

Amendment No.

CHAMBER ACTION

Senate

House

.

Representative Gaetz offered the following:

**Amendment (with title amendment)**

Remove everything after the enacting clause and insert:

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

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

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

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

(b) If a death sentence is imposed and affirmed on appeal to the Supreme Court, the appointed attorney shall be allowed compensation, not to exceed \$1,000, for attorney fees and costs incurred in representing the defendant as to an application for

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17 executive clemency, with compensation to be paid out of general  
18 revenue from funds budgeted to the Justice Administrative  
19 Commission ~~Department of Corrections~~.

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

22 27.701 Capital collateral regional counsel.—

23 ~~(1)~~ There are created three regional offices of capital  
24 collateral counsel, which shall be located in a northern,  
25 middle, and southern region of the state. The northern region  
26 shall consist of the First, Second, Third, Fourth, Eighth, and  
27 Fourteenth Judicial Circuits; the middle region shall consist of  
28 the Fifth, Sixth, Seventh, Ninth, Tenth, Twelfth, Thirteenth,  
29 and Eighteenth Judicial Circuits; and the southern region shall  
30 consist of the Eleventh, Fifteenth, Sixteenth, Seventeenth,  
31 Nineteenth, and Twentieth Judicial Circuits. Each regional  
32 office shall be administered by a regional counsel. A regional  
33 counsel must be, and must have been for the preceding 5 years, a  
34 member in good standing of The Florida Bar or a similar  
35 organization in another state. Each capital collateral regional  
36 counsel shall be appointed by the Governor, and is subject to  
37 confirmation by the Senate. The Supreme Court Judicial  
38 Nominating Commission shall recommend to the Governor three  
39 qualified candidates for each appointment as regional counsel.  
40 The Governor shall appoint a regional counsel for each region  
41 from among the recommendations, or, if it is in the best  
42 interest of the fair administration of justice in capital cases,  
43 the Governor may reject the nominations and request submission  
44 of three new nominees by the Supreme Court Judicial Nominating

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45 Commission. Each capital collateral regional counsel shall be  
46 appointed to a term of 3 years. Vacancies in the office of  
47 capital collateral regional counsel shall be filled in the same  
48 manner as appointments. A person appointed as a regional counsel  
49 may not run for or accept appointment to any state office for 2  
50 years following vacation of office.

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

67 Section 4. Subsection (1) and paragraph (b) of subsection  
68 (4) of section 27.702, Florida Statutes, are amended to read:

69 27.702 Duties of the capital collateral regional counsel;  
70 reports.—

71 (1) The capital collateral regional counsel shall  
72 represent each person convicted and sentenced to death in this

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73 state for the sole purpose of instituting and prosecuting  
74 collateral actions challenging the legality of the judgment and  
75 sentence imposed against such person in the state courts,  
76 federal courts in this state, the United States Court of Appeals  
77 for the Eleventh Circuit, and the United States Supreme Court.

78 ~~The capital collateral regional counsel and the attorneys~~  
79 ~~appointed pursuant to s. 27.710 shall file only those~~  
80 ~~postconviction or collateral actions authorized by statute.~~ The  
81 three capital collateral regional counsel's offices shall  
82 function independently and be separate budget entities, and the  
83 regional counsel shall be the office heads for all purposes. The  
84 Justice Administrative Commission shall provide administrative  
85 support and service to the three offices to the extent requested  
86 by the regional counsel. The three regional offices shall not be  
87 subject to control, supervision, or direction by the Justice  
88 Administrative Commission in any manner, including, but not  
89 limited to, personnel, purchasing, transactions involving real  
90 or personal property, and budgetary matters.

91 (4)

92 (b) Each capital collateral regional counsel ~~and each~~  
93 ~~attorney participating in the pilot program in the northern~~  
94 ~~region pursuant to s. 27.701(2)~~ shall provide a quarterly report  
95 to the President of the Senate and the Speaker of the House of  
96 Representatives which details the number of hours worked by  
97 investigators and legal counsel per case and the amounts per  
98 case expended during the preceding quarter in investigating and  
99 litigating capital collateral cases.

