SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 12-A

SPONSOR: Senators Burt, Brown-Waite, Silver, Campbell, Bronson and Horne

SUBJECT: The Death Penalty

DATE: January 5, 2000 REVISED: 01-05-00

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson/Gomez	Cannon	CJ	Fav/3 amendments
2.				
3.				
4.				
5.				

I. Summary:

Senate Bill 12-A creates a "dual track" or "parallel track" capital postconviction process, in which the death-sentenced inmate files his or her "capital postconviction action" (in the legislation referring to collateral proceedings initiated after the direct appeal) almost contemporaneously with the inmate's direct appeal. Statutory time limitations and other restrictions are created and govern the filing and disposition of a capital postconviction action and other matters such as public records production and appointment of counsel in capital postconviction cases. Several rules of criminal procedure relating to capital postconviction proceedings are repealed, in whole or in part. The bill also limits the number of state postconviction actions and bars successive postconviction actions except for claims of newly discovered evidence of actual innocence.

The bill also addresses attorney registry issues by requiring that appropriation for attorney registry fees go directly to the Comptroller and that registry attorneys provide the Comptroller with billing documentation.

The bill also addresses issues relating to conflict cases in capital postconviction proceedings by authorizing a Capital Collateral Regional Counsel (CCRC) to withdraw from a case, prohibiting a CCRC from accepting an appointment or taking any other action that will create a conflict of interest, and providing for withdraw of an appellate public defender when the appellate public defender served as the defendant's trial counsel.

The bill also requires the Commission on Capital Cases to compile and analyze case-tracking reports produced by the Florida Supreme Court.

The bill strongly encourages the courts to impose sanctions against an inmate, inmate's counsel, or both, who engage in abusive or dilatory proceedings in a capital postconviction case.

The legislation requests that the Florida Supreme Court study the feasibility of centralized case management and submit its recommendations to the Legislature before January 1, 2001.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: 27.51; 27.702; 27.703; 27.709; 27.710; 27.711; 119.19; 922.108; 924.055; 924.056; 924.057; 924.058; 924.059; and 924.395.

II. Present Situation:

A. Brief History of some Major Recent Events Relevant to Florida's Electric Chair and Florida's Capital Postconviction Proceedings

On September 30, 1999, Judge Stan Morris of the Eighth Judicial Circuit and chairperson of the Supreme Court Committee on Postconviction Relief in Capital Cases (hereinafter referred to as the "Morris Committee") submitted to Chief Justice Harding a proposed new Fla.R.Crim.P. 3.851, "Collateral Relief After Death Sentence Has Been Imposed." The proposed rule requires the defendant to pursue federal discretionary remedies concurrently with state postconviction remedies and requires a state motion for postconviction relief to be filed within one year after the mandate affirming the judgment and sentence on the direct appeal to the Florida Supreme Court, a shorter period of time than the current time limitation which uses the expiration of the time permitted for the filing of, or upon the disposition of, a petition for writ of certiorari in the U.S. Supreme Court.

On December 3, 1999, Judge Philip Padovano, who sits on the First District Court of Appeal and is a member of the Morris Committee, provided the Legislature with a draft of his proposed Rule 3.851, which provides a "dual track" or "parallel track" capital collateral postconviction process. This proposed "dual track" process differs from a "dual track" process proposed by the Governor on November 29, 1999. In the Governor's proposal, the capital collateral postconviction process would commence in the sentencing court within 180 days of the filing of the initial brief in the Florida Supreme Court on the direct appeal of the defendant's judgment and sentence of death. In Judge Padovano's proposal, the capital collateral postconviction action would commence in the Florida Supreme Court, which would dispose of the case. The circuit courts would serve as fact finders, conducting evidentiary hearings on postconviction claims which the Florida Supreme Court determines require such hearings. Judge Charles Miner, who also sits on the First District Court of Appeal, provided the Legislature with a proposed codification of Judge Padovano's rule.

On December 7, 1999, the Governor announced a Special Session from January 5, 2000 to January 7, 2000. The Governor's Proclamation identified the call as being for the sole and exclusive purpose of considering the following items of substantive legislation:

> Legislation authorizing that death sentences be carried out by lethal injection or electrocution, and exemptions from public records law thereto; mandating the concurrent preparation and filing of postconviction and collateral claims with the direct appeal in all capital cases; and including further limitations on the filing of such claims; and requiring a nonbinding advisory jury recommendation in capital sentencing proceedings.

B. Capital Collateral Postconviction Proceedings

1. Overview of proceedings in capital cases.

After a defendant has been sentenced to death, the defendant is entitled to challenge the conviction and sentence in three distinct stages. First, the public defender or private counsel is required to file a *direct appeal* to the Florida Supreme Court. An appeal of the Florida Supreme Court's decision on the direct appeal is to the United States Supreme Court by *petition for writ of certiorari*.

Second, if the U.S. Supreme Court rejects the appeal, *state collateral postconviction* proceedings or *collateral review* begin. The Capital Collateral Regional Counsel (CCRC) represents most defendants in capital collateral postconviction proceedings.

State collateral postconviction proceedings are controlled by Rules 3.850, 3.851 and 3.852, Fla. R.Crim.P. Unlike a direct appeal, which challenges the legal errors apparent from the trial transcripts or record on appeal, a collateral postconviction proceeding is designed to raise claims which are "collateral" to what transpired in the trial court. Consequently, such postconviction proceedings usually involve three categories of claims, all of which invoke constitutional error:

- ineffective assistance of trial counsel;
- *Brady* violations, *i.e.*, a due process denial from the prosecution's suppression of material, exculpatory evidence; and
- newly discovered evidence, for example, post-trial recantation by a principal witness.

Since the consideration of these claims often require new fact finding, collateral postconviction motions are filed in the trial court which sentenced the defendant to death. Appeals from the grant or denial of postconviction relief are to the Florida Supreme Court. (At this point, the CCRC, in a petition for writ of habeas corpus, usually will raise the claim of ineffective assistance of the direct appeal counsel.)

The third, and what is intended to be the final stage is federal habeas corpus, a proceeding controlled by 28 U.S.C. s. 2254(a). Federal habeas allows a defendant to petition the federal district court to review whether the conviction or sentence violates or was obtained in violation of federal law. Federal habeas is almost exclusively limited to consideration of claims previously asserted in direct appeal or in state postconviction proceedings. Appeals of federal habeas are to the Federal Eleventh Circuit Court of Appeal and then to the United States Supreme Court.

Finally, once the Governor signs a death warrant, a defendant will typically file a second or successive collateral postconviction motion and a second federal habeas petition along with motions to stay the execution.

