

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; prohibiting the capital  
3 collateral regional counsel or private counsel  
4 from soliciting another person to make a  
5 request for public records on the counsel's  
6 behalf; providing for sanctions; specifying  
7 circumstances under which the Secretary of  
8 State may destroy records held by a repository;  
9 clarifying the application of provisions  
10 governing the production of records in capital  
11 postconviction proceedings; amending s. 27.702,  
12 F.S.; requiring that the capital collateral  
13 regional counsel or private counsel notify the  
14 Commission on the Administration of Justice in  
15 Capital Cases and the trial court of pleadings  
16 filed in capital cases; requiring that a notice  
17 of hearing be filed with each pleading;  
18 requiring that the trial court expedite the  
19 hearings in capital cases; amending s. 27.708,  
20 F.S.; deleting references to Rule 3.852;  
21 limiting certain public-records requests made  
22 on behalf of clients; providing an  
23 appropriation; providing an effective date.  
24

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

26  
27 Section 1. Section 119.19, Florida Statutes, is  
28 created to read:

29 119.19 Capital postconviction public-records  
30 production.--  
31

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

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

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

8           (2) The Secretary of State shall establish and  
9 maintain a records repository for the purpose of archiving  
10 capital postconviction public records as provided for in this  
11 section.

12           (3)(a) Upon issuance of the Florida Supreme Court's  
13 mandate, the Attorney General shall promptly provide written  
14 notification to the state attorney who prosecuted the case  
15 that a death sentence has been affirmed. Upon receipt of such  
16 notification, the state attorney shall promptly provide  
17 written notification to each law enforcement agency involved  
18 in the case.

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

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

29           (b) Within 90 days after notification, the Department  
30 of Corrections shall copy, seal, and deliver to the repository  
31 all public records determined by the department to be relevant

1 to the subject matter of a proceeding under Rule 3.850 or Rule  
2 3.851 and where such production would not be unduly burdensome  
3 for the department. The department shall bear the costs.

4 (5)(a) The chief law enforcement officer of each law  
5 enforcement agency that was involved in the case, whether  
6 through an investigation, arrest, prosecution, or  
7 incarceration, shall notify 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 possession of the agency or in possession of any employee of  
11 the agency have been copied, indexed, and delivered to the  
12 records repository as required by subsection (3).

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

19 (c) The Secretary of Corrections shall provide written  
20 notification to the Attorney General upon compliance with  
21 subsection (4) and shall certify that to the best of his or  
22 her knowledge and belief all public records in the  
23 department's possession have been copied, indexed, and  
24 delivered to the records repository as required by paragraph  
25 (4)(b).

26 (6)(a) Within 90 days after issuance of the Florida  
27 Supreme Court's mandate affirming a death sentence, both the  
28 public defender or private counsel for the defendant and the  
29 state attorney involved in the case shall provide written  
30 notification to the Attorney General of the name and address  
31 of any person or agency in addition to those persons and

1 agencies listed in subsections (3) and (4) which may have  
2 information pertinent to the case unless previously provided  
3 to the Capital Collateral Regional Counsel or post conviction  
4 private counsel. The Attorney General shall promptly provide  
5 written notification to each identified person or agency after  
6 receiving the information from the public defender, private  
7 counsel for the defendant, or state attorney and shall request  
8 that all public records in the possession of the person or  
9 agency which pertain to the case be copied, sealed, and  
10 delivered to the records repository.

11 (b) Within 90 days after receiving a request for  
12 public records under paragraph (a), the person or agency shall  
13 provide written notification to the Attorney General of  
14 compliance with this subsection and shall certify that to the  
15 best of his or her knowledge and belief all public records  
16 requested have been copied, indexed, and delivered to the  
17 records repository.

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

27 (b) Upon the entry of an appropriate court order,  
28 sealed boxes subject to an inspection by the trial court shall  
29 be shipped to the respective clerk of court. Such a box may be  
30 opened only for an inspection by the trial court in camera and  
31 only with a representative of the agency present at the

1 unsealing by the court. The moving party shall bear all costs  
2 associated with the transportation and inspection of such  
3 records by the trial court.

4 (8)(a) Within 90 days after a capital collateral  
5 regional counsel or private counsel is appointed to represent  
6 a defendant sentenced to death, the regional counsel, private  
7 counsel, or other counsel who is a member of The Florida Bar  
8 and is authorized by such counsel representing a defendant  
9 shall send a written demand for additional public records to  
10 each person or agency submitting public records under  
11 subsections (3) and (4) and to each person or agency  
12 identified as having information pertinent to the case under  
13 subsection (6). Each person or agency notified under this  
14 subsection shall, within 90 days after receipt of the written  
15 demand, deliver to the records repository any additional  
16 public records in the possession of the person or agency which  
17 pertain to the case and shall certify that to the best of his  
18 or her knowledge and belief all additional public records have  
19 been delivered to the Attorney General or, if no additional  
20 public records are found, shall recertify that the public  
21 records previously delivered are complete.

22 (b) Within 60 days after receiving the written demand,  
23 the agency or person may file an objection in the trial court.  
24 Within 30 days after the filing of an objection, the trial  
25 court shall hold a hearing and order an agency or person to  
26 produce additional public records if it finds each of the  
27 following:

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

30

31

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

4           3. The additional public records sought are relevant  
5 to the subject matter of a proceeding under Rule 3.850 or Rule  
6 3.851 or appear reasonably calculated to lead to the discovery  
7 of admissible evidence.

