

By the Committees on Governmental Operations; 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 the records in the file;
8 authorizing the court to directly release the child's
9 records to certain entities; requiring that the department
10 release information in a manner and setting that is
11 appropriate to the child's age and maturity and the nature
12 of the information; providing that certain entities may
13 share confidential information about a child with other
14 entities that provide services benefiting children;
15 amending s. 39.202, F.S.; clarifying who has access to a
16 child's records and who may bring an action to require
17 access to confidential records held by the department;
18 revising provisions relating to the amount of time the
19 department is required to make and keep such records;
20 amending s. 39.2021, F.S.; expanding the department's
21 authority to release records relating to children on its
22 own initiative upon a showing of good cause; requiring
23 notice to certain parties before such release; providing
24 for a court order to stop such release; amending s.
25 402.115, F.S.; adding the Department of Juvenile Justice
26 to the list of agencies that are authorized to exchange
27 confidential information; amending s. 415.107, F.S.;
28 clarifying who may bring an action to require access to
29 confidential records held by the Department of Children

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

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

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

41 39.00145 Records concerning children.--

42 (1) The case file of every child under the supervision of
43 or in the custody of the department, the department's authorized
44 agents, or contract providers for the department, including
45 community-based care lead agencies and their subcontracted
46 providers, must be maintained in a complete and accurate manner.
47 Such case file must contain the child's case plan required by
48 part VIII of this chapter, and the full name and street address
49 of any and all shelters, foster parents, group homes, treatment
50 facilities, or locations where the child is placed.

51 (2) (a) Notwithstanding any other provision in this chapter,
52 any records in a case file shall be made available for inspection
53 without cost to the child who is the subject of the case file and
54 the child's caregiver, guardian ad litem, or attorney. A request
55 for inspection by the child's attorney must be submitted in
56 writing.

57 (b) The child who is the subject of the case file and the
58 child's caregiver, guardian ad litem, or attorney shall be

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59 provided any records in the child's case file or a complete and
60 accurate copy of the child's case file, at no cost, upon the
61 request of that child or the child's caregiver, guardian ad
62 litem, or attorney on behalf of the child.

63 (c) The department shall release the information in a
64 manner and setting that is appropriate to the age and maturity of
65 the child and the nature of the information being released which
66 may include the release of such information in a therapeutic
67 setting, if appropriate. This paragraph does not deny the child
68 access to his or her records.

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 for the child or for the safety of the child, the court
72 may approve the release of confidential records or information
73 contained in them. Any such information retains its confidential
74 or exempt status.

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

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

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88 exempt from disclosure under chapter 119 if the records or
89 information are reasonably necessary to ensure access to
90 appropriate services for the child or for the safety of the
91 child.

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

94 (c) This subsection does not apply to information
95 concerning clients and records of certified domestic violence
96 centers which are confidential under s. 39.908 and privileged
97 under s. 90.5036.

98 Section 2. Subsection (1), paragraph (a) of subsection (2),
99 and subsection (7) of section 39.202, Florida Statutes, are
100 amended, paragraph (r) is added to subsection (2) of that
101 section, and subsection (9) is added to that section, to read:

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

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

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

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

- 126 1. Child or adult protective investigations;
- 127 2. Ongoing child or adult protective services;
- 128 3. Early intervention and prevention services;
- 129 4. Healthy Start services;

130 5. Licensure or approval of adoptive homes, foster homes,
131 child care facilities, facilities licensed under chapter 393, or
132 family day care homes or informal child care providers who
133 receive subsidized child care funding, or other homes used to
134 provide for the care and welfare of children; or

135 6. Services for victims of domestic violence ~~when~~ provided
136 by certified domestic violence centers working at the
137 department's request as case consultants or with shared clients.

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

142 (r) Persons with whom the department is seeking to place
143 the child or with whom placement has been granted, including, but
144 not limited to, foster parents for whom an approved home study
145 has been conducted; the designee of a licensed residential group

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146 home under s. 39.523; an approved relative or nonrelative
147 placement pursuant to s. 39.402(4); or preadoptive parents for
148 whom a favorable preliminary adoptive home study has been
149 conducted, adoptive parents, or an adoptive entity acting on
150 behalf of preadoptive parents or adoptive parents.

151 (7) The department shall make and keep reports and records
152 of all cases under this chapter relating to child abuse,
153 abandonment, and neglect and shall preserve the records
154 pertaining to a child and family until 7 years after ~~the last~~
155 ~~entry was made or until~~ the child is 18 years of age after which
156 time the department, whichever date is first reached, and may
157 ~~then~~ destroy the records. Department records required by this
158 chapter relating to child abuse, abandonment, and neglect may be
159 inspected only upon order of the court or as provided for in this
160 section.

