

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1467 Access to Confidential Records of Children
SPONSOR(S): Government Efficiency & Accountability Council and Weatherford
TIED BILLS: **IDEN./SIM. BILLS:** SB 2762

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on State Affairs</u>	<u>10 Y, 0 N</u>	<u>Williamson</u>	<u>Williamson</u>
2) <u>Government Efficiency & Accountability Council</u>	<u>13 Y, 0 N, As CS</u>	<u>Williamson</u>	<u>Cooper</u>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The Department of Children and Family Services (Department) is an executive branch agency headed by a Secretary who is appointed by the Governor and confirmed by the Senate. As part of its responsibilities, the Department investigates reports of abuse, abandonment, or neglect of children and vulnerable adults.

Current law provides public record exemptions for all records held by the Department concerning reports of abandonment, abuse, or neglect of a child or vulnerable adult. This includes reports made to the central abuse hotline and all records generated because of such reports.

The bill creates requirements regarding case files for children under the supervision of or in the custody of the Department, and, at no cost, authorizes access to those files by the child or the child’s caregiver, guardian ad litem, or attorney on behalf of the child. The bill also authorizes the court to determine whether sharing information in the case file is necessary to ensure access to appropriate services or for the safety of the child.

The bill authorizes access to confidential and exempt records by community-based care lead agencies and their subcontracted providers. It also authorizes access by a person with whom placement of a child is being considered or has been granted. This includes a foster parent upon whom an approved home study has been conducted, the designee of a licensed residential group home, an approved relative or nonrelative placement, a preadoptive parent upon whom a favorable preliminary adoptive home study has been conducted, an adoptive parent, or an adoption entity acting on behalf of the child or preadoptive or adoptive parent.

Finally, the bill makes editorial and organizational changes.

The bill does not appear to create a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill creates new requirements related to the maintenance of child records.

Empower families – The bill authorizes a child to have access to his or her case file.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Public Records Law

Article I, s. 24(a) of the Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.¹

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act² provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or
- Protecting trade or business secrets.

Department of Children and Family Services

The Department of Children and Family Services (Department) is an executive branch agency headed by a Secretary who is appointed by the Governor and confirmed by the Senate.³ As part of its responsibilities, the Department investigates reports of abuse, abandonment, or neglect of children and vulnerable adults.⁴ Sensitive information regarding children, vulnerable adults, and alleged perpetrators is collected during those investigations.

Public Record Exemptions for the Department

Current law provides public record exemptions for all records held by the Department concerning reports of abandonment, abuse, or neglect of a child⁵ or vulnerable adult.⁶ This includes reports made to the central abuse hotline and all records generated because of such reports.

¹ Article I, s. 24(c) of the Florida Constitution.

² Section 119.15, F.S.

³ Section 20.19, F.S.

⁴ See chapters 39 and 415, F.S.

⁵ Section 39.202(1), F.S.

⁶ Section 415.107(1), F.S.

The exemption authorizes release of the confidential and exempt⁷ information to certain agencies and persons or under certain circumstances. For example, the Department may release such information to the Department of Health, the Agency for Persons with disabilities, county agencies responsible for carrying out: child or adult protective investigations; ongoing child or adult protective services; early intervention and prevention services; Healthy Start services; licensure or approval of adoptive homes, foster homes, or child care facilities; or services for victims of domestic violence.⁸

If a child under investigation or supervision is determined to be missing, the Department may release to the public the name of the child and the child's date of birth, a physical description of the child,⁹ and a photograph of the child.¹⁰ The law enforcement agency primarily responsible for the investigation may release any information received from the Department regarding the investigation, if it believes release is likely to assist efforts in locating the child or to promote the safety or well-being of the child.¹¹

Current law also authorizes any person or organization, including the Department, to petition the court for an order making public the records of the Department pertaining to investigations of alleged abuse, abandonment, or neglect of a child¹² or vulnerable adult.¹³ The court must determine whether good cause exists for public access. In making this determination, the court must balance the best interests of the:

