written notice of the mandate and serve a copy of it upon the  
 435 state attorney who prosecuted the case, the Department of

32-01271A-13 20131750  
 436 Corrections, and the defendant's trial counsel. The notice to  
 437 the state attorney shall direct the state attorney to submit  
 438 public records to the records repository within 90 days after  
 439 receipt of written notification and to notify each law  
 440 enforcement agency involved in the investigation of the capital  
 441 offense to submit public records to the records repository  
 442 within 90 days after receipt of written notification. The notice  
 443 to the Department of Corrections shall direct the department to  
 444 submit public records to the records repository within 90 days  
 445 after receipt of written notification.

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

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

459 (d) Within 15 days after receiving written notification of  
 460 any additional person or agency pursuant to paragraphs (b) or  
 461 (c), the Attorney General shall notify all persons or agencies  
 462 identified pursuant to paragraphs (b) or (c) that these persons  
 463 or agencies are required by law to copy, index, and deliver to  
 464 the records repository all public records pertaining to the case

32-01271A-13 20131750\_\_

465 that are in their possession. The person or agency shall bear  
 466 the costs related to copying, indexing, and delivering the  
 467 records.

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

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

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

487 (c) Within 90 days after receipt of written notification of  
 488 the mandate from the Attorney General, the Department of  
 489 Corrections shall copy, index, and deliver to the records  
 490 repository all public records determined by the department to be  
 491 relevant to the subject matter of a proceeding under s. 924.056  
 492 or s. 924.058, unless such copying, indexing, and delivering  
 493 would be unduly burdensome. The department shall bear the costs.

32-01271A-13 20131750\_\_

494 The secretary of the department shall provide written  
 495 notification to the Attorney General of compliance with this  
 496 paragraph certifying that, to the best of the secretary of the  
 497 department's knowledge or belief, all such public records in the  
 498 possession of the secretary of the department have been copied,  
 499 indexed, and delivered to the records repository.

500 (d) Within 90 days after receipt of written notification of  
 501 the mandate from the state attorney, a law enforcement agency  
 502 shall copy, index, and deliver to the records repository all  
 503 public records which were produced in the investigation or  
 504 prosecution of the case. Each agency shall bear the costs. The  
 505 chief law enforcement officer of each law enforcement agency  
 506 shall provide written notification to the Attorney General of  
 507 compliance with this paragraph including certifying that, to the  
 508 best of the chief law enforcement officer's knowledge or belief,  
 509 all such public records in possession of the agency or in  
 510 possession of any employee of the agency, have been copied,  
 511 indexed, and delivered to the records repository.

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

32-01271A-13

20131750\_\_

523 (7) EXEMPT OR CONFIDENTIAL PUBLIC RECORDS.—

524 (a) Any public records delivered to the records repository  
 525 pursuant to this section that are confidential or exempt from  
 526 the requirements of s. 119.07(1) or Art. I, Section 24(a),  
 527 Florida Constitution, must be separately contained, without  
 528 being redacted, and sealed. The outside of the container must  
 529 clearly identify that the public record is confidential or  
 530 exempt and that the seal may not be broken without an order of  
 531 the trial court. The outside of the container must identify the  
 532 nature of the public records and the legal basis for the  
 533 exemption.

534 (b) Upon the entry of an appropriate court order, sealed  
 535 containers subject to an inspection by the trial court shall be  
 536 shipped to the clerk of court. The containers may be opened only  
 537 for inspection by the trial court in camera. The moving party  
 538 shall bear all costs associated with the transportation and  
 539 inspection of such records by the trial court. The trial court  
 540 shall perform the unsealing and inspection without ex parte  
 541 communications and in accord with procedures for reviewing  
 542 sealed documents.

543 (8) DEMAND FOR ADDITIONAL PUBLIC RECORDS.—

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

549 (b) Within 90 days of receipt of the written demand, each  
 550 person or agency notified under this subsection shall deliver to  
 551 the records repository any additional public records in the

32-01271A-13

20131750\_\_

552 possession of the person or agency that pertain to the case and  
 553 shall certify to the best of the person or agency's knowledge  
 554 and belief that all additional public records have been  
 555 delivered to the records repository or, if no additional public  
 556 records are found, shall recertify that the public records  
 557 previously delivered are complete.

558 (c) Within 60 days of receipt of the written demand, any  
 559 person or agency may file with the trial court an objection to  
 560 the written demand described in paragraph (a). The trial court  
 561 shall hold a hearing and issue a ruling within 30 days after the  
 562 filing of any objection, ordering a person or agency to produce  
 563 additional public records if the court determines each of the  
 564 following exists:

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

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

570 3. The additional public records sought are relevant to the  
 571 subject matter of a postconviction proceeding under s. 924.056  
 572 or s. 924.058, or appear reasonably calculated to lead to the  
 573 discovery of admissible evidence.

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

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

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

32-01271A-13 20131750\_\_

581 1. Attests that collateral counsel has made a timely and  
582 diligent search of the records repository; and  
583 2. Identifies with specificity those public records not at  
584 the records repository; and  
585 3. Establishes that the additional public records are  
586 either relevant to the subject matter of the postconviction  
587 proceeding or are reasonably calculated to lead to the discovery  
588 of admissible evidence; and  
589 4. Shall be served in accord with subsection (4).  
590 (b) Within 30 days after the affidavit of collateral  
591 counsel is filed, the trial court shall order a person or agency  
592 to produce additional public records only upon finding each of  
593 the following:  
594 1. Collateral counsel has made a timely and diligent search  
595 of the records repository;  
596 2. Collateral counsel's affidavit identifies with  
597 specificity those additional public records that are not at the  
598 records repository;  
599 3. The additional public records sought are either relevant  
600 to the subject matter of a capital postconviction proceeding or  
601 appear reasonably calculated to lead to the discovery of  
602 admissible evidence; and  
603 4. The additional records request is not overly broad or  
604 unduly burdensome.  
605 (10) Collateral counsel shall provide the personnel,  
606 supplies, and any necessary equipment to copy records held at  
607 the records repository.  
608 (11) AUTHORITY OF THE COURT.-In proceedings under this  
609 section the trial court may:

32-01271A-13 20131750\_\_

610 (a) Compel or deny disclosure of records;  
611 (b) Conduct an in-camera inspection;  
612 (c) Extend the times in this section upon a showing of good  
613 cause;  
614 (d) Impose sanctions upon any party, person, or agency  
615 affected by this section including initiating contempt  
616 proceedings, taxing expenses, extending time, ordering facts to  
617 be established, and granting other relief; and  
618 (e) Resolve any dispute arising under this section unless  
619 jurisdiction is in an appellate court.  
620 (12) SCOPE OF PRODUCTION AND RESOLUTION OF PRODUCTION  
621 ISSUES.-  
622 (a) Unless otherwise limited, the scope of production under  
623 any part of this section shall be that the public records sought  
624 are not privileged or immune from production and are either  
625 relevant to the subject matter of a postconviction proceeding  
626 under s. 924.056 or s. 924.058 or are reasonably calculated to  
627 lead to the discovery of admissible evidence.  
628 (b) Any objections or motions to compel production of  
629 public records pursuant to this section shall be filed within 30  
630 days after the end of the production time period provided by  
631 this section. Counsel for the party objecting or moving to  
632 compel shall file a copy of the objection or motion directly  
633 with the trial court. The trial court shall hold a hearing on  
634 the objection or motion on an expedited basis.  
635 (c) The trial court may order mediation for any controversy  
636 as to public records production pursuant to this section in  
637 accord with Florida Rules of Civil Procedure 1.700, 1.710,  
638 1.720, 1.730, or the trial court may refer any such controversy

32-01271A-13

20131750

639 to a magistrate in accord with Florida Rule of Civil Procedure  
640 1.490.

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

655 Section 15. Effective July 1, 2013, section 27.7091,  
656 Florida Statutes, is amended to read:

657 27.7091 Legislative recommendations to Supreme Court;  
658 postconviction proceedings; pro bono service credit.--In the  
659 interest of promoting justice and integrity with respect to  
660 capital collateral representation, the Legislature recommends  
661 that the Supreme Court+

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

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

32-01271A-13

20131750

668 Section 16. Effective July 1, 2013, subsection (3) of  
669 section 27.711, Florida Statutes, is amended to read:

670 27.711 Terms and conditions of appointment of attorneys as  
671 counsel in postconviction capital collateral proceedings.--

672 (3) An attorney appointed to represent a capital defendant  
673 is entitled to payment of the fees set forth in this section  
674 only upon full performance by the attorney of the duties  
675 specified in this section and approval of payment by the trial  
676 court, and the submission of a payment request by the attorney,  
677 subject to the availability of sufficient funding specifically  
678 appropriated for this purpose. ~~An attorney may not be~~  
679 ~~compensated under this section for work performed by the~~  
680 ~~attorney before July 1, 2003, while employed by the northern~~  
681 ~~regional office of the capital collateral counsel.~~ The Chief  
682 Financial Officer shall notify the executive director and the  
683 court if it appears that sufficient funding has not been  
684 specifically appropriated for this purpose to pay any fees which  
685 may be incurred. The attorney shall maintain appropriate  
686 documentation, including a current and detailed hourly  
687 accounting of time spent representing the capital defendant. The  
688 fee and payment schedule in this section is the exclusive means  
689 of compensating a court-appointed attorney who represents a  
690 capital defendant. When appropriate, a court-appointed attorney  
691 must seek further compensation from the Federal Government, as  
692 provided in 18 U.S.C. s. 3006A or other federal law, in habeas  
693 corpus litigation in the federal courts.

