

By Representative Lynn

1 A bill to be entitled
 2 An act relating to public records; amending and
 3 renumbering s. 415.51, F.S.; revising
 4 provisions relating to confidentiality of
 5 Department of Children and Family Services
 6 reports and records of cases of child abuse and
 7 neglect; providing an exemption from public
 8 records requirements for department reports and
 9 records of cases of child abandonment;
 10 requiring certain recordkeeping and
 11 preservation by the department; providing for
 12 future review and repeal; providing a finding
 13 of public necessity; amending s. 119.07, F.S.,
 14 to conform; providing a contingent effective
 15 date.

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

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 19 Section 1. Section 415.51, Florida Statutes, is
 20 renumbered as section 39.202, Florida Statutes, and amended to
 21 read:

22 39.202 ~~415.51~~ Confidentiality of reports and records
 23 in cases of child abuse, abandonment, or neglect.--

24 (1)(a) In order to protect the rights of the child and
 25 the child's parents, legal custodians, or caregivers ~~or other~~
 26 ~~persons responsible for the child's welfare~~, all records held
 27 by the department concerning reports of child abuse,
 28 abandonment, or neglect, including reports made to the central
 29 abuse hotline and all records generated as a result of such
 30 reports, shall be confidential and exempt from the provisions
 31 of s. 119.07(1) and shall not be disclosed except as

1 specifically authorized by this chapter ~~ss. 415.502-415.514~~.
2 Such exemption from s. 119.07(1) applies to information in the
3 possession of those entities granted access as set forth in
4 this section.

5 (b) Except for information identifying individuals,
6 all records involving the death of a child determined to be a
7 result of abuse, abandonment, or neglect shall be released to
8 the public within 10 days after completion of the
9 investigation.

10 (2) Access to such records, excluding the name of the
11 reporter which shall be released only as provided in
12 subsection (4) ~~(9)~~, shall be granted only to the following
13 persons, officials, and agencies:

14 (a) Employees, authorized or agents, or contract
15 providers of the department, the Department of Health, or
16 county agencies responsible for carrying out child or adult
17 protective investigations, ongoing child or adult protective
18 services, Healthy Start services, or licensure or approval of
19 adoptive homes, foster homes, or child care facilities, or
20 family day care homes or informal child care providers who
21 receive subsidized child care funding, or other homes used to
22 provide for the care and welfare of children. Also, employees
23 or agents of the Department of Juvenile Justice responsible
24 for the provision of services to children, pursuant to ~~parts~~
25 ~~II and IV of chapter 985 39~~.

26 (b) Criminal justice agencies of appropriate
27 jurisdiction.

28 (c) The state attorney of the judicial circuit in
29 which the child resides or in which the alleged abuse,
30 abandonment, or neglect occurred.

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1 (d) The parent, caregiver, or legal custodian of any
2 child who is alleged to have been abused, abandoned, or
3 neglected, and the child, and their attorneys ~~or abandoned~~.
4 This access shall be made available no later than 30 days
5 after the department receives the initial report of abuse,
6 neglect, or abandonment. However, any information otherwise
7 made confidential or exempt by law shall not be released
8 pursuant to this paragraph.

9 (e) Any person alleged in the report as having caused
10 the abuse, abandonment, or neglect, ~~or abandonment~~ of a child.
11 This access shall be made available no later than 30 days
12 after the department receives the initial report of abuse,
13 abandonment, or neglect, ~~or abandonment~~. However, any
14 information otherwise made confidential or exempt by law shall
15 not be released pursuant to this paragraph.

16 (f) A court upon its finding that access to such
17 records may be necessary for the determination of an issue
18 before the court; however, such access shall be limited to
19 inspection in camera, unless the court determines that public
20 disclosure of the information contained therein is necessary
21 for the resolution of an issue then pending before it.

22 (g) A grand jury, by subpoena, upon its determination
23 that access to such records is necessary in the conduct of its
24 official business.

