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CHAMBER ACTION

<u>Senate</u>	.	<u>House</u>
Comm: RCS	.	
4/22/2008	.	
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1 The Committee on Governmental Operations (Dean) recommended the  
2 following **amendment**:

3  
4 **Senate Amendment (with title amendment)**

5 Delete everything after the enacting clause  
6 and insert:

7  
8 Section 1. Section 39.00145, Florida Statutes, is created  
9 to read:

10 39.00145 Records concerning children.--

11 (1) The case file of every child under the supervision of  
12 or in the custody of the department, the department's authorized  
13 agents, or contract providers for the department, including  
14 community-based care lead agencies and their subcontracted  
15 providers, must be maintained in a complete and accurate manner.  
16 Such case file must contain the child's case plan required by  
17 part VIII of this chapter, and the full name and street address



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18 of any and all shelters, foster parents, group homes, treatment  
19 facilities, or locations where the child is placed.

20 (2) (a) Notwithstanding any other provision in this chapter,  
21 any records in a case file shall be made available for inspection  
22 without cost to the child who is the subject of the case file and  
23 the child's caregiver, guardian ad litem, or attorney. A request  
24 for inspection by the child's attorney must be submitted in  
25 writing.

26 (b) The child who is the subject of the case file and the  
27 child's caregiver, guardian ad litem, or attorney shall be  
28 provided any records in the child's case file or a complete and  
29 accurate copy of the child's case file, at no cost, upon the  
30 request of that child or the child's caregiver, guardian ad  
31 litem, or attorney on behalf of the child.

32 (c) The department shall release the information in a  
33 manner and setting that is appropriate to the age and maturity of  
34 the child and the nature of the information being released which  
35 may include the release of such information in a therapeutic  
36 setting, if appropriate. This paragraph does not deny the child  
37 access to his or her records.

38 (3) If a court determines that sharing information in the  
39 child's case file is necessary to ensure access to appropriate  
40 services for the child or for the safety of the child, the court  
41 may approve the release of confidential records or information  
42 contained in them. Any such information retains its confidential  
43 or exempt status.

44 (4) The placement of a child in shelter care or a finding  
45 that a child is dependent pursuant to this chapter is a health  
46 and safety emergency for the purpose of disclosure of records  
47 under the Family Educational Rights and Privacy Act.



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48       (5) (a) Notwithstanding any other provision of law, all  
49 state and local agencies and programs that provide services to  
50 children or that are responsible for a child's safety, including  
51 the Department of Juvenile Justice, the Department of Health, the  
52 Agency for Health Care Administration, the Agency for Persons  
53 with Disabilities, the Department of Education, individual school  
54 districts, the Statewide Guardian Ad Litem Office, and any  
55 contract provider of such agencies, may share with each other  
56 confidential records or information that is confidential or  
57 exempt from disclosure under chapter 119 if the records or  
58 information are reasonably necessary to ensure access to  
59 appropriate services for the child or for the safety of the  
60 child.

61       (b) Records or information made confidential by federal law  
62 may not be shared under this subsection.

63       (c) This subsection does not apply to information  
64 concerning clients and records of certified domestic violence  
65 centers which are confidential under s. 39.908 and privileged  
66 under s. 90.5036.

67       Section 2. Subsection (1), paragraph (a) of subsection (2),  
68 and subsection (7) of section 39.202, Florida Statutes, are  
69 amended, paragraph (r) is added to subsection (2) of that  
70 section, and subsection (9) is added to that section, to read:

71       39.202 Confidentiality of reports and records in cases of  
72 child abuse or neglect.--

73       (1) In order to protect the rights of the child and the  
74 child's parents or other persons responsible for the child's  
75 welfare, all records held by the department concerning reports of  
76 child abandonment, abuse, or neglect, including reports made to  
77 the central abuse hotline and all records generated as a result



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78 of such reports, shall be confidential and exempt from the  
79 provisions of s. 119.07(1) and shall not be disclosed except as  
80 specifically authorized by this chapter. Such exemption from s.  
81 119.07(1) applies to information in the possession of those  
82 entities granted access as set forth in this section. As provided  
83 in s. 39.00145, any entity granted access to records under this  
84 section shall grant access to any other entity or individual  
85 entitled to access under this section.

