

By Senator Dockery

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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

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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 her
51 entire case file, at no cost, upon the request of the child or
52 the child's caregiver, guardian ad litem, or attorney on behalf
53 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
57 litem, or attorney, at no cost. A request by the child's attorney
58 or guardian ad litem must be submitted in writing.

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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 waive the confidential status of the information contained in the
62 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 Privacy
79 Act, the disclosure of information in health and safety
80 emergencies applies to a child placed in shelter care or found to
81 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 the
86 department, the Department of Juvenile Justice, the Department of
87 Health, the Agency for Health Care Administration, the Agency for

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88 Persons with Disabilities, the Department of Education,
89 individual school districts, the Statewide Guardian Ad Litem
90 program, the Office of Child Abuse Prevention, and any contract
91 provider of such agencies providing services that benefit
92 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 who
95 is or has been the recipient of services within the jurisdiction
96 of each agency or program. The department is considered a parent
97 for the purpose of receiving and sharing education records.
98 Confidential or exempt information shared among agencies and
99 agency contractors, as agents for the state, remains confidential
100 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 of
110 child abandonment, abuse, or neglect, including reports made to
111 the central abuse hotline and all records generated as a result
112 of such reports, shall be confidential and exempt from the
113 provisions of s. 119.07(1) and shall not be disclosed except as
114 specifically authorized by this chapter. Such exemption from s.
115 119.07(1) applies to information in the possession of those
116 entities granted access as set forth in this section. As provided

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117 in s. 39.00145, any entity granted access to records under this
118 section shall grant access to any other entity or individual
119 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.

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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 to
152 read:

153 39.2021 Release of confidential information.--

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

161 (a) In making a ~~this~~ determination of good cause, the court
162 shall balance the best interests of the child who is the focus of
163 the investigation and the interest of the ~~that~~ child's siblings,
164 together with the privacy rights of other persons identified in
165 the reports, against the public interest. The public interest in
166 access to such records is reflected in s. 119.01(1), and includes
167 the need for the public ~~citizens~~ to know of and adequately
168 evaluate the actions of the department ~~of Children and Family~~
169 ~~Services~~ and the court system in providing children ~~of this state~~
170 with the protections enumerated in s. 39.001. However, this
171 subsection does not contravene s. 39.202, which protects the name
172 of any person reporting the abuse, abandonment, or neglect of a
173 child.

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

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

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

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

195
196 ~~The summary information shall not include the name of, or other~~
197 ~~identifying information with respect to, any person identified in~~
198 ~~any investigation. In making a determination to release~~
199 ~~confidential information, the court shall balance the best~~
200 ~~interests of the child who is the focus of the investigation and~~
201 ~~the interests of that child's siblings, together with the privacy~~
202 ~~rights of other persons identified in the reports against the~~

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203 ~~public interest for access to public records. However, this~~
204 ~~subsection does not contravene s. 39.202, which protects the name~~
205 ~~of any person reporting abuse, abandonment, or neglect of a~~
206 ~~child.~~

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

215 (2) Notwithstanding subsection (1), the department may make
216 public the records of the department, or any information included
217 in such records, which pertain to investigations of abuse,
218 abandonment, or neglect of a child which resulted in serious
219 mental, emotional, or physical injury to the child, if the
220 secretary determines that release of the records is in the public
221 interest. The public interest in access to such records is
222 reflected in s. 119.01(1), and includes the need for the public
223 to know of and adequately evaluate the actions of the department
224 and the court system in providing children with the protections
225 enumerated in s. 39.001. However, this subsection does not
226 contravene s. 39.202, which protects the name of any person
227 reporting the abuse, abandonment, or neglect of a child.

228 (a) Before releasing the records, the department shall make
229 a good faith effort to notify the child, the child's caregiver,
230 the child's attorney, the guardian ad litem assigned to the case,
231 any person named as an alleged perpetrator in the report of

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232 abuse, abandonment, or neglect, and any law enforcement agency
233 actively involved in investigating the alleged abuse,
234 abandonment, or neglect. Such notification must take place at
235 least 72 hours before the release of the records, by hand or via
236 overnight delivery service, with evidence of delivery.

