

1 A bill to be entitled
2 An act relating to access to confidential records of
3 children; creating s. 39.00145, F.S.; requiring that the
4 case file of a child under the supervision or in the
5 custody of the Department of Children and Family Services
6 be maintained in a complete and accurate manner;
7 specifying who has access to the case file and records in
8 the file; authorizing the court to directly release the
9 child's records to certain entities; providing that
10 entities that have access to confidential information
11 about a child may share it with other entities that
12 provide services benefiting children; amending s. 39.202,
13 F.S.; clarifying who has access to a child's records and
14 who may bring an action to require access to confidential
15 records held by the department; amending s. 39.2021, F.S.;
16 expanding the authority of the Department of Children and
17 Family Services to release records relating to children on
18 its own initiative upon a showing of good cause; requiring
19 notice to certain parties before release; providing for a
20 court order to stop the release; creating s. 63.038, F.S.;
21 requiring the adoption entity to provide certain
22 information relating to a child to prospective adoptive
23 parents; amending s. 402.115, F.S.; adding the Department
24 of Juvenile Justice to the list of agencies that are
25 authorized to exchange confidential information; amending
26 s. 415.107, F.S.; clarifying who may bring an action to
27 require access to confidential records held by the
28 Department of Children and Family Services; amending s.

29 415.1071, F.S.; expanding the authority of the department
 30 to release records relating to vulnerable adults on its
 31 own initiative upon a showing of good cause; requiring
 32 notice to certain parties before release; providing for a
 33 court order to stop the release; providing an effective
 34 date.

35
 36 Be It Enacted by the Legislature of the State of Florida:

37
 38 Section 1. Section 39.00145, Florida Statutes, is created
 39 to read:

40 39.00145 Child records.--

41 (1) The case file of every child under the supervision of
 42 or in the custody of the department, the department's authorized
 43 agents, or contract providers for the department, including
 44 community-based care lead agencies and their subcontracted
 45 providers, must be maintained in a complete and accurate manner,
 46 including, but not limited to, the child's case plan required by
 47 part VIII of this chapter, and the full name and street address
 48 of any and all shelters, foster parents, group homes, treatment
 49 facilities, or locations where the child is placed. The child
 50 shall be provided with a complete and accurate copy of his or
 51 her entire case file, at no cost, upon the request of the child
 52 or the child's caregiver, guardian ad litem, or attorney on
 53 behalf of the child.

54 (2) Notwithstanding any other provision in this chapter,
 55 the records in the case file shall be made available for review
 56 upon request of the child or the child's caregiver, guardian ad

HB 1467

2008

57 litem, or attorney, at no cost. A request by the child's
58 attorney or guardian ad litem must be submitted in writing.

59 (a) Release of records in the case file to the child, or
60 the child's caregiver, guardian ad litem, or attorney, does not
61 wave the confidential status of the information contained in
62 the records.

63 (b) If a child, or the child's caregiver, attorney, or
64 guardian ad litem, requests access to the child's case file, any
65 person who fails to provide records in the case file under
66 assertion of a claim of an exemption from the public-records
67 requirements of chapter 119, or who fails to provide access
68 within a reasonable time, is subject to sanctions and penalties
69 under s. 119.10.

70 (3) If a court determines that sharing information in the
71 child's case file is necessary to ensure access to appropriate
72 services or for the safety of the child, the court may approve
73 the direct release of records to the Department of Juvenile
74 Justice or its contractors under chapter 984 or chapter 985, to
75 the child's school, or to the child's physical health care,
76 mental health care, or developmental disabilities provider.
77 Information so released retains its confidential or exempt
78 status. For purposes of the Family Educational Rights and
79 Privacy Act, the disclosure of information in health and safety
80 emergencies applies to a child placed in shelter care or found
81 to be dependent under this chapter.