100 Section 5. Section 27.703, Florida Statutes, is amended to

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read:

27.703 Conflict of interest and substitute counsel.—

(1) The capital collateral regional counsel shall not accept an appointment or take any other action that will create an actual ~~a~~ conflict of interest. If, at any time during the representation of a person, the capital collateral regional counsel alleges ~~determines~~ that the continued representation of that person creates an actual ~~a~~ conflict of interest, the sentencing court shall, upon determining that an actual conflict exists upon application by the regional counsel, designate another regional counsel. If the replacement regional counsel alleges that an actual conflict of interest exists, the sentencing court shall, upon determining that an actual conflict exists and, only if a conflict exists with the other two ~~counsel,~~ appoint one or more members of The Florida Bar who meet the requirements of s. 27.704(2) and who are not disqualified pursuant to s. 27.7045 to represent the person one or more of such persons. An actual conflict of interest exists when an attorney actively represents conflicting interests. A possible, speculative, or merely hypothetical conflict is insufficient to support an allegation that an actual conflict of interest exists.

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

(3) Capital collateral regional ~~Prior to employment,~~

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129 counsel appointed pursuant to this section must have  
130 participated in at least five felony jury trials, five felony  
131 appeals, or five capital postconviction evidentiary hearings, or  
132 any combination of at least five of such proceedings, and must  
133 not be disqualified pursuant to s. 27.7045.

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

136 27.704 Appointment of assistants and other staff.—Each  
137 capital collateral regional counsel may:

138 (1) Appoint, employ, and establish, in such numbers as he  
139 or she determines, full-time or part-time assistant counsel,  
140 investigators, and other clerical and support personnel who  
141 shall be paid from funds appropriated for that purpose. A full-  
142 time assistant capital collateral counsel must not be  
143 disqualified pursuant to s. 27.7045; must be a member in good  
144 standing of The Florida Bar, with not less than 3 years'  
145 experience in the practice of criminal law;~~7~~ and, prior to  
146 employment, must have participated in at least five felony jury  
147 trials, five felony appeals, or five capital postconviction  
148 evidentiary hearings or any combination of at least five of such  
149 proceedings. Law school graduates who do not have the  
150 qualifications of a full-time assistant capital collateral  
151 counsel may be employed as members of the legal staff but may  
152 not be designated as sole counsel for any person.

153 (2) Contract with private counsel who are members in good  
154 standing of The Florida Bar or with public defenders for the  
155 purpose of providing prompt and cost-effective representation  
156 for individuals who are sentenced to death in this state. A

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157 private counsel or public defender under contract with the  
158 regional counsel must not be disqualified pursuant to s.  
159 27.7045; must have at least 3 years' experience in the practice  
160 of criminal law; and, prior to the contract, must have  
161 participated in at least two capital trials or capital  
162 sentencing proceedings ~~five felony jury trials~~, five felony  
163 appeals, or five capital postconviction evidentiary hearings, or  
164 any combination of at least five of such proceedings.

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

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

171 27.7045 Capital case proceedings; constitutionally  
172 deficient representation.—Notwithstanding another provision of  
173 law, an attorney employed by the state or appointed pursuant to  
174 s. 27.711 may not represent a person charged with a capital  
175 offense at trial or on direct appeal or a person sentenced to  
176 death in a postconviction proceeding if, in two separate  
177 instances, a court, in a capital postconviction proceeding,  
178 determined that such attorney provided constitutionally  
179 deficient representation and relief was granted as a result.  
180 This prohibition on representation shall be for a period of 5  
181 years, which commences at the time relief is granted after the  
182 highest court having jurisdiction to review the deficient  
183 representation determination has issued its final order  
184 affirming the second such determination.

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

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

189 27.7081 Capital postconviction public records production.-

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

191 (a) "Agency" has the same meaning as provided in s.  
192 119.011.

193 (b) "Collateral counsel" means a capital collateral  
194 regional counsel from one of the three regions in Florida, a  
195 private attorney who has been appointed to represent a capital  
196 defendant for postconviction litigation, or a private attorney  
197 who has been hired by the capital defendant or who has agreed to  
198 work pro bono for a capital defendant for postconviction  
199 litigation.

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

202 (d) "Trial court" means:

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

205 2. If a motion for postconviction relief in a capital case  
206 has been filed and a different judge has already been assigned  
207 to that motion, the judge who is assigned to rule on that  
208 motion.