- Child and that child's siblings, together with the privacy rights of other persons identified in the reports, against the public interest.¹⁴
- Vulnerable adult with the privacy right of other persons identified in the reports against the public interest.¹⁵

The law also authorizes the Department to petition¹⁶ the court for an order for the immediate public release of Department records pertaining to such investigations. The court, within 24 hours after the Department files the petition,¹⁷ must determine whether good cause exists.¹⁸ If the court determines that good cause exists for public access, the court must direct the Department to redact¹⁹ the name and other identifying information of any person identified in any protective investigation report until the court finds that there is probable cause to believe that the person identified committed an act of alleged abuse, abandonment, or neglect.²⁰

⁷ There is a difference between records that are exempt from public records requirements and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such record cannot be released by an agency to anyone other than to the persons or entities designated in the statute. See Attorney General Opinion 85-62. If a record is made simply exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances. See *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

⁸ See ss. 39.202(2)(a) and 415.107(3)(a), F.S.

⁹ The physical description includes, at a minimum, the height, weight, hair color, eye color, gender, and any identifying physical characteristics of the child.

¹⁰ Section 39.202(4)(a), F.S.

¹¹ Section 39.202(4)(c), F.S.

¹² Section 39.2021(1), F.S.

¹³ Section 415.1071(1), F.S.

¹⁴ Section 39.2021(1), F.S.

¹⁵ Section 415.1071(1), F.S.

¹⁶ In cases involving a child, the petition must be served personally upon the child, the child's parent or guardian, and any person named as an alleged perpetrator in the report of abuse, abandonment, or neglect. In cases involving a vulnerable adult, the petition must be served personally upon the vulnerable adult, the vulnerable adult's legal guardian, if any, and any person named as an alleged perpetrator in the report of abuse, neglect, or exploitation.

¹⁷ If the court does not grant or deny the petition within the 24-hour period, the Department may release to the public summary information that includes a confirmation that an investigation has been conducted concerning the alleged victim; the dates and brief description of procedural activities undertaken during the Department's investigation; and the date of each judicial proceeding, a summary of each participant's recommendations made at the judicial proceeding, and the ruling of the court. The information cannot include the name of, or other identifying information with respect to, any person identified in any investigation.

¹⁸ Section 39.2021(2), F.S.

¹⁹ Section 119.011(12), F.S., defines "redact" to mean "to conceal from a copy of an original public record, or to conceal from an electronic image that is available for public viewing, that portion of the record containing exempt or confidential information."

²⁰ Sections 39.2021(3) and 415.1071(3), F.S.

Effect of Bill

Child Case File Records

The bill requires that a case file for a child under the supervision of or in the custody of the Department be maintained in a complete and accurate manner. The case file must contain the child's case plan as required by part VIII of chapter 39, F.S., and the full name and street address of all shelters, foster parents, group homes, treatment facilities, or locations where the child is placed. At no cost, the child must be provided with a complete and accurate copy of the entire case file upon request of the child or the child's caregiver, guardian ad litem, or attorney on behalf of the child.

The bill further authorizes inspection of the case file by the child or the child's caregiver, guardian ad litem, or attorney, at no cost. A request by the attorney to inspect the file must be submitted in writing. It is unclear why a request to *inspect* the file must be made in writing but there is no written requirement for a request for a complete *copy* of the record.

The bill also authorizes the court to determine whether sharing information in the case file is necessary to ensure access to appropriate services or for the safety of the child. If such determination is made, the court may approve release of the records.

The bill authorizes the sharing of confidential and exempt records between all state and local agencies and programs providing services to children or that are responsible for the safety of the child. Bill provides that this authorization to share confidential and exempt records includes the Department, the Department of Juvenile Justice, the Department of Health, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Education, individual school districts, the Statewide Guardian Ad Litem program, and the Office of Child Abuse Prevention.