25 (h) Any appropriate official of the department
26 responsible for:

27 1. Administration or supervision of the department's
28 program for the prevention, investigation, or treatment of
29 child abuse, abandonment, ~~or neglect~~, or exploitation, or
30 abuse, abandonment, neglect, or exploitation of a disabled
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1 adult or elderly person, when carrying out his or her official
2 function; or
3 2. Taking appropriate administrative action concerning
4 an employee of the department alleged to have perpetrated
5 ~~institutional~~ child abuse, abandonment, or neglect, or
6 exploitation, or abuse, abandonment, neglect, or exploitation
7 of a disabled adult or elderly person; or-
8 3. Employing and continuing employment of personnel of
9 the department.
10 (i) Any person engaged in the use of such records or
11 information for bona fide research, statistical, or audit
12 purposes. All such requests for records or information shall
13 require the requesting individual or entity to enter into a
14 privacy and security agreement which provides that the
15 requesting individual or entity shall comply with all laws and
16 rules governing the use of such records and information for
17 research, statistical, or audit purposes. ~~However, no~~
18 ~~information identifying the subjects of the report shall be~~
19 ~~made available to the researcher.~~
20 (j) The Division of Administrative Hearings for
21 purposes of any administrative challenge.
22 (k) Any appropriate official of the human rights
23 advocacy committee investigating a report of known or
24 suspected child abuse, abandonment, or neglect, the Auditor
25 General for the purpose of conducting preliminary or
26 compliance reviews pursuant to s. 11.45, or the guardian ad
27 litem for the child ~~as defined in s. 415.503.~~
28 (l) Employees or agents of an agency of another state
29 that has comparable jurisdiction to the jurisdiction described
30 in paragraph (a).
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1 (m) The Public Employees Relations Commission for the
2 sole purpose of obtaining evidence for appeals filed pursuant
3 to s. 447.207. Records may be released only after deletion of
4 all information which specifically identifies persons other
5 than the employee.

6 (n) Employees or agents of the Department of Revenue
7 responsible for child support enforcement activities.

8 (3) The department may release to professional persons
9 such information as is necessary for the diagnosis and
10 treatment of the child or the person perpetrating the abuse,
11 abandonment, or neglect.

12 (4) The name of any person reporting child abuse,
13 abandonment, or neglect may not be released to any person
14 other than employees of the department responsible for child
15 protective services, or the central abuse hotline, law
16 enforcement, or the appropriate state attorney ~~or law~~
17 ~~enforcement agency,~~ without the written consent of the person
18 reporting. This does not prohibit the subpoenaing of a person
19 reporting child abuse, abandonment, or neglect when deemed
20 necessary by the court, the state attorney, or the department,
21 provided the fact that such person made the report is not
22 disclosed. Any person who reports a case of child abuse,
23 abandonment, or neglect may, at the time he or she makes the
24 report, request that the department notify him or her that a
25 child protective investigation occurred as a result of the
26 report. The department shall mail such a notice to the
27 reporter within 10 days after completing the child protective
28 investigation.

29 (5) All records and reports of the child protection
30 team are confidential and exempt from the provisions of ss.
31 119.07(1) and 455.667 ~~455.241~~, and shall not be disclosed,

1 except, upon request, to the state attorney, law enforcement,
2 the department, and necessary professionals, in furtherance of
3 the treatment or additional evaluative needs of the child or
4 by order of the court.

5 (6) The department shall make and keep reports and
6 records of all cases under this chapter relating to child
7 abuse, abandonment, and neglect and shall preserve the records
8 pertaining to a child and family until 7 years after the last
9 entry was made or until the child is 18 years of age,
10 whichever date is first reached, and may then destroy the
11 records. Department records required by this chapter relating
12 to child abuse, abandonment, and neglect may be inspected only
13 upon order of the court or as provided for in this section.