209 (2) APPLICABILITY AND SCOPE.-This section only applies to  
210 the production of public records for capital postconviction  
211 defendants and does not change or alter the time periods  
212 specified in Rule 3.851, Florida Rules of Criminal Procedure.

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213 Furthermore, this section does not affect, expand, or limit the  
214 production of public records for any purpose other than use in a  
215 proceeding held pursuant to Rule 3.850 or Rule 3.851, Florida  
216 Rules of Criminal Procedure. This section shall not be a basis  
217 for renewing public records requests that have been initiated  
218 previously or for relitigating issues pertaining to production  
219 of public records upon which a court has ruled before July 1,  
220 2013. Public records requests made in postconviction proceedings  
221 in capital cases in which the conviction and sentence of death  
222 have been affirmed on direct appeal before July 1, 2013, shall  
223 be governed by the rules and laws in effect immediately before  
224 July 1, 2013.

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

228 (4) FILING AND SERVICE.—

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

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

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

240 (d) Persons and agencies receiving postconviction public

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241 records notifications or requests pursuant to this section are  
242 not required to furnish records filed in a trial court before  
243 the receipt of the notice.

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

245 (a) Within 15 days after receiving written notification of  
246 the Florida Supreme Court's mandate affirming the sentence of  
247 death, the Attorney General shall file with the trial court a  
248 written notice of the mandate and serve a copy of the notice  
249 upon the state attorney who prosecuted the case, the Department  
250 of Corrections, and the defendant's trial counsel. The notice to  
251 the state attorney shall direct the state attorney to submit  
252 public records to the records repository within 90 days after  
253 receipt of written notification and to notify each law  
254 enforcement agency involved in the investigation of the capital  
255 offense to submit public records to the records repository  
256 within 90 days after receipt of written notification. The notice  
257 to the Department of Corrections shall direct the department to  
258 submit public records to the records repository within 90 days  
259 after receipt of written notification.

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

266 (c) Within 90 days after receiving written notification of  
267 issuance of the Florida Supreme Court's mandate affirming a  
268 death sentence, the defendant's trial counsel shall provide

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269 written notification to the Attorney General of the name and  
270 address of a person or agency with information pertinent to the  
271 case which has not previously been provided to collateral  
272 counsel.

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

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

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

290 (b) Within 90 days after receipt of a written notice of  
291 the mandate from the Attorney General, the state attorney shall  
292 copy, index, and deliver to the records repository all public  
293 records that were produced in the state attorney's investigation  
294 or prosecution of the case. The state attorney shall bear the  
295 costs. The state attorney shall also provide written  
296 notification to the Attorney General of compliance with this

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297 section, including certifying that, to the best of the state  
298 attorney's knowledge or belief, all public records in the state  
299 attorney's possession have been copied, indexed, and delivered  
300 to the records repository as required by this section.

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

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

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325 delivered to the records repository.

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

338 (7) EXEMPT OR CONFIDENTIAL PUBLIC RECORDS.—

339 (a) Public records delivered to the records repository  
340 pursuant to this section that are confidential or exempt from  
341 the requirements of s. 119.07(1) or s. 24(a), Art. I of the  
342 State Constitution, must be separately contained, without being  
343 redacted, and sealed. The outside of the container must clearly  
344 identify that the public record is confidential or exempt and  
345 that the seal may not be broken without an order of the trial  
346 court. The outside of the container must identify the nature of  
347 the public records and the legal basis for the exemption.

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

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353 such records by the trial court.

354 (8) DEMAND FOR ADDITIONAL PUBLIC RECORDS.-

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

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

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

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

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

379 3. The additional public records sought are relevant to  
380 the subject matter of a postconviction proceeding under Rule

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381 3.851, Florida Rules of Criminal Procedure, or appear reasonably  
382 calculated to lead to the discovery of admissible evidence.

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

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

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

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

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

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

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

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

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

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

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

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409 discovery of admissible evidence.

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

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

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

417 (a) Compel or deny disclosure of records.

418 (b) Conduct an inspection in camera.