2. Successive collateral postconviction motions.

Rule 3.850(f), Fla.R.Crim.P, restricts successive collateral postconviction motions as follows:

> A second or successive motion may be dismissed if the judge finds that it fails to allege new or different grounds for relief and the prior determination was on

> the merits or, if new and different grounds are alleged, the judge finds that the failure of the movant or the attorney to assert those grounds in a prior motion constituted an abuse of the procedure governed by these rules.

The Florida Supreme Court has held that the restriction against such successive motions on grounds previously raised is applied "only when the grounds raised were previously adjudicated on their merits, and not where the previous motion was summarily denied or dismissed for legal insufficiency." *McCrae v. State*, 437 So. 2d 1388, 1390 (Fla.1983); *See also Ranaldson v. State*, 672 So. 2d 564, 565 (Fla. 1st DCA. 1996). However, when the Court finds that the defendant could have and should have raised his or her claims in the original motion, Rule 3.850(f) works as a "procedural default." *See e.g.*, *Pope v. State*, 702 So. 2d 221, 223 (Fla. 1997).

3. Time limitations; amending motions.

Rule 3.851 applies to all motions and petitions for any type of postconviction or collateral relief. Rule 3.851(b)(1) provides that a Rule 3.850 motion must be filed within one year after the judgment and sentence in a death case become final. Rule 3.851(3), states that the one year time limitation in Rule 3.851(b)(1) assumes that the defendant will have counsel assigned and working on the postconviction motion within 30 days after the judgment and sentence become final. "Further, this time limitation shall not preclude the right to amend or to supplement pending pleadings pursuant to these rules."

The 1996 Legislature codified the Rule 3.851 time limitation in s. 924.055, F.S. In addition, s. 924.055, F.S., provides the following time limitations:

- The circuit court shall conduct all hearings and render a decision within 90 days after the date the state files its response to a capital collateral postconviction motion.
- The Florida Supreme Court shall render a decision within 200 days after the date a notice is filed appealing a trial court's postconviction order, or from the filing of an extraordinary writ.
- A defendant must file any petition for habeas corpus relief in the federal district court within 90 days after the date the U.S. Supreme Court issues a mandate in a postconviction proceeding.

To date, the court has not adopted these time limitations by rule, although the Legislature has specifically asked it to do so. *See* s. 27.7091, F.S. (Stating: "the Legislature recommends that the Supreme Court . . . adopt by rule the provisions of s. 924.055, which limit the time for postconviction proceedings in capital cases").

4. Discovery in postconviction motions.

Discovery is the use of certain pretrial procedures by a party, e.g., depositions, to learn facts about the case and the other party in order to assist in the preparation of trial. The Florida Rules of Criminal Procedure provide liberal discovery to parties in a criminal trial. Fla.R.Crim.P. 3.222. However, neither Rule 3.850, nor Rule 3.851, address the issue of discovery in capital collateral

postconviction proceedings. Rule 3.852 is essentially a discovery rule but it deals solely with capital postconviction records production. *Amendments to Florida Rules of Criminal Procedure*, 723 So.2d 123 (Fla. 1998).

For other forms of discovery, the trial court is authorized to allow "limited" discovery. In *State v. Lewis*, 656 So.2d 1248 (Fla. 1994), the Court adopted some guidelines:

> In most cases any grounds for post-conviction relief will appear on the face of the record. On a motion which sets forth good reason, however, the court may allow limited discovery into matters which are relevant and material, and where the discovery is permitted the court may place limitations on the sources and scope. On review of an order denying or limiting discovery it will be the [moving party's] burden to show that the discretion has been abused. . . . The trial judge, in deciding whether to allow this limited form of discovery, shall consider the issues presented, the elapsed time between the conviction and the post-conviction hearing, any burdens placed on the opposing party and witnesses, alternative means of securing the evidence, and any other relevant facts.

C. Capital Collateral Regional Counsel

The Capital Collateral Regional Counsel (CCRC) represents all death-sentenced inmates in capital collateral postconviction actions challenging the legality of the judgment and sentence in the state and federal courts. s. 27.702(1), F.S. There are three CCRC offices which function independently: Northern Region (Tallahassee); Middle Region (Tampa); and Southern Region (Ft. Lauderdale). s. 27.701, F.S.

The CCRC represents defendants sentenced within the CCRC's region. In the event that a CCRC has a conflict of interest with a client, the sentencing court may designate another CCRC or private counsel to represent the defendant. s. 27.703, F.S. Subsection (2) of s. 27.703, F.S., provides for payment of the private counsel of up to $100 per hour but does not incorporate the fee schedule contained in s. 27.711, F.S.

The CCRC's are appointed by the Governor from a list of three qualified candidates selected by the Supreme Court Judicial Nominating Commission. s. 27.701, F.S. The CCRC's serve three-year terms and are subject to confirmation by the Senate. Id. The 1997 Legislature created the regional offices. ch. 97-313, L.O.F. Prior to 1997, one capital collateral representative represented all death-sentenced inmates.

Each CCRC is required to provide a quarterly report to the Legislature's presiding officers and the Commission on Capital Cases. The report details the number of hours worked by investigators and legal counsel per case and the amount per case expended during the preceding quarter in investigating and litigating capital collateral cases. s. 27.702 (4), F.S. The six member Commission (appointed by the presiding officers and the Governor) is charged with reviewing the administration of justice in capital collateral cases and the operation of the CCRC offices. s. 27.709(2), F.S.

D. Attorney Registry for Capital Postconviction Representation

The 1998 Legislature created a statewide registry of private criminal defense attorneys to supplement the CCRC system and serve as a "backup" by alleviating any case backlog. ss. 27.710 and 27.711, F.S. Backlog cases are those which are ready for the capital collateral postconviction process to begin, yet no attorney has been assigned to the case.

The executive director of the Commission on Capital Cases compiles and maintains the statewide attorney registry. Under s. 27.710(5), F.S., an attorney from the statewide registry is appointed by the trial court that sentenced the defendant when it is notified by the executive director. The executive director is authorized to notify the trial court when the director has been notified by the Attorney General of one of the following events:

- 91 days have elapsed since the Supreme Court issued a mandate on a direct appeal or the U.S. Supreme Court has denied a petition for writ of certiorari (whichever is later); or
- a person under sentence of death who was previously represented by private counsel is currently unrepresented in a capital collateral postconviction proceeding; or
- the trial court issues an order finding that one year and one day have elapsed since the period for filing a collateral postconviction motion commenced, and the defendant's complete original motion has not been filed in the trial court.