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

90 (a) Employees, authorized agents, or contract providers of  
91 the department, including community-based care lead agencies and  
92 their subcontracted providers, the Department of Health, the  
93 Agency for Persons with Disabilities, or county agencies  
94 responsible for carrying out:

- 95 1. Child or adult protective investigations;
- 96 2. Ongoing child or adult protective services;
- 97 3. Early intervention and prevention services;
- 98 4. Healthy Start services;
- 99 5. Licensure or approval of adoptive homes, foster homes,  
100 child care facilities, facilities licensed under chapter 393, or  
101 family day care homes or informal child care providers who  
102 receive subsidized child care funding, or other homes used to  
103 provide for the care and welfare of children; or
- 104 6. Services for victims of domestic violence ~~when~~ provided  
105 by certified domestic violence centers working at the  
106 department's request as case consultants or with shared clients.

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108 Also, employees or agents of the Department of Juvenile Justice  
109 responsible for the provision of services to children, pursuant  
110 to chapters 984 and 985.

111 (r) Persons with whom the department is seeking to place  
112 the child or with whom placement has been granted, including, but  
113 not limited to, foster parents for whom an approved home study  
114 has been conducted; the designee of a licensed residential group  
115 home under s. 39.523; an approved relative or nonrelative  
116 placement pursuant to s. 39.402(4); or preadoptive parents for  
117 whom a favorable preliminary adoptive home study has been  
118 conducted, adoptive parents, or an adoptive entity acting on  
119 behalf of preadoptive parents or adoptive parents.

120 (7) The department shall make and keep reports and records  
121 of all cases under this chapter relating to child abuse,  
122 abandonment, and neglect and shall preserve the records  
123 pertaining to a child and family until 7 years after ~~the last~~  
124 ~~entry was made or until~~ the child is 18 years of age after which  
125 time the department, whichever date is first reached, and may  
126 ~~then~~ destroy the records. Department records required by this  
127 chapter relating to child abuse, abandonment, and neglect may be  
128 inspected only upon order of the court or as provided for in this  
129 section.

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

134 Section 3. Section 39.2021, Florida Statutes, is amended to  
135 read:

136 39.2021 Release of confidential information.--



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137           (1) (a) Any person or organization, including the department  
138 ~~of Children and Family Services~~, may petition the court for an  
139 order making public the records of the department ~~of Children and~~  
140 ~~Family Services~~ which pertain to an investigation ~~investigations~~  
141 of alleged abuse, abandonment, or neglect of a child. The court  
142 shall determine whether there is good cause ~~exists~~ for public  
143 access to the records sought or a portion thereof.

144           (b) In making a ~~this~~ determination of good cause, the court  
145 shall balance the best interests of the child who is the focus of  
146 the investigation and the interest of the ~~that~~ child's siblings,  
147 together with the privacy rights of other persons identified in  
148 the reports, against the public interest. The public interest in  
149 access to such records is reflected in s. 119.01(1), and includes  
150 the need for the public ~~citizens~~ to know of and adequately  
151 evaluate the actions of the department ~~of Children and Family~~  
152 ~~Services~~ and the court system in providing children ~~of this state~~  
153 with the protections enumerated in s. 39.001. However, this  
154 subsection does not contravene s. 39.202, which protects the name  
155 of any person reporting the abuse, abandonment, or neglect of a  
156 child.

157           (2) (a) In cases involving serious bodily injury to a child,  
158 the department ~~of Children and Family Services~~ may petition the  
159 court for an order for the immediate public release of records of  
160 the department which pertain to the protective investigation. The  
161 petition must be personally served upon the child, the child's  
162 parent or guardian, and any person named as an alleged  
163 perpetrator in the report of abuse, abandonment, or neglect. The  
164 court must determine whether good cause exists for the public  
165 release of the records sought no later than 24 hours, excluding  
166 Saturdays, Sundays, and legal holidays, after the date the



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167 | department filed the petition with the court. If the court does  
168 | not grant or deny the petition within the 24-hour time period,  
169 | the department may release to the public summary information  
170 | including:

171 |     ~~1.(a)~~ A confirmation that an investigation has been  
172 | conducted concerning the alleged victim.

173 |     ~~2.(b)~~ The dates and brief description of procedural  
174 | activities undertaken during the department's investigation.

175 |     ~~3.(c)~~ The date of each judicial proceeding, a summary of  
176 | each participant's recommendations made at the judicial  
177 | proceeding, and the ruling of the court.

