

By the Committee on Criminal Justice and Senator Burt

307-1685-98

1 A bill to be entitled
2 An act relating to the administration of
3 capital cases; creating s. 119.19, F.S.;
4 defining terms; requiring that the Secretary of
5 State establish a records repository for
6 archiving capital postconviction records;
7 requiring that the law enforcement agencies and
8 the state attorney copy and deliver to the
9 records repository public records produced in
10 capital cases; requiring the Department of
11 Corrections to copy and deliver to the records
12 repository public records that pertain to the
13 defendant; providing requirements for notifying
14 the Attorney General upon delivery of such
15 records to the repository; requiring that the
16 Attorney General request public records from
17 certain additional persons and agencies;
18 providing requirements for sealing confidential
19 records and records that are exempt from
20 disclosure under the Public Records Law;
21 prohibiting the opening of such records without
22 a court order; providing for written demand for
23 additional public records; prohibiting the
24 capital collateral regional counsel or private
25 counsel from obtaining the production of
26 additional public records in a capital case
27 until after filing an affidavit and obtaining a
28 court order; requiring that the capital
29 collateral regional counsel or private counsel
30 provide the personnel and equipment for copying
31 records held at the repository; providing for

1 resolving certain disputes with respect to the
2 production of records; specifying circumstances
3 under which the Secretary of State may destroy
4 records held by a repository; amending s.
5 27.702, F.S.; requiring that the capital
6 collateral regional counsel or private counsel
7 notify the Commission on the Administration of
8 Justice in Capital Cases and the trial court of
9 pleadings filed in capital cases; requiring
10 that a notice of hearing be filed with each
11 pleading; requiring that the trial court
12 expedite the hearings in capital cases;
13 amending s. 27.708, F.S.; deleting references
14 to Rule 3.852; limiting certain public-records
15 requests made on behalf of clients; providing
16 an appropriation; providing an effective date.

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

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20 Section 1. Section 119.19, Florida Statutes, is
21 created to read:

22 119.19 Capital postconviction public-records
23 production.--

24 (1) As used in this section, the term "trial court"
25 means:

26 (a) The judge who entered the judgment and imposed the
27 sentence of death; or

28 (b) If a motion under Rule 3.850 or Rule 3.851 has
29 been filed and a different judge has already been assigned to
30 that motion, the judge who is assigned to rule on that motion.

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1 (2) The Secretary of State shall establish and
2 maintain a records repository for the purpose of archiving
3 capital postconviction public records as provided for in this
4 section.

5 (3)(a) Upon issuance of the Florida Supreme Court's
6 mandate, the Attorney General shall promptly provide written
7 notification to the state attorney who prosecuted the case
8 that a death sentence has been affirmed. Upon receipt of such
9 notification, the state attorney shall promptly provide
10 written notification to each law enforcement agency involved
11 in the case.

12 (b) Within 90 days after receipt of notification each
13 law enforcement agency involved in the case and the state
14 attorney who prosecuted the case shall copy, seal, and deliver
15 to the repository all public records, except for those filed
16 in the trial court, which were produced in the investigation
17 or prosecution of the case. Each agency shall bear the costs.

18 (4)(a) Upon issuance of the Florida Supreme Court's
19 mandate, the Attorney General shall promptly provide written
20 notification to the Department of Corrections that a death row
21 inmate's sentence has been affirmed.

22 (b) Within 90 days after notification, the Department
23 of Corrections shall copy, seal, and deliver to the repository
24 all public records determined by the department to be relevant
25 to the subject matter of a proceeding under Rule 3.850 or Rule
26 3.851 and where such production would not be unduly burdensome
27 for the department. The department shall bear the costs.

28 (5)(a) The chief law enforcement officer of each law
29 enforcement agency that was involved in the case, whether
30 through an investigation, arrest, prosecution, or
31 incarceration, shall notify the Attorney General upon

1 compliance with subsection (3) and shall certify that to the
2 best of his or her knowledge and belief all public records in
3 possession of the agency or in possession of any employee of
4 the agency have been copied, indexed, and delivered to the
5 records repository as required by subsection (3).

6 (b) The state attorney who prosecuted the case shall
7 provide written notification to the Attorney General upon
8 compliance with subsection (3) and shall certify that to the
9 best of his or her knowledge and belief all public records in
10 his or her possession have been copied, indexed, and delivered
11 to the records repository as required by subsection (3).

12 (c) The Secretary of Corrections shall provide written
13 notification to the Attorney General upon compliance with
14 subsection (4) and shall certify that to the best of his or
15 her knowledge and belief all public records in the
16 department's possession have been copied, indexed, and
17 delivered to the records repository as required by paragraph
18 (4)(b).