To be eligible for the registry, an attorney must meet the qualifications specified in s. 27.704(2), F.S., for private counsel who represent death-sentenced defendants in capital collateral postconviction proceedings. That is, the attorney must have at least three years experience in the practice of criminal law, and must have participated in at least five felony jury trials, five felony appeals, or five capital postconviction evidentiary hearings or any combination of at least five such proceedings.

Certain limitations are placed on attorneys who are appointed pursuant to the registry statute:

- An attorney may not represent more than five capital defendants at any one time.

- An attorney may not file repetitive or frivolous pleadings that are not supported by law or facts.

- An attorney may not represent the death-sentenced defendant during a retrial, a resentencing proceeding, or a proceeding commenced under ch. 940, F.S. (executive clemency).
- An attorney may not represent the death-sentenced defendant in a proceeding challenging a conviction or sentence other than the conviction and sentence of death for which the appointment was made.

- An attorney may not represent the death-sentenced defendant in any civil litigation other than habeas corpus proceedings.

Immediately after appointment by the trial court that sentenced the defendant to death, the attorney must file a notice of appearance with the trial court indicating acceptance of the appointment. s. 27.711(2), F.S. The attorney must specify that he will represent the defendant throughout all capital collateral postconviction proceedings or until released by order of the trial court. Id. Additionally, the attorney must enter into a contract with the Comptroller. s. 27.710 (4), F.S. The executive director of the Commission on Capital Cases develops the form of the contract and the Comptroller functions as contract manager and enforces performance of the terms and conditions of the contract. Id.

Although the Comptroller serves as the contract manager, the Justice Administrative Commission (JAC) is provided the appropriation for the registry attorneys. The JAC currently passes this appropriation on to the Comptroller.

Section 27.711(4), F.S., provides a fee and payment schedule. Upon approval by the trial court, and after certain stages in litigation are complete, a registry attorney is entitled to payment by the Comptroller, as follows:

- $100 per hour, up to a maximum of $2,500, upon accepting the appointment and filing the notice of appearance;
- $100 per hour, up to a maximum of $20,000, after timely filing in the trial court the capital defendant's complete original motion for postconviction relief;
- $100 per hour, up to a maximum of $20,000, after the trial court issues a final order granting or denying the defendant's motion for postconviction relief;
- $100 per hour, up to a maximum of $20,000, after timely filing in the Supreme Court the defendant's briefs that address the trial court's final order granting or denying the defendant's motion for postconviction relief and the state petition for writ of habeas corpus;
- $100 per hour, up to a maximum of $10,000, after the trial court issues an order pursuant to a remand from the Supreme Court, which directs the trial court to hold further proceedings on the capital defendant's motion for postconviction relief;
- $100 per hour, up to a maximum of $4,000, after the appeal of the trial court's denial of the defendant's motion for postconviction relief and the defendant's state petition for writ of habeas corpus becomes final in the Supreme Court;
- $100 per hour, up to a maximum of $2,500, at the conclusion of the defendant's capital collateral postconviction proceeding in the state court and after filing a petition for writ of certiorari in the U.S. Supreme Court; and
- $100 per hour, up to a maximum of $5,000, if the U.S. Supreme Court accepts for review the defendant's collateral challenge of the conviction and sentence of death. This payment shall be full compensation for representing the defendant throughout the certiorari proceedings before the U.S. Supreme Court.

An attorney who is actively representing a capital defendant is entitled to a maximum of $500 per fiscal year for tuition and expenses for continuing legal education that pertains to the representation of capital defendants. s. 27.711(7), F.S.

In addition, the attorney is authorized to hire an investigator for $40 per hour, up to a maximum of $15,000, to assist in the defendant's representation. s. 27.711(5), F.S. Finally, the attorney is

entitled to a maximum of $15,000 for miscellaneous expenses, such as transcript preparation, expert witnesses, and copying. Further, an attorney is entitled to payment in excess of the $15,000 cap if the court finds that extraordinary circumstances exist. s. 27.711(6), F.S.

E. Records Repository

In 1998, the Legislature enacted s. 119.19, F.S., requiring the Secretary of State to establish and maintain a records repository for the purpose of archiving capital postconviction records. Section 119.19(3), F.S., requires the state attorney, local law enforcement agencies, and the Department of Corrections to submit to the repository all relevant public records produced in a death penalty case. Other agencies are to submit records to the repository when they have public records relevant to the case. Agencies are to submit records upon notification that a death sentence has been affirmed on direct appeal. The records repository is intended to collect all relevant records while the case is "fresh" in everyone's mind and store them in a centralized location.

Section 119.19(4), F.S., requires postconviction counsel to review the records in the repository and file a written demand for additional agency records within 90 days of appointment. If the agency objects to the demand, the trial court must resolve the dispute within 30 days. The trial court may only order additional records production if it makes specific findings. After that one request, postconviction counsel is prohibited from making any further public records requests. However, in the event postconviction counsel can, through an affidavit, establish that the agency still possesses relevant public records, the trial court may order them produced upon specific findings.

Section 119.19(7), F.S., provides that any public record delivered to the records repository which is confidential or exempt must be separately boxed and sealed. Upon entry of the appropriate court order, the sealed boxes shall be shipped to the respective clerk of court for inspection by the trial court.

Section 119.19(10), F.S., provides that the CCRC or private counsel shall provide the personnel, supplies and any necessary equipment used to copy records held at the records repository. In practice, the staff of the Commission on Capital Cases has taken on this function and assumed the responsibility of submitting copies to capital collateral counsel.

III. Effect of Proposed Changes:

A. Limitations on Capital Postconviction Actions that can be Filed by Capital Collateral Regional Counsel and any State-Funded Capital Postconviction Counsel

Section 27.702, F.S., is amended to provide that the CCRC and registry attorneys file only those postconviction or collateral actions authorized by statute.

B. Records Repository

Section 119.19, F.S., is amended to do the following:

- Compress existing time frames for agency responses to public records requests (most of the current provisions requiring agency responses in 90 days are amended to require responses in 60 days).

- Require affected agencies to send public records claimed to be confidential or exempt directly to the Clerks of Court instead of to the records repository, the intended effect of which is to save the time and effort of requesting that the sealed records be shipped to the trial court for an *in camera* inspection, a procedure that happens with some frequency.

- Requires that a written demand for public needs include requests for records associated with particular named individuals, and also brief statement of information relevant to the person's identity and relationship to the defendant.

- Transfer the responsibilities of providing the personnel, supplies, and necessary equipment to copy records held at the records repository from the CCRC's or private counsel to the Secretary of State, a change designed to ensure that record copying is done by an executive branch agency viewed as impartial.