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

165 Section 3. Section 39.2021, Florida Statutes, is amended to
166 read:

167 39.2021 Release of confidential information.--

168 (1) (a) Any person or organization, including the department
169 ~~of Children and Family Services~~, may petition the court for an
170 order making public the records of the department ~~of Children and~~
171 ~~Family Services~~ which pertain to an investigation ~~investigations~~
172 of alleged abuse, abandonment, or neglect of a child. The court
173 shall determine whether there is good cause ~~exists~~ for public
174 access to the records sought or a portion thereof.

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175 (b) In making a ~~this~~ determination of good cause, the court
176 shall balance the best interests of the child who is the focus of
177 the investigation and the interest of the ~~that~~ child's siblings,
178 together with the privacy rights of other persons identified in
179 the reports, against the public interest. The public interest in
180 access to such records is reflected in s. 119.01(1), and includes
181 the need for the public ~~citizens~~ to know of and adequately
182 evaluate the actions of the department ~~of Children and Family~~
183 ~~Services~~ and the court system in providing children ~~of this state~~
184 with the protections enumerated in s. 39.001. However, this
185 subsection does not contravene s. 39.202, which protects the name
186 of any person reporting the abuse, abandonment, or neglect of a
187 child.

188 (2)(a) In cases involving serious bodily injury to a child,
189 the department ~~of Children and Family Services~~ may petition the
190 court for an order for the immediate public release of records of
191 the department which pertain to the protective investigation. The
192 petition must be personally served upon the child, the child's
193 parent or guardian, and any person named as an alleged
194 perpetrator in the report of abuse, abandonment, or neglect. The
195 court must determine whether good cause exists for the public
196 release of the records sought no later than 24 hours, excluding
197 Saturdays, Sundays, and legal holidays, after the date the
198 department filed the petition with the court. If the court does
199 not grant or deny the petition within the 24-hour time period,
200 the department may release to the public summary information
201 including:

202 1.(a) A confirmation that an investigation has been
203 conducted concerning the alleged victim.

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

206 3.~~(e)~~ The date of each judicial proceeding, a summary of
207 each participant's recommendations made at the judicial
208 proceeding, and the ruling of the court.

209 (b) The summary information shall not include the name of,
210 or other identifying information with respect to, any person
211 identified in any investigation. In making a determination to
212 release confidential information, the court shall balance the
213 best interests of the child who is the focus of the investigation
214 and the interests of that child's siblings, together with the
215 privacy rights of other persons identified in the reports against
216 the public interest for access to public records. However, this
217 subsection does not contravene s. 39.202, which protects the name
218 of any person reporting abuse, abandonment, or neglect of a
219 child.

220 (3) If ~~When~~ the court determines that there is good cause
221 for public access ~~exists~~, the court shall direct ~~that~~ the
222 department to redact the name of, and other identifying
223 information with respect to, any person identified in the ~~any~~
224 protective investigation report until ~~such time as~~ the court
225 finds that there is probable cause to believe that the person
226 identified committed an act of alleged abuse, abandonment, or
227 neglect.

228 (4) Notwithstanding subsections (1) and (2), the secretary
229 may make public any records of the department which pertain to an
230 investigation of alleged abuse, abandonment, or neglect of a
231 child which resulted in serious mental, emotional, or physical
232 injury to the child, or any information included in such records,

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233 if the secretary determines that the release of the records is in
234 the public interest; however, this section does not contravene s.
235 39.202, which protects the name of any person reporting abuse,
236 abandonment, or neglect of a child. The public interest in access
237 to such records is reflected in s. 119.01(1) and includes the
238 need for the public to know and adequately evaluate the actions
239 of the department and the court system in providing children with
240 the protections enumerated in s. 39.001.

241 (a) In making a determination that the release of the
242 records is in the public interest, the secretary shall balance
243 the best interests of the child who is the focus of the
244 investigation and the interest of the child's siblings, together
245 with the privacy rights of other persons identified in the
246 reports, against the public interest.

247 (b) Before the records are made public, the secretary must
248 state in writing and with specificity the basis for the
249 determination that the release of the records is in the public
250 interest.

251 (c) If the secretary determines that release of the records
252 is in the public interest, the department shall redact the name
253 of, and any other identifying information with respect to, any
254 person identified in the report of abuse, abandonment, or neglect
255 until the court finds that there is probable cause to believe the
256 person identified committed an act of alleged abuse, abandonment,
257 or neglect.