19 (6)(a) Within 90 days after issuance of the Florida
20 Supreme Court's mandate affirming a death sentence, both the
21 public defender or private counsel for the defendant and the
22 state attorney involved in the case shall provide written
23 notification to the Attorney General of the name and address
24 of any person or agency in addition to those persons and
25 agencies listed in subsections (3) and (4) which may have
26 information pertinent to the case. The Attorney General shall
27 promptly provide written notification to each identified
28 person or agency after receiving the information from the
29 public defender, private counsel for the defendant, or state
30 attorney and shall request that all public records in the
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1 possession of the person or agency which pertain to the case
2 be copied, sealed, and delivered to the records repository.

3 (b) Within 90 days after receiving a request for
4 public records under paragraph (a), the person or agency shall
5 provide written notification to the Attorney General of
6 compliance with this subsection and shall certify that to the
7 best of his or her knowledge and belief all public records
8 requested have been copied, indexed, and delivered to the
9 records repository.

10 (7)(a) Any public record delivered to the records
11 repository under this section which is confidential or exempt
12 from the requirements of s. 119.07(1) and s. 24(a), Art. I of
13 the State Constitution must be separately boxed, without being
14 redacted, and sealed. The outside of the box must clearly
15 identify the public records as exempt, and the seal may not be
16 broken without an order of the trial court. The outside of the
17 box must identify the nature of the public records and the
18 legal basis under which the public records are exempt.

19 (b) Upon the entry of an appropriate court order,
20 sealed boxes subject to an inspection by the trial court shall
21 be shipped to the respective clerk of court. Such a box may be
22 opened only for an inspection by the trial court in camera and
23 only with a representative of the agency present at the
24 unsealing by the court. The moving party shall bear all costs
25 associated with the transportation and inspection of such
26 records by the trial court.

27 (8)(a) Within 90 days after a capital collateral
28 regional counsel or private counsel is appointed to represent
29 a defendant sentenced to death, the regional counsel, private
30 counsel, or other counsel who is a member of The Florida Bar
31 and is authorized by such counsel representing a defendant

1 shall send a written demand for additional public records to
2 each person or agency submitting public records under
3 subsections (3) and (4) and to each person or agency
4 identified as having information pertinent to the case under
5 subsection (6). Each person or agency notified under this
6 subsection shall, within 90 days after receipt of the written
7 demand, deliver to the records repository any additional
8 public records in the possession of the person or agency which
9 pertain to the case and shall certify that to the best of his
10 or her knowledge and belief all additional public records have
11 been delivered to the Attorney General or, if no additional
12 public records are found, shall recertify that the public
13 records previously delivered are complete.

14 (b) Within 60 days after receiving the written demand,
15 the agency or person may file an objection in the trial court.
16 Within 30 days after the filing of an objection, the trial
17 court shall hold a hearing and order an agency or person to
18 produce additional public records if it finds each of the
19 following:

20 1. The regional counsel or private counsel has made a
21 timely and diligent search as provided in this section.

22 2. The regional or private counsel's written demand
23 identifies, with specificity, those additional public records
24 that are not at the repository.

25 3. The additional public records sought are relevant
26 to the subject matter of a proceeding under Rule 3.850 or Rule
27 3.851 or appear reasonably calculated to lead to the discovery
28 of admissible evidence.

29 4. The additional public-records request is not
30 overbroad or unduly burdensome.

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1 (9)(a) After production of additional public records
2 or recertification as provided in subsection (8), the regional
3 counsel, the private counsel, or any person acting on behalf
4 of counsel is prohibited from making any further
5 public-records requests under this chapter. An agency is not
6 required to produce additional public records except by court
7 order as provided in this subsection.

8 (b) In order to obtain additional public records
9 beyond those provided under subsection (8), the regional
10 counsel, private counsel, or other counsel who is a member of
11 The Florida Bar and is authorized by the regional counsel or
12 private counsel shall file an affidavit in the trial court
13 which attests that he or she has made a timely and diligent
14 search of the records repository and specifically identifies
15 those additional public records that are not at the repository
16 and are relevant to the subject matter of a proceeding under
17 Rule 3.850 or Rule 3.851 or are reasonably calculated to lead
18 to the discovery of admissible evidence. The affiant shall
19 provide a copy of the affidavit to all affected agencies upon
20 the filing of such affidavit in the trial court.

21 (c) Within 30 days after the filing of an affidavit,
22 the trial court shall order an agency to produce additional
23 public records only if it finds each of the following:

24 1. The regional counsel or private counsel has made a
25 timely and diligent search as provided in this section.

26 2. The regional or private counsel's affidavit
27 identifies, with specificity, those additional public records
28 that are not at the repository.