Reports and Records in Cases of Child Abuse or Neglect

Current law provides that all records held by the Department concerning reports of child abandonment, abuse, or neglect are confidential and exempt from public records requirements. It also provides for release of such records to certain entities or under certain circumstances.²¹

The bill authorizes access to the confidential and exempt records by community-based care lead agencies and their subcontracted providers. It also authorizes access by a person with whom placement of a child is being considered or has been granted. This includes:

- A foster parent upon whom an approved home study has been conducted;
- The designee of a licensed residential group home pursuant to s. 39.523, F.S.;
- An approved relative or nonrelative placement pursuant to s. 39.402(4), F.S.;
- A preadoptive parent upon whom a favorable preliminary adoptive home study has been conducted;
- An adoptive parent; or
- An adoption entity acting on behalf of the child, a preadoptive parent, or an adoptive parent.

Miscellaneous Changes

The bill authorizes the Department, the Department of Health, and the Agency for Persons with Disabilities to share with the Department of Juvenile Justice confidential or exempt information regarding a person who is or has been in a program within the jurisdiction of any of the aforementioned agencies.

Finally, the bill makes editorial and organizational changes.

²¹ See s. 39.202(2), F.S.

C. SECTION DIRECTORY:

Section 1 creates s. 39.00145, F.S., to create requirements regarding the case file of a child under the supervision or in the custody of the Department of Children and Family Services.

Section 2 amends s. 39.202, F.S., to specify who has access to a child's records.

Section 3 amends s. 39.2021, F.S., to make editorial changes.

Section 4 amends s. 402.115, F.S., to authorize the Department of Juvenile Justice to share confidential or exempt information with specified entities.

Section 5 amends s. 415.1071, F.S., to make editorial changes.

Section 6 provides an effective date of July 1, 2008.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

Committee on State Affairs

On April 2, 2008, the Committee on State Affairs adopted a strike-all amendment and reported the bill favorably with amendment. The strike-all amendment addresses several issues raised by the bill analysis.

The strike-all amendment removes from the bill provisions related to the release of a child's confidential records to a prospective adoptive parent. Removing this provision addresses concerns regarding who is deemed a "prospective" adoptive parent.

The bill authorized access to confidential records by a person with whom placement of a child is "being considered." The amendment provides that such persons include foster parents, pre-adoptive and adoptive parents, and adoption agencies considered for placement for a child.

The strike-all amendment reinstates the court petition process for access to confidential records, which was removed by the bill. Reinstating the petition process addresses the constitutional concerns raised by the bill analysis. The strike-all amendment also removes from the bill the authority of the Department Secretary to release those confidential records.

The strike-all amendment clarifies that the provisions of the bill do not apply to information concerning clients and records of certified domestic violence centers.

Finally, it removes redundant provisions related to a person's right to access records under the Public Records Act, which already are codified in chapter 119, F.S.

Government Efficiency & Accountability Council

On April 8, 2008, the Government Efficiency & Accountability Council reported HB 1467 favorably as a Council Substitute. The Council Substitute incorporates the strike-all amendment adopted by the Committee on State Affairs and two amendments to that strike-all amendment, which were adopted by the Council.

Amendment one removes from the strike-all amendment the requirement that a guardian ad litem submit a written request to inspect a child's case file. Under current law, guardians ad litem must show a copy of the court order appointing them as guardian ad litem to a child prior to receiving access to confidential or exempt information.

Amendment two further clarifies that those individuals with whom placement of a child is being considered or has been granted includes:

- A foster parent upon whom an approved home study has been conducted;
- The designee of a licensed residential group home;
- An approved relative or nonrelative placement;
- A preadoptive parent upon whom a favorable preliminary adoptive home study has been conducted;
- An adoptive parent; or
- An adoption entity acting on behalf of the child, a preadoptive parent, or an adoptive parent.