258 (d) Before releasing the records, the department shall make
259 a good faith effort to notify the child named in the records, the
260 child's caregiver if the child is under the age of 18, the
261 child's attorney, the guardian ad litem assigned to the case, any

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262 person named as an alleged perpetrator in the report of abuse,
263 abandonment, or neglect, and any law enforcement agency actively
264 involved in investigating the alleged abuse, abandonment, or
265 neglect. Such notification must take place at least 3 business
266 days before the release of the records, by hand or via overnight
267 delivery service, with evidence of delivery.

268 (e) After receiving notice, the child, the child's
269 caregiver, the child's attorney, the guardian ad litem assigned
270 to the case, any person named as an alleged perpetrator in the
271 report, and any law enforcement agency actively investigating an
272 allegation may petition a circuit court for an order preventing
273 the department from releasing the records. If the department is
274 provided actual or constructive notice by the child, or his her
275 representative, the alleged perpetrator or his or her
276 representative, or any law enforcement agency actively
277 investigating an allegation of an intent to file a petition for
278 an order preventing the release of such records, the department
279 may not release the records until the court has denied the
280 petition. If the department is notified that there is an intent
281 to file a petition and such petition is not filed within 10
282 business days after such notification, the department may release
283 the records thereafter.

284 (f) The circuit court may order the department not to
285 release the records only after finding that the best interests of
286 the child who is the focus of the investigation and the interest
287 of the child's siblings, together with the privacy rights of
288 other persons identified in the reports, are outweighed by the
289 public interest. If the petition is filed by a law enforcement
290 agency actively involved in an investigation, the court shall

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291 also weigh the interest of the law enforcement agency in
292 maintaining the confidentiality of those records while the
293 investigation is active.

294 Section 4. Section 402.115, Florida Statutes, is amended to
295 read:

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

305 Section 5. Present subsections (6), (7), and (8) of section
306 415.107, Florida Statutes, are redesignated as subsections (7),
307 (8), and (9), respectively, and a new subsection (6) is added to
308 that section, to read:

309 415.107 Confidentiality of reports and records.--

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

314 Section 6. Section 415.1071, Florida Statutes, is amended
315 to read:

316 415.1071 Release of confidential information.--

317 (1) Any person or organization, including the department ~~of~~
318 ~~Children and Family Services,~~ may petition the court for an order
319 making public the records of the department ~~of Children and~~

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320 ~~Family Services~~ which pertain to an investigation ~~investigations~~
321 of alleged abuse, neglect, or exploitation of a vulnerable adult.
322 The court shall determine whether there is good cause ~~exists~~ for
323 public access to the records sought or a portion thereof.

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

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

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349 | the petition within the 24-hour time period, the department may
350 | release to the public summary information including:

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

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

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

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

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

376 | (4) Notwithstanding subsections (1) and (2), the secretary
377 | may make public any records of the department which pertain to an

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

390 (a) In making a determination that the release of the
391 records is in the public interest, the secretary shall balance
392 the best interests of the vulnerable adult who is the focus of
393 the investigation, together with the privacy rights of other
394 persons identified in the reports, against the public interest.

395 (b) Before the records are made public, the secretary must
396 state in writing and with specificity the basis for the
397 determination that the release of the records is in the public
398 interest.

399 (c) If the secretary determines that release of the records
400 is in the public interest, the department shall redact the name
401 of, and any other identifying information with respect to, any
402 person identified in the report of abuse, neglect, or
403 exploitation until the court finds that there is probable cause
404 to believe the person identified committed an act of alleged
405 abuse, neglect, or exploitation.

406 (d) Before releasing the records, the department shall make

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407 a good faith effort to notify the vulnerable adult, the
408 vulnerable adult's guardian, if any, the vulnerable adult's
409 attorney, any person named as an alleged perpetrator in the
410 report of abuse, neglect, or exploitation, and any law
411 enforcement agency actively involved in investigating the alleged
412 abuse, neglect, or exploitation. Such notification must take
413 place at least 3 business days before the release of the records,
414 by hand or via overnight delivery service, with evidence of
415 delivery.

416 (e) After receiving notice, the vulnerable adult, the
417 vulnerable adult's guardian, if any, the vulnerable adult's
418 attorney, any person named as an alleged perpetrator in the
419 report, and any law enforcement agency actively investigating an
420 allegation may petition a circuit court for an order preventing
421 the department from releasing the records. If the department is
422 provided actual or constructive notice by the vulnerable adult,
423 or his her representative, the alleged perpetrator or his or her
424 representative, or any law enforcement agency actively
425 investigating an allegation of an intent to file a petition for
426 an order preventing the release of such records, the department
427 may not release the records until the court has denied the
428 petition. If the department is notified that there is an intent
429 to file a petition and such petition is not filed within 10
430 business days after such notification, the department may release
431 the records thereafter.

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

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

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