

By the Committee on Children, Families, and Elder Affairs; and
Senator Dockery

586-06448-08

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1 A bill to be entitled

2 An act relating to confidential records of children;
3 creating s. 39.00145, F.S.; requiring that the case file
4 of a child under the supervision or in the custody of the
5 Department of Children and Family Services be maintained
6 in a complete and accurate manner; specifying who has
7 access to the case file and records in the file;
8 authorizing the court to directly release the child's
9 records to certain entities; providing that entities that
10 have access to confidential information about a child may
11 share it with other entities that provide services
12 benefiting children; amending s. 39.202, F.S.; clarifying
13 who has access to a child's records and who may bring an
14 action to require access to confidential records held by
15 the department; amending s. 39.2021, F.S.; expanding the
16 authority of the Department of Children and Family
17 Services to release records relating to children on its
18 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; amending s. 402.115,
21 F.S.; adding the Department of Juvenile Justice to the
22 list of agencies that are authorized to exchange
23 confidential information; amending s. 415.107, F.S.;
24 clarifying who may bring an action to require access to
25 confidential records held by the Department of Children
26 and Family Services; amending s. 415.1071, F.S.; expanding
27 the authority of the department to release records
28 relating to vulnerable adults on its own initiative upon a
29 showing of good cause; requiring notice to certain parties

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30 before release; providing for a court order to stop the
31 release; providing an effective date.

32
33 Be It Enacted by the Legislature of the State of Florida:

34
35 Section 1. Section 39.00145, Florida Statutes, is created
36 to read:

37 39.00145 Records concerning children.--

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

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) The release of records in the case file to the child's
60 caregiver or guardian ad litem does not waive the confidential
61 status of the information contained in the records.

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

69 (3) If a court determines that sharing information in the
70 child's case file is necessary to ensure access to appropriate
71 services or for the safety of the child, the court may approve
72 the release of confidential records or information contained in
73 them. Information so released retains its confidential or exempt
74 status. For purposes of the Family Educational Rights and Privacy
75 Act, the disclosure of information in health and safety
76 emergencies applies to a child placed in shelter care or found to
77 be dependent under this chapter.

78 (4) Notwithstanding any other provision of law, all state
79 and local agencies and programs that provide services to
80 children, or are responsible for a child's safety, including the
81 Department of Juvenile Justice, the Department of Health, the
82 Agency for Health Care Administration, the Agency for Persons
83 with Disabilities, the Department of Education, individual school
84 districts, the Statewide Guardian Ad Litem Office, and any
85 contract provider of such agencies, may share with each other
86 confidential records or information that is confidential and
87 exempt from disclosure under chapter 119 if the records or

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88 information are reasonably necessary to assure access to
89 appropriate services or for the safety of the child. Confidential
90 or exempt information shared among agencies and agency
91 contractors, as agents for the state, remains confidential or
92 exempt as provided by law. Any records or information otherwise
93 made confidential by federal law may not be released under this
94 section. This subsection does not apply to information concerning
95 clients and records of certified domestic violence centers which
96 are confidential under s. 39.908 and privileged under s. 90.5036.

97 Section 2. Subsection (1) and paragraph (a) of subsection
98 (2) of section 39.202, Florida Statutes, are amended, paragraph
99 (r) is added to subsection (2) of that section, and subsection
100 (9) is added to that section, to read:

101 39.202 Confidentiality of reports and records in cases of
102 child abuse or neglect.--

103 (1) In order to protect the rights of the child and the
104 child's parents or other persons responsible for the child's
105 welfare, all records held by the department concerning reports of
106 child abandonment, abuse, or neglect, including reports made to
107 the central abuse hotline and all records generated as a result
108 of such reports, shall be confidential and exempt from the
109 provisions of s. 119.07(1) and shall not be disclosed except as
110 specifically authorized by this chapter. Such exemption from s.
111 119.07(1) applies to information in the possession of those
112 entities granted access as set forth in this section. As provided
113 in s. 39.00145, any entity granted access to records under this
114 section shall grant access to any other entity or individual
115 entitled to access under this section.

116 (2) Except as provided in subsection (4), access to such

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117 records, excluding the name of the reporter which shall be
118 released only as provided in subsection (5), shall be granted
119 only to the following persons, officials, and agencies:

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

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

137
138 Also, employees or agents of the Department of Juvenile Justice
139 responsible for the provision of services to children, pursuant
140 to chapters 984 and 985.

141 (r) Persons with whom placement of a child is being
142 considered or has been granted, including, but not limited to,
143 foster parents, preadoptive and adoptive parents, or an adoptive
144 entity acting on their behalf.