C. The Creation of a "Dual Track" Capital Postconviction Process; Prohibition on Successive Postconviction Claims; Motion for DNA Analysis; and Repeal of Rules of Criminal Procedure Governing Capital Postconviction Cases

1. Time limitations and their effect on issuance of the death warrant

Section 922.095, F.S., is amended to provide that a person convicted and sentenced to death must pursue all possible collateral remedies within the time limits provided by statute. Failure to seek relief within the statutory time limits constitutes grounds for issuance of the death warrant. Any claim not pursued within the statutory time limits is barred, and no claim filed after the statutory time limits constitutes grounds for judicial stay of any death warrant.

2. Legislative intent

Section 924.055, F.S., is amended to provide that it is the Legislature's intent to "reduce delays in capital cases and to ensure that all appeals and postconviction actions in capital cases are resolved within 5 years after the date a sentence of death is imposed in the circuit court." Other amendments of this section are described as follows:

- It is also the Legislature's intent that all postconviction actions be filed as early as possible after imposition of the death sentence, and that all such actions be filed in compliance with time limitations in ch. 924, F.S.

- It is also the Legislature's intent except as provided in s. 924.056(5), F.S., that no death-sentenced person or that person's capital postconviction counsel file more than one postconviction action in a sentencing court and one appeal therefrom to the Florida Supreme Court.

- It is also the Legislature's intent that no state resources be expended in violation of the act.

- The Attorney General must deliver to the Speaker of the House of Representatives and the President of the Senate a copy of any court pleading or order that describes or adjudicates a violation of the act by any state employee or party contracting with the state.

3. "Dual Track" capital postconviction process/limitations and other requirements governing capital postconviction actions in which the death sentence is imposed on or after the effective date of the act

Section 924.056, F.S., is created to provide that, within 15 days after imposing a sentence of death, the sentencing court must appoint the appropriate CCRC or private postconviction counsel, unless the defendant declines to accept postconviction legal representation, in which case the state shall not provide such representation. Other provisions of this section are described as follows:

- Within 30 days after the appointment of the CCRC, the CCRC must file a notice of appearance in the trial court or move to withdraw based on a conflict of interest or for good cause.

- The court must appoint private counsel pursuant to part IV of ch. 27, F.S., in any case in which the CCRC moves to withdraw or otherwise informs the court that the CCRC cannot comply with ch. 924, F.S., or in which the court determines such counsel cannot comply with this chapter or other applicable laws.

- The defendant who accepts the appointment of postconviction counsel must cooperate with and assist postconviction counsel. If the sentencing court finds that the defendant is obstructing the process, the defendant is not entitled to any further postconviction legal representation provided by the state.

- Each attorney participating in a capital case on behalf of the defendant must provide all information on the case the attorney obtained during the attorney's representation of the defendant to the defendant's capital postconviction counsel, who must maintain the confidentiality of that information and is subject to the same penalties as the providing attorney for violating confidentiality.

- If the defendant requests, without good cause, the removal or replacement of his or her appointed postconviction counsel, the court must notify the defendant that no further state resources will be expended on the defendant's postconviction representation, unless the request is withdrawn; if the request is not immediately withdrawn, counsel will be removed from the case and no further state resources will be expended on the defendant's postconviction representation.

- The prosecuting attorney and the defendant's trial counsel must provide the defendant or, if represented, defendant's capital postconviction counsel, with copies of all pretrial

and trial discovery and all contents of the prosecuting attorney's file, except for information that the prosecuting attorney has a legal right under state or federal law to withhold from disclosure.

- The clerk of the court must provide a copy of the record on appeal to the capital postconviction counsel and the state attorney and Attorney General within 60 days after the sentencing court appoints postconviction counsel. However, the court may grant an extension of up to 30 days when extraordinary circumstances exist.

- *"Dual Track" Capital Postconviction Process:* With respect to all capital postconviction actions commenced after the effective date of this act, a capital postconviction action is not commenced until the defendant or the defendant's postconviction action in the sentencing court or, as provided in s. 924.056(4), F.S. (ineffective assistance of direct appeal counsel) in the Florida Supreme Court. *The defendant or defendant's capital postconviction counsel must file a fully pled postconviction action within 180 days after the filing of the appellant's initial brief in the direct appeal.*

Therefore, the collateral attack commences almost contemporaneously with the direct appeal in contrast to the current process in which the collateral attack does not commence until after federal proceedings relating to and following the issuance of the mandate in the direct appeal have run their course. The bill, in its present form, does not address limitation periods for "pipeline cases" and persons in various stages of the capital postconviction process.

- The fully pled postconviction action must include all meritorious claims that the defendant's judgment or sentence was entered in violation of the State or Federal Constitution or in violation of state or federal law, including any claim of ineffective assistance of trial counsel, allegations of innocence, or any claim that the state withheld evidence favorable to the defendant. Further, a capital postconviction action is not full pled unless it satisfies the requirements of s. 924.058(2), F.S., or any superseding rule of court.

- No claim may be considered in a capital postconviction action which could or should have been raised before trial, at trial or, if preserved, on direct appeal.

- No claim of ineffective assistance of capital postconviction counsel may be raised in a state court.

- The pendency of public records requests or litigation, or the pendency of other litigation, or the failure of the defendant or defendant's capital postconviction counsel to timely prosecute a case, shall not constitute cause for the court to grant any request for an extension of time. Further, no appeal may be taken from the denial of such extension.

- The time for commencement of the postconviction action may not be tolled for any reason or cause. All claims outside time limitations are barred.

- The defendant or defendant's capital postconviction counsel must file a fully pled postconviction action in the Florida Supreme Court raising any claim of ineffective

assistance of direct appeal counsel within 45 days after mandate issues affirming the death sentence on direct appeal.

Section 924.057, F.S., is created to provide that, regardless of when a sentence is imposed, all successive capital postconviction actions are barred unless commenced by filing a fully pled postconviction action within 90 days after the facts giving rise to the cause of action were discovered or should have been discovered with the exercise of due diligence. Such claim shall be barred pursuant to subsection (3) or s. 924.057, F.S., unless the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable fact finder would have found the defendant guilty of the underlying offense. Additionally, the facts underlying this claim must have been unknown to the defendant or his or her attorney and must be such that they could not have been ascertained by the exercise of due diligence prior to filing the earlier postconviction motion. The time period allowed for filing a successive collateral postconviction action shall not be grounds for a stay.

4. *Limitations and other requirements governing capital postconviction actions in which the death sentence is imposed before the effective date of the act*

Section 924.057, F.S., is created to provide that nothing in this act shall expand any right or time period allowed for the prosecution of capital postconviction claims in any case in which a postconviction action was commenced or should have been commenced prior to the effective date of this action.