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

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

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

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

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

436 (b) Counsel for a party objecting or moving to compel

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437 production of public records pursuant to this section must file  
438 a copy of the objection or motion directly with the trial court.

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

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

459 Section 9. Subsections (3) and (4) of section 27.710,  
460 Florida Statutes, are amended to read:

461 27.710 Registry of attorneys applying to represent persons  
462 in postconviction capital collateral proceedings; certification  
463 of minimum requirements; appointment by trial court.—

464 (3) An attorney who applies for registration and court

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465 appointment as counsel in postconviction capital collateral  
466 proceedings must certify that he or she is counsel of record in  
467 not more than nine ~~four~~ such proceedings and, if appointed to  
468 represent a person in postconviction capital collateral  
469 proceedings, shall continue such representation under the terms  
470 and conditions set forth in s. 27.711 until the sentence is  
471 reversed, reduced, or carried out or unless permitted to  
472 withdraw from representation by the trial court. The court may  
473 not permit an attorney to withdraw from representation without a  
474 finding of sufficient good cause. The court may impose  
475 appropriate sanctions if it finds that an attorney has shown bad  
476 faith with respect to continuing to represent a defendant in a  
477 postconviction capital collateral proceeding. This section does  
478 not preclude the court from reassigning a case to a capital  
479 collateral regional counsel following discontinuation of  
480 representation if a conflict of interest no longer exists with  
481 respect to the case.

482 (4) Each private attorney who is appointed by the court to  
483 represent a capital defendant must enter into a contract with  
484 the Justice Administrative Commission ~~Chief Financial Officer~~.  
485 If the appointed attorney fails to execute the contract within  
486 30 days after the date the contract is mailed to the attorney,  
487 the executive director shall notify the trial court. The Justice  
488 Administrative Commission ~~Chief Financial Officer~~ shall ~~develop~~  
489 ~~the form of the contract,~~ function as contract manager, and  
490 enforce performance of the terms and conditions of the contract.  
491 The Justice Administrative Commission shall approve uniform  
492 contract forms for use in procuring the services of private

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493 court-appointed counsel and uniform procedures and forms for use  
494 by a court-appointed attorney in support of billing for attorney  
495 fees, costs, and related expenses to demonstrate attorney  
496 completion of specified duties. By signing such contract, the  
497 attorney certifies that he or she intends to continue the  
498 representation under the terms and conditions set forth in the  
499 contract until the sentence is reversed, reduced, or carried out  
500 or until released by order of the trial court.

501 Section 10. Subsections (3), (4), (5), (6), (7), (9),  
502 (12), (13), and (14) of section 27.711, Florida Statutes, are  
503 amended to read:

504 27.711 Terms and conditions of appointment of attorneys as  
505 counsel in postconviction capital collateral proceedings.-

506 (3) An attorney appointed to represent a capital defendant  
507 is entitled to payment of the fees set forth in this section  
508 only upon full performance by the attorney of the duties  
509 specified in this section and approval of payment by the trial  
510 court, and the submission of a payment request by the attorney,  
511 subject to the availability of sufficient funding specifically  
512 appropriated for this purpose. ~~An attorney may not be~~  
513 ~~compensated under this section for work performed by the~~  
514 ~~attorney before July 1, 2003, while employed by the northern~~  
515 ~~regional office of the capital collateral counsel.~~ The Justice  
516 Administrative Commission Chief Financial Officer shall notify  
517 ~~the executive director~~ and the court if it appears that  
518 sufficient funding has not been specifically appropriated for  
519 this purpose to pay any fees which may be incurred. The attorney  
520 shall maintain appropriate documentation, including a current

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521 and detailed hourly accounting of time spent representing the  
522 capital defendant. The fee and payment schedule in this section  
523 is the exclusive means of compensating a court-appointed  
524 attorney who represents a capital defendant. When appropriate, a  
525 court-appointed attorney must seek further compensation from the  
526 Federal Government, as provided in 18 U.S.C. s. 3006A or other  
527 federal law, in habeas corpus litigation in the federal courts.

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

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

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

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

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

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

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

565 (g) At the conclusion of the capital defendant's  
566 postconviction capital collateral proceedings in state court,  
567 the attorney is entitled to \$100 per hour, up to a maximum of  
568 \$2,500, after filing a petition for writ of certiorari in the  
569 Supreme Court of the United States.