694 Section 17. Paragraph (b) of subsection (4) of section  
695 27.711, Florida Statutes, is amended to read:

696 27.711 Terms and conditions of appointment of attorneys as

32-01271A-13 20131750\_\_

697 counsel in postconviction capital collateral proceedings.-  
 698 (4) Upon approval by the trial court, an attorney appointed  
 699 to represent a capital defendant under s. 27.710 is entitled to  
 700 payment of the following fees by the Chief Financial Officer:  
 701 (b) The attorney is entitled to \$100 per hour, up to a  
 702 maximum of \$20,000, after timely filing in the trial court the  
 703 capital defendant's complete original motion for postconviction  
 704 relief ~~under the Florida Rules of Criminal Procedure~~. The motion  
 705 must raise all issues to be addressed by the trial court.  
 706 However, an attorney is entitled to fees under this paragraph if  
 707 the court schedules a hearing on a matter that makes the filing  
 708 of the original motion for postconviction relief unnecessary or  
 709 if the court otherwise disposes of the case.  
 710  
 711 The hours billed by a contracting attorney under this subsection  
 712 may include time devoted to representation of the defendant by  
 713 another attorney who is qualified under s. 27.710 and who has  
 714 been designated by the contracting attorney to assist him or  
 715 her.  
 716 Section 18. Section 922.095, Florida Statutes, is amended  
 717 to read:  
 718 922.095 Grounds for death warrant; limitations of actions.-  
 719 A person who is convicted and sentenced to death must pursue all  
 720 possible collateral remedies within the time limits provided by  
 721 statute. Failure to seek relief within the statutory time limits  
 722 constitutes grounds for issuance of a death warrant under s.  
 723 922.052 or s. 922.14. Any postconviction claim not pursued  
 724 within the statutory time limits is barred. No postconviction  
 725 claim filed after the time required by law shall be grounds for

32-01271A-13 20131750\_\_

726 a judicial stay of any warrant.  
 727 Section 19. Section 922.108, Florida Statutes, is reenacted  
 728 to read:  
 729 922.108 Sentencing orders in capital cases.-The sentence of  
 730 death must not specify any particular method of execution. The  
 731 wording or form of the sentencing order shall not be grounds for  
 732 reversal of any sentence.  
 733 Section 20. Section 924.055, Florida Statutes, is amended  
 734 to read:  
 735 924.055 Postconviction review in capital cases; legislative  
 736 findings and intent.-  
 737 (1) It is the intent of the Legislature to reduce delays in  
 738 capital cases and to ensure that all ~~appeals and~~ postconviction  
 739 actions in capital cases are resolved as quickly as possible  
 740 ~~within 5 years~~ after the date a sentence of death is imposed in  
 741 the circuit court. ~~All capital postconviction actions must be~~  
 742 ~~filed as early as possible after the imposition of a sentence of~~  
 743 ~~death which may be during a direct appeal of the conviction and~~  
 744 ~~sentence~~. A person sentenced to death or that person's capital  
 745 postconviction counsel must file any postconviction ~~legal~~  
 746 in compliance with the timeframes ~~statutes of limitation~~  
 747 established in s. 924.056, s. 924.058, and elsewhere in this  
 748 chapter. Except as expressly allowed by s. 924.058 ~~or~~  
 749 ~~924.056(5)~~, a person sentenced to death or that person's capital  
 750 postconviction counsel may not file more than one postconviction  
 751 action in a sentencing court and one appeal therefrom to the  
 752 Florida Supreme Court, unless authorized by law.  
 753 (2) It is the further intent of the Legislature that no  
 754 state resources be expended in violation of this act. In the

32-01271A-13

20131750\_\_

755 event that any state employee or party contracting with the  
 756 state violates the provisions of this act, the Attorney General  
 757 shall deliver to the Speaker of the House of Representatives and  
 758 the President of the Senate a copy of any court pleading or  
 759 order that describes or adjudicates a violation.

760 Section 21. Section 924.056, Florida Statutes, is amended  
 761 to read:

762 (Substantial rewording of section.

763 See s. 924.056, F.S., for present text.)

764 924.056 Capital postconviction proceedings.—This section  
 765 governs all postconviction proceedings in every capital case in  
 766 which the conviction and sentence of death have been affirmed on  
 767 direct appeal on or after July 1, 2015.

768 (1) APPOINTMENT OF POSTCONVICTION COUNSEL.—

769 (a) Upon the issuance of the mandate affirming a judgment  
 770 and sentence of death on direct appeal, the Supreme Court of  
 771 Florida shall at the same time issue an order appointing the  
 772 appropriate office of the Capital Collateral Regional Counsel.

773 (b) Within 30 days of being appointed, the regional counsel  
 774 shall file a notice of appearance in the trial court or a motion  
 775 to withdraw based on an actual conflict of interest or some  
 776 other legal ground. Motions to withdraw filed more than 30 days  
 777 after being appointed shall not be entertained unless based on  
 778 an actual conflict of interest.

779 (c) The court shall conduct a hearing in accordance with s.  
 780 924.059 if the regional counsel's motion to withdraw is based on  
 781 an actual conflict. If the regional counsel files a motion to  
 782 withdraw based on any other legal ground, the chief judge or  
 783 assigned judge shall rule on the motion within 15 days of the

Page 27 of 61

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

32-01271A-13

20131750\_\_

784 filling of the motion. If the court determines that new  
 785 postconviction counsel should be appointed, the court shall  
 786 appoint another regional counsel and, only if a conflict exists  
 787 with the replacement regional counsel, appoint new  
 788 postconviction counsel from the statewide registry of attorneys  
 789 compiled and maintained by the Justice Administrative Commission  
 790 pursuant to s. 27.710.

791 (d) If the defendant requests without good cause that any  
 792 attorney appointed under this subsection be removed or replaced,  
 793 the court shall notify the defendant that no further state  
 794 resources may be expended for postconviction representation for  
 795 that defendant, unless the defendant withdraws the request to  
 796 remove or replace postconviction counsel. If the defendant does  
 797 not withdraw his or her request, then any appointed attorney  
 798 must be removed from the case and no further state resources may  
 799 be expended for the defendant's postconviction representation.

800 (2) PRELIMINARY PROCEDURES.—

801 (a) Within 30 days of the issuance of mandate affirming a  
 802 judgment and sentence of death on direct appeal, the chief judge  
 803 shall assign the case to a judge qualified under the Rules of  
 804 Judicial Administration to conduct capital proceedings.

805 (b) The assigned judge shall conduct a status conference no  
 806 later than 90 days after the judicial assignment, and shall hold  
 807 status conferences at least every 90 days thereafter until the  
 808 evidentiary hearing has been completed or the postconviction  
 809 motion has been ruled on without a hearing. The attorneys, with  
 810 leave of the trial court, may, with leave of the court, appear  
 811 electronically at the status conferences. Requests to appear  
 812 electronically shall be liberally granted. Pending motions,

Page 28 of 61

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

32-01271A-13 20131750\_\_  
 813 disputes involving public records, or any other matters ordered  
 814 by the court shall be heard at the status conferences. The  
 815 inmate's presence is not required at status conferences held  
 816 pursuant to this paragraph.

817 (c) Within 45 days of appointment of postconviction  
 818 counsel, the defendant's trial counsel shall provide to  
 819 postconviction counsel all information pertaining to the  
 820 defendant's capital case which was obtained during the  
 821 representation of the defendant. Postconviction counsel shall  
 822 maintain the confidentiality of all confidential information  
 823 received.

824 (3) TIME LIMITATIONS ON FILING A POSTCONVICTION MOTION.—

825 (a) Any postconviction motion must be filed by the inmate  
 826 within one year after the judgment and sentence become final.  
 827 For the purposes of this subsection, a judgment is final:

828 1. Upon the expiration of the time permitted to file in the  
 829 United States Supreme Court a petition for writ of certiorari  
 830 seeking review of the Supreme Court of Florida decision  
 831 affirming a judgment and sentence of death; or

832 2. Upon the disposition of the petition for writ of  
 833 certiorari by the United States Supreme Court, if filed.

834 (b) No postconviction motion shall be filed or considered  
 835 pursuant to this subsection if filed beyond the time limitation  
 836 provided in paragraph (a) unless it alleges:

837 1. The facts on which the motion is predicated were unknown  
 838 to the movant or the movant's attorney and could not have been  
 839 ascertained by the exercise of due diligence;

840 2. The fundamental constitutional right asserted was not  
 841 established within the period provided for in paragraph (a) and

32-01271A-13 20131750\_\_  
 842 has been held to apply retroactively; or  
 843 3. Postconviction counsel, through neglect, failed to file  
 844 the motion.

845 (c) All petitions for extraordinary relief in which the  
 846 Supreme Court of Florida has original jurisdiction, including  
 847 petitions for writs of habeas corpus, shall be filed  
 848 simultaneously with the initial brief filed on behalf of the  
 849 death-sentenced inmate in the appeal of the circuit court's  
 850 order on the initial motion for postconviction relief filed  
 851 under this subsection.

852 (d) The time limitation provided in paragraph (a) is  
 853 established with the understanding that each inmate sentenced to  
 854 death will have counsel assigned and available to begin  
 855 addressing the inmate's postconviction issues within the time  
 856 specified in this subsection. Should the Governor sign a death  
 857 warrant before the expiration of the time limitation provided in  
 858 paragraph (a), the Supreme Court of Florida, on a defendant's  
 859 request, will grant a stay of execution to allow any  
 860 postconviction relief motions to proceed in a timely manner.

861 (4) CONTENTS OF A POSTCONVICTION MOTION.—

862 (a) No state court shall consider a postconviction motion  
 863 unless the motion is fully pled. For the purposes of this  
 864 subsection, a fully pled postconviction motion is one which  
 865 complies with paragraph (b). The fully pled postconviction  
 866 motion must raise all cognizable claims that the defendant's  
 867 judgment or sentence was entered in violation of the  
 868 Constitution or laws of the United States or the Constitution or  
 869 the laws of the state, including any claim of ineffective  
 870 assistance of trial counsel or direct appeal counsel,

32-01271A-13 20131750\_\_

871 allegations of innocence, or that the state withheld evidence  
872 favorable to the defendant.

873 (b) The defendant's postconviction motion shall be filed  
874 under oath and shall be fully pled to include:

875 1. The judgment or sentence under attack and the court  
876 which rendered the same;

877 2. A statement of each issue raised on appeal and the  
878 disposition thereof;

879 3. Whether a previous postconviction motion has been filed  
880 and, if so, the disposition of all previous claims raised in  
881 postconviction litigation; if a previous motion or motions have  
882 been filed, the reason or reasons the claim or claims in the  
883 present motion were not raised in the former motion or motions;

884 4. The nature of the relief sought;

885 5. A fully detailed allegation of the factual basis for any  
886 claim for which an evidentiary hearing is sought, including the  
887 attachment of any document supporting the claim, the name and  
888 address of any witness, the attachment of affidavits of the  
889 witnesses or a proffer of the testimony;

890 6. A fully detailed allegation as to the basis for any  
891 purely legal or constitutional claim for which an evidentiary  
892 hearing is not required and the reason that this claim could not  
893 have been or was not raised on direct appeal; and

894 7. A concise memorandum of applicable case law as to each  
895 claim asserted.