145 (9) Any individual, agency, or other entity entitled to

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146 access records under this section may petition a circuit court,
147 in accordance with s. 119.11, to enforce the provisions of this
148 section.

149 Section 3. Section 39.2021, Florida Statutes, is amended to
150 read:

151 39.2021 Release of confidential information.--

152 (1) Any person or organization, including the department ~~of~~
153 ~~Children and Family Services~~, may petition the court for an order
154 making public the records of the department ~~of Children and~~
155 ~~Family Services~~ which pertain to an investigation ~~investigations~~
156 of alleged abuse, abandonment, or neglect of a child. The court
157 shall determine whether there is good cause ~~exists~~ for public
158 access to the records sought or a portion thereof. In making a
159 ~~this~~ determination of good cause, the court shall balance the
160 best interests of the child who is the focus of the investigation
161 and the interest of the ~~that~~ child's siblings, together with the
162 privacy rights of other persons identified in the reports,
163 against the public interest. The public interest in access to
164 such records is reflected in s. 119.01(1), and includes the need
165 for the public ~~citizens~~ to know of and adequately evaluate the
166 actions of the department ~~of Children and Family Services~~ and the
167 court system in providing children ~~of this state~~ with the
168 protections enumerated in s. 39.001. However, this subsection
169 does not contravene s. 39.202, which protects the name of any
170 person reporting the abuse, abandonment, or neglect of a child.

171 (2) In cases involving serious bodily injury to a child,
172 the department ~~of Children and Family Services~~ may petition the
173 court for an order for the immediate public release of records of
174 the department which pertain to the protective investigation. The

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175 petition must be personally served upon the child, the child's
176 parent or guardian, and any person named as an alleged
177 perpetrator in the report of abuse, abandonment, or neglect. The
178 court must determine whether good cause exists for the public
179 release of the records sought no later than 24 hours, excluding
180 Saturdays, Sundays, and legal holidays, after the date the
181 department filed the petition with the court. If the court does
182 not grant or deny the petition within the 24-hour time period,
183 the department may release to the public summary information
184 including:

185 (a) A confirmation that an investigation has been conducted
186 concerning the alleged victim.

187 (b) The dates and brief description of procedural
188 activities undertaken during the department's investigation.

189 (c) The date of each judicial proceeding, a summary of each
190 participant's recommendations made at the judicial proceeding,
191 and the ruling of the court.

192
193 The summary information shall not include the name of, or other
194 identifying information with respect to, any person identified in
195 any investigation. In making a determination to release
196 confidential information, the court shall balance the best
197 interests of the child who is the focus of the investigation and
198 the interests of that child's siblings, together with the privacy
199 rights of other persons identified in the reports against the
200 public interest for access to public records. However, this
201 subsection does not contravene s. 39.202, which protects the name
202 of any person reporting abuse, abandonment, or neglect of a
203 child.

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

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

227 (a) Before releasing the records, the department shall
228 attempt to notify the child, the child's caregiver, the child's
229 attorney, the guardian ad litem assigned to the case, any person
230 named as an alleged perpetrator in the report of abuse,
231 abandonment, or neglect, and any law enforcement agency actively
232 involved in investigating the alleged abuse, abandonment, or

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233 neglect. Such notification must take place at least 3 business
234 days before the release of the records, by hand or via overnight
235 delivery service, with evidence of delivery.

236 (b) After receiving notice, the child, the child's
237 caregiver, the child's attorney, the guardian ad litem assigned
238 to the case, any person named as an alleged perpetrator in the
239 report, and any law enforcement agency actively investigating an
240 allegation may petition a circuit court for an order preventing
241 the department from releasing the records. If notified of a
242 petition filed under this paragraph, the department may not
243 release the records without a court order.

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

250 Section 4. Section 402.115, Florida Statutes, is amended to
251 read:

252 402.115 Sharing confidential or exempt
253 information.--Notwithstanding any other provision of law to the
254 contrary, the Department of Health, the Department of Children
255 and Family Services, the Department of Juvenile Justice, and the
256 Agency for Persons with Disabilities may share confidential
257 information or information exempt from disclosure under chapter
258 119 on any individual who is or has been the subject of a program
259 within the jurisdiction of each agency. Information so exchanged
260 remains confidential or exempt as provided by law.

