

By Representative Alexander

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 Florida Rules of Criminal Procedure; limiting  
22 certain public-records requests made on behalf  
23 of clients; repealing Rule 3.852, Florida Rules  
24 of Criminal Procedure, relating to the  
25 production of records in postconviction  
26 proceedings in capital cases; providing an  
27 appropriation; providing an effective date.

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29 Be It Enacted by the Legislature of the State of Florida:  
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1           Section 1. Section 119.19, Florida Statutes, is  
2 created to read:

3           119.19 Capital postconviction public-records  
4 production.--

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

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

9           (b) If a motion under Rule 3.850 or Rule 3.851,  
10 Florida Rules of Criminal Procedure, has been filed and a  
11 different judge has already been assigned to that motion, the  
12 judge who is assigned to rule on that motion.

13           (2) The Secretary of State shall establish and  
14 maintain a records repository for the purpose of archiving  
15 capital postconviction public records as provided for in this  
16 section.

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

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

30           (4)(a) Upon issuance of the Florida Supreme Court's  
31 mandate, the Attorney General shall promptly provide written

1 notification to the Department of Corrections that a death row  
2 inmate's sentence has been affirmed.

3 (b) Within 90 days after notification, the Department  
4 of Corrections shall copy, seal, and deliver to the repository  
5 all public records determined by the department to be relevant  
6 to the subject matter of a proceeding under Rule 3.850 or Rule  
7 3.851 and where such production would not be unduly burdensome  
8 for the department. The department shall bear the costs.

9 (5)(a) 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 (3) and shall certify that to the  
14 best of his or her knowledge and belief all public records in  
15 possession of the agency or in possession of any employee of  
16 the agency have been copied, indexed, and delivered to the  
17 records repository as required by subsection (3).

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

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

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1           (6)(a) Within 90 days after issuance of the Florida  
2 Supreme Court's mandate affirming a death sentence, both the  
3 public defender or private counsel for the defendant and the  
4 state attorney involved in the case shall provide written  
5 notification to the Attorney General of the name and address  
6 of any person or agency in addition to those persons and  
7 agencies listed in subsections (3) and (4) which may have  
8 information pertinent to the case. The Attorney General shall  
9 promptly provide written notification to each identified  
10 person or agency after receiving the information from the  
11 public defender, private counsel for the defendant, or state  
12 attorney and shall request that all public records in the  
13 possession of the person or agency which pertain to the case  
14 be copied, sealed, and delivered to the records repository.

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

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

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1       (b) Upon the entry of an appropriate court order,  
2 sealed boxes subject to an inspection by the trial court shall  
3 be shipped to the respective clerk of court. Such a box may be  
4 opened only for an inspection by the trial court in camera and  
5 only with a representative of the agency present at the  
6 unsealing by the court. The moving party shall bear all costs  
7 associated with the transportation and inspection of such  
8 records by the trial court.

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

27       (b) Within 60 days after receiving the written demand,  
28 the agency or person may file an objection in the trial court.  
29 Within 30 days after the filing of an objection, the trial  
30 court shall hold a hearing and order an agency or person to  
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1 produce additional public records if it finds each of the  
2 following:  
3       1. The regional counsel or private counsel has made a  
4 timely and diligent search as provided in this section.  
5       2. The regional or private counsel's written demand  
6 identifies, with specificity, those additional public records  
7 that are not at the repository.  
8       3. The additional public records sought are relevant  
9 to the subject matter of a proceeding under Rule 3.850 or Rule  
10 3.851 or appear reasonably calculated to lead to the discovery  
11 of admissible evidence.  
12       4. The additional public-records request is not  
13 overbroad or unduly burdensome.  
14       (9)(a) After production of additional public records  
15 or recertification as provided in subsection (8), the regional  
16 counsel or the private counsel is prohibited from making any  
17 further public-records requests under this chapter. An agency  
18 is not required to produce additional public records except by  
19 court order as provided in this subsection.  
20       (b) In order to obtain additional public records  
21 beyond those provided under subsection (8), the regional  
22 counsel, private counsel, or other counsel who is a member of  
23 The Florida Bar and is authorized by the regional counsel or  
24 private counsel shall file an affidavit in the trial court  
25 which attests that he or she has made a timely and diligent  
26 search of the records repository and specifically identifies  
27 those additional public records that are not at the repository  
28 and are relevant to the subject matter of a proceeding under  
29 Rule 3.850 or Rule 3.851 or are reasonably calculated to lead  
30 to the discovery of admissible evidence. The affiant shall  
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1 provide a copy of the affidavit to all affected agencies upon  
2 the filing of such affidavit in the trial court.