896 (c) A postconviction motion and memorandum of law filed  
897 under this subsection shall not exceed 75 pages exclusive of the  
898 attachments. Attachments shall include, but are not limited to,  
899 the judgment and sentence. The memorandum of law shall set forth

32-01271A-13 20131750\_\_

900 the applicable case law supporting the granting of relief as to  
901 each separately pled claim.

902 (d) Claims raised in a postconviction motion that could  
903 have or should have been raised at trial and, if properly  
904 preserved, on direct appeal of the judgment and sentence, are  
905 barred.

906 (e) A postconviction motion may not include a claim of  
907 ineffective assistance of collateral postconviction counsel.

908 (f) A postconviction motion may not be amended without  
909 court approval. In no instance shall such motion be amended  
910 beyond the time limitations provided by subsection (3) for the  
911 filing of a postconviction motion. If amendment is allowed, the  
912 state shall file an amended answer within 20 days after the  
913 amended motion is filed.

914 (g) Any postconviction motion that does not comply with any  
915 requirement in this subsection shall not be considered in any  
916 state court.

917 (5) PROCEDURE; EVIDENTIARY HEARING; DISPOSITION.—

918 (a) All pleadings in a postconviction proceeding shall be  
919 filed with the clerk of the trial court and served on the  
920 assigned judge, opposing party, and the Attorney General. The  
921 clerk shall immediately deliver to the chief judge or the  
922 assigned judge any motion filed in a postconviction proceeding  
923 along with the court file.

924 (b) If the defendant intends to offer expert testimony of  
925 his or her mental status in a postconviction proceeding, the  
926 state shall be entitled to have the defendant examined by its  
927 own mental health expert. If the defendant fails to cooperate  
928 with the state's expert, the trial court may, in its discretion,

32-01271A-13 20131750\_\_

929 proceed as provided in rule 3.202(e) of the Florida Rules of  
 930 Criminal Procedure. Reports provided to either party by an  
 931 expert witness shall be disclosed to opposing counsel upon  
 932 receipt.

933 (c) The state shall file its answer within 60 days of the  
 934 filing of an initial postconviction motion. The answer and  
 935 accompanying memorandum of law shall not exceed 75 pages,  
 936 exclusive of attachments and exhibits. The answer shall address  
 937 the legal sufficiency of any claim in the motion, respond to the  
 938 allegations of the motion, address any procedural bars, and  
 939 state the reasons that an evidentiary hearing is or is not  
 940 required. As to any claims of legal insufficiency or procedural  
 941 bar, the state shall include a short statement of any applicable  
 942 case law.

943 (d) No later than 30 days after the state files its answer  
 944 to an initial motion, the trial court shall hold a case  
 945 management conference. At the case management conference, both  
 946 parties shall disclose all documentary exhibits that they intend  
 947 to offer at the evidentiary hearing, provide an exhibit list of  
 948 all such exhibits, and exchange a witness list with the names  
 949 and addresses of any potential witnesses. All expert witnesses  
 950 shall be specifically designated on the witness list, and copies  
 951 of all expert reports shall be attached. At the case management  
 952 conference, the trial court shall:

953 1. Schedule an evidentiary hearing, to be held within 90  
 954 days, on claims listed by the defendant as requiring a factual  
 955 determination;

956 2. Hear argument on any purely legal claims not based on  
 957 disputed facts; and

32-01271A-13 20131750\_\_

958 3. Resolve disputes arising from the exchange of  
 959 information under this paragraph.

960 (e) If the court determines that an evidentiary hearing is  
 961 not necessary and that the defendant's postconviction motion is  
 962 legally insufficient or that the motion, files, and records in  
 963 the case show that the defendant is not entitled to relief, the  
 964 court shall, within 30 days of the conclusion of the case  
 965 management conference, deny the motion, setting forth a detailed  
 966 rationale therefore, and attaching or referencing such portions  
 967 of the record as are necessary to allow for meaningful appellate  
 968 review.

969 (f) Immediately following an evidentiary hearing, the trial  
 970 court shall order a transcript of the hearing which shall be  
 971 filed within 30 days. Within 30 days of receipt of the  
 972 transcript, the court shall render its order, ruling on each  
 973 claim considered at the evidentiary hearing and all other claims  
 974 raised in the postconviction motion, making detailed findings of  
 975 fact and conclusions of law with respect to each claim, and  
 976 attaching or referencing such portions of the record as are  
 977 necessary to allow for meaningful appellate review. The order  
 978 issued after the evidentiary hearing shall resolve all the  
 979 claims raised in the postconviction motion and shall be  
 980 considered the final order for purposes of appeal. The clerk of  
 981 the trial court shall promptly serve upon the parties and the  
 982 Attorney General a copy of the final order, with a certificate  
 983 of service.

984 (g) Motions for rehearing shall be filed within 15 days of  
 985 the rendition of the trial court's order and a response thereto  
 986 filed within 10 days thereafter. The trial court's order

32-01271A-13 20131750\_\_  
 987 disposing of the motion for rehearing shall be rendered no later  
 988 than 15 days after the response is filed.

989 (h) An appeal may be taken by filing a notice to appeal  
 990 with the Florida Supreme Court within 15 days of the entry of a  
 991 final order on a capital postconviction motion. No interlocutory  
 992 appeal shall be permitted.

993 Section 22. Section 924.057, Florida Statutes, is amended  
 994 to read:

995 924.057 ~~Limitation on Capital postconviction proceedings in~~  
 996 ~~cases in which the conviction and sentence of death were~~  
 997 ~~affirmed on direct appeal before July 1, 2015 death sentence was~~  
 998 ~~imposed before January 14, 2000. This section shall govern all~~  
 999 ~~capital postconviction actions in cases in which the trial court~~  
 1000 ~~imposed the sentence of death before the effective date of this~~  
 1001 ~~act.~~

1002 (1) Nothing in this act shall expand any right or time  
 1003 period allowed for the prosecution of capital postconviction  
 1004 claims in any case in which a postconviction action was  
 1005 commenced or should have been commenced prior to the effective  
 1006 date of this act.

1007 (2) Postconviction proceedings in every capital case in  
 1008 which the conviction and sentence of death have been affirmed on  
 1009 direct appeal before July 1, 2015, shall be governed by the  
 1010 rules and laws in effect immediately prior to the effective date  
 1011 of this act.

1012 ~~(2) Except as provided in s. 924.056(5), in every case in~~  
 1013 ~~which mandate has issued in the Florida Supreme Court concluding~~  
 1014 ~~at least one capital postconviction action in the state court~~  
 1015 ~~system, a successive capital postconviction action shall be~~

32-01271A-13 20131750\_\_  
 1016 ~~barred on the effective date of this act, unless the rules or~~  
 1017 ~~law in effect immediately prior to the effective date of this~~  
 1018 ~~act permitted the successive postconviction action, in which~~  
 1019 ~~case the action shall be barred on the date provided in~~  
 1020 ~~subsection (4).~~

1021 ~~(3) All capital postconviction actions pending on the~~  
 1022 ~~effective date of this act shall be barred, and shall be~~  
 1023 ~~dismissed with prejudice, unless fully pled in substantial~~  
 1024 ~~compliance with s. 924.058, or with any superseding order or~~  
 1025 ~~rule, on or before:~~

1026 ~~(a) The time in which the action would be barred by this~~  
 1027 ~~section if the action had not begun prior to the effective date~~  
 1028 ~~of this act, or~~

1029 ~~(b) Any earlier date provided by the rules or law, or court~~  
 1030 ~~order, in effect immediately prior to the effective date of this~~  
 1031 ~~act.~~

1032 ~~(4) In every capital case in which the trial court imposed~~  
 1033 ~~the sentence of death before the effective date of this act, a~~  
 1034 ~~capital postconviction action shall be barred unless it is~~  
 1035 ~~commenced on or before January 8, 2001, or any earlier date~~  
 1036 ~~provided by the rule or law in effect immediately prior to the~~  
 1037 ~~effective date of this act.~~

1038 Section 23. Section 924.058, Florida Statutes, is amended  
 1039 to read:

1040 (Substantial rewording of section.

1041 See s. 924.058, F.S., for present text.)

1042 924.058 Successive postconviction motions.—This section  
 1043 governs successive postconviction motions in all postconviction  
 1044 proceedings in every capital case in which the conviction and

32-01271A-13 20131750\_\_

1045 sentence of death have been affirmed on direct appeal on or  
 1046 after July 1, 2015. A postconviction motion is successive if a  
 1047 state court has previously ruled on a postconviction motion  
 1048 challenging the same judgment and sentence.

1049 (1) TIME LIMITATIONS ON FILING A SUCCESSIVE POSTCONVICTION  
 1050 MOTION.—

1051 (a) A successive postconviction motion is barred unless  
 1052 commenced by filing a fully pled successive postconviction  
 1053 motion within 90 days:

1054 1. After the facts giving rise to the claim were discovered  
 1055 or should have been discovered with the exercise of due  
 1056 diligence; or

1057 2. After the fundamental constitutional right asserted was  
 1058 established and held to apply retroactively.

1059 (b) No successive postconviction motion shall be filed or  
 1060 considered pursuant to this subsection if filed beyond the time  
 1061 limitation provided in paragraph (a) unless it alleges that  
 1062 postconviction counsel, through neglect, failed to file the  
 1063 motion.

1064 (2) CONTENTS OF A SUCCESSIVE POSTCONVICTION MOTION.—

1065 (a) No state court shall consider a successive  
 1066 postconviction motion unless the motion is fully pled. For the  
 1067 purposes of this subsection, a fully pled successive  
 1068 postconviction motion includes:

1069 1. All of the pleading requirements of an initial  
 1070 postconviction motion under s. 924.056;

1071 2. The disposition of all previous claims raised in  
 1072 postconviction proceedings and the reason or reasons the claim  
 1073 or claims raised in the present motion were not raised in the

32-01271A-13 20131750\_\_

1074 former motion or motions;

1075 3. If based upon newly discovered evidence, *Brady v.*  
 1076 *Maryland*, 373 U.S. 83 (1963), or *Giglio v. United States*, 405  
 1077 U.S. 150 (1972), the following:

1078 a. The names, addresses, and telephone numbers of all  
 1079 witnesses supporting the claim;

1080 b. A statement that the witness will be available, should  
 1081 an evidentiary hearing be scheduled, to testify under oath to  
 1082 the facts alleged in the motion or affidavit;

1083 c. If evidentiary support is in the form of documents,  
 1084 copies of all documents shall be attached, including any  
 1085 affidavits obtained; and

1086 d. As to any witness or document listed in the motion or  
 1087 attachment to the motion, a statement of the reason why the  
 1088 witness or document was not previously available.