261 Section 5. Present subsections (6), (7), and (8) of section

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262 415.107, Florida Statutes, are renumbered as subsections (7),
263 (8), and (9), respectively, and a new subsection (6) is added to
264 that section, to read:

265 415.107 Confidentiality of reports and records.--

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

270 Section 6. Section 415.1071, Florida Statutes, is amended
271 to read:

272 415.1071 Release of confidential information.--

273 (1) Any person or organization, including the department ~~of~~
274 ~~Children and Family Services~~, may petition the court for an order
275 making public the records of the department ~~of Children and~~
276 ~~Family Services~~ which pertain to an investigation ~~investigations~~
277 of alleged abuse, neglect, or exploitation of a vulnerable adult.
278 The court shall determine whether there is good cause ~~exists~~ for
279 public access to the records sought or a portion thereof. In
280 making a this ~~this~~ determination of good cause, the court shall
281 balance the best interests of the vulnerable adult who is the
282 focus of the investigation together with the privacy right of
283 other persons identified in the reports, against the public
284 interest. The public interest in access to such records is
285 reflected in s. 119.01(1), and includes the need for the public
286 ~~citizens~~ to know of and adequately evaluate the actions of the
287 department ~~of Children and Family Services~~ and the court system
288 in providing vulnerable adults ~~of this state~~ with the protections
289 enumerated in s. 415.101. However, this subsection does not
290 contravene s. 415.107, which protects the name of any person

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291 reporting the abuse, neglect, or exploitation of a vulnerable
292 adult.

293 (2) In cases involving serious bodily injury to a
294 vulnerable adult, the department ~~of Children and Family Services~~
295 may petition the court for an order for the immediate public
296 release of records of the department which pertain to the
297 protective investigation. The petition must be personally served
298 upon the vulnerable adult, the vulnerable adult's legal guardian,
299 if any, and any person named as an alleged perpetrator in the
300 report of abuse, neglect, or exploitation. The court must
301 determine whether good cause exists for the public release of the
302 records sought no later than 24 hours, excluding Saturdays,
303 Sundays, and legal holidays, after the date the department filed
304 the petition with the court. If the court does not grant or deny
305 the petition within the 24-hour time period, the department may
306 release to the public summary information including:

307 (a) A confirmation that an investigation has been conducted
308 concerning the alleged victim.

309 (b) The dates and brief description of procedural
310 activities undertaken during the department's investigation.

311 (c) The date of each judicial proceeding, a summary of each
312 participant's recommendations made at the judicial proceeding,
313 and the ruling of the court.

314

315 The summary information shall not include the name of, or other
316 identifying information with respect to, any person identified in
317 any investigation. In making a determination to release
318 confidential information, the court shall balance the best
319 interests of the vulnerable adult who is the focus of the

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320 investigation together with the privacy rights of other persons
321 identified in the reports against the public interest for access
322 to public records. However, this subsection does not contravene
323 s. 415.107, which protects the name of any person reporting
324 abuse, neglect, or exploitation of a vulnerable adult.

325 (3) ~~If when~~ the court determines that there is good cause
326 for public access ~~exists~~, the court shall direct ~~that~~ the
327 department to redact the name of and other identifying
328 information with respect to any person identified in the any
329 protective investigation report until ~~such time as~~ the court
330 finds that there is probable cause to believe that the person
331 identified committed an act of alleged abuse, neglect, or
332 exploitation.

333 (4) Notwithstanding subsections (1) and (2), the department
334 may make public records of the department which pertain to
335 investigations of alleged abuse, neglect, and exploitation of a
336 vulnerable adult which resulted in serious mental, emotional, or
337 physical injury to the adult if the secretary determines that
338 release of the records is in the public interest and the public
339 interest outweighs any privacy interest contained in the records.
340 The public interest in access to such records is reflected in s.
341 119.01(1), and includes the need for the public to know of and
342 adequately evaluate the actions of the department and the court
343 system in providing vulnerable adults of this state with the
344 protections enumerated in s. 415.101. However, this subsection
345 does not contravene s. 415.107, which protects the name of any
346 person reporting the abuse, neglect, or exploitation of a
347 vulnerable adult.

348 (a) Before releasing the records, the department shall

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349 attempt to notify the vulnerable adult, the vulnerable adult's
350 legal guardian, if any, any person named as an alleged
351 perpetrator in the report of abuse, neglect, or exploitation, and
352 any law enforcement agency actively involved in investigating the
353 alleged abuse, neglect, or exploitation. Such notification must
354 take place at least 3 business days before releasing the records,
355 which must be delivered by hand or via overnight delivery service
356 with evidence of delivery.

357 (b) After receiving notice, the vulnerable adult, the
358 vulnerable adult's legal guardian, any person named as an alleged
359 perpetrator in the report, or any law enforcement agency actively
360 investigating an allegation may petition a circuit court for an
361 order preventing the department from releasing the records. If
362 notified of a petition filed pursuant to this paragraph, the
363 department may not release the records without a court order.

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

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