29 3. The additional public records sought are relevant
30 to the subject matter of a proceeding under Rule 3.850 or Rule
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1 3.851 or appear reasonably calculated to lead to the discovery
2 of admissible evidence.

3 4. The additional public-records request is not
4 overbroad or unduly burdensome.

5 (10) The capital collateral regional counsel or
6 private counsel shall provide the personnel, supplies, and any
7 necessary equipment used by the capital collateral regional
8 counsel or private counsel to copy records held at the records
9 repository.

10 (11) The trial court shall resolve any dispute that
11 arises under this section, unless the appellate court has
12 exclusive jurisdiction.

13 (12) Sixty days after a capital sentence is carried
14 out, 60 days after a defendant is released from incarceration
15 following the granting of a pardon or reversal of the
16 sentence, or 60 days after the defendant has been resentenced
17 to a term of years, the Attorney General shall provide written
18 notification to the Secretary of State, who may then destroy
19 the records held by the records repository which pertain to
20 that case.

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

23 27.702 Duties of the capital collateral regional
24 counsel; reports.--

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

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1 **(b)** Each capital collateral regional counsel shall
2 provide a quarterly report to the President of the Senate, the
3 Speaker of the House of Representatives, and the Commission on
4 the Administration of Justice in Capital Cases which details
5 the number of hours worked by investigators and legal counsel
6 per case and the amounts per case expended during the
7 preceding quarter in investigating and litigating capital
8 collateral cases.

9 Section 3. Subsections (2) and (3) of section 27.708,
10 Florida Statutes, are amended to read:

11 27.708 Access to prisoners; compliance with the
12 Florida Rules of Criminal Procedure in capital collateral
13 litigation; records requests; approval of records requests.--

14 (2) The capital collateral regional counsel and
15 contracted private counsel must timely comply with all
16 provisions of the Florida Rules of Criminal Procedure
17 governing collateral review of capital cases, ~~including~~
18 ~~provisions pertaining to requests for records under Rule~~
19 ~~3.852, Florida Rules of Criminal Procedure.~~

20 (3) Except as provided in s. 119.19, the capital
21 collateral regional counsel, contracted private counsel, or
22 any person acting on behalf of counsel shall not make any
23 public-records request on behalf of his or her client.~~All~~
24 ~~requests for records in capital postconviction proceedings~~
25 ~~must be made in accordance with Rule 3.852, Florida Rules of~~
26 ~~Criminal Procedure, and, if the person sentenced to death is~~
27 ~~represented by an assistant capital collateral regional~~
28 ~~counsel or other attorney appointed to assist the regional~~
29 ~~counsel, the regional counsel must approve the request.~~

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

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

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

6 Section 5. Funds sufficient to carry out the
7 provisions of this act are appropriated from the General
8 Revenue Fund to the Secretary of State.

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

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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 1330

- 4 . Uses the term "public record." Defines "trial court."
5 . Places the capital postconviction records provisions in
6 chapter 119.
7 . Provides that the Department of State is to maintain a
8 central records repository for the purpose of archiving
9 capital postconviction public records.
10 . Expressly prohibits postconviction counsel from filing
11 the public records request unless requested by an
12 attorney and except as provided in the bill.
13 . Provides that the attorney general and state attorney
14 shall promptly notify certain agencies that a death
15 sentence has been affirmed upon issuance of the Florida
16 Supreme Court Mandate.
17 . Requires certain relevant agencies to copy and send
18 public records to the repository within 90 days of
19 receipt of written notification.
20 . Provides that the Department of Corrections shall only
21 submit record copies which are relevant to a
22 postconviction proceeding and are not unduly burdensome.
23 . Provides that the state attorney and local law
24 enforcement submit all public records produced in the
25 investigation or prosecution of the case, except for
26 those filed in the trial court, and requires the
27 Department of Corrections submit all records which
28 pertain to the defendant. Removes requirement to submit
29 defendant's file.
30 . Contains a 90-day time limitation on an agency's records
31 production after receipt of request for additional
32 records (after initial production).
33 . Specifically requires that an agency representative
34 claiming exemption be present when the trial court opens
35 the sealed box containing confidential or exempt
36 material. Provides for such material to be sent to the
37 clerk of court. Provides that cost associated with the
38 transportation and inspection of such records shall be
39 borne by the moving party.
40 . Provides that within 60 days of receipt of written
41 demand, the agency may file an objection and the trial
42 court must hold a hearing and order production of
43 additional records, only if it makes specific findings.
44 . Provides that postconviction counsel is prohibited from
45 making additional requests beyond those requests made
46 within 90 days after appointment. However, if
47 postconviction counsel files an affidavit, the trial
48 court shall order further production only if it makes the

1 specific finding.
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