237 (b) 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.

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

249 Section 4. Section 63.038, Florida Statutes, is created to
250 read:

251 63.038 Access to child's records.--At the time that a
252 prospective adoptive parent is identified for a born or unborn
253 child whose parents are seeking to place the child for adoption
254 or whose parental rights were terminated pursuant to chapter 39,
255 the prospective adoptive parent is entitled to access to the
256 child's records upon request.

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

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

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

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

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

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

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

278 (g) Written information relating to the availability of
279 adoption subsidies for the child.

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

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

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

290 Section 5. Section 402.115, Florida Statutes, is amended to
291 read:

292 402.115 Sharing confidential or exempt
293 information.--Notwithstanding any other provision of law to the
294 contrary, the Department of Health, the Department of Children
295 and Family Services, the Department of Juvenile Justice, and the
296 Agency for Persons with Disabilities may share confidential
297 information or information exempt from disclosure under chapter
298 119 on any individual who is or has been the subject of a program
299 within the jurisdiction of each agency. Information so exchanged
300 remains confidential or exempt as provided by law.

301 Section 6. Present subsections (6), (7), and (8) of section
302 415.107, Florida Statutes, are renumbered as subsections (7),
303 (8), and (9), respectively, and a new subsection (6) is added to
304 that section, to read:

305 415.107 Confidentiality of reports and records.--

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

310 Section 7. Section 415.1071, Florida Statutes, is amended
311 to read:

312 415.1071 Release of confidential information.--

313 (1) Any person or organization, including the department ~~of~~
314 ~~Children and Family Services,~~ may petition the court for an order
315 making public the records of the department ~~of Children and~~
316 ~~Family Services~~ which pertain to an investigation ~~investigations~~

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317 of alleged abuse, neglect, or exploitation of a vulnerable adult.
318 The court shall determine whether there is good cause ~~exists~~ for
319 public access to the records sought or a portion thereof.

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

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

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345 ~~the petition within the 24-hour time period, the department may~~
346 ~~release to the public summary information including:~~

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

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

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

354

355 ~~The summary information shall not include the name of, or other~~
356 ~~identifying information with respect to, any person identified in~~
357 ~~any investigation. In making a determination to release~~
358 ~~confidential information, the court shall balance the best~~
359 ~~interests of the vulnerable adult who is the focus of the~~
360 ~~investigation together with the privacy rights of other persons~~
361 ~~identified in the reports against the public interest for access~~
362 ~~to public records. However, this subsection does not contravene~~
363 ~~s. 415.107, which protects the name of any person reporting~~
364 ~~abuse, neglect, or exploitation of a vulnerable adult.~~

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

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

386 (a) Before releasing the records, the department shall make
387 a good faith effort to notify the vulnerable adult, the
388 vulnerable adult's legal guardian, if any, any person named as an
389 alleged perpetrator in the report of abuse, neglect, or
390 exploitation, and any law enforcement agency actively involved in
391 investigating the alleged abuse, neglect, or exploitation. Such
392 notification must take place at least 72 hours before the release
393 of the records, by hand or via overnight delivery service, with
394 evidence of delivery.

395 (b) After receiving notice, the vulnerable adult, the
396 vulnerable adult's legal guardian, any person named as an alleged
397 perpetrator in the report, or any law enforcement agency actively
398 investigating an allegation may petition a circuit court for an
399 order preventing the department from releasing the records.

400 (c) The circuit court may order the department not to
401 release the records only after finding that the best interests of

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402 the petitioner outweigh the public interest. Any information
403 otherwise made confidential or exempt by law, including the name
404 of the person reporting the abuse, neglect, or exploitation, may
405 not be released pursuant to this subsection.

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