1089 (b) A successive postconviction motion and memorandum of  
 1090 law filed under this subsection shall not exceed 25 pages  
 1091 exclusive of the attachments. Attachments shall include, but are  
 1092 not limited to, the judgment and sentence. The memorandum of law  
 1093 shall set forth the applicable case law supporting the granting  
 1094 of relief as to each separately pled claim.

1095 (c) Claims raised in a successive postconviction motion  
 1096 that could have or should have been raised at trial, on direct  
 1097 appeal of the judgment and sentence, if properly preserved, and  
 1098 in the initial postconviction motion, are barred.

1099 (d) A successive postconviction motion may not include a  
 1100 claim of ineffective assistance of collateral postconviction  
 1101 counsel.

1102 (e) A successive postconviction motion may not be amended

32-01271A-13 20131750\_\_

1103 without court approval. In no instance shall such motion be  
 1104 amended beyond the time limitations provided by subsection (1)  
 1105 for the filing of a successive postconviction motion. If  
 1106 amendment is allowed, the state shall file an amended answer  
 1107 within 20 days after the amended motion is filed.

1108 (f) Any successive postconviction motion that does not  
 1109 comply with any requirement in this subsection shall not be  
 1110 considered in any state court.

1111 (3) PROCEDURE; EVIDENTIARY HEARING; DISPOSITION.-

1112 (a) If the defendant intends to offer expert testimony of  
 1113 his or her mental status in a successive postconviction motion  
 1114 proceeding, the state shall be entitled to have the defendant  
 1115 examined by its own mental health expert. If the defendant fails  
 1116 to cooperate with the state's expert, the trial court may, in  
 1117 its discretion, proceed as provided in rule 3.202(e) of the  
 1118 Florida Rules of Criminal Procedure. Reports provided to either  
 1119 party by an expert witness shall be disclosed to opposing  
 1120 counsel upon receipt.

1121 (b) The state shall file its answer within 20 days of the  
 1122 filing of a successive postconviction motion. The answer shall  
 1123 not exceed 25 pages, exclusive of attachments and exhibits. The  
 1124 answer shall address the legal sufficiency of any claim in the  
 1125 motion, respond to the allegations of the motion, address any  
 1126 procedural bars, and state the reasons that an evidentiary  
 1127 hearing is or is not required. As to any claims of legal  
 1128 insufficiency or procedural bar, the answer shall include a  
 1129 short statement of any applicable case law.

1130 (c) No later than 30 days after the state files its answer  
 1131 to a successive postconviction motion, the trial court shall

32-01271A-13 20131750\_\_

1132 hold a case management conference. At the case management  
 1133 conference, both parties shall disclose all documentary exhibits  
 1134 that they intend to offer at the evidentiary hearing, provide an  
 1135 exhibit list of all such exhibits, and exchange a witness list  
 1136 with the names and addresses of any potential witnesses. All  
 1137 expert witnesses shall be specifically designated on the witness  
 1138 list, and copies of all expert reports shall be attached. At the  
 1139 case management conference, the trial court shall:

1140 1. Schedule an evidentiary hearing, to be held within 90  
 1141 days, on claims listed by the defendant as requiring a factual  
 1142 determination;

1143 2. Hear argument on any purely legal claims not based on  
 1144 disputed facts; and

1145 3. Resolve disputes arising from the exchange of  
 1146 information under this paragraph.

1147 (d) If the court determines that an evidentiary hearing is  
 1148 not necessary and that the defendant's successive postconviction  
 1149 motion is legally insufficient or that the motion, files, and  
 1150 records in the case show that the defendant is not entitled to  
 1151 relief, the court shall, within 30 days of the conclusion of the  
 1152 case management conference, deny the motion, setting forth a  
 1153 detailed rationale therefore, and attaching or referencing such  
 1154 portions of the record as are necessary to allow for meaningful  
 1155 appellate review.

1156 (e) Immediately following an evidentiary hearing, the trial  
 1157 court shall order a transcript of the hearing which shall be  
 1158 filed within 30 days. Within 30 days of receipt of the  
 1159 transcript, the court shall render its order, ruling on each  
 1160 claim considered at the evidentiary hearing and all other claims

32-01271A-13 20131750

1161 raised in the successive postconviction motion, making detailed  
 1162 findings of fact and conclusions of law with respect to each  
 1163 claim, and attaching or referencing such portions of the record  
 1164 as are necessary to allow for meaningful appellate review. The  
 1165 order issued after the evidentiary hearing shall resolve all the  
 1166 claims raised in the successive postconviction motion and shall  
 1167 be considered the final order for purposes of appeal. The clerk  
 1168 of the trial court shall promptly serve upon the parties and the  
 1169 Attorney General a copy of the final order, with a certificate  
 1170 of service.

1171 (f) Motions for rehearing shall be filed within 15 days of  
 1172 the rendition of the trial court's order and a response thereto  
 1173 filed within 10 days thereafter. The trial court's order  
 1174 disposing of the motion for rehearing shall be rendered no later  
 1175 than 15 days after the response is filed.

1176 (g) An appeal may be taken by filing a notice to appeal  
 1177 with the Florida Supreme Court within 15 days of the entry of a  
 1178 final order on a capital postconviction motion. No interlocutory  
 1179 appeal shall be permitted.

1180 Section 24. Section 924.0581, Florida Statutes, is created  
 1181 to read:

1182 924.0581 Capital postconviction appeals to the Florida  
 1183 Supreme Court.—This section governs capital postconviction  
 1184 appeals to the Florida Supreme Court in every capital case in  
 1185 which the conviction and sentence of death have been affirmed on  
 1186 direct appeal on or after July 1, 2015.

1187 (1) Initial and Successive Postconviction Motion Appeals.—

1188 (a) When the notice of appeal is filed in the Florida  
 1189 Supreme Court, the chief justice shall direct the appropriate

32-01271A-13 20131750

1190 chief judge of the circuit court to monitor the preparation of  
 1191 the complete record for timely filing in the Florida Supreme  
 1192 Court.

1193 (b) The complete record in a death penalty appeal shall  
 1194 include transcripts of all proceedings conducted in the lower  
 1195 court, all items required by rule 9.200 of the Florida Rules of  
 1196 Appellate Procedure, and any item listed in any order issued by  
 1197 the Florida Supreme Court. The record shall begin with the most  
 1198 recent mandate issued by the Florida Supreme Court; or, in the  
 1199 event the preceding appeal was disposed of without a mandate,  
 1200 the most recent filing not already transmitted to the Florida  
 1201 Supreme Court in a prior record. The record shall exclude any  
 1202 materials already transmitted to the Florida Supreme Court as  
 1203 the record in any prior appeal.

1204 (c) The Florida Supreme Court shall take judicial notice of  
 1205 the appellate records in all prior appeals and writ proceedings  
 1206 involving a challenge to the same judgment of conviction and  
 1207 sentence of death. Appellate records subject to judicial notice  
 1208 under this section shall not be duplicated in the record  
 1209 transmitted for the appeal under review.

1210 (d) If the sentencing court has denied the initial or  
 1211 successive postconviction motion without an evidentiary hearing,  
 1212 the Florida Supreme Court shall initially review the case to  
 1213 determine whether the trial court correctly resolved the  
 1214 defendant's claims without an evidentiary hearing. If the  
 1215 Florida Supreme Court determines an evidentiary hearing should  
 1216 have been held, the court may remand the case for an evidentiary  
 1217 hearing. Jurisdiction shall be relinquished to the trial court  
 1218 for the purpose of conducting an evidentiary hearing on any

32-01271A-13 20131750\_\_

1219 issues identified in the Florida Supreme Court's order. The  
 1220 trial court must schedule an evidentiary hearing within 30 days  
 1221 of the Florida Supreme Court's order and conclude the hearing  
 1222 within 90 days of scheduling. Upon conclusion of the evidentiary  
 1223 hearing, the record shall be supplemented with the hearing  
 1224 transcript.

1225 (e) The defendant has 30 days from the date the record is  
 1226 filed to file an initial brief. The answer brief must be filed  
 1227 within 20 days after filing of the initial brief. The reply  
 1228 brief, if any, must be filed within 20 days after filing of the  
 1229 answer brief. The cross-reply brief, if any, shall be filed  
 1230 within 20 days thereafter. A brief submitted after these time  
 1231 periods is barred and shall not be heard.

1232 (f) Oral arguments shall be scheduled within 30 days after  
 1233 the filing of the defendant's replay brief.

1234 (g)1. The Florida Supreme Court shall render its decision  
 1235 within 180 days after oral arguments have concluded. If a denial  
 1236 of an action for postconviction relief is affirmed, the Governor  
 1237 may proceed to issue a warrant for execution.

1238 2. In instances where the Florida Supreme Court does not  
 1239 comply with subparagraph 1., the Chief Justice of the Florida  
 1240 Supreme Court shall, within 10 days after the expiration of the  
 1241 180 day deadline, submit a report to the Speaker of the Florida  
 1242 House of Representatives and the President of the Florida Senate  
 1243 explaining why a decision was not timely rendered. The Chief  
 1244 Justice shall submit a report to the Speaker of the Florida  
 1245 House of Representatives and the President of the Florida Senate  
 1246 every 30 days thereafter in which a decision is not rendered  
 1247 explaining the reasons therefore.

32-01271A-13 20131750\_\_

1248 (2) PETITIONS FOR EXTRAORDINARY RELIEF.-

1249 (a) Review proceedings under this subsection shall be  
 1250 treated as original proceedings under rule 9.100 of the Rules of  
 1251 Appellate Procedure, except as otherwise provided in this  
 1252 subsection.