In every case in which mandate has issued in the Florida Supreme Court concluding at least one capital postconviction action in the state court system, a successive capital postconviction action shall be barred on the effective date of this act, unless the law in effect immediately prior to the effective date of this act permitted the successive postconviction action, in which case the action shall be barred on the date provided in subsection (4) (providing that action must commence on or before January 8, 1991).

All capital postconviction actions pending on the effective date of this act shall be barred, and shall be dismissed with prejudice, unless fully pled in substantial compliance with s. 924.058, or with any superseding order or rule, on or before the time in which the action would be barred by this section of the action had not begun prior to the effective date of this act or any earlier date provided by the law, or court order, in effect immediately prior to the effective date of this act.

In every capital case in which the trial court imposed the sentence of death before the effective date of this act, a capital postconviction action shall be barred unless it is commenced on or before January 8, 2001, or any earlier date provided by the law in effect immediately prior to the effective date of this act.

5. Capital postconviction claims/state's response

Section 924.058, F.S., is created and regulates the procedures in postconviction actions for capital postconviction relief commencing after the effective date of this act unless and until such

procedures are revised by rules adopted by the Florida Supreme Court which specifically reference this section. Other provisions of the section are described as follows:

- The defendant or defendant's postconviction counsel shall not file more than one capital postconviction in the sentencing court, one appeal therefrom in the Florida Supreme Court, and one original capital postconviction action in the Florida Supreme Court in which a claim is raised that direct appeal counsel was ineffective.

- The defendant's postconviction action must be filed under oath and "fully pled." This section includes specific information which must be included in order for the action to constitute a "fully pled" action.

- Any postconviction action that does not comply with the requirements of s. 924.058, F.S., shall not be considered in any state court. No amendment of the postconviction action shall be allowed after the expiration of statutory time limitations for the commencement of capital postconviction actions.

- The prosecuting attorney or Attorney General is authorized to file one response to any capital postconviction action within 60 days after receipt of the defendant's fully pled capital postconviction action. The sentencing court may grant an extension for the filing of the response upon a showing of good cause.

6. Time limitations and judicial review in capital postconviction actions/motion for production of evidence for forensic DNA testing

Section 924.059, F.S., is created and regulates the procedures in actions for capital postconviction relief commencing after the effective date of the act unless and until such procedures are revised by rules adopted by the Florida Supreme Court, which specifically reference this section. Other provisions of this section are described as follows:

- Within 30 days following the receipt of the state's answer, the sentencing court must conduct a hearing to determine whether an evidentiary hearing is required, if a hearing has been requested by the defendant or defendant's capital postconviction counsel. Within 30 days thereafter, the court must rule on whether an evidentiary hearing is required, and if so, schedule such hearing to be held within 90 days. If the court determines that the postconviction action is legally insufficient or that the defendant is not entitled to relief, the court must, within 45 days thereafter, deny such action with the order to include the rationale for the denial and the supporting record.

- Within 10 days of the order scheduling an evidentiary hearing, the defendant or defendant's capital postconviction counsel must disclose names and addresses of potential witness not previously disclosed and their affidavits or a proffer of their testimony. The state has 10 days following defendant's disclosure to make a reciprocal disclosure.

- The state is entitled to have the defendant examined by its mental expert if the defense raises mental status issues. All of the defendant's mental status claims will be denied as a

matter of law if the defendant fails to cooperate with the state's expert. All reports provided by expert witnesses must be disclosed by opposing counsel upon receipt.

- Following the evidentiary hearing, the court must order a transcription of the hearing which must be filed within 30 days following the hearing. Within 30 days of receipt of the transcript, the court must issue its final order granting or denying postconviction relief, making detailed findings of fact and conclusions of law with respect to any allegations asserted.

- An appeal may be taken to the Florida Supreme Court within 15 days from the entry of a final order on a capital postconviction action. Interlocutory appeals and motions for rehearing are prohibited.

- The clerk of the court must promptly serve all parties with a copy of the final order.

- If the Florida Supreme Court has denied the capital postconviction action without an evidentiary hearing, the appeal to the Florida Supreme Court will be expeditiously resolved in a "summary fashion." The Court must initially review the appeal to determine whether the sentencing court correctly resolved the defendant's claims without an evidentiary hearing; if the Court determines that an evidentiary hearing should have been held, it may remand by order without opinion and shall relinquish jurisdiction to the sentencing court for a specified period not to exceed 30 days to conduct the hearing, with the record thereafter supplemented with the hearing transcript.

- The Florida Supreme Court must render a final decision granting or denying postconviction relief within 180 days after the Court receives the record on appeal.

- The Governor may proceed to issue a warrant for execution if an appeal from a denial of postconviction relief is denied.

- A capital postconviction action filed in violation of the time limits provided by statute, and all claims raised therein, are waived.

- A state court shall not consider any capital postconviction action in violation of s. 924.056, or s. 924.057, F.S. The Attorney General must deliver to the Governor, the President of the Senate, and the Speaker of the House of Representatives a copy of any pleading or order that alleges or adjudicates any violation of this provision.

7. Repeal of procedural rules

Fla.R.Crim.P. 3.850 ("Motion to Vacate, Set Aside, or Correct Sentence") is repealed to the extent the rule is inconsistent with the provisions of this act. Fla.R.Crim.P. 3.851 ("Collateral Relief After Death Sentence Has Been Imposed"), as amended on January 15, 1998, and Fla.R.Crim.P. 3.852 ("Capital Postconviction Public Records Production") are repealed in their entirety.

D. Appropriation of Attorney Registry Fees/Appointment of Registry Counsel

Section 27.710, F.S., is amended to provide that the appropriation for attorney registry fees goes directly to the Comptroller, the agency that performs the contract management functions, rather than the current practice where the Justice Administrative Commission receives this appropriation and then passes it on to the Comptroller, thereby creating an unnecessary layer in the payment process.

This section is also amended to authorize a CCRC to withdraw from a case, thereby allowing for immediate appointment of a registry attorney.

E. Conflict of Interest Involving Appellate Public Defender

Section 27.51, F.S., is amended to provide for reassignment of an appellate public defender when the appellate public defender served as defendant's trial counsel. This provision is designed to avoid a conflict of interest in representing a defendant on direct appeal contemporaneous with a collateral postconviction claim that the Public Defender's office handling the appeal was ineffective at trial.

F. Conflict of Interest Involving Capital Collateral Regional Counsel

Section 27.703, F.S., is amended to prohibit a CCRC from accepting an appointment or taking any other action that will create a conflict of interest. In addition, this section is amended to allow for withdraw of counsel in any case where there exists a conflict of interest and not just in cases where counsel represents codefendant.