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

10           (c) The attorney general and state attorney shall  
11 provide notification as provided in subsections (3) and (4) on  
12 cases where the mandate has issued on the date that this  
13 statute becomes effective, but where initial requests for  
14 public records have not been made.

15           (d) If, on the date that this statute becomes  
16 effective, a defendant is represented by appointed CCRC or  
17 private counsel, and he or she has initiated the public  
18 records request process, counsel shall file within ninety days  
19 of the effective date of this statute, a written demand for  
20 any additional records that have not previously been the  
21 subject of a notice to produce. An agency may file an  
22 objection to such additional demand and the trial court shall  
23 hold a hearing as provided by paragraph (b). This statute  
24 shall not be a basis for renewing requests that have been  
25 initiated previously or for relitigating issues pertaining to  
26 production of public records upon which a court has ruled  
27 prior to the effective date of the statute, or for stopping an  
28 execution which has been scheduled based upon a warrant  
29 executed by the governor prior to the effective date of the  
30 Statute.

31

1           (e) If, on the date that this statute becomes  
2 effective, the defendant has had a 3.850 motion denied and no  
3 3.850 motion is pending, no additional requests shall be made  
4 by CCRC or contracted private counsel until a death warrant is  
5 signed by the governor and an execution is scheduled. Within  
6 ten days of the signing of the death warrant, CCRC or  
7 contracted private counsel may request of a person or agency  
8 that the defendant has previously requested to produce records  
9 any records previously requested to which no objection was  
10 raised or sustained, but which the agency has received or  
11 produced since the previous request or which for any reason  
12 the agency has in its possession and did not produce within  
13 ten days of the receipt of the previous notice or such shorter  
14 time period ordered by the court to comply with the time for  
15 the scheduled execution. The person or agency shall produce  
16 the record or shall file in the trial court an affidavit  
17 stating that it does not have the requested record or that the  
18 record has been produced previously.

19           (9)(a) After production of additional public records  
20 or recertification as provided in subsection (8), the regional  
21 counsel or the private counsel is prohibited from making any  
22 further public-records requests under this chapter. An agency  
23 is not required to produce additional public records except by  
24 court order as provided in this subsection.

25           (b) In order to obtain additional public records  
26 beyond those provided under subsection (8), the regional  
27 counsel, private counsel, or other counsel who is a member of  
28 The Florida Bar and is authorized by the regional counsel or  
29 private counsel shall file an affidavit in the trial court  
30 which attests that he or she has made a timely and diligent  
31 search of the records repository and specifically identifies

1 those additional public records that are not at the repository  
2 and are relevant to the subject matter of a proceeding under  
3 Rule 3.850 or Rule 3.851 or are reasonably calculated to lead  
4 to the discovery of admissible evidence. The affiant shall  
5 provide a copy of the affidavit to all affected agencies upon  
6 the filing of such affidavit in the trial court.

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

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

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

15 3. The additional public records sought are relevant  
16 to the subject matter of a proceeding under Rule 3.850 or Rule  
17 3.851 or appear reasonably calculated to lead to the discovery  
18 of admissible evidence.

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

21 (10) The capital collateral regional counsel or  
22 private counsel shall provide the personnel, supplies, and any  
23 necessary equipment used by the capital collateral regional  
24 counsel or private counsel to copy records held at the records  
25 repository.

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

29 (12) The capital collateral regional counsel or  
30 private counsel shall not solicit another person to make a  
31 request for public records on behalf of the regional counsel

1 or private counsel. The trial court shall impose appropriate  
2 sanctions against any regional counsel or private counsel  
3 found in violation of this subsection.

4 (13) Sixty days after a capital sentence is carried  
5 out, 60 days after a defendant is released from incarceration  
6 following the granting of a pardon or reversal of the  
7 sentence, or 60 days after the defendant has been resentenced  
8 to a term of years, the Attorney General shall provide written  
9 notification to the Secretary of State, who may then destroy  
10 the records held by the records repository which pertain to  
11 that case.

12 (14) This section pertains only to the production of  
13 records for capital postconviction defendants and does not  
14 change or alter any times periods specified in Rule 3.850 or  
15 Rule 3.851, Florida Rules of Criminal Procedure. Furthermore,  
16 this section does not affect, expand, or limit the production  
17 of public records for any purposes other than use in a  
18 proceeding held pursuant to Rule 3.850 or Rule 3.851, Florida  
19 Rules of Criminal Procedure.

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

22 27.702 Duties of the capital collateral regional  
23 counsel; reports.--

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

30 (b) Each capital collateral regional counsel shall  
31 provide a quarterly report to the President of the Senate, the

1 Speaker of the House of Representatives, and the Commission on  
2 the Administration of Justice in Capital Cases which details  
3 the number of hours worked by investigators and legal counsel  
4 per case and the amounts per case expended during the  
5 preceding quarter in investigating and litigating capital  
6 collateral cases.

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

9 27.708 Access to prisoners; compliance with the  
10 Florida Rules of Criminal Procedure in capital collateral  
11 litigation; records requests; approval of records requests.--

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

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

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

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. From General Revenue Funds, \$75,000 shall  
7 be provided to the Department of State in order to carry out  
8 the provisions of this bill.

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

10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31