570 (h) If, at any time, a death warrant is issued, the  
571 attorney is entitled to \$100 per hour, up to a maximum of  
572 \$5,000. This payment shall be full compensation for attorney  
573 ~~attorney's~~ fees and costs for representing the capital defendant  
574 throughout the proceedings before the state courts of Florida.

575  
576 The hours billed by a contracting attorney under this subsection

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577 may include time devoted to representation of the defendant by  
578 another attorney who is qualified under s. 27.710 and who has  
579 been designated by the contracting attorney to assist him or  
580 her.

581 (5) An attorney who represents a capital defendant may use  
582 the services of one or more investigators to assist in  
583 representing a capital defendant. Upon approval by the trial  
584 court, the attorney is entitled to payment from the Justice  
585 Administrative Commission ~~Chief Financial Officer~~ of \$40 per  
586 hour, up to a maximum of \$15,000, for the purpose of paying for  
587 investigative services.

588 (6) An attorney who represents a capital defendant is  
589 entitled to a maximum of \$15,000 for miscellaneous expenses,  
590 such as the costs of preparing transcripts, compensating expert  
591 witnesses, and copying documents. Upon approval by the trial  
592 court, the attorney is entitled to payment by the Justice  
593 Administrative Commission ~~Chief Financial Officer~~ of up to  
594 \$15,000 for miscellaneous expenses, except that, if the trial  
595 court finds that extraordinary circumstances exist, the attorney  
596 is entitled to payment in excess of \$15,000.

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

604 (9) An attorney may not represent more than ten ~~five~~

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605 defendants in capital postconviction litigation at any one time.

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

619 (13) Before ~~Prior to~~ the filing of a motion for order  
620 approving payment of attorney ~~attorney's~~ fees, costs, or related  
621 expenses, the assigned counsel shall deliver a copy of his  
622 intended billing, together with supporting affidavits and all  
623 other necessary documentation, to the Justice Administrative  
624 Commission ~~Chief Financial Officer's~~ named contract manager. The  
625 Justice Administrative Commission shall review the intended  
626 billing ~~contract manager shall have 10 business days from~~  
627 ~~receipt to review the billings, affidavit, and documentation~~ for  
628 completeness and compliance with contractual and statutory  
629 requirements. If the Justice Administrative Commission ~~contract~~  
630 ~~manager~~ objects to any portion of the proposed billing, the  
631 objection and reasons therefor shall be communicated to the  
632 assigned counsel. The assigned counsel may thereafter file his

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633 or her motion for order approving payment of attorney ~~attorney's~~  
634 fees, costs, or related expenses together with supporting  
635 affidavits and all other necessary documentation. The motion  
636 must specify whether the Justice Administrative Commission ~~Chief~~  
637 ~~Financial Officer's contract manager~~ objects to any portion of  
638 the billing or the sufficiency of documentation and, if so, the  
639 reason therefor. A copy of the motions and attachments shall be  
640 served on the Justice Administrative Commission at least 5  
641 business days before the date of a hearing. The Justice  
642 Administrative Commission has standing to appear before the  
643 court to contest any motion for an order approving payment of  
644 attorney fees, costs, or related expenses and may participate in  
645 a hearing on the motion by use of telephonic or other  
646 communication equipment. ~~A copy of the motion and attachments~~  
647 ~~shall be served on the Chief Financial Officer's contract~~  
648 ~~manager, who shall have standing to file pleadings and appear~~  
649 ~~before the court to contest any motion for order approving~~  
650 ~~payment.~~ The fact that the Justice Administrative Commission  
651 ~~Chief Financial Officer's contract manager~~ has not objected to  
652 any portion of the billing or to the sufficiency of the  
653 documentation is not binding on the court, which retains primary  
654 authority and responsibility for determining the reasonableness  
655 of all billings for fees, costs, and related expenses, subject  
656 to statutory limitations.