1253 (b) A petition for extraordinary relief shall be in the  
 1254 form prescribed by rule 9.100 of the Rules of Appellate  
 1255 Procedure, may include supporting documents, and shall recite in  
 1256 the statement of facts:

1257 1. The date and nature of the lower tribunal's order sought  
 1258 to be reviewed;

1259 2. The name of the lower tribunal rendering the order;

1260 3. The nature, disposition, and dates of all previous court  
 1261 proceedings;

1262 4. If a previous petition was filed, the reason the claim  
 1263 in the present petition was not raised previously; and

1264 5. The nature of the relief sought.

1265 (c) 1. A petition for belated appeal shall include a  
 1266 detailed allegation of the specific acts sworn to by the  
 1267 petitioner or petitioner's counsel that constitute the basis for  
 1268 entitlement to belated appeal, including whether petitioner  
 1269 requested counsel to proceed with the appeal and the date of any  
 1270 such request, whether counsel misadvised the petitioner as to  
 1271 the availability of appellate review or the filing of the notice  
 1272 of appeal, or whether there were circumstances unrelated to  
 1273 counsel's action or inaction, including names of individuals  
 1274 involved and dates of the occurrences, that were beyond the  
 1275 petitioner's control and otherwise interfered with the  
 1276 petitioner's ability to file a timely appeal.

32-01271A-13 20131750\_\_

1277 2. A petition for belated appeal shall not be filed more  
 1278 than 1 year after the expiration of time for filing the notice  
 1279 of appeal from a final order denying relief pursuant to s.  
 1280 924.056 or s. 924.058, unless it alleges under oath with a  
 1281 specific factual basis that the petitioner:

1282 a. Was unaware an appeal had not been timely filed, was not  
 1283 advised of the right to an appeal, was misadvised as to the  
 1284 rights to an appeal, or was prevented from timely filing a  
 1285 notice of appeal due to circumstances beyond the petitioner's  
 1286 control; and

1287 b. Could not have ascertained such facts by the exercise of  
 1288 due diligence.

1289 (d) A petition alleging ineffective assistance of appellate  
 1290 counsel must include detailed allegations of the specific acts  
 1291 that constitute the alleged ineffective assistance of counsel on  
 1292 direct appeal and must be filed simultaneously with the initial  
 1293 brief in the appeal from the lower tribunal's final order  
 1294 denying relief pursuant to s. 924.056 or s. 924.058.

1295 (3) PETITIONS SEEKING RELIEF OF NONFINAL ORDERS IN DEATH  
 1296 PENALTY POSTCONVICTION PROCEEDINGS.—

1297 (a) This subsection applies to proceedings that invoke the  
 1298 jurisdiction of the supreme court for review of nonfinal orders  
 1299 issued in postconviction proceedings following the imposition of  
 1300 the death penalty. Review of such proceedings shall be treated  
 1301 as original proceedings under rule 9.100 of the Rules of  
 1302 Appellate Procedure, except as otherwise provided in this  
 1303 subsection.

1304 (b) Jurisdiction of the Florida Supreme Court shall be  
 1305 invoked by filing a petition with the Clerk of the Florida

32-01271A-13 20131750\_\_

1306 Supreme Court within 30 days of rendition of the nonfinal order  
 1307 to be reviewed. A copy of the petition shall be served on the  
 1308 opposing party and furnished to the judge who issued the order  
 1309 to be reviewed. Either party to the death penalty postconviction  
 1310 proceedings may seek review under this subsection.

1311 (c) The petition shall be in the form prescribed by rule  
 1312 9.100 of the Rules of Appellate Procedure, and shall contain:

1313 1. The basis for invoking the jurisdiction of the court;

1314 2. The date and nature of the order sought to be reviewed;

1315 3. The name of the lower tribunal rendering the order;

1316 4. The name, disposition, and dates of all previous trial,  
 1317 appellate, and postconviction proceedings relating to the  
 1318 conviction and death sentence that are the subject of the  
 1319 proceedings in which the order sought to be reviewed was  
 1320 entered;

1321 5. The facts on which the petitioner relies, with  
 1322 references to the appropriate pages of the supporting appendix;

1323 6. Argument in support of the petition, including an  
 1324 explanation of why the order departs from the essential  
 1325 requirements of law and how the order may cause material injury  
 1326 for which there is no adequate remedy on appeal, and appropriate  
 1327 citations of authority; and

1328 7. The nature of the relief sought.

1329 (d) The petition shall be accompanied by an appendix, as  
 1330 prescribed by rule 9.220 of the Rules of Appellate Procedure,  
 1331 which shall contain the portions of the record necessary for a  
 1332 determination of the issues presented.

1333 (e) If the petition demonstrates a preliminary basis for  
 1334 relief or a departure from the essential requirements of law

32-01271A-13 20131750  
 1335 that may cause material injury for which there is no adequate  
 1336 remedy by appeal, the court may issue an order directing the  
 1337 respondent to show cause, within the time set by the court, why  
 1338 relief should not be granted. No response shall be permitted  
 1339 unless ordered by the court. Within 20 days after service of the  
 1340 response or such other time set by the court, the petitioner may  
 1341 serve a reply, which shall not exceed 15 pages in length, and  
 1342 supplemental appendix.

1343 (f) A stay of proceedings under this subsection is not  
 1344 automatic. The party seeking a stay must petition the Florida  
 1345 Supreme Court for a stay of proceedings. During the pendency of  
 1346 a review of a nonfinal order, unless a stay is granted by the  
 1347 Florida Supreme Court, the lower tribunal may proceed with all  
 1348 matters, except that the lower tribunal may not render a final  
 1349 order disposing of the cause pending review of the nonfinal  
 1350 order.

1351 (g) The parties may not file any other pleadings, motions,  
 1352 replies, or miscellaneous papers without leave of court.

1353 (h) Seeking review under this subsection shall not extend  
 1354 the time limitations in s. 924.056, s. 924.058, or s. 27.7081.

1355 Section 25. Effective July 1, 2013, section 924.0585,  
 1356 Florida Statutes, is created to read:

1357 924.0585 Capital postconviction proceedings; reporting  
 1358 requirements.—The Florida Supreme Court shall annually report to  
 1359 the Speaker of the Florida House of Representatives and the  
 1360 President of the Florida Senate the status of each capital case  
 1361 in which a postconviction action has been filed that has been  
 1362 pending for more than 3 years. The report must include the name  
 1363 of the state court judge involved in the case.

32-01271A-13 20131750  
 1364 Section 26. Section 924.0585, Florida Statutes, as created  
 1365 by this act, is amended to read:  
 1366 924.0585 Capital postconviction proceedings; reporting  
 1367 requirements.—

1368 (3) A capital postconviction action filed in violation of  
 1369 the time limitations provided by statute is barred, and all  
 1370 claims raised therein are waived. A state court shall not  
 1371 consider any capital postconviction action filed in violation of  
 1372 s. 924.056 or s. 924.058. The Attorney General shall deliver to  
 1373 the Governor, the President of the Senate, and the Speaker of  
 1374 the House of Representatives a copy of any pleading or order  
 1375 that alleges or adjudicates any violation of this provision.

1376 Section 27. Section 924.059, Florida Statutes, is amended  
 1377 to read:

1378 (Substantial rewording of section.

1379 See s. 924.059, F.S., for present text.)

1380 924.059 Conflicts of interest in capital postconviction  
 1381 proceedings.—In any capital postconviction proceeding in which  
 1382 it is alleged that there is a conflict of interest with  
 1383 postconviction counsel, the court shall hold a hearing within 30  
 1384 days of such allegation to determine whether an actual conflict  
 1385 exists and whether such conflict will adversely affect a  
 1386 defendant's lawyer's performance. An actual conflict of interest  
 1387 exists when an attorney actively represents conflicting  
 1388 interests. To demonstrate an actual conflict, the defendant must  
 1389 identify specific evidence suggesting that his or her interests  
 1390 were or may be compromised. A possible, speculative, or merely  
 1391 hypothetical conflict is insufficient to support an allegation  
 1392 that a conflict of interest exists. The court must rule within

32-01271A-13 20131750\_\_

1393 10 days of the conclusion of the hearing.  
 1394 Section 28. Section 924.0591, Florida Statutes, is created  
 1395 to read:  
 1396 924.0591 Incompetence to proceed in capital postconviction  
 1397 proceedings.—  
 1398 (1) A death-sentenced inmate pursuing collateral relief who  
 1399 is found by the court to be mentally incompetent shall not be  
 1400 proceeded against if there are factual matters at issue, the  
 1401 development or resolution of which require the inmate’s input.  
 1402 However, all collateral relief issues that involve only matters  
 1403 of record and claims that do not require the inmate’s input  
 1404 shall proceed in collateral proceedings notwithstanding the  
 1405 inmate’s incompetency.  
 1406 (2) If, at any stage of a postconviction proceeding, the  
 1407 court determines that there are reasonable grounds to believe  
 1408 that a death-sentenced inmate is incompetent to proceed and that  
 1409 factual matters are at issue, the development or resolution of  
 1410 which require the inmate’s input, a judicial determination of  
 1411 incompetency is required.  
 1412 (3) Collateral counsel may file a motion for competency  
 1413 determination and an accompanying certificate of counsel that  
 1414 the motion is made in good faith and on reasonable grounds to  
 1415 believe that the death-sentenced inmate is incompetent to  
 1416 proceed. The motion and certificate shall replace the signed  
 1417 oath by the inmate that otherwise must accompany a  
 1418 postconviction motion filed under s. 924.056 and s. 924.058.  
 1419 (4) The motion for competency examination shall be in  
 1420 writing and shall allege with specificity the factual matters at  
 1421 issue and the reason that a competency consultation with the

32-01271A-13 20131750\_\_

1422 inmate is necessary with respect to each factual matter  
 1423 specified. To the extent that it does not invade the lawyer-  
 1424 client privilege with collateral counsel, the motion shall  
 1425 contain a recital of the specific observations of, and  
 1426 conversations with, the death-sentenced inmate that have formed  
 1427 the basis of the motion.  
 1428 (5) If the court finds that there are reasonable grounds to  
 1429 believe that a death-sentenced inmate is incompetent to proceed  
 1430 in a postconviction proceeding in which factual matters are at  
 1431 issue, the development or resolution of which require the  
 1432 inmate’s input, the court shall order the inmate examined by no  
 1433 more than 3, nor fewer than 2, experts before setting the matter  
 1434 for a hearing. The court may seek input from the death-sentenced  
 1435 inmate’s counsel and the state attorney before appointment of  
 1436 the experts.  
 1437 (6) The order appointing experts shall:  
 1438 (a) Identify the purpose of the evaluation and specify the  
 1439 area of inquiry that should be addressed;  
 1440 (b) Specify the legal criteria to be applied; and  
 1441 (c) Specify the date by which the report shall be submitted  
 1442 and to whom it shall be submitted.  
 1443 (7) Counsel for both the death-sentenced inmate and the  
 1444 state may be present at the examination, which shall be  
 1445 conducted at a date and time convenient for all parties and the  
 1446 Department of Corrections.  
 1447 (8) On appointment by the court, the experts shall examine  
 1448 the death-sentenced inmate with respect to the issue of  
 1449 competence to proceed, as specified by the court in its order  
 1450 appointing the experts to evaluate the inmate, and shall

32-01271A-13

20131750\_\_

1451 evaluate the inmate as ordered.