This section is further amended to provide that the Justice Administrative Commission shall transfer all unexpended funds from Specific Appropriation 615 of the 1999-2000 General Appropriations Act to the Administrative Trust Fund within the Department of Banking and Finance for disbursement purposes. The Department of Banking and Finance is authorized to expend such funds transferred by the Justice Administrative Commission for contracts with private attorneys. In addition, the Department of Banking and Finance is authorized to expend up to $60,000 of such funds for associated administrative support and two additional positions are authorized for fiscal year 1999-2000.

G. Case Tracking

Section 27.709, F.S., is created to require the Commission on Capital Cases to compile and analyze case-tracking reports produced by the Supreme Court. The Commission is to analyze these reports to identify trends and changes in case management/processing, identify and evaluate "unproductive points of delay," and generally evaluate case progress through the judicial system. The Commission must report its findings to the Legislature by January 1 of each year.

H. Registry Attorneys' Report of Billings

Section 27.711, F.S., is amended to require registry attorneys to provide billing documentation to the Comptroller prior to submission to the court. The Comptroller has standing to object to payment.

I. Sanctions for Abusive or Dilatory Practices

Section 924.395, F.S., is created to provide a statement of legislative policy in which the courts are strongly encouraged through their inherent powers and pursuant to this section, to impose sanctions against any person within the court's jurisdiction who is found by a court to have engaged in abusive or dilatory practices in collateral postconviction proceedings. This section describes a number of abusive or dilatory practices and sanctions available to the courts through their inherent powers.

J. Repeal of Current Statutory Time Limits for Filing a Motion for Postconviction Relief

Paragraph (b) of subsection (6) of s. 924.051, F.S., which provides time limits for the filing of a motion for postconviction relief, is repealed, because these time limits conflict with time limits provided in the legislation.

K. Supreme Court Study

The bill provides legislative findings that a centralized case management of capital postconviction actions has the potential to reduce delays and should be considered. The Legislature requests that the Florida Supreme Court study the feasibility of a requirement that all capital postconviction actions be filed in the Supreme Court. This was the "dual track" capital postconviction process proposed by Judge Philip Padovano, who is a member of the Morris Committee. The Supreme Court would also dispose of capital postconviction actions under Judge Padovano's proposal. The circuit courts would act as fact finders, submitting to the Supreme Court findings of fact and conclusions of law in those actions which the Supreme Court has remanded to the circuit courts for evidentiary hearings.

The Legislature recognizes that such a reform may substantially enhance judicial efficiency and may initially necessitate additional workload funding. If the Supreme Court finds that centralized management is a more efficient model, the Court shall estimate the implementation costs. The Legislature requests that the Court submit any recommendations to the Governor, the Senate, and the House of Representatives before January 1, 2001.

L. Other Provisions

The legislation contains a severability clause in the event any section is declared unconstitutional.

The act is effective upon becoming law, but section 10, which repeals, in whole or in part, rules of criminal procedure, takes effect only if the act is passed by the affirmative vote of two-thirds of the membership of each house of the Legislature.

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:

I. Separation of Powers Doctrine

Under Art. II, Sec. 3, Fla. Const., no branch may exercise any powers appertaining to another branch unless expressly provided by the Constitution. This constitutional provision is essentially the embodiment of the "separation of powers" doctrine. Further, "[the fundamental idea of separation of powers is that the judiciary is the operative check on possible arbitrary action by legislative and executive officers." *Seminole County Board of County Commissioners v. Long*, 422 So.2d 938, 941-42 (Fla. Th DCA 1982).

In *School Board of Broward County v. Surette*, 281 So.2d 481 (Fla. 1973), the Florida Supreme Court stated that "[w]here rules and construing opinions have been promulgated by this Court relating to the practice and procedure of all courts and a statutory provision provides a contrary practice or procedure . . . the statute must fall."

Art. V., Sec. 3, Fla. Const., states: "The practice and procedure in all courts shall be governed by rules adopted by the supreme court." In *R.J.A. v. Foster*, 603 So.2d 1167, 1171 (Fla. 1992) the Court stated:

> *When* a lawsuit must be filed is, in our view, substantive; *how* it is to be tried in an orderly manner is procedural. *See Benyard v. Wainwright*, 322 So.2d 473, 475 (Fla. 1975) (Substantive law prescribes the duties and rights under our system of government. . . . Procedural law concerns the means and method to apply and enforce those duties and rights." (Emphasis in original).

In *Kalway v. State*, 730 So.2d 861, 862 (Fla. 1st DCA. 1999), the First District Court of Appeal found that a statute governing waiver of court costs for indigent prisoners, which the court determined was substantive law, also contained "directives, which are not binding on the supreme court, concerning the manner in which the substantive objectives are to be reached." While noting that only the Florida Supreme Court had the power to adopt rules of practice and procedure for all courts of this state, the Court found that the procedural aspects of the statute were minimal and did not void the statute as violative of the "separation of powers" doctrine because they were "intended to implement the substantive provisions of the law." The Court did not find any apparent conflict between the procedural portions of the section and any existing court rule or procedure. The Court further noted:

> If the procedural elements of the statute were found to intrude impermissibly upon the procedural practice of the courts, the legislative provisions would have to give way to the court rules and procedures. Further, the legislative provisions do not bar the Florida Supreme Court's future adoption of specific rules designed to carry out the substantive goals of the [section].

In *Kalway v. Singletary*, 708 So.2d 267 (Fla. 1998), the Florida Supreme Court affirmed the decision of the appellate court, finding the interplay between the statute and rule to be anomalous and not violative of the "separation of powers" doctrine. The Court found the

"setting of an interim time-frame for challenging the Department of Corrections disciplinary action following the exhaustion of intra-departmental proceedings [to be] a technical matter not outside the purview of the legislature." The court did not view this action as an intrusion on its rulemaking authority. While noting the "potency" of the "separation of powers" doctrine, the court explained:

> This does not mean, however, that two branches of state government cannot work hand in hand in promoting the public good or implementing the public will, as evidenced by our recent decision in *Amendments to the Florida Rules of Appellate Procedure*, 685 So.2d 773 (Fla. 1996) wherein we deferred to the legislature in limited matters relating to the constitutional right to appeal:
>
> > [W]e believe that the legislature may implement this constitutional right and place reasonable conditions upon it so long as they do not thwart the litigants' legitimate appellate rights. Of course this Court continues to have jurisdiction over the practice and procedure relating to appeals. [Id. at 774-75.]

