

By Senator Burt

16-779B-98

1 A bill to be entitled
2 An act relating to the administration of
3 capital cases; requiring that the Secretary of
4 State establish a regional records repository
5 for each capital collateral regional office;
6 requiring that the public defender, law
7 enforcement agencies, the state attorney, and
8 the Department of Corrections copy and deliver
9 records to the records repository which pertain
10 to a capital case; providing requirements for
11 notifying the Attorney General upon delivery of
12 such records to the repository; requiring that
13 the Attorney General request records from
14 certain additional persons and agencies;
15 providing requirements for sealing confidential
16 records and records that are exempt from
17 disclosure under the Public Records Law;
18 prohibiting such records from being opened
19 without a court order; prohibiting the capital
20 collateral regional counsel or private counsel
21 from requesting the production of public
22 records in a capital case until after reviewing
23 records held by the records repository;
24 requiring that the capital collateral regional
25 counsel or private counsel provide the
26 personnel and equipment for copying records
27 held at the repository; providing for resolving
28 certain disputes with respect to the production
29 of records; specifying circumstances under
30 which the Secretary of State may destroy
31 records held by a repository; amending s.

1 27.702, F.S.; requiring that the capital
2 collateral regional counsel or private counsel
3 notify the Commission on the Administration of
4 Justice in Capital Cases and the trial court of
5 pleadings filed in capital cases; requiring
6 that a notice of hearing be filed with each
7 pleading; requiring that the trial court
8 expedite the hearings in capital cases;
9 repealing s. 27.708(3), F.S., relating to
10 requests for records in capital cases;
11 providing an appropriation; providing an
12 effective date.

13

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

15

16 Section 1. Capital collateral regional records
17 repositories.--

18 (1) The Secretary of State shall establish and
19 maintain a regional records repository for each of the three
20 capital collateral regional offices. The regional records
21 repository shall be located within the same county as the
22 capital collateral regional office.

23 (2) Within 60 days after a death penalty is imposed,
24 the public defender or private counsel for the defendant, each
25 law enforcement agency involved in the case, the state
26 attorney who prosecuted the case, and the Department of
27 Corrections shall legibly copy, seal, and deliver to the
28 appropriate regional repository all records, including
29 electronic records, which pertain to the case, and each agency
30 shall bear the costs.

31

1 (3)(a) The public defender or attorney for the
2 defendant shall notify the Attorney General upon compliance
3 with subsection (2) and shall certify that to the best of his
4 or her knowledge and belief all records in his or her
5 possession which pertain to the case, with the exception of
6 pleadings filed in the trial court, have been legibly copied,
7 indexed, and delivered to the appropriate regional records
8 repository.

9 (b) The chief law enforcement officer of each law
10 enforcement agency that was involved in the case, whether
11 through an investigation, arrest, prosecution, or
12 incarceration, shall notify the Attorney General upon
13 compliance with subsection (2) and shall certify that all
14 records in possession of the agency or in possession of any
15 employee of the agency which pertain to the case, except for
16 records that have previously been provided to the public
17 defender, private counsel for the defendant, or state
18 attorney, have been legibly copied, indexed, and delivered to
19 the appropriate regional records repository. A descriptive
20 list of evidence held by the law enforcement agency shall be
21 provided to the Attorney General.

22 (c) The state attorney who prosecuted the case shall
23 notify the Attorney General upon compliance with subsection
24 (2) and shall certify that to the best of his or her knowledge
25 and belief all records in his or her possession which pertain
26 to the case, with the exception of records previously given to
27 the defendant's counsel, have been legibly copied, indexed,
28 and delivered to the appropriate regional records repository.

29 (d) The Secretary of Corrections shall notify the
30 Attorney General upon compliance with subsection (2) and shall
31 certify that to the best of his or her knowledge and belief

1 all records in the department's possession which pertain to
2 the case, except for records that have previously been
3 provided to the public defender or state attorney, have been
4 legibly copied, indexed, and delivered to the appropriate
5 regional records repository.

6 (4)(a) Within 60 days after a death penalty is
7 imposed, both the public defender or attorney for the
8 defendant and the state attorney involved in the case shall
9 notify the Attorney General of the name and address of any
10 person or agency in addition to those persons and agencies
11 listed in subsection (2) which may have information pertinent
12 to the case. The Attorney General shall notify each identified
13 person or agency within 60 days after receiving the
14 information from the public defender or state attorney and
15 shall request that all records in the possession of the person
16 or agency which pertain to the case, including electronic
17 records, be legibly copied, sealed, and delivered to the
18 appropriate regional records repository.

19 (b) Within 60 days after receiving a request for
20 records under paragraph (a), the person or agency shall notify
21 the Attorney General of compliance with this subsection and
22 shall certify that to the best of his or her knowledge and
23 belief all records in its possession which pertain to the
24 case, except for records that have previously been provided to
25 the public defender or state attorney, have been legibly
26 copied, indexed, and delivered to the appropriate regional
27 records repository.