1452 (a) The experts first shall consider factors related to the  
 1453 issue of whether the death-sentenced inmate meets the criteria  
 1454 for competence to proceed, that is, whether the inmate has  
 1455 sufficient present ability to consult with counsel with a  
 1456 reasonable degree of rational understanding and whether the  
 1457 inmate has a rational as well as factual understanding of the  
 1458 pending collateral proceedings.

1459 (b) In considering the issue of competence to proceed, the  
 1460 experts shall consider and include in their report:

1461 1. The inmate's capacity to understand the adversary nature  
 1462 of the legal process and the collateral proceedings;

1463 2. The inmate's ability to disclose to collateral counsel  
 1464 facts pertinent to the postconviction proceeding at issue; and

1465 3. Any other factors considered relevant by the experts and  
 1466 the court as specified in the order appointing the experts.

1467 (c) Any written report submitted by an expert shall:

1468 1. Identify the specific matters referred for evaluation;

1469 2. Describe the evaluative procedures, techniques, and  
 1470 tests used in the examination and the purpose or purposes for  
 1471 each;

1472 3. State the expert's clinical observations, findings, and  
 1473 opinions on each issue referred by the court for evaluation, and  
 1474 indicate specifically those issues, if any, on which the expert  
 1475 could not give an opinion; and

1476 4. Identify the sources of information used by the expert  
 1477 and present the factual basis for the expert's clinical findings  
 1478 and opinions.

1479 (9) If the experts find that the death-sentenced inmate is

32-01271A-13

20131750\_\_

1480 incompetent to proceed, the experts shall report on any  
 1481 recommended treatment for the inmate to attain competence to  
 1482 proceed. In considering the issues relating to treatment, the  
 1483 experts shall report on:

1484 (a) The mental illness or mental retardation causing the  
 1485 incompetence;

1486 (b) The treatment or treatments appropriate for the mental  
 1487 illness or mental retardation of the inmate and an explanation  
 1488 of each of the possible treatment alternatives in order of  
 1489 choices; and

1490 (c) The likelihood of the inmate attaining competence under  
 1491 the treatment recommended, an assessment of the probable  
 1492 duration of the treatment required to restore competence, and  
 1493 the probability that the inmate will attain competence to  
 1494 proceed in the foreseeable future.

1495 (10) Within 30 days after the experts have completed their  
 1496 examinations of the death-sentenced inmate, the court shall  
 1497 schedule a hearing on the issue of the inmate's competence to  
 1498 proceed.

1499 (11) If, after a hearing, the court finds the inmate  
 1500 competent to proceed, or, after having found the inmate  
 1501 incompetent, finds that competency has been restored, the court  
 1502 shall enter its order so finding and shall proceed with a  
 1503 postconviction motion. The inmate shall have 60 days to amend  
 1504 his or her postconviction motion only as to those issues that  
 1505 the court found required factual consultation with counsel.

1506 (12) If the court does not find the inmate incompetent, the  
 1507 order shall contain:

1508 (a) Findings of fact relating to the issues of competency;

32-01271A-13

20131750\_\_

1509 (b) Copies of the reports of the examining experts; and

1510 (c) Copies of any other psychiatric, psychological, or  
 1511 social work reports submitted to the court relative to the  
 1512 mental state of the death-sentenced inmate.

1513 (13) If the court finds the inmate incompetent or finds the  
 1514 inmate competent subject to the continuation of appropriate  
 1515 treatment, the court shall follow the procedures set forth in  
 1516 rule 3.212(c) of the Florida Rules of Criminal Procedure, except  
 1517 that, to the extent practicable, any treatment shall take place  
 1518 at a custodial facility under the direct supervision of the  
 1519 Department of Corrections.

1520 Section 29. Section 924.0592, Florida Statutes, is created  
 1521 to read:

1522 924.0592 Capital postconviction proceedings after a death  
 1523 warrant has been issued.—This section governs all postconviction  
 1524 proceedings in every capital case in which the conviction and  
 1525 sentence of death have been affirmed on direct appeal on or  
 1526 after July 1, 2015, and in which a death warrant has been  
 1527 issued.

1528 (1) Upon issuance of a death warrant pursuant to s. 922.052  
 1529 or s. 922.14, the issuing entity shall notify the chief judge of  
 1530 the circuit that sentenced the inmate to death. The chief judge  
 1531 shall assign the case to a judge qualified under the Rules of  
 1532 Judicial Administration to conduct capital cases immediately  
 1533 upon receipt of such notification.

1534 (2) Postconviction proceedings after a death warrant has  
 1535 been issued shall take precedence over all other cases. The  
 1536 assigned judge shall make every effort to resolve scheduling  
 1537 conflicts with other cases including cancellation or

32-01271A-13

20131750\_\_

1538 rescheduling of hearings or trials and requesting senior judge  
 1539 assistance.

1540 (3) The time limitations provided in s. 924.056 and s.  
 1541 924.058 do not apply after a death warrant has been issued. All  
 1542 postconviction motions filed after a death warrant has been  
 1543 issued shall be heard expeditiously considering the time  
 1544 limitations set by the date of execution and the time required  
 1545 for appellate review.

1546 (4) The location of any hearings after a death warrant is  
 1547 issued shall be determined by the trial judge considering the  
 1548 availability of witnesses or evidence, the security problems  
 1549 involved in the case, and any other factor determined by the  
 1550 trial court.

1551 (5) All postconviction motions filed after a death warrant  
 1552 is issued shall be considered successive motions and subject to  
 1553 the content requirement of s. 924.058.

1554 (6) The assigned judge shall schedule a case management  
 1555 conference as soon as reasonably possible after receiving  
 1556 notification that a death warrant has been issued. During the  
 1557 case management conference the court shall set a time for filing  
 1558 a postconviction motion, shall schedule a hearing to determine  
 1559 whether an evidentiary hearing should be held, and shall hear  
 1560 arguments on any purely legal claims not based on disputed  
 1561 facts. If the postconviction motion, files, and records in the  
 1562 case conclusively show that the movant is entitled to no relief,  
 1563 the motion may be denied without an evidentiary hearing. If the  
 1564 trial court determines that an evidentiary hearing should be  
 1565 held, the court shall schedule the hearing to be held as soon as  
 1566 reasonably possible considering the time limitations set by the

32-01271A-13 20131750\_\_

1567 date of execution and the time required for appellate review.

1568 (7) The assigned judge shall require all proceedings  
 1569 conducted pursuant to this section to be reported using the most  
 1570 advanced and accurate technology available in general use at the  
 1571 location of the hearing. The proceedings shall be transcribed  
 1572 expeditiously considering the time limitations set by the  
 1573 execution date.

1574 (8) The court shall obtain a transcript of all proceedings  
 1575 conducted pursuant to this section and shall render its order in  
 1576 accordance with s. 924.056(5) (e) as soon as possible after the  
 1577 hearing is concluded. A copy of the final order shall be  
 1578 electronically transmitted to the Supreme Court of Florida and  
 1579 to the attorneys of record. The record shall be immediately  
 1580 delivered to the clerk of the Supreme Court of Florida by the  
 1581 clerk of the trial court or as ordered by the assigned judge.  
 1582 The record shall also be electronically transmitted if the  
 1583 technology is available. A notice of appeal shall not be  
 1584 required to transmit the record.

1585 Section 30. Section 924.0593, Florida Statutes, is created  
 1586 to read:

1587 924.0593 Insanity at the time of execution.-

1588 (1) A person under sentence of death shall not be executed  
 1589 while insane. A person under sentence of death is insane for  
 1590 purposes of execution if the person lacks the mental capacity to  
 1591 understand the fact of the impending execution and the reason  
 1592 for it.

1593 (2) No motion for a stay of execution pending hearing,  
 1594 based on grounds of the inmate's insanity to be executed, shall  
 1595 be entertained by any court until such time as the Governor of

32-01271A-13 20131750\_\_

1596 Florida has held appropriate proceedings for determining the  
 1597 issue pursuant to s. 922.07.

1598 (3) (a) On determination of the Governor of Florida,  
 1599 subsequent to the signing of a death warrant for an inmate under  
 1600 sentence of death and pursuant to s. 922.07, that the inmate is  
 1601 sane to be executed, counsel for the inmate may move for a stay  
 1602 of execution and a hearing based on the inmate's insanity to be  
 1603 executed. The motion:

1604 1. Shall be filed in the circuit court of the circuit in  
 1605 which the execution is to take place and shall be heard by one  
 1606 of the judges of that circuit or such other judge as shall be  
 1607 assigned by the Chief Justice of the Florida Supreme Court to  
 1608 hear the motion. The state attorney of the circuit shall  
 1609 represent the State of Florida in any proceedings held on the  
 1610 motion; and

1611 2. Shall be in writing and shall contain a certificate of  
 1612 counsel that the motion is made in good faith and on reasonable  
 1613 grounds to believe that the prisoner to be executed is insane.

1614 (b) Counsel for the inmate shall file, along with the  
 1615 motion, all reports of experts that were submitted to the  
 1616 governor pursuant to s. 922.07. If any of the evidence is not  
 1617 available to counsel for the inmate, counsel shall attach to the  
 1618 motion an affidavit so stating, with an explanation of why the  
 1619 evidence is unavailable.

1620 (c) Counsel for the inmate and the state may submit such  
 1621 other evidentiary material and written submissions including  
 1622 reports of experts on behalf of the inmate that are relevant to  
 1623 determination of the issue.