178 |     (b) The summary information shall not include the name of,  
179 | or other identifying information with respect to, any person  
180 | identified in any investigation. In making a determination to  
181 | release confidential information, the court shall balance the  
182 | best interests of the child who is the focus of the investigation  
183 | and the interests of that child's siblings, together with the  
184 | privacy rights of other persons identified in the reports against  
185 | the public interest for access to public records. However, this  
186 | subsection does not contravene s. 39.202, which protects the name  
187 | of any person reporting abuse, abandonment, or neglect of a  
188 | child.

189 |     (3) ~~If when~~ the court determines that there is good cause  
190 | for public access ~~exists~~, the court shall direct ~~that~~ the  
191 | department to redact the name of, and other identifying  
192 | information with respect to, any person identified in the any  
193 | protective investigation report until ~~such time as~~ the court  
194 | finds that there is probable cause to believe that the person  
195 | identified committed an act of alleged abuse, abandonment, or  
196 | neglect.



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197       (4) Notwithstanding subsections (1) and (2), the secretary  
198 may make public any records of the department which pertain to an  
199 investigation of alleged abuse, abandonment, or neglect of a  
200 child which resulted in serious mental, emotional, or physical  
201 injury to the child, or any information included in such records,  
202 if the secretary determines that the release of the records is in  
203 the public interest; however, this section does not contravene s.  
204 39.202, which protects the name of any person reporting abuse,  
205 abandonment, or neglect of a child. The public interest in access  
206 to such records is reflected in s. 119.01(1) and includes the  
207 need for the public to know and adequately evaluate the actions  
208 of the department and the court system in providing children with  
209 the protections enumerated in s. 39.001.

210       (a) In making a determination that the release of the  
211 records is in the public interest, the secretary shall balance  
212 the best interests of the child who is the focus of the  
213 investigation and the interest of the child's siblings, together  
214 with the privacy rights of other persons identified in the  
215 reports, against the public interest.

216       (b) Before the records are made public, the secretary must  
217 state in writing and with specificity the basis for the  
218 determination that the release of the records is in the public  
219 interest.

220       (c) If the secretary determines that release of the records  
221 is in the public interest, the department shall redact the name  
222 of, and any other identifying information with respect to, any  
223 person identified in the report of abuse, abandonment, or neglect  
224 until the court finds that there is probable cause to believe the  
225 person identified committed an act of alleged abuse, abandonment,  
226 or neglect.





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227        (d) Before releasing the records, the department shall make  
228 a good faith effort to notify the child named in the records, the  
229 child's caregiver if the child is under the age of 18, the  
230 child's attorney, the guardian ad litem assigned to the case, any  
231 person named as an alleged perpetrator in the report of abuse,  
232 abandonment, or neglect, and any law enforcement agency actively  
233 involved in investigating the alleged abuse, abandonment, or  
234 neglect. Such notification must take place at least 3 business  
235 days before the release of the records, by hand or via overnight  
236 delivery service, with evidence of delivery.

237        (e) After receiving notice, the child, the child's  
238 caregiver, the child's attorney, the guardian ad litem assigned  
239 to the case, any person named as an alleged perpetrator in the  
240 report, and any law enforcement agency actively investigating an  
241 allegation may petition a circuit court for an order preventing  
242 the department from releasing the records. If the department is  
243 provided actual or constructive notice by the child, or his her  
244 representative, the alleged perpetrator or his or her  
245 representative, or any law enforcement agency actively  
246 investigating an allegation of an intent to file a petition for  
247 an order preventing the release of such records, the department  
248 may not release the records until the court has denied the  
249 petition. If the department is notified that there is an intent  
250 to file a petition and such petition is not filed within 10  
251 business days after such notification, the department may release  
252 the records thereafter.

253        (f) The circuit court may order the department not to  
254 release the records only after finding that the best interests of  
255 the child who is the focus of the investigation and the interest  
256 of the child's siblings, together with the privacy rights of



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257 other persons identified in the reports, are outweighed by the  
258 public interest. If the petition is filed by a law enforcement  
259 agency actively involved in an investigation, the court shall  
260 also weigh the interest of the law enforcement agency in  
261 maintaining the confidentiality of those records while the  
262 investigation is active.

263 Section 4. Section 402.115, Florida Statutes, is amended to  
264 read:

265 402.115 Sharing confidential or exempt  
266 information.--Notwithstanding any other provision of law to the  
267 contrary, the Department of Health, the Department of Children  
268 and Family Services, the Department of Juvenile Justice, and the  
269 Agency for Persons with Disabilities may share confidential  
270 information or information exempt from disclosure under chapter  
271 119 on any individual who is or has been the subject of a program  
272 within the jurisdiction of each agency. Information so exchanged  
273 remains confidential or exempt as provided by law.