82 (4) Notwithstanding any other provision of law, all state
83 and local agencies and programs that provide services that
84 benefit children, from prenatal care to programs supporting

85 successful transition to self-sufficient adulthood, including
 86 the department, the Department of Juvenile Justice, the
 87 Department of Health, the Agency for Health Care Administration,
 88 the Agency for Persons with Disabilities, the Department of
 89 Education, individual school districts, the Statewide Guardian
 90 Ad Litem program, the Office of Child Abuse Prevention, and any
 91 contract provider of such agencies providing services that
 92 benefit children for such agencies, may share with each other
 93 confidential information or information that is exempt from
 94 disclosure under chapter 119 and that concerns any individual
 95 who is or has been the recipient of services within the
 96 jurisdiction of each agency or program. The department is
 97 considered a parent for the purpose of receiving and sharing
 98 education records. Confidential or exempt information shared
 99 among agencies and agency contractors, as agents for the state,
 100 remains confidential or exempt as provided by law.

101 Section 2. Subsection (1) and paragraph (a) of subsection
 102 (2) of section 39.202, Florida Statutes, are amended, paragraph
 103 (r) is added to subsection (2) of that section, and subsection
 104 (9) is added to that section, to read:

105 39.202 Confidentiality of reports and records in cases of
 106 child abuse or neglect.--

107 (1) In order to protect the rights of the child and the
 108 child's parents or other persons responsible for the child's
 109 welfare, all records held by the department concerning reports
 110 of child abandonment, abuse, or neglect, including reports made
 111 to the central abuse hotline and all records generated as a
 112 result of such reports, shall be confidential and exempt from

HB 1467

2008

113 the provisions of s. 119.07(1) and shall not be disclosed except
114 as specifically authorized by this chapter. Such exemption from
115 s. 119.07(1) applies to information in the possession of those
116 entities granted access as set forth in this section. As
117 provided in s. 39.00145, any entity granted access to records
118 under this section shall grant access to any other entity or
119 individual entitled to access under this section.

120 (2) Except as provided in subsection (4), access to such
121 records, excluding the name of the reporter which shall be
122 released only as provided in subsection (5), shall be granted
123 only to the following persons, officials, and agencies:

124 (a) Employees, authorized agents, or contract providers of
125 the department, including community-based care lead agencies and
126 their subcontracted providers, the Department of Health, the
127 Agency for Persons with Disabilities, or county agencies
128 responsible for carrying out:

- 129 1. Child or adult protective investigations;
- 130 2. Ongoing child or adult protective services;
- 131 3. Early intervention and prevention services;
- 132 4. Healthy Start services;
- 133 5. Licensure or approval of adoptive homes, foster homes,
134 child care facilities, facilities licensed under chapter 393, or
135 family day care homes or informal child care providers who
136 receive subsidized child care funding, or other homes used to
137 provide for the care and welfare of children; or
- 138 6. Services for victims of domestic violence ~~when~~ provided
139 by certified domestic violence centers working at the
140 department's request as case consultants or with shared clients.

141
 142 Also, employees or agents of the Department of Juvenile Justice
 143 responsible for the provision of services to children, pursuant
 144 to chapters 984 and 985.

145 (r) Persons with whom placement of a child is being
 146 considered or has been granted.

147 (9) Any individual, agency, or other entity entitled to
 148 access records under this section may petition a circuit court,
 149 in accordance with s. 119.11, to enforce the provisions of this
 150 section.

151 Section 3. Section 39.2021, Florida Statutes, is amended
 152 to read:

153 39.2021 Release of confidential information.--

154 (1) Any person or organization, including the department
 155 ~~of Children and Family Services~~, may petition the court for an
 156 order making public the records of the department ~~of Children~~
 157 ~~and Family Services~~ which pertain to an investigation
 158 ~~investigations~~ of alleged abuse, abandonment, or neglect of a
 159 child. The court shall determine whether there is good cause
 160 ~~exists~~ for public access to the records sought or a portion
 161 thereof.

162 (a) In making a ~~this~~ determination of good cause, the
 163 court shall balance the best interests of the child who is the
 164 focus of the investigation and the interest of the ~~that~~ child's
 165 siblings, together with the privacy rights of other persons
 166 identified in the reports, against the public interest. The
 167 public interest in access to such records is reflected in s.
 168 119.01(1), and includes the need for the public ~~citizens~~ to know

169 of and adequately evaluate the actions of the department of
 170 ~~Children and Family Services~~ and the court system in providing
 171 children of this state with the protections enumerated in s.
 172 39.001. However, this subsection does not contravene s. 39.202,
 173 which protects the name of any person reporting the abuse,
 174 abandonment, or neglect of a child.

