

## CHAPTER 98-198

### Committee Substitute for Senate Bill No. 1330

An act relating to the administration of capital cases; creating s. 119.19, F.S.; defining terms; requiring that the Secretary of State establish a records repository for archiving capital postconviction records; requiring that the law enforcement agencies and the state attorney copy and deliver to the records repository public records produced in capital cases; requiring the Department of Corrections to copy and deliver to the records repository public records that pertain to the defendant; providing requirements for notifying the Attorney General upon delivery of such records to the repository; requiring that the Attorney General request public records from certain additional persons and agencies; providing requirements for sealing confidential records and records that are exempt from disclosure under the Public Records Law; prohibiting the opening of such records without a court order; providing for written demand for additional public records; prohibiting 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; requiring that the capital collateral regional counsel or private counsel provide the personnel and equipment for copying records held at the repository; providing for resolving certain disputes with respect to the production of records; prohibiting the capital collateral regional counsel or private counsel from soliciting another person to make a request for public records on the counsel's behalf; providing for sanctions; specifying circumstances under which the Secretary of State may destroy records held by a repository; clarifying the application of provisions governing the production of records in capital postconviction proceedings; amending s. 27.702, F.S.; requiring 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; requiring that a notice of hearing be filed with each pleading; requiring that the trial court expedite the hearings in capital cases; amending s. 27.708, F.S.; deleting references to Rule 3.852; limiting certain public-records requests made on behalf of clients; providing an appropriation; providing an effective date.

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

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

119.19 Capital postconviction public-records production.—

(1) As used in this section, the term “trial court” means:

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

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

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

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

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

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

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

(5)(a) The chief law enforcement officer of each law enforcement agency that was involved in the case, whether through an investigation, arrest, prosecution, or incarceration, shall notify the Attorney General upon compliance with subsection (3) and shall certify that to the best of his or her knowledge and belief all public records in possession of the agency or in possession of any employee of the agency have been copied, indexed, and delivered to the records repository as required by subsection (3).

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

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

(6)(a) Within 90 days after issuance of the Florida Supreme Court's mandate affirming a death sentence, both the public defender or private counsel for the defendant and the state attorney involved in the case shall provide

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(14) This section pertains only to the production of records for capital postconviction defendants and does not change or alter any times periods specified in Rule 3.850 or Rule 3.851, Florida Rules of Criminal Procedure.

Furthermore, this section does not affect, expand, or limit the production of public records for any purposes other than use in a proceeding held pursuant to Rule 3.850 or Rule 3.851, Florida Rules of Criminal Procedure.

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

27.702 Duties of the capital collateral regional counsel; reports.—

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

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

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

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

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

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

Section 4. Notice of hearings in capital cases; expedited hearings.—

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

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

Section 5. From General Revenue Funds, \$75,000 shall be provided to the Department of State in order to carry out the provisions of this bill.

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

Became a law without the Governor's approval May 24, 1998.

Filed in Office Secretary of State May 22, 1998.