274 Section 5. Present subsections (6), (7), and (8) of section  
275 415.107, Florida Statutes, are redesignated as subsections (7),  
276 (8), and (9), respectively, and a new subsection (6) is added to  
277 that section, to read:

278 415.107 Confidentiality of reports and records.--

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

283 Section 6. Section 415.1071, Florida Statutes, is amended  
284 to read:

285 415.1071 Release of confidential information.--



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286 (1) Any person or organization, including the department of  
287 ~~Children and Family Services~~, may petition the court for an order  
288 making public the records of the department of ~~Children and~~  
289 ~~Family Services~~ which pertain to an investigation ~~investigations~~  
290 of alleged abuse, neglect, or exploitation of a vulnerable adult.  
291 The court shall determine whether there is good cause ~~exists~~ for  
292 public access to the records sought or a portion thereof.

293 (b) In making a this determination of good cause, the court  
294 shall balance the best interests of the vulnerable adult who is  
295 the focus of the investigation together with the privacy right of  
296 other persons identified in the reports against the public  
297 interest. The public interest in access to such records is  
298 reflected in s. 119.01(1), and includes the need for the public  
299 ~~citizens~~ to know of and adequately evaluate the actions of the  
300 department of ~~Children and Family Services~~ and the court system  
301 in providing vulnerable adults of ~~this state~~ with the protections  
302 enumerated in s. 415.101. However, this subsection does not  
303 contravene s. 415.107, which protects the name of any person  
304 reporting the abuse, neglect, or exploitation of a vulnerable  
305 adult.

306 (2) (a) In cases involving serious bodily injury to a  
307 vulnerable adult, the department of ~~Children and Family Services~~  
308 may petition the court for an order for the immediate public  
309 release of records of the department which pertain to the  
310 protective investigation. The petition must be personally served  
311 upon the vulnerable adult, the vulnerable adult's legal guardian,  
312 if any, and any person named as an alleged perpetrator in the  
313 report of abuse, neglect, or exploitation. The court must  
314 determine whether good cause exists for the public release of the  
315 records sought no later than 24 hours, excluding Saturdays,



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316 Sundays, and legal holidays, after the date the department filed  
317 the petition with the court. If the court does not grant or deny  
318 the petition within the 24-hour time period, the department may  
319 release to the public summary information including:

320 1.~~(a)~~ A confirmation that an investigation has been  
321 conducted concerning the alleged victim.

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

324 3.~~(c)~~ The date of each judicial proceeding, a summary of  
325 each participant's recommendations made at the judicial  
326 proceeding, and the ruling of the court.

327 (b) The summary information shall not include the name of,  
328 or other identifying information with respect to, any person  
329 identified in any investigation. In making a determination to  
330 release confidential information, the court shall balance the  
331 best interests of the vulnerable adult who is the focus of the  
332 investigation together with the privacy rights of other persons  
333 identified in the reports against the public interest for access  
334 to public records. However, this subsection does not contravene  
335 s. 415.107, which protects the name of any person reporting  
336 abuse, neglect, or exploitation of a vulnerable adult.

337 (3) If ~~When~~ the court determines that there is good cause  
338 for public access ~~exists~~, the court shall direct ~~that~~ the  
339 department to redact the name of and other identifying  
340 information with respect to any person identified in the ~~any~~  
341 protective investigation report until ~~such time as~~ the court  
342 finds that there is probable cause to believe that the person  
343 identified committed an act of alleged abuse, neglect, or  
344 exploitation.



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345       (4) Notwithstanding subsections (1) and (2), the secretary  
346 may make public any records of the department which pertain to an  
347 investigation of alleged abuse, neglect, or exploitation of a  
348 vulnerable adult which resulted in serious mental, emotional, or  
349 physical injury to the adult, or any information included in such  
350 records, if the secretary determines that the release of the  
351 records is in the public interest. The public interest in access  
352 to such records is reflected in s. 119.01(1) and includes the  
353 need for the public to know and adequately evaluate the actions  
354 of the department and the court system in providing vulnerable  
355 adults with the protections enumerated in s. 415.101. However,  
356 this subsection does not contravene s. 415.107, which protects  
357 the name of any person reporting the abuse, neglect, or  
358 exploitation of a vulnerable adult.