175 ~~(2) In cases involving serious bodily injury to a child,~~
 176 ~~the Department of Children and Family Services may petition the~~
 177 ~~court for an order for the immediate public release of records~~
 178 ~~of the department which pertain to the protective investigation.~~
 179 ~~The petition must be personally served upon the child, the~~
 180 ~~child's parent or guardian, and any person named as an alleged~~
 181 ~~perpetrator in the report of abuse, abandonment, or neglect. The~~
 182 ~~court must determine whether good cause exists for the public~~
 183 ~~release of the records sought no later than 24 hours, excluding~~
 184 ~~Saturdays, Sundays, and legal holidays, after the date the~~
 185 ~~department filed the petition with the court. If the court does~~
 186 ~~not grant or deny the petition within the 24 hour time period,~~
 187 ~~the department may release to the public summary information~~
 188 ~~including:~~

189 ~~(a) A confirmation that an investigation has been~~
 190 ~~conducted concerning the alleged victim.~~

191 ~~(b) The dates and brief description of procedural~~
 192 ~~activities undertaken during the department's investigation.~~

193 ~~(c) The date of each judicial proceeding, a summary of~~
 194 ~~each participant's recommendations made at the judicial~~
 195 ~~proceeding, and the ruling of the court.~~

196

197 ~~The summary information shall not include the name of, or other~~
 198 ~~identifying information with respect to, any person identified~~
 199 ~~in any investigation. In making a determination to release~~
 200 ~~confidential information, the court shall balance the best~~
 201 ~~interests of the child who is the focus of the investigation and~~
 202 ~~the interests of that child's siblings, together with the~~
 203 ~~privacy rights of other persons identified in the reports~~
 204 ~~against the public interest for access to public records.~~
 205 ~~However, this subsection does not contravene s. 39.202, which~~
 206 ~~protects the name of any person reporting abuse, abandonment, or~~
 207 ~~neglect of a child.~~

208 ~~(b)(3)~~ If ~~When~~ the court determines that there is good
 209 cause for public access ~~exists~~, the court shall direct ~~that~~ the
 210 department to redact the name of, and other identifying
 211 information with respect to, any person identified in the any
 212 protective investigation report until ~~such time as~~ the court
 213 finds that there is probable cause to believe that the person
 214 identified committed an act of alleged abuse, abandonment, or
 215 neglect.

216 (2) Notwithstanding subsection (1), the department may
 217 make public the records of the department, or any information
 218 included in such records, which pertain to investigations of
 219 abuse, abandonment, or neglect of a child which resulted in
 220 serious mental, emotional, or physical injury to the child, if
 221 the secretary determines that release of the records is in the
 222 public interest. The public interest in access to such records
 223 is reflected in s. 119.01(1), and includes the need for the
 224 public to know of and adequately evaluate the actions of the

HB 1467

2008

225 department and the court system in providing children with the
226 protections enumerated in s. 39.001. However, this subsection
227 does not contravene s. 39.202, which protects the name of any
228 person reporting the abuse, abandonment, or neglect of a child.

229 (a) Before releasing the records, the department shall
230 make a good faith effort to notify the child, the child's
231 caregiver, the child's attorney, the guardian ad litem assigned
232 to the case, any person named as an alleged perpetrator in the
233 report of abuse, abandonment, or neglect, and any law
234 enforcement agency actively involved in investigating the
235 alleged abuse, abandonment, or neglect. Such notification must
236 take place at least 72 hours before the release of the records,
237 by hand or via overnight delivery service, with evidence of
238 delivery.

239 (b) After receiving notice, the child, the child's
240 caregiver, the child's attorney, the guardian ad litem assigned
241 to the case, any person named as an alleged perpetrator in the
242 report, and any law enforcement agency actively investigating an
243 allegation may petition a circuit court for an order preventing
244 the department from releasing the records.

245 (c) The circuit court may order the department not to
246 release the records only after finding that the best interests
247 of the petitioner outweigh the public interest. Any information
248 otherwise made confidential or exempt by law, including the name
249 of the person reporting the abuse, abandonment, or neglect, may
250 not be released pursuant to this subsection.