14 (7)(6) A person who knowingly or willfully makes
15 public or discloses to any unauthorized person any
16 confidential information contained in the central abuse
17 hotline is subject to the penalty provisions of s. 39.205
18 ~~415.513~~. This notice shall be prominently displayed on the
19 first sheet of any documents released pursuant to this
20 section.

21 Section 2. The provisions in s. 39.202, Florida
22 Statutes, as amended by this act, which provide an exemption
23 from public records requirements for reports and records of
24 cases of child abandonment held by the Department of Children
25 and Family Services are subject to the Open Government Sunset
26 Review Act of 1995 in accordance with s. 119.15, Florida
27 Statutes, and shall stand repealed on October 2, 2003, unless
28 reviewed and saved from repeal by reenactment of the
29 Legislature.

30 Section 3. It is a public necessity that reports and
31 records of cases of child abandonment held by the Department

1 of Children and Family Services be confidential and exempt
2 from public records requirements due to the sensitive and
3 personal nature of these records and the detrimental effect
4 that release of such personal information could have on the
5 families and children involved. Further, the disclosure of
6 such information could interfere with the department's ability
7 to carry out its duties with respect to the protection of
8 families and children.

9 Section 4. Paragraphs (a), (b), (c), and (d) of
10 subsection (7) of section 119.07, Florida Statutes, are
11 amended to read:

12 119.07 Inspection, examination, and duplication of
13 records; exemptions.--

14 (7)(a) Any person or organization, including the
15 Department of Children and Family ~~Health and Rehabilitative~~
16 Services, may petition the court for an order making public
17 the records of the Department of Children and Family ~~Health~~
18 ~~and Rehabilitative~~ Services that pertain to investigations of
19 alleged abuse, neglect, abandonment, or exploitation of a
20 child, a disabled adult, or an elderly person. The court shall
21 determine if good cause exists for public access to the
22 records sought or a portion thereof. In making this
23 determination, the court shall balance the best interest of
24 the disabled adult, elderly person, or child who is the focus
25 of the investigation, and in the case of the child, the
26 interest of that child's siblings, together with the privacy
27 right of other persons identified in the reports against the
28 public interest. The public interest in access to such records
29 is reflected in s. 119.01(1), and includes the need for
30 citizens to know of and adequately evaluate the actions of the
31 Department of Children and Family ~~Health and Rehabilitative~~

1 Services and the court system in providing disabled adults,
2 elderly persons, and children of this state with the
3 protections enumerated in ss. 39.001 and 415.101 ~~and 415.502~~.
4 However, nothing in this subsection shall contravene the
5 provisions of ss. 39.202 ~~415.51~~ and 415.107, which protect the
6 name of any person reporting the abuse, neglect, abandonment,
7 or exploitation of a child, a disabled adult, or an elderly
8 person.

9 (b)1. In cases involving the death of a disabled adult
10 or an elderly person as the result of abuse, neglect, or
11 exploitation, there shall be a presumption that the best
12 interest of the disabled adult or elderly person and the
13 public interest will be served by full public disclosure of
14 the circumstances of the investigation of the death and any
15 other investigation concerning the disabled adult or elderly
16 person.

17 2. In cases involving the death of a child as the
18 result of abuse, neglect, or abandonment, there shall be a
19 presumption that the best interest of the child and the
20 child's siblings and the public interest will be served by
21 full public disclosure of the circumstances of the
22 investigation of the death of the child and any other
23 investigation concerning the child and the child's siblings.