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

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661 ~~collateral regional counsel.~~

662 Section 11. Section 922.095, Florida Statutes, is amended  
663 to read:

664 922.095 Grounds for death warrant; ~~limitations of~~  
665 ~~actions.~~—A person who is convicted and sentenced to death must  
666 pursue all possible collateral remedies in state court in  
667 accordance with the Florida Rules of Criminal Procedure within  
668 ~~the time limits provided by statute. Failure to seek relief~~  
669 ~~within the statutory time limits constitutes grounds for~~  
670 ~~issuance of a death warrant under s. 922.052 or s. 922.14. Any~~  
671 ~~claim not pursued within the statutory time limits is barred. No~~  
672 ~~claim filed after the time required by law shall be grounds for~~  
673 ~~a judicial stay of any warrant.~~

674 Section 12. Section 922.052, Florida Statutes, is amended  
675 to read:

676 922.052 Issuance of warrant of execution.—

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

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

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

688 2. Allowed the time permitted for filing a habeas corpus

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689 petition in federal court to expire.

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

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

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

705 (4)~~(2)~~ If, for any reason, the sentence is not executed  
706 during the week designated, the warrant shall remain in full  
707 force and effect and the sentence shall be carried out as  
708 provided in s. 922.06.

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

711 924.055 Postconviction review in capital cases;  
712 legislative findings and intent.—

713 ~~(1)~~ It is the intent of the Legislature to reduce delays  
714 in capital cases and to ensure that all appeals and  
715 postconviction actions in capital cases are resolved as soon as  
716 possible ~~within 5 years~~ after the date a sentence of death is

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717 imposed in the circuit court. ~~All capital postconviction actions~~  
718 ~~must be filed as early as possible after the imposition of a~~  
719 ~~sentence of death which may be during a direct appeal of the~~  
720 ~~conviction and sentence.~~ A person sentenced to death or that  
721 person's capital postconviction counsel must file any  
722 postconviction legal action in compliance with the Florida Rules  
723 of Criminal Procedure ~~statutes of limitation established in s.~~  
724 ~~924.056 and elsewhere in this chapter. Except as expressly~~  
725 ~~allowed by s. 924.056(5), a person sentenced to death or that~~  
726 ~~person's capital postconviction counsel may not file more than~~  
727 ~~one postconviction action in a sentencing court and one appeal~~  
728 ~~therefrom to the Florida Supreme Court, unless authorized by~~  
729 ~~law.~~

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

737 Section 14. Section 924.056, Florida Statutes, is amended  
738 to read:

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

741 924.056 Capital postconviction proceedings; reporting  
742 requirements.-

743 (1) The Supreme Court shall annually report to the Speaker  
744 of the House of Representatives and the President of the Senate

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745 the status of each capital case in which a postconviction action  
746 has been filed that has been continuously pending for more than  
747 3 years. The report must include the name of the state court  
748 judge involved in the case.

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

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

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

761 924.057 Capital postconviction proceedings; legislative  
762 intent.—The Legislature acknowledges the efforts made by the  
763 judicial branch in establishing the rules of criminal procedure  
764 that make the capital postconviction process fair and more  
765 efficient. The Legislature also recognizes and commends the  
766 judicial branch for continuing these efforts by issuing  
767 Administrative Order AOSC13-11, which creates a Capital  
768 Postconviction Proceedings Subcommittee of the Criminal Court  
769 Steering Committee, and directs the subcommittee to undertake a  
770 comprehensive review of capital postconviction proceedings, and  
771 to make recommendations to the Supreme Court whether court rules  
772 should be amended to improve the overall efficiency of the

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773 capital postconviction process. In support of these efforts, the  
774 Legislature expresses its intent that capital postconviction  
775 proceedings be conducted in accordance with court rules, and  
776 that courts strictly adhere to the timeframes and postconviction  
777 motion content requirements established therein.

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

780 Section 17. If a provision of this act or the application  
781 thereof to a person or circumstance is held invalid, the  
782 invalidity does not affect other provisions or applications of  
783 the act which can be given effect without the invalid provision  
784 or application, and to this end the provisions of this act are  
785 declared severable.

786 Section 18. Effective July 1, 2013, four full-time  
787 equivalent positions with associated salary and rate of 220,000  
788 are authorized and \$417,338 in recurring funds from the General  
789 Revenue Fund and \$14,832 in nonrecurring general revenue is  
790 appropriated to the Justice Administration Commission for the  
791 creation of the northern region office of the Capital Collateral  
792 Regional Counsel as provided in this act.

