

By the Committees on Judiciary; Children, Families, and Elder Affairs; and Senators Dockery and Lynn

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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 actively considered or has been granted, including foster parents  
143 for whom an approved home study has been conducted; the designee  
144 of a licensed residential group home under s. 39.523; an approved  
145 relative or nonrelative placement pursuant to s. 39.402(4); or

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146 preadoptive parents for whom a favorable preliminary adoptive  
147 home study has been conducted, adoptive parents, or an adoptive  
148 entity acting on behalf of preadoptive parents or adoptive  
149 parents.

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

154 Section 3. Section 39.2021, Florida Statutes, is amended to  
155 read:

156 39.2021 Release of confidential information.--

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

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175 | person reporting the abuse, abandonment, or neglect of a child.

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

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

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

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

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

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204 rights of other persons identified in the reports against the  
205 public interest for access to public records. However, this  
206 subsection does not contravene s. 39.202, which protects the name  
207 of any person reporting abuse, abandonment, or neglect of a  
208 child.

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

217 (4) Notwithstanding subsections (1) and (2), the secretary  
218 may make public the records of the department which pertain to an  
219 investigation of alleged abuse, abandonment, or neglect of a  
220 child which resulted in serious mental, emotional, or physical  
221 injury to the child, or any information included in such records,  
222 if the secretary determines that the release of the records is in  
223 the public interest.

224 (a) In making a determination of the public interest, the  
225 secretary shall balance the best interests of the child who is  
226 the focus of the investigation and the interest of the child's  
227 siblings, together with the privacy rights of other persons  
228 identified in the reports, against the public interest. The  
229 public interest in access to such records is reflected in s.  
230 119.01(1) and includes the need for the public to know and  
231 adequately evaluate the actions of the department and the court  
232 system in providing children with the protections enumerated in



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233 s. 39.001. However, this subsection does not contravene s.  
234 39.202, which protects the name of any person reporting the  
235 abuse, abandonment, or neglect of a child.

236 (b) Before the records are made public, the secretary must  
237 state in writing and with specificity the basis for the  
238 determination of public interest.

239 (c) If the secretary determines that release of the records  
240 is in the public interest, the department shall redact the name  
241 of, and any other identifying information with respect to, any  
242 person identified in the report of abuse, abandonment, or neglect  
243 until the court finds that there is probable cause to believe the  
244 person identified committed an act of alleged abuse, abandonment,  
245 or neglect.

246 (d) Before releasing the records, the department shall make  
247 a good faith effort to notify the child, the child's caregiver,  
248 the child's attorney, the guardian ad litem assigned to the case,  
249 any person named as an alleged perpetrator in the report of  
250 abuse, abandonment, or neglect, and any law enforcement agency  
251 actively involved in investigating the alleged abuse,  
252 abandonment, or neglect. Such notification must take place at  
253 least 3 business days before the release of the records, by hand  
254 or via overnight delivery service, with evidence of delivery.

255 (e) After receiving notice, the child, the child's  
256 caregiver, the child's attorney, the guardian ad litem assigned  
257 to the case, any person named as an alleged perpetrator in the  
258 report, and any law enforcement agency actively investigating an  
259 allegation may petition a circuit court for an order preventing  
260 the department from releasing the records.

261 (f) The circuit court may order the department not to

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262 release the records only after finding that the best interests of  
263 the petitioner outweigh the public interest. The public interest  
264 in access to such records is reflected in s. 119.01(1), and  
265 includes the need for the public to know and adequately evaluate  
266 the actions of the department and the court system in providing  
267 children with the protections enumerated in s. 39.001.

268 Section 4. Section 402.115, Florida Statutes, is amended to  
269 read:

270 402.115 Sharing confidential or exempt  
271 information.--Notwithstanding any other provision of law to the  
272 contrary, the Department of Health, the Department of Children  
273 and Family Services, the Department of Juvenile Justice, and the  
274 Agency for Persons with Disabilities may share confidential  
275 information or information exempt from disclosure under chapter  
276 119 on any individual who is or has been the subject of a program  
277 within the jurisdiction of each agency. Information so exchanged  
278 remains confidential or exempt as provided by law.