1624 (d) A copy of the motion and all supporting documents shall

32-01271A-13 20131750\_\_

1625 be served on the Florida Department of Legal Affairs and the  
 1626 state attorney of the circuit in which the motion has been  
 1627 filed.

1628 (4) If the circuit judge, upon review of the motion and  
 1629 submissions, has reasonable grounds to believe that the inmate  
 1630 to be executed is insane, the judge shall grant a stay of  
 1631 execution and may order further proceedings which may include a  
 1632 hearing.

1633 (5) Any hearing on the insanity of the inmate to be  
 1634 executed shall not be a review of the Governor's determination,  
 1635 but shall be a hearing de novo. At the hearing, the issue the  
 1636 court must determine whether the inmate presently meets the  
 1637 criteria for insanity at time of execution, that is, whether the  
 1638 prisoner lacks the mental capacity to understand the fact of the  
 1639 pending execution and the reason for it.

1640 (6) The court may do any of the following as may be  
 1641 appropriate and adequate for a just resolution of the issues  
 1642 raised:

1643 (a) Require the presence of the inmate at the hearing;

1644 (b) Appoint no more than 3 disinterested mental health  
 1645 experts to examine the inmate with respect to the criteria for  
 1646 insanity and to report their findings and conclusions to the  
 1647 court; or

1648 (c) Enter such other orders as may be appropriate to  
 1649 effectuate a speedy and just resolution of the issues raised.

1650 (7) At hearings held pursuant to this section, the court  
 1651 may admit such evidence as the court deems relevant to the  
 1652 issues, including but not limited to the reports of expert  
 1653 witnesses, and the court shall not be strictly bound by the

32-01271A-13 20131750\_\_

1654 rules of evidence.

1655 (8) If, at the conclusion of the hearing, the court finds,  
 1656 by clear and convincing evidence, that the inmate is insane, the  
 1657 court shall enter its order continuing the stay of the death  
 1658 warrant; otherwise, the court shall deny the motion and enter  
 1659 its order dissolving the stay of execution.

1660 Section 31. Section 924.0594, Florida Statutes, is created  
 1661 to read:

1662 924.0594 Dismissal of postconviction proceedings.—This  
 1663 section applies only when an inmate seeks both to dismiss a  
 1664 pending postconviction proceedings and to discharge collateral  
 1665 counsel.

1666 (1) If an inmate files a motion to dismiss a pending  
 1667 postconviction motion and to discharge collateral counsel pro  
 1668 se, the Clerk of the Court shall serve copies of the motion on  
 1669 counsel of record for both the inmate and the state. Counsel of  
 1670 record may file responses within 10 days.

1671 (2) The trial judge shall review the motion and the  
 1672 responses and schedule a hearing. The inmate, collateral  
 1673 counsel, and the state shall be present at the hearing.

1674 (3) The judge shall examine the inmate at the hearing and  
 1675 shall hear argument of the inmate, collateral counsel, and the  
 1676 state. No fewer than 2 or more than 3 qualified experts shall be  
 1677 appointed to examine the inmate if the judge concludes that  
 1678 there are reasonable grounds to believe the inmate is not  
 1679 mentally competent for purposes of this section. The experts  
 1680 shall file reports with the court setting forth their findings.  
 1681 Thereafter, the court shall conduct an evidentiary hearing and  
 1682 enter an order setting forth findings of competency or

32-01271A-13 20131750\_\_

1683 incompetency.

1684 (4) If the inmate is found to be incompetent for purposes

1685 of this section, the court shall deny the motion without

1686 prejudice.

1687 (5) If the inmate is found to be competent for purposes of

1688 this section, the court shall conduct a complete

1689 Durocher/Faretta inquiry to determine whether the inmate

1690 knowingly, freely, and voluntarily wants to dismiss pending

1691 postconviction proceedings and discharge collateral counsel.

1692 (6) If the court determines that the inmate has made the

1693 decision to dismiss pending postconviction proceedings and

1694 discharge collateral counsel knowingly, freely, and voluntarily,

1695 the court shall enter an order dismissing all pending

1696 postconviction proceedings and discharging collateral counsel.

1697 If the court determines that the inmate has not made the

1698 decision to dismiss pending postconviction proceedings and

1699 discharge collateral counsel knowingly, freely, and voluntarily,

1700 the court shall enter an order denying the motion without

1701 prejudice.

1702 (7) If the court denies the motion, the inmate may seek

1703 review pursuant to s. 924.0581(2). If the court grants the

1704 motion:

1705 (a) A copy of the motion, the order, and the transcript of

1706 the hearing or hearings conducted on the motion shall be

1707 forwarded to the Clerk of the Supreme Court of Florida within 30

1708 days; and

1709 (b) Discharged counsel shall, within 10 days after issuance

1710 of the order, file with the clerk of the circuit court 2 copies

1711 of a notice seeking review in the Supreme Court of Florida, and

32-01271A-13 20131750\_\_

1712 shall, within 20 days after the filing of the transcript, serve

1713 an initial brief. Both the inmate and the state may serve

1714 responsive briefs.

1715 (8) (a) Within 10 days of the rendition of an order granting

1716 a inmate's motion to discharge counsel and dismiss the motion

1717 for postconviction relief, discharged counsel must file with the

1718 clerk of the circuit court a notice seeking review in the

1719 Florida Supreme Court.

1720 (b) The circuit judge presiding over the motion to dismiss

1721 and discharge counsel shall order a transcript of the hearing to

1722 be prepared and filed with the clerk of the circuit court no

1723 later than 25 days from rendition of the final order. Within 30

1724 days of the granting of a motion to dismiss and discharge

1725 counsel, the clerk of the circuit court shall forward a copy of

1726 the motion, order, and transcripts of all hearings held on the

1727 motion to the Clerk of the Florida Supreme Court.

1728 (c) Within 20 days of the filing of the record in the

1729 Florida Supreme Court, discharged counsel shall serve an initial

1730 brief. Both the state and the prisoner may serve responsive

1731 briefs. All briefs must be served and filed as prescribed by

1732 rule 9.210 of the Rules of Appellate Procedure.

1733 (d) The Florida Supreme Court shall rule on the motion

1734 within 60 days of the last brief filing deadline.

1735 Section 32. If any provision of this act or the application

1736 thereof to any person or circumstance is held invalid, the

1737 invalidity does not affect other provisions or applications of

1738 the act which can be given effect without the invalid provision

1739 or application, and to this end the provisions of this act are

1740 declared severable.

32-01271A-13

20131750\_\_

1741           Section 33. Except as otherwise provided herein, this act  
1742 shall take effect July 1, 2015, contingent upon voter approval  
1743 of SJR\_\_\_\_\_ in the General Election of 2014.

# CourtSmart Tag Report

**Room:** LL 37

**Case:**

**Type:**

**Caption:** Senate Appropriations Subcommittee on Criminal and Civil Justice

**Judge:**

**Started:** 4/4/2013 8:34:11 AM

**Ends:** 4/4/2013 9:56:04 AM **Length:** 01:21:54

**8:34:16 AM** Meeting called to order.  
**8:34:22 AM** Chairman Bradley opens.  
**8:34:56 AM** TAB 6- SB 1750  
**8:35:11 AM** Senator Negron, recognized.  
**8:38:07 AM** Am. 128118  
**8:39:21 AM** Senator Diaz de la Portilla asks what the fiscal impact of the bill is.  
**8:39:36 AM** Senator Negron responds that it may actually save a de minimus amount of money.  
**8:40:00 AM** Senator Dean asks for an explanation of the timelines Senator Negron is proposing for post conviction proceedings.  
**8:40:55 AM** Senator Negron responds that the current language says five years and he wants the goal to be as soon as possible.  
**8:42:12 AM** Chairman Bradley asks if this affects newly discovered evidence claims.  
**8:42:51 AM** Senator Negron responds that it does not.  
**8:42:54 AM** Senator Soto asks if this bill comports with separation of powers requirements.  
**8:43:13 AM** Senator Negron responds that there would need to be a constitutional amendment.  
**8:44:21 AM** Senator Soto asks if the legislature should wait for information from the Supreme Court work group first.  
**8:44:48 AM** Senator Negron responds that he does not think that is necessary.  
**8:45:32 AM** Senator Soto asks if the bill affects existing cases or only new cases going forward.  
**8:46:04 AM** Senator Negron responds that it only affects cases going forward.  
**8:46:35 AM** Julianne Holt, Public Defender-13th Circuit, Florida Public Defenders Association, recognized.  
**8:48:02 AM** Steve Metz, Florida Bar, recognized.  
**8:50:22 AM** Senator Braynon asks if the Florida Bar is in support of the bill.  
**8:50:40 AM** Mr. Metz responds that some of the procedure that the bill deals with falls within the province of the court.  
**8:51:33 AM** Senator Braynon asks for clarification.  
**8:51:41 AM** Mr. Metz responds that they support the concepts in the bill, and that it needs a little more work because there is some tension.  
**8:52:44 AM** Senator Smith comments that the legislature should stay out of court procedure and should wait until the court comes up with their own rules.  
**8:55:39 AM** Senator Dean makes a comment.  
**8:56:02 AM** Senator Diaz de la Portilla comments that he shares Senator Soto's concerns, but that he believes Senator Negron has done a good job.  
**8:57:04 AM** Senator Soto responds that the rule making is unconstitutional and he cannot support the bill.  
**8:57:42 AM** Chairman Bradley expresses his support for the bill.  
**8:58:42 AM** Senator Negron responds that the bill would be unconstitutional on its own, but that with the constitutional amendment it would not be.  
**9:00:41 AM** TAB 2- CS/SB 1140  
**9:01:05 AM** Senator Stargel, recognized.  
**9:01:16 AM** Am. 129396  
**9:02:22 AM** Senator Clemens asks if these pipes can be used for legal purposes.  
**9:03:01 AM** Senator Stargel responds that she is not aware of legal uses.  
**9:03:04 AM** Senator Clemens asks if there is any exemption for legal uses.  
**9:03:08 AM** Senator Stargel responds that this is about sales, not use.  
**9:03:11 AM** Senator Diaz de la Portilla asks if a hookah would be included.  
**9:03:34 AM** Senator Stargel responds that she is not familiar with the hookah, but that it has to be drug paraphernalia.  
**9:03:59 AM** Representative Rouson, recognized.  
**9:04:24 AM** Senator Diaz de la Portilla asks if there is anything in the way that pipes are defined that could be interpreted by law enforcement as something that can be used to go after hookah bars.  
**9:04:55 AM** Representative Rouson says no.  
**9:05:17 AM** Senator Diaz de la Portilla asks what the definition of drug paraphernalia is.  
**9:05:39 AM** Representative Rouson provides a list and a photograph.  
**9:06:01 AM** Senator Stargel comments that this is for the retail sales, not for use, and hookah bars probably buy wholesale.