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

794  
795 -----

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

797 Remove everything before the enacting clause and insert:

798 A bill to be entitled

799 An act relating to the death penalty; providing a short  
800 title; amending s. 27.5304, F.S.; requiring funds used to

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801       compensate court-appointed attorneys who represent a person  
802       convicted and sentenced to death in clemency proceedings to  
803       be paid by the Justice Administrative Commission rather  
804       than the Department of Corrections; amending s. 27.701(2),  
805       F.S.; repealing a pilot project using registry attorneys to  
806       provide capital collateral counsel services in the northern  
807       region of the Capital Collateral Regional Counsel; amending  
808       s. 27.702, F.S.; removing language requiring the capital  
809       collateral regional counsel to only file postconviction  
810       actions authorized by statute; amending s. 27.703, F.S.;  
811       prohibiting the capital collateral regional counsel and  
812       replacement regional counsel from accepting an appointment  
813       or taking an action that creates an actual conflict of  
814       interest; describing actual conflict of interest; amending  
815       s. 27.704, F.S.; requiring attorneys who contract with the  
816       capital collateral regional counsel to meet certain  
817       criteria; creating s. 27.7045, F.S.; prohibiting an  
818       attorney from representing a person charged with a capital  
819       offense in specified proceedings for 5 years if in two  
820       separate instances a court, in a capital postconviction  
821       proceeding, determined that the attorney provided  
822       constitutionally deficient representation and relief was  
823       granted; amending s. 27.7081, F.S.; providing definitions;  
824       establishing procedures for public records production in  
825       postconviction capital cases proceedings; amending s.  
826       27.710, F.S.; requiring private registry attorneys  
827       appointed by the court to represent persons in  
828       postconviction capital proceedings to contract with the

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829 Justice Administrative Commission rather than the Chief  
830 Financial Officer; specifying that the Justice  
831 Administrative Commission is the contract manager;  
832 requiring the Justice Administrative Commission to approve  
833 uniform contract forms and procedures; amending s. 27.711,  
834 F.S.; replacing references to the "Chief Financial Officer"  
835 with "Justice Administrative Commission" for purposes of  
836 paying private registry attorneys appointed by the court to  
837 represent persons in postconviction capital proceedings;  
838 permitting private registry attorneys appointed by the  
839 court to represent persons in postconviction capital  
840 proceedings to represent no more than ten, rather than  
841 five, defendants in capital postconviction litigation at  
842 any one time; amending s. 922.095, F.S.; requiring persons  
843 convicted and sentenced to death to pursue all possible  
844 collateral remedies in state court in accordance with the  
845 Florida Rules of Criminal Procedure rather than in  
846 accordance with statute; amending s. 922.052, F.S.;  
847 requiring the sheriff to send the record of a person's  
848 conviction and death sentence to the clerk of the Florida  
849 Supreme Court; requiring the clerk of the Florida Supreme  
850 Court to inform the Governor in writing certifying that a  
851 person convicted and sentenced to death meets certain  
852 criteria; requiring the Governor to issue a warrant within  
853 30 days of receiving the clerk's letter of certification in  
854 all cases where the executive clemency process has  
855 concluded directing the warden to execute the sentence  
856 within 180 days; authorizing the Governor to sign a warrant

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857 of execution if the clerk of the Florida Supreme Court does  
858 not comply; amending s. 924.055, F.S.; removing obsolete  
859 language requiring capital postconviction motions to be  
860 filed in accordance with statute; requiring capital  
861 postconviction motions to be filed in accordance with the  
862 Florida Rules of Criminal Procedure; amending s. 924.056,  
863 F.S.; requiring the Supreme Court to annually report  
864 certain information regarding capital postconviction cases  
865 to the Legislature; requiring courts to report specified  
866 findings of ineffective assistance of counsel to The  
867 Florida Bar; amending s. 924.057, F.S.; providing  
868 legislative intent regarding postconviction proceedings in  
869 capital cases; repealing ss. 924.058, 924.059, and 924.395,  
870 F.S., relating to postconviction capital case proceedings;  
871 providing severability; providing an appropriation;  
872 providing an effective date.