28 (5) Any record delivered to a regional records
29 repository under this section which is confidential or exempt
30 from the requirements of section 119.07(1), Florida Statutes,
31 and section 24(a), Article I of the State Constitution, must

1 be separately boxed, without being redacted, and sealed. The
2 outside of the box must clearly identify the records as
3 confidential and the seal may not be broken without an order
4 of the trial court. The outside of the box shall identify the
5 nature of the records and the legal basis under which the
6 records are confidential. Such a box may be opened only for an
7 inspection by the trial court in camera.

8 (6) Within 60 days after a capital collateral regional
9 counsel or private counsel is appointed to represent a
10 defendant sentenced to death, the regional counsel or private
11 counsel shall send a written demand for additional records to
12 each person or agency notified under subsection (2) and to
13 each person or agency identified as having information
14 pertinent to the case under subsection (4). Each person or
15 agency notified under this subsection shall deliver to the
16 appropriate regional records repository any records in the
17 possession of the person or agency which pertain to the case
18 and shall certify that to the best of his or her knowledge and
19 belief such delivery to the Attorney General or, if no
20 additional records are found, shall recertify the records
21 previously delivered.

22 (7) The capital collateral regional counsel or private
23 counsel may not request the production of a public record
24 until the regional counsel or private counsel reviews all
25 records held by the regional records repository which pertain
26 to the case and certifies to the court that the records
27 requested by the regional counsel or private counsel are not
28 held by the regional records repository. The capital
29 collateral regional counsel or private counsel may not request
30 the production of a duplicate of any record held by the
31 regional records repository.

1 (8)(a) The capital collateral regional counsel or
2 private counsel shall provide the personnel, supplies, and any
3 necessary equipment used by the capital collateral regional
4 counsel or private counsel to copy records held at a regional
5 records repository.

6 (b) The trial court shall resolve any dispute that
7 arises under this section, unless the appellate court has
8 exclusive jurisdiction.

9 (9) Sixty days after a capital sentence is carried
10 out, 60 days after a defendant is released from incarceration
11 following the granting of a pardon or reversal of the
12 sentence, or 60 days after the defendant has been resentenced
13 to a term of years, the Secretary of State may destroy the
14 records held by a regional records repository which pertain to
15 the case.

16 Section 2. Subsection (4) of section 27.702, Florida
17 Statutes, is amended to read:

18 27.702 Duties of the capital collateral regional
19 counsel; reports.--

20 (4)(a) The capital collateral regional counsel or
21 private counsel shall give written notification of each
22 pleading filed by that office and the name of the person
23 filing the pleading to the Commission on the Administration of
24 Justice in Capital Cases and to the trial court assigned to
25 the case.

26 (b) Each capital collateral regional counsel shall
27 provide a quarterly report to the President of the Senate, the
28 Speaker of the House of Representatives, and the Commission on
29 the Administration of Justice in Capital Cases which details
30 the number of hours worked by investigators and legal counsel
31 per case and the amounts per case expended during the

1 preceding quarter in investigating and litigating capital
2 collateral cases.

3 Section 3. Notice of hearings in capital cases;
4 expedited hearings.--

5 (1) A notice of hearing must be filed
6 contemporaneously with each pleading filed with the court in a
7 capital case.

8 (2) The trial court shall make every effort to
9 expedite any hearing held by the court in a capital case.

10 Section 4. Subsection (3) of section 27.708, Florida
11 Statutes, is repealed.

12 Section 5. Funds sufficient to carry out the
13 provisions of this act are appropriated from the General
14 Revenue Fund to the Secretary of State.

15 Section 6. This act shall take effect July 1, 1998.

16 *****

17
18 SENATE SUMMARY

19 Requires the Secretary of State to establish and maintain
20 a regional records repository for each of the three
21 capital collateral regional offices. Requires that,
22 following imposition of a death sentence, the public
23 defender, law enforcement agencies involved in the case,
24 the state attorney, and the Department of Corrections
25 copy and deliver records that pertain to the case to the
26 regional records repository. Requires that such delivery
27 be certified to the Attorney General. Requires that
28 confidential records and records exempt from disclosure
29 under the Public Records Law be sealed and identified.
30 Requires that the capital collateral regional counsel or
31 private counsel review the records held by the regional
records repository before requesting the production of a
public record. Authorizes the Department of Law
Enforcement to destroy the records that pertain to a case
60 days after a capital sentence is carried out or after
the defendant is released or resentenced to a term of
years. Requires that the capital collateral regional
counsel or private counsel notify the Commission on the
Administration of Justice in Capital Cases and the trial
court of each pleading filed by the regional counsel's
office. (See bill for details.)