24 (c) In cases involving serious bodily injury to a
25 child, a disabled adult or an elderly person, the Department
26 of Children and Family ~~Health and Rehabilitative~~ Services may
27 petition the court for an order for the immediate public
28 release of records of the department which pertain to the
29 investigation of abuse, neglect, abandonment, or exploitation
30 of the child, disabled adult, or elderly person who suffered
31 serious bodily injury. The petition must be personally served

1 upon the child, disabled adult, or elderly person, the child's
2 parents or guardian, the legal guardian of that person, if
3 any, and any person named as an alleged perpetrator in the
4 report of abuse, neglect, abandonment, or exploitation. The
5 court must determine if good cause exists for the public
6 release of the records sought no later than 24 hours,
7 excluding Saturdays, Sundays, and legal holidays, from the
8 date the department filed the petition with the court. If the
9 court has neither granted nor denied the petition within the
10 24-hour time period, the department may release to the public
11 summary information including:

- 12 1. A confirmation that an investigation has been
13 conducted concerning the alleged victim.
- 14 2. The dates and brief description of procedural
15 activities undertaken during the department's investigation.
- 16 3. The date of each judicial proceeding, a summary of
17 each participant's recommendations made at the judicial
18 proceedings, and the rulings of the court.

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20 The summary information may not include the name of, or other
21 identifying information with respect to, any person identified
22 in any investigation. In making a determination to release
23 confidential information, the court shall balance the best
24 interests of the disabled adult or elderly person or child who
25 is the focus of the investigation and, in the case of the
26 child, the interests of that child's siblings, together with
27 the privacy rights of other persons identified in the reports
28 against the public interest for access to public records.
29 However, nothing in this paragraph shall contravene the
30 provisions of ss. 39.202 ~~415.51~~ and 415.107, which protect the
31 name of any person reporting abuse, neglect, abandonment, or

1 exploitation of a child, a disabled adult, or an elderly
2 person.

3 (d) In cases involving the death of a child or a
4 disabled adult or an elderly person, the Department of
5 Children and Family ~~Health and Rehabilitative~~ Services may
6 petition the court for an order for the immediate public
7 release of records of the department which pertain to the
8 investigation of abuse, neglect, abandonment, or exploitation
9 of the child, disabled adult, or elderly person who died. The
10 department must personally serve the petition upon the child's
11 parents or guardian, the legal guardian of the disabled adult
12 or elderly person, if any, and any person named as an alleged
13 perpetrator in the report of abuse, neglect, abandonment, or
14 exploitation. The court must determine if good cause exists
15 for the public release of the records sought no later than 24
16 hours, excluding Saturdays, Sundays, and legal holidays, from
17 the date the department filed the petition with the court. If
18 the court has neither granted nor denied the petition within
19 the 24-hour time period, the department may release to the
20 public summary information including:

21 1. A confirmation that an investigation has been
22 conducted concerning the alleged victim.

23 2. The dates and brief description of procedural
24 activities undertaken during the department's investigation.

25 3. The date of each judicial proceeding, a summary of
26 each participant's recommendations made at the judicial
27 proceedings, and the ruling of the court.

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29 In making a determination to release confidential information,
30 the court shall balance the best interests of the disabled
31 adult or elderly person or child who is the focus of the

1 investigation and, in the case of the child, the interest of
2 that child's siblings, together with the privacy right of
3 other persons identified in the reports against the public
4 interest. However, nothing in this paragraph shall contravene
5 the provisions of ss. 39.202 ~~415.51~~ and 415.107, which protect
6 the name of any person reporting abuse, neglect, abandonment,
7 or exploitation of a child, a disabled adult, or an elderly
8 person.

9 Section 5. This act shall take effect on the same date
10 as House Bill or similar legislation takes effect, if such
11 legislation is adopted in the same legislative session or an
12 extension thereof.

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15 HOUSE SUMMARY

16 Revises existing provisions relating to confidentiality
17 of Department of Children and Family Services reports and
18 records of child abuse and neglect cases, and transfers
19 such provisions from ch. 415 to ch. 39, F.S. Provides an
20 exemption from public records requirements for department
21 reports and records of cases of child abandonment.
22 Provides for future review and repeal. Requires certain
23 recordkeeping and preservation by the department of child
24 abuse, abandonment, and neglect cases.
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