251 Section 4. Section 63.038, Florida Statutes, is created to
252 read:

253 63.038 Access to child's records.--At the time that a
254 prospective adoptive parent is identified for a born or unborn
255 child whose parents are seeking to place the child for adoption
256 or whose parental rights were terminated pursuant to chapter 39,
257 the prospective adoptive parent is entitled to access to the
258 child's records upon request.

259 (1) The following information shall, at a minimum and if
260 available to the adoption entity, be provided to the prospective
261 adoptive parent:

262 (a) The family social and medical history form completed
263 pursuant to s. 63.082(3).

264 (b) The biological mother's medical records documenting
265 her prenatal care and the birth and delivery of the child.

266 (c) A complete set of the child's medical records
267 documenting all medical treatment and care since the child's
268 birth.

269 (d) All mental health, psychological, and psychiatric
270 records, reports, and evaluations concerning the child.

271 (e) The child's educational records, which include all
272 records relating to any special educational needs of the child.

273 (f) Records documenting all incidents that require the
274 department to provide services to the child, including all
275 orders of adjudication of dependency or termination of parental
276 rights issued pursuant to chapter 39, any case plans drafted to
277 address the child's needs, all protective services
278 investigations identifying the child as a victim, and all
279 guardian ad litem reports filed with the court concerning the
280 child.

281 (g) Written information relating to the availability of
 282 adoption subsidies for the child.

283 (2) In all cases, the prospective adoptive parent shall
 284 receive all available information requested by the date that the
 285 final hearing on the adoption is noticed with the court.

286 (3) When providing information pursuant to this section,
 287 the adoption entity responsible for the record shall redact any
 288 identifying information concerning the child; the child's
 289 parents, siblings, and relatives; and perpetrators of crimes
 290 against the child or involving the child.

291 (4) Disclosure under this section does not waive the
 292 confidential status of the information contained in the records.

293 Section 5. Section 402.115, Florida Statutes, is amended
 294 to read:

295 402.115 Sharing confidential or exempt
 296 information.--Notwithstanding any other provision of law to the
 297 contrary, the Department of Health, the Department of Children
 298 and Family Services, the Department of Juvenile Justice, and the
 299 Agency for Persons with Disabilities may share confidential
 300 information or information exempt from disclosure under chapter
 301 119 on any individual who is or has been the subject of a
 302 program within the jurisdiction of each agency. Information so
 303 exchanged remains confidential or exempt as provided by law.

304 Section 6. Present subsections (6), (7), and (8) of
 305 section 415.107, Florida Statutes, are renumbered as subsections
 306 (7), (8), and (9), respectively, and a new subsection (6) is
 307 added to that section, to read:

308 415.107 Confidentiality of reports and records.--

309 (6) Any individual, agency, or other entity entitled to
 310 access records under this section may petition a circuit court,
 311 in accordance with s. 119.11, to enforce the provisions of this
 312 section.

313 Section 7. Section 415.1071, Florida Statutes, is amended
 314 to read:

315 415.1071 Release of confidential information.--

316 (1) Any person or organization, including the department
 317 ~~of Children and Family Services~~, may petition the court for an
 318 order making public the records of the department ~~of Children~~
 319 ~~and Family Services~~ which pertain to an investigation
 320 ~~investigations~~ of alleged abuse, neglect, or exploitation of a
 321 vulnerable adult. The court shall determine whether there is
 322 good cause ~~exists~~ for public access to the records sought or a
 323 portion thereof.

324 (a) In making a ~~this~~ determination of good cause, the
 325 court shall balance the best interests of the vulnerable adult
 326 who is the focus of the investigation together with the privacy
 327 right of other persons identified in the reports, against the
 328 public interest. The public interest in access to such records
 329 is reflected in s. 119.01(1), and includes the need for the
 330 public ~~citizens~~ to know of and adequately evaluate the actions
 331 of the department ~~of Children and Family Services~~ and the court
 332 system in providing vulnerable adults ~~of this state~~ with the
 333 protections enumerated in s. 415.101. However, this subsection
 334 does not contravene s. 415.107, which protects the name of any
 335 person reporting the abuse, neglect, or exploitation of a
 336 vulnerable adult.