9:06:29 AM Senator Diaz de la Portilla responds that many people do buy hookahs for home use.

9:06:40 AM Senator Dean asks if this is about sale and not possession.

9:06:54 AM Senator Stargel responds that this is correct.

9:07:01 AM Senator Soto asks about an amendment to exempt hookahs and hookah bars.

9:07:26 AM Senator Stargel does not believe that hookah bars are included in the bill at all.

9:07:46 AM Mike Erickson, Criminal Justice Committee, recognized, to expound on drug paraphernalia statutes.

9:10:14 AM Senator Diaz de la Portilla asks if a retail establishment is selling a hookah to use at home, could that be seen as the sale of drug paraphernalia under the statutes.

9:10:56 AM Mr. Erickson responds that he believes that it would not be.

9:11:34 AM Senator Diaz de la Portilla asks a follow up question.

9:12:00 AM Mr. Erickson responds.

9:12:57 AM Jill Gran, Florida Alcohol and Drug Abuse Association, waives in support.

9:13:20 AM Senator Stargel comments that this is about crack pipes and crack use.

9:13:58 AM Senator Garcia comments that hookahs are cultural and legal and that he has concerns with the bill.

9:14:59 AM Senator Flores expresses her support for this bill.

9:15:42 AM Senator Diaz de la Portilla expresses his support for this bill.

9:15:59 AM Senator Dean comments that this is about sale, not possession, and he support the bill.

9:16:24 AM Senator Hays expresses his support for the bill.

9:17:17 AM Representative Rouson, recognized.

9:19:53 AM TAB 4- CS/SB 1126

9:20:12 AM Senator Smith, recognized.

9:20:52 AM Senator Dean asks if this is going to be a misdemeanor or a felony.

9:21:25 AM Mr. Erickson responds that it is a third degree felony.

9:21:49 AM Carl Hassell, Sergeant, Florida Sheriffs Association, Hillsborough County Sheriffs Office, waives in support.

9:23:15 AM Robert Ura, Captain, Florida Sheriffs Association, Hillsborough County Sheriffs Office, recognized.

9:25:05 AM Senator Garcia comments that he has been a victim of identity theft and that this is a good bill.

9:26:19 AM Senator Dean comments that he has had family members experience identity theft.

9:27:18 AM Senator Hays comments on the effective date.

9:28:06 AM Senator Braynon comments on the prevalence of this crime.

9:30:25 AM TAB 1- CS/CS/SB 1110

9:30:37 AM Mike Bascom, Legislative Assistant to Senator Evers, recognized.

9:30:58 AM Am. 568106

9:31:28 AM Am. 919748

9:32:17 AM Am. 494616

9:32:44 AM Senator Diaz de la Portilla asks what motivated this bill.

9:33:13 AM Mr. Bascom responds that the impetus is the backlog of appointments.

9:33:59 AM Senator Dean asks if these individuals are regulated by the railroad industry.

9:34:19 AM Mr. Bascom responds that this is correct, the officers can only patrol CSX property.

9:35:00 AM Senator Dean asks why this bill talks about common carriers.

9:35:12 AM Mr. Bascom responds that this applies to the whole industry and not just CSX.

9:35:30 AM Frank Kirbyson, Deputy Chief, CSX Transportation, waives in support.

9:35:45 AM Ken Kopczynski, Florida PBA Inc., waives in support.

9:36:21 AM TAB 3- CS/SB 400

9:36:23 AM Senator Dean, recognized.

9:37:23 AM Senator Smith asks if this is one incident or over a period of time.

9:37:37 AM Senator Dean responds it starts the first time you lie.

9:37:45 AM Senator Smith asks about a specific scenario.

9:38:05 AM Senator Dean responds.

9:38:34 AM Jim Gabbard, Chief of Police, Florida Police Chiefs Association, waives in support.

9:38:56 AM Senator Smith comments that this seems excessive.

9:40:51 AM Senator Dean responds that this is for when a person knowingly lies multiple time, and says that the individual gets the benefit of the doubt for the first lie.

9:42:10 AM Chairman Bradley asks staff to comment.

9:42:31 AM Mr. Erickson responds.

9:44:40 AM Senator Soto asks if this first requires a conviction.

9:45:04 AM Mr. Erickson responds that this bill does not address the multiple lies issue.

9:46:35 AM Senator Altman comments that these are lies intended to mislead law enforcement.

9:47:35 AM Senator Dean comments that this is not about a random interview, but about continuous lying to an officer about criminal activity.

9:49:11 AM TAB 5- CS/SB 1372

9:49:14 AM Chairman Bradley, recognized.

**9:50:52 AM** Senator Smith asks about fiscal impacts on local governments.  
**9:51:26 AM** Chairman Bradley responds that he sees Senator Smith's point.  
**9:52:19 AM** Kristopher Browning, Associate, Florida Smart Justice Alliance, waives in support.  
**9:52:28 AM** Tom Feeney, Major, Florida Sheriffs Association, waives in support.  
**9:52:48 AM** Senator Smith comments that he supports this bill, but that we need to know the cost and support it.  
**9:53:48 AM** Chairman Bradley responds that this is a great point.  
**9:54:21 AM** Senator Diaz de la Portilla asks if this is just one more thing that the courts consider when determining to detain someone.  
**9:54:57 AM** Chairman Bradley responds that this is correct.  
**9:55:55 AM** Meeting adjourned.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/4/2013

Meeting Date

Topic \_\_\_\_\_

Bill Number SB 1750  
(if applicable)

Name JULIANNE HOLT

Amendment Barcode BY NEX TREN.  
(if applicable)

Job Title PUBLIC DEFENDER - 13TH CIRCUIT

Address P.O. BOX 172417

Phone 813-307-4000

Street TAMPA State FL Zip \_\_\_\_\_

E-mail JHOLT@PNS.STATE.US.

Speaking:  For  Against  Information

Representing FLORIDA PUBLIC DEFENDER ASSOC.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

Topic \_\_\_\_\_

Bill Number SB 1750  
(if applicable)

Name STEVE METZ

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title \_\_\_\_\_

Address 215 S MOBILE

Phone \_\_\_\_\_

Street TALLY FLA. State \_\_\_\_\_ Zip \_\_\_\_\_

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing FL. BAR

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/4/13  
Meeting Date

Topic Pretrial Detention Bill Number 1372  
Name Tom Feeney Amendment Barcode \_\_\_\_\_  
Job Title Major (if applicable)  
Address 2008 E. 8th Avenue Phone 813 363-0375  
Street  
City Tampa State FL Zip 33605 E-mail LBowden @  
City State Zip  
Speaking:  For  Against  Information  
Representing Florida Sheriffs Assn US  
Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/4/13  
Meeting Date

Topic Pretrial Detention Bill Number 1372  
Name KRISTOPHER BROWNING Amendment Barcode \_\_\_\_\_  
Job Title Associate, Ramsey Bishop Consulting (if applicable)  
Address 204 South Monroe St. Ste. 201 Phone (850) 907-3436  
Street  
City Tallahassee State FL Zip 32301 E-mail Kbrowning@bridgesofamerica.org  
City State Zip  
Speaking:  For  Against  Information  
Representing Florida Smart Justice Alliance  
Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3 April 2013  
Meeting Date

Topic Drug Para  
Name Jill Gran  
Job Title \_\_\_\_\_

Bill Number 3 1140 (if applicable)  
Amendment Barcode \_\_\_\_\_ (if applicable)

Address 2808 Mahan Dr  
Tallahassee FL 32308  
City State Zip

Phone \_\_\_\_\_  
E-mail jill@fadaa.org

Speaking:  For  Against  Information

Representing FL Alcohol + Drug Abuse Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/4/13  
Meeting Date

Topic Unlawful Possession of Personal Identifiers  
Name Carl Hessel  
Job Title Sergeant  
Address 2008 E. 8th Avenue  
Tampa FL 33605  
City State Zip

Bill Number 1126 (if applicable)  
Amendment Barcode \_\_\_\_\_ (if applicable)

Speaking:  For  Against  Information

Phone 813 363-0375  
E-mail Lbowden@hcs0.tampa.fl.us

Representing Florida Sheriff's Assn + Hillsborough Co. Sheriff's Office

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/4/2013  
Meeting Date

Topic Rail Road Police

Bill Number 1110  
(if applicable)

Name FRANK Kirbyson

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Deputy Chief

Address 500 WATER ST  
Street

Phone 904-226-3097

JACKSONVILLE FL 32202  
City State Zip

E-mail FRANK-KIRBYSON@CSX  
Co.

Speaking:  For  Against  Information

Representing CSX TRANSPORTATION

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4.4.13  
Meeting Date

Topic Railroad Police Ofc

Bill Number 1110  
(if applicable)

Name Ken Kopczynski "Cope-CHEN-ski"

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title lobbyist

Address 300 East Brevard St  
Street

Phone 222-3329

TALLA FL 32301  
City State Zip

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing FLA PBA INC

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/4/13  
Meeting Date

Topic Unlawful Possession of Personal Identifications Bill Number 1126  
(if applicable)

Name Robert Uka Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Captain

Address 2008 E. 8th Avenue Phone 813 363-0375  
Street

Tampa FL 33605 E-mail LBowden@Hcso.  
City State Zip tampa.fl.us

Speaking:  For  Against  Information

Representing Florida Sheriff's Assn, B Hillsborough County Sheriff's Office

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

4/4/13  
Meeting Date

Topic False Reports to Law Enforcement officers Bill Number SB 0400  
(if applicable)

Name Jim Gabbard Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Chief of Police (Retired)

Address 1100 31st Ave Phone 772-473-7966  
Street

Vero Beach Fla 32960 E-mail \_\_\_\_\_  
City State Zip

Speaking:  For  Against  Information

Representing The Florida Police Chiefs Association

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)