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

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

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

11 3. The additional public records sought are relevant  
12 to the subject matter of a proceeding under Rule 3.850 or Rule  
13 3.851 or appear reasonably calculated to lead to the discovery  
14 of admissible evidence.

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

17 (10) The capital collateral regional counsel or  
18 private counsel shall provide the personnel, supplies, and any  
19 necessary equipment used by the capital collateral regional  
20 counsel or private counsel to copy records held at the records  
21 repository.

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

25 (12) The capital collateral regional counsel or  
26 private counsel shall not solicit another person to make a  
27 request for public records on behalf of the regional counsel  
28 or private counsel. The trial court shall impose appropriate  
29 sanctions against any regional counsel or private counsel  
30 found in violation of this subsection.

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

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

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

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

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

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

1 per case and the amounts per case expended during the  
2 preceding quarter in investigating and litigating capital  
3 collateral cases.

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

6 27.708 Access to prisoners; compliance with the  
7 Florida Rules of Criminal Procedure in capital collateral  
8 litigation; records requests; approval of records requests.--

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

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

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

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

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

1           Section 5. Rule 3.852, Florida Rules of Criminal  
2 Procedure, is repealed.  
3           Section 6. Funds sufficient to carry out the  
4 provisions of this act are appropriated from the General  
5 Revenue Fund to the Secretary of State.  
6           Section 7. This act shall take effect July 1 of the  
7 year in which enacted, but section 5 shall take effect only if  
8 enacted by the affirmative vote of two-thirds of the  
9 membership of each house of the Legislature.  
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HOUSE SUMMARY

Requires that the Secretary of State establish a records repository for archiving capital postconviction records. Requires that the law enforcement agencies and the state attorney copy and deliver to the records repository public records produced in capital cases. Requires the Department of Corrections to copy and deliver to the records repository public records that pertain to the defendant. Provides requirements for notifying the Attorney General upon delivery of such records to the repository. Requires that the Attorney General request public records from certain additional persons and agencies. Provides requirements for sealing confidential records and records that are exempt from disclosure under the Public Records Law. Prohibits the opening of such records without a court order. Provides for written demand for additional public records. Prohibits the capital collateral regional counsel or private counsel from obtaining the production of additional public records in a capital case until after filing an affidavit and obtaining a court order. Requires that the capital collateral regional counsel or private counsel provide the personnel and equipment for copying records held at the repository. Provides for resolving certain disputes with respect to the production of records. Prohibits the capital collateral regional counsel or private counsel from soliciting another person to make a request for public records on the counsel's behalf. Provides for sanctions. Specifies circumstances under which the Secretary of State may destroy records held by a repository. Clarifies the application of provisions governing the production of records in capital postconviction proceedings.

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 pleadings filed in capital cases. Requires that a notice of hearing be filed with each pleading. Requires that the trial court expedite the hearings in capital cases. Limits certain public-records requests made on behalf of clients of capital collateral regional counsel or contracted private counsel.

Repeals Rule 3.852, Florida Rules of Criminal Procedure, governing the production of public records for any postconviction proceeding in a capital case.

Provides an appropriation.