In *Bain v. State*, 730 So.2d 296 (Fla.2d DCA 1999), the Second District Court of Appeal certified two questions to the Florida Supreme Court. The first question was whether the Criminal Appeal Reform Act of 1996 (s. 924.051, F.S.) was an attempt to affect the jurisdiction of the appellate courts to entertain appeals in criminal cases. The second question was, if the act was an attempt to affect the appellate court's jurisdiction, did the act constitute a valid exercise of legislative authority in light of Art. I, Sec. 21, Fla. Const. (access to courts), Art. II, Sec. 3, Fla. Const. (separation of powers), and Art. V, Sec. 4(b)(1) (appeals from final orders as a matter of right).

The Court believed that there was no case or controversy in the *Amendments* case, and that the Florida Supreme Court's remarks arguably were dicta. The Court questioned whether the Legislature "has discretion to condition (or limit, or qualify) [the right to appeal final orders] when the constitution has not, regardless of the perceived reasonableness of the conditions." The Court believed that the "separation of powers" doctrine and the Constitution's guarantee of free access to the courts "mandate caution when inferring legislative authority to control the power of the judiciary." Despite, the Court's reservations, it determined that it had to defer to the Florida Supreme Court's expression in the *Amendments* case and assume that the Legislature does have the authority; however, the Court exercised its discretion to certify this question to the Florida Supreme Court.

To the extent the limitations for commencement of a capital collateral postconviction action are viewed by the Florida Supreme Court to be substantive matters, there may be no "separation of powers" issue regarding those limitations. However, the bill also contains provisions that may be viewed as procedural matters within the Court's purview. The bill, in its present form, does not contain any provision providing that a rule or rules of the court may supersede those provisions of the bill that the court might view as procedural. Such a provision might belay a "separation of powers" issue because it would clarify that the Legislature is not attempting to conjoin and assume legislative and judicial powers.

II. Habeas Corpus

Art. I, Sec. 13, Fla. Const., provides that the right to relief through the petition for writ of habeas corpus must be “grantable of right, freely and without cost.”

> Florida Rule of Criminal Procedure 3.850 is the "procedural vehicle" for the collateral remedy available through the writ of habeas corpus. *State v. Bolyea*, 520 So.2d 562, 563 (Fla.1988). Courts addressing rule 3.850 issues "must be mindful that the right to habeas relief protected by article I, section 13 of the Florida Constitution is implicated." *Haag v. State*, 591 So.2d 614, 616 (Fla.1992).

Arvelaez v. Butterworth 1999 WL 419331 (Fla. 1999) (Anstead concurring).

Fla.R.Crim.P. 3.850 is also the procedural vehicle for claims formerly brought by a petition for writ of error coram nobis. *See, e.g., Richardson v. State*, 546 So.2d 1037, 1039 (Fla. 1989) (“Claims of the suppression of evidence by the prosecution, which are in essence alleged violations of *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), are also properly brought under rule 3.850, not in an application for a writ of error coram nobis.”).

Rule 3.850 is repealed by the legislation to the extent it is inconsistent with the act; the writ, however, remains. Further, legislation cannot affect the Court’s constitutional rulemaking prerogative. The legislation creates a statute of limitations for collateral postconviction relief; however, it does not purport to close down access to the writ of habeas corpus or repeal the Court’s authority to entertain a petition for writ of habeas corpus. Even in light of the repeal of Rule 3.850 and the creation of a statute of limitations for capital postconviction actions, the Court is free to exercise its original jurisdiction to hear collateral claims at any time by petition for writ of habeas corpus.

Yet, the State Constitution does not provide that the only remedy for deprivations of organic rights which occurred at trial must be by writ of habeas corpus or a procedural vehicle adopted by the Florida Supreme Court for collateral relief through habeas corpus. Further, the State Constitution does not confer upon the Florida Supreme Court’s exclusive authority to provide a remedy for postconviction actions or prescribe the periods within which such actions may be brought upon postconviction claims. In fact, the Florida Judicial Council, specifically recommended at its meeting on October 27, 1962, “the adoption of a rule *or the enactment of a statute which would facilitate and expedite the handling of post-conviction claims.” Roy v. Wainwright*, 151 So.2d 825, 827 (Fla. 1963) (emphasis supplied). The Court opted for the rule, which was Criminal Procedure Rule 1, the predecessor of Rule 3.850.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

C. Government Sector Impact:

The three-year cost of Senate Bill 6-A is estimated to be nearly $12.0 million. With the exception of collateral proceedings and transcript copies, these cost figures were provided by the relevant agency.

Total Estimated Costs

	FY 1999-2000	FY 2000-2001	FY 2001-2002	TOTAL
Collateral Proceedings	** $472,396	$5,759,514	$2,540,950	$8,772,860
State Court System	Indeterm.	Indeterm.	Indeterm.	Indeterm.
State Attorneys	* $495,000	$75,000	$75,000	$645,000
Office of the Attorney General	Indet/Insig	$949,271	$925,271	$1,874,542
Records Repository	$106,250	$75,000	$75,000	$256,250
Transcript Copies	* $66,000	$15,000	$15,000	$96,000
Office of the Comptroller	**$60,405	$120,810	$120,810	$302,025
Total:	**$1,200,051**	**$6,994,595**	**$3,752,031**	**$11,946,677**

* Costs will be absorbed within current resources.
** Costs will be paid from available funds in specific appropriation 615, G.A.A.

Collateral Proceedings

The fiscal analysis for collateral proceedings is based on the following assumptions:

1. 90 inmates are currently in the direct appeal stage.

2. 100 inmates are beyond the direct appeal stage but do not have a fully pled 3.850 motion filed with the court.

3. 50 new death sentences will be meted out annually requiring postconviction processing (based on historical experience). This is 25 more than the population currently requiring postconviction processing on an annual basis. To put this in context, there were 445 capital murder filings in 1998.

4. There is approximately a 50 percent reversal rate at the direct appeal stage.

5. Fifty percent of postconviction motions are remanded to the trial court by the Florida Supreme Court (based on data from the Commission on the Administration of Justice in Capital Cases).

To develop a cost estimate, the fees established in s. 27.711, F.S., for registry attorneys were used. This does not imply that only private attorneys would or should be used, but only that these fees were used for the purposes of this fiscal analysis.