HB 1467

2008

337 ~~(2) In cases involving serious bodily injury to a~~
338 ~~vulnerable adult, the Department of Children and Family Services~~
339 ~~may petition the court for an order for the immediate public~~
340 ~~release of records of the department which pertain to the~~
341 ~~protective investigation. The petition must be personally served~~
342 ~~upon the vulnerable adult, the vulnerable adult's legal~~
343 ~~guardian, if any, and any person named as an alleged perpetrator~~
344 ~~in the report of abuse, neglect, or exploitation. The court must~~
345 ~~determine whether good cause exists for the public release of~~
346 ~~the records sought no later than 24 hours, excluding Saturdays,~~
347 ~~Sundays, and legal holidays, after the date the department filed~~
348 ~~the petition with the court. If the court does not grant or deny~~
349 ~~the petition within the 24-hour time period, the department may~~
350 ~~release to the public summary information including:~~

351 ~~(a) A confirmation that an investigation has been~~
352 ~~conducted concerning the alleged victim.~~

353 ~~(b) The dates and brief description of procedural~~
354 ~~activities undertaken during the department's investigation.~~

355 ~~(c) The date of each judicial proceeding, a summary of~~
356 ~~each participant's recommendations made at the judicial~~
357 ~~proceeding, and the ruling of the court.~~

358
359 ~~The summary information shall not include the name of, or other~~
360 ~~identifying information with respect to, any person identified~~
361 ~~in any investigation. In making a determination to release~~
362 ~~confidential information, the court shall balance the best~~
363 ~~interests of the vulnerable adult who is the focus of the~~
364 ~~investigation together with the privacy rights of other persons~~

HB 1467

2008

365 ~~identified in the reports against the public interest for access~~
366 ~~to public records. However, this subsection does not contravene~~
367 ~~s. 415.107, which protects the name of any person reporting~~
368 ~~abuse, neglect, or exploitation of a vulnerable adult.~~

369 (b)(3) ~~If~~ When the court determines that there is good
370 cause for public access ~~exists~~, the court shall direct ~~that~~ the
371 department to redact the name of and other identifying
372 information with respect to any person identified in the any
373 protective investigation report until ~~such time as~~ the court
374 finds that there is probable cause to believe that the person
375 identified committed an act of alleged abuse, neglect, or
376 exploitation.

377 (2) Notwithstanding subsection (1), the department may
378 make public records of the department which pertain to
379 investigations of alleged abuse, neglect, and exploitation of a
380 vulnerable adult which resulted in serious mental, emotional, or
381 physical injury to the adult if the secretary determines that
382 release of the records is in the public interest. The public
383 interest in access to such records is reflected in s. 119.01(1),
384 and includes the need for the public to know of and adequately
385 evaluate the actions of the department and the court system in
386 providing vulnerable adults of this state with the protections
387 enumerated in s. 415.101. However, this subsection does not
388 contravene s. 415.107, which protects the name of any person
389 reporting the abuse, neglect, or exploitation of a vulnerable
390 adult.

391 (a) Before releasing the records, the department shall
392 make a good faith effort to notify the vulnerable adult, the

HB 1467

2008

393 vulnerable adult's legal guardian, if any, any person named as
394 an alleged perpetrator in the report of abuse, neglect, or
395 exploitation, and any law enforcement agency actively involved
396 in investigating the alleged abuse, neglect, or exploitation.
397 Such notification must take place at least 72 hours before the
398 release of the records, by hand or via overnight delivery
399 service, with evidence of delivery.

400 (b) After receiving notice, the vulnerable adult, the
401 vulnerable adult's legal guardian, any person named as an
402 alleged perpetrator in the report, or any law enforcement agency
403 actively investigating an allegation may petition a circuit
404 court for an order preventing the department from releasing the
405 records.

406 (c) The circuit court may order the department not to
407 release the records only after finding that the best interests
408 of the petitioner outweigh the public interest. Any information
409 otherwise made confidential or exempt by law, including the name
410 of the person reporting the abuse, neglect, or exploitation, may
411 not be released pursuant to this subsection.

412 Section 8. This act shall take effect July 1, 2008.