359       (a) In making a determination that the release of the  
360 records is in the public interest, the secretary shall balance  
361 the best interests of the vulnerable adult who is the focus of  
362 the investigation, together with the privacy rights of other  
363 persons identified in the reports, against the public interest.

364       (b) Before the records are made public, the secretary must  
365 state in writing and with specificity the basis for the  
366 determination that the release of the records is in the public  
367 interest.

368       (c) If the secretary determines that release of the records  
369 is in the public interest, the department shall redact the name  
370 of, and any other identifying information with respect to, any  
371 person identified in the report of abuse, neglect, or  
372 exploitation until the court finds that there is probable cause  
373 to believe the person identified committed an act of alleged  
374 abuse, neglect, or exploitation.



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375       (d) Before releasing the records, the department shall make  
376 a good faith effort to notify the vulnerable adult, the  
377 vulnerable adult's guardian, if any, the vulnerable adult's  
378 attorney, any person named as an alleged perpetrator in the  
379 report of abuse, neglect, or exploitation, and any law  
380 enforcement agency actively involved in investigating the alleged  
381 abuse, neglect, or exploitation. Such notification must take  
382 place at least 3 business days before the release of the records,  
383 by hand or via overnight delivery service, with evidence of  
384 delivery.

385       (e) After receiving notice, the vulnerable adult, the  
386 vulnerable adult's guardian, if any, the vulnerable adult's  
387 attorney, any person named as an alleged perpetrator in the  
388 report, and any law enforcement agency actively investigating an  
389 allegation may petition a circuit court for an order preventing  
390 the department from releasing the records. If the department is  
391 provided actual or constructive notice by the vulnerable adult,  
392 or his her representative, the alleged perpetrator or his or her  
393 representative, or any law enforcement agency actively  
394 investigating an allegation of an intent to file a petition for  
395 an order preventing the release of such records, the department  
396 may not release the records until the court has denied the  
397 petition. If the department is notified that there is an intent  
398 to file a petition and such petition is not filed within 10  
399 business days after such notification, the department may release  
400 the records thereafter.

401       (f) The circuit court may order the department not to  
402 release the records only after finding that the best interests of  
403 the petitioner outweigh the public interest. The public interest  
404 in access to such records is reflected in s. 119.01(1), and



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405 includes the need for the public to know and adequately evaluate  
406 the actions of the department and the court system in providing  
407 vulnerable adults with the protections enumerated in s. 415.101.

408 Section 7. This act shall take effect July 1, 2008.

409  
410 ===== T I T L E A M E N D M E N T =====

411 And the title is amended as follows:

412 Delete everything before the enacting clause  
413 and insert:

414 A bill to be entitled

415 An act relating to confidential records of children;  
416 creating s. 39.00145, F.S.; requiring that the case file  
417 of a child under the supervision or in the custody of the  
418 Department of Children and Family Services be maintained  
419 in a complete and accurate manner; specifying who has  
420 access to the case file and the records in the file;  
421 authorizing the court to directly release the child's  
422 records to certain entities; requiring that the department  
423 release information in a manner and setting that is  
424 appropriate to the child's age and maturity and the nature  
425 of the information; providing that certain entities may  
426 share confidential information about a child with other  
427 entities that provide services benefiting children;  
428 amending s. 39.202, F.S.; clarifying who has access to a  
429 child's records and who may bring an action to require  
430 access to confidential records held by the department;  
431 revising provisions relating to the amount of time the  
432 department is required to make and keep such records;  
433 amending s. 39.2021, F.S.; expanding the department's  
434 authority to release records relating to children on its



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435 | own initiative upon a showing of good cause; requiring  
436 | notice to certain parties before such release; providing  
437 | for a court order to stop such release; amending s.  
438 | 402.115, F.S.; adding the Department of Juvenile Justice  
439 | to the list of agencies that are authorized to exchange  
440 | confidential information; amending s. 415.107, F.S.;  
441 | clarifying who may bring an action to require access to  
442 | confidential records held by the Department of Children  
443 | and Family Services; amending s. 415.1071, F.S.; expanding  
444 | the department's authority to release records relating to  
445 | vulnerable adults on its own initiative upon a showing of  
446 | good cause; requiring notice to certain parties before  
447 | such release; providing for a court order to stop such  
448 | release; providing an effective date.