1.	Filing notice of appearance	$100/hour up to $2,500
2.	File 3.850 motion	$100/hour up to $20,000
3.	Trial court final order	$100/hour up to $20,000
4.	Filing appeal of final order to Florida Supreme Court	$100/hour up to $20,000
5.	Trial court order pursuant to remand	$100/hour up to $10,000
6.	Florida Supreme Court hearing of appeal of trial court final order and state writ of habeas corpus	$100/hour up to $4,000
7.	Filing writ of certiorari in U.S. Supreme Court	$100/hour up to $2,500
8.	If U.S. Supreme Court accepts review	$100/hour up to $5,000
9.	Investigative expenses	$40/hour up to $15,000
10.	Case related expenses	Up to $15,000

With the exception of filing a 3.850 motion and investigative and case-related expenses (items 2, 9, and 10, above), this analysis assumes that the maximum cost for each of the events listed above would be incurred. This may be somewhat overstated since a sample of

14 cases reveals that the fees paid for filing a 3.850 motion average approximately $13,000, or 65 percent of the maximum amount allowable.

The costs are phased in over the next two and one-half years based on the timing specified in the bill.

State Court System

The State Court Administrator indicated that there would almost "certainly be an increase in the use of judicial resources, but the amount is indeterminate." They went on to further state that the proposed legislation would ". . . lead to increased involvement and use of judicial resources at both the Supreme Court and trial court levels."

State Attorneys

The analysis for state attorneys reflects the cost of reviewing, copying, and shipping the cases estimated to be immediately impacted by the bill as well as the increased cases in subsequent years (90 on direct appeal, 50 of those awaiting a fully pled postconviction motion, and 25 over the current workload annually). An average case is ten boxes each with approximately two thousand pages of material. The unit cost is $.15 per page for all associated costs. The 1999-2000 cost is 165 cases multiplied by $3,000. The recurring cost is for the estimated 25 additional cases per year multiplied by $3,000.

It should be noted that state attorneys are not requesting any additional resources to make the copies or deal with this workload. There will be a reallocation of work activities and tasks during the time that these cases are being reviewed and copied. The state attorneys "prefer initially to absorb the workload if possible" so these cases can be resolved as expeditiously as possible.

Office of the Attorney General

To handle the accelerated pace of postconviction proceedings the Office of the Attorney General stated a need for 12 additional staff (eight attorneys) and associated expenses.

Department of State

For the records repository, the Department of State has indicated that there will be a fiscal impact of $75,000 annually to outsource the production of copies in an imaged format and an additional $75,000 for a non-recurring expenditure to handle the projected influx of cases due to the "dual track" proposal. The department proposed three options for the records repository functions of this legislation. They ranged from $72,530 to $75,000 annually with the privatization option being the greatest expense by approximately $2,500.

Transcript Copies

Transcript copies must be provided to the capital postconviction attorney, the state attorney, and the Attorney General within 60 days after appointment of postconviction counsel. The

cost was calculated with the assumption that the typical case would be 2,000 pages at $.10 per page (these figures are based on data from the Office of the Public Defender, Second Judicial Circuit).

Office of the Comptroller

The Office of the Comptroller is requesting appropriation for staffing the agency believes will be required to carry out responsibilities inherent in assuming full responsibility for administering and monitoring the contractual relationships with the private capital collateral attorneys.

It is the Comptroller's understanding that within the next year at least 100 such contracts are expected to be in effect. Based on current workloads experienced by the three agencies now responsible, and current contract numbers, the Comptroller anticipates that when the number of contracts are in effect the services of one senior attorney and one full time accountant will be required to administer the agency's responsibilities. The two positions would cost approximately $120,810 per year, computed as follows:

Estimated Costs to Comptroller

	Attorney	**Accountant**
Salary	$50,000	$32,000
Benefits (28%)	$14,000	$ 8,960
Expense	$ 5,925	$ 5,925
OCO	$ 2,000	$ 2,000
TOTAL	**$71,925**	**$48,885**

In addition, because the current version of the bill would require the Comptroller to assume this responsibility as soon as the bill becomes law, in order to pay these contractual obligations, the Comptroller will require the remaining balance of the appropriations originally directed to that purpose for this fiscal year, which was originally made to the JAC. It is the Comptroller's understanding that the balance presently approximates $1,385,000, although it is likely to be considerably smaller by the time the bill actually becomes law.

The primary thrust of those sections of the bill dealing with changing the capital postconviction process is that it will accelerate the time between imposition and execution of the death sentence. If it materializes, the shortened time frame will translate into cost savings in the future. Those savings, however, will be beyond the three-year window of this fiscal analysis. Although, some litigation efficiencies will probably accrue, the bulk of the quantifiable savings will be from reducing the amount of time a death row inmate spends in prison. Based on the most recent per diem for operating Florida State Prison (FY 1997-98), each year that execution is accelerated will save approximately $20,000 per inmate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

A. Federalism

The approach taken by SB 6-A is to restrict state collateral attack and, with the exception of a limit right to raise a successor claim relating to newly discovered DNA evidence, otherwise bars successor claims in state court. The implication and effect of this approach is that the federal courts will be the only judicial avenue to consider virtually all successor claims, which essentially raise federal constitutional claims. This approach departs from principles of federalism and the intent of recent federal legislation relating to federal habeas relief.

"The States . . . have great latitude to establish the structure and jurisdiction of their own courts. In addition, States may apply their own neutral procedural rules to federal claims, unless those rules are preempted by federal law. These principles are fundamental to a system of federalism in which the States share responsibility for the application and enforcement of federal law." *Howlett v. Rose*, 496 U.S. 356, 372 (1990) (citations omitted). *See Royal Caribbean Corp. v. Modesto*, 614 So.2d 517, 519-20 (Fla. 3rd DCA 1992), quoting *Howlett*.

Further, Congress intended in the Anti-Terrorism Act and Effective Death Penalty Act of 1996 to extend greater deference to state court determinations of collateral claims.

B. Effect of Repealed Rules if Provisions of Law Declared Invalid

In *State ex rel. Boyd v. Green*, 355 So.2d 789 (Fla.1978), the Florida Supreme Court held that where one section of a law was unconstitutional and another section repealed a rule which was 'so connected and dependent' on the new legislative scheme established by the invalid section, notwithstanding a severability clause, the two sections could not be treated as severable, and the unconstitutionality of the one section invalidated the repeal of the rule in the other section."

If any of the various sections relating to the parallel track capital postconviction process were declared constitutionally invalid by the Florida Supreme Court, and the section repealing the rules relating to capital postconviction proceedings were deemed by the Court to be so "connected and dependent" to the invalid sections, the Court could invalidate the section repealing the rules.

VIII. Amendments:

#1 by Criminal Justice (Barcode #593474):
Deletes reference to "fully pled postconviction action" to clarify that claim of ineffective assistance of direct appeal counsel is separate from claim of ineffective assistance of trial counsel.
#2 by Criminal Justice (Barcode #112230):
Technical in nature. Designed to conform bill to successive claims for actual innocence provision.

#3 by Criminal Justice (Barcode #311186):
Corrects typographical error.