279 Section 5. Present subsections (6), (7), and (8) of section  
280 415.107, Florida Statutes, are renumbered as subsections (7),  
281 (8), and (9), respectively, and a new subsection (6) is added to  
282 that section, to read:

283 415.107 Confidentiality of reports and records.--

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

288 Section 6. Section 415.1071, Florida Statutes, is amended  
289 to read:

290 415.1071 Release of confidential information.--

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291 (1) Any person or organization, including the department of  
292 ~~Children and Family Services~~, may petition the court for an order  
293 making public the records of the department of ~~Children and~~  
294 ~~Family Services~~ which pertain to an investigation ~~investigations~~  
295 of alleged abuse, neglect, or exploitation of a vulnerable adult.  
296 The court shall determine whether there is good cause ~~exists~~ for  
297 public access to the records sought or a portion thereof. In  
298 making a ~~this~~ determination of good cause, the court shall  
299 balance the best interests of the vulnerable adult who is the  
300 focus of the investigation together with the privacy right of  
301 other persons identified in the reports, against the public  
302 interest. The public interest in access to such records is  
303 reflected in s. 119.01(1), and includes the need for the public  
304 ~~citizens~~ to know of and adequately evaluate the actions of the  
305 department of ~~Children and Family Services~~ and the court system  
306 in providing vulnerable adults of ~~this state~~ with the protections  
307 enumerated in s. 415.101. However, this subsection does not  
308 contravene s. 415.107, which protects the name of any person  
309 reporting the abuse, neglect, or exploitation of a vulnerable  
310 adult.

311 (2) In cases involving serious bodily injury to a  
312 vulnerable adult, the department of ~~Children and Family Services~~  
313 may petition the court for an order for the immediate public  
314 release of records of the department which pertain to the  
315 protective investigation. The petition must be personally served  
316 upon the vulnerable adult, the vulnerable adult's legal guardian,  
317 if any, and any person named as an alleged perpetrator in the  
318 report of abuse, neglect, or exploitation. The court must  
319 determine whether good cause exists for the public release of the

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320 records sought no later than 24 hours, excluding Saturdays,  
321 Sundays, and legal holidays, after the date the department filed  
322 the petition with the court. If the court does not grant or deny  
323 the petition within the 24-hour time period, the department may  
324 release to the public summary information including:

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

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

329 (c) The date of each judicial proceeding, a summary of each  
330 participant's recommendations made at the judicial proceeding,  
331 and the ruling of the court.

332

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

343 (3) If ~~When~~ the court determines that there is good cause  
344 for public access ~~exists~~, the court shall direct ~~that~~ the  
345 department to redact the name of and other identifying  
346 information with respect to any person identified in the any  
347 protective investigation report until ~~such time as~~ the court  
348 finds that there is probable cause to believe that the person

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349 identified committed an act of alleged abuse, neglect, or  
350 exploitation.

351 (4) Notwithstanding subsections (1) and (2), the secretary  
352 may make public the records of the department which pertain to an  
353 investigation of alleged abuse, neglect, or exploitation of a  
354 vulnerable adult which resulted in serious mental, emotional, or  
355 physical injury to the adult, or any information included in such  
356 records, if the secretary determines that the release of the  
357 records is in the public interest.

358 (a) In making a determination of the public interest, the  
359 secretary shall balance the best interests of the vulnerable  
360 adult who is the focus of the investigation, together with the  
361 privacy rights of other persons identified in the reports,  
362 against the public interest. The public interest in access to  
363 such records is reflected in s. 119.01(1) and includes the need  
364 for the public to know and adequately evaluate the actions of the  
365 department and the court system in providing vulnerable adults  
366 with the protections enumerated in s. 415.101. However, this  
367 subsection does not contravene s. 415.107, which protects the  
368 name of any person reporting the abuse, neglect, or exploitation  
369 of a vulnerable adult.

370 (b) Before the records are made public, the secretary must  
371 state in writing and with specificity the basis for the  
372 determination of public interest.

373 (c) If the secretary determines that release of the records  
374 is in the public interest, the department shall redact the name  
375 of, and any other identifying information with respect to, any  
376 person identified in the report of abuse, neglect, or  
377 exploitation until the court finds that there is probable cause

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378 to believe the person identified committed an act of alleged  
379 abuse, neglect, or exploitation.

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

390 (e) After receiving notice, the vulnerable adult, the  
391 vulnerable adult's guardian, if any, the vulnerable adult's  
392 attorney, any person named as an alleged perpetrator in the  
393 report, and any law enforcement agency actively investigating an  
394 allegation may petition a circuit court for an order preventing  
395 the department from releasing the records.

396 (f) The circuit court may order the department not to  
397 release the records only after finding that the best interests of  
398 the petitioner outweigh the public interest. The public interest  
399 in access to such records is reflected in s. 119.01(1), and  
400 includes the need for the public to know and adequately evaluate  
401 the actions of the department and the court system in providing  
402 vulnerable adults with the protections enumerated in s. 415.101.

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