

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1439
SPONSOR(S): Nehr and others
TIED BILLS:

Confidential Records of Children and Vulnerable Adults

IDEN./SIM. BILLS: SB 126

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Health Care Services Policy Committee		Preston	Schoolfield
2)	Governmental Affairs Policy Committee			
3)	Civil Justice & Courts Policy Committee			
4)	Health & Family Services Policy Council			
5)				

SUMMARY ANALYSIS

One of the responsibilities of the Department of Children and Family Services (DCF or department) is to investigate reports of abuse, abandonment, or neglect of children and abuse, neglect, and exploitation of vulnerable adults. Current law provides public record exemptions for all records held by the department concerning these reports. This includes reports made to the central abuse hotline and all records generated because of such reports.

The bill makes a number of change related to the records of children under the supervision of or in the custody of the department, including, but not limited to:

- Specifying minimum information that must be contained in a case file;
- Authorizing access to or provision of records in the case file at no cost to the child or the child’s caregiver, guardian ad litem, or attorney on behalf of the child;
- Authorizing the court to determine whether sharing information in the case file is necessary to ensure access to appropriate services or for the safety of the child and approving the release of that information; and
- Providing exceptions for certain specified records.

The bill also clarifies which information in those records is confidential and exempt and which entities may have access to that information. The bill grants authority to the secretary of the department to release records related to a case that is already in the public domain with redaction of the identity of the child unless the name of the child is also in the public domain or the child is reasonably identifiable from information in the public domain.

The bill also clarifies which information in records relating to the abuse, neglect, or exploitation of a vulnerable adult is confidential and exempt and which entities may have access to that information. The bill grants authority to the secretary of the department to release records related to a case that is already in the public domain with redaction of the identity of the victim unless the name of the victim is also in the public domain or the victim is reasonably identifiable from information in the public domain.

The bill does not appear to create a fiscal impact on state or local governments.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Public Records Law

Article I, s. 24(a) of the Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Article I, s. 24(a) of the Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.¹

Public policy regarding access to government records is further addressed in the Florida Statutes. Section 119.07(1), Florida Statutes, also guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act² provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes:

- Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or
- Protecting trade or business secrets.

¹ Article I, s. 24(c) of the Florida Constitution.

² Section 119.15, Florida Statutes.

Public Records and Exemptions for Department of Children and Family Services

As part of its responsibilities, the department investigates reports of abuse, abandonment, or neglect of children and abuse, neglect, or exploitation of vulnerable adults.³ Sensitive information relating to children, vulnerable adults, and alleged perpetrators is collected during those investigations. Current law provides public record exemptions for all records held by the department concerning reports of abandonment, abuse, or neglect of a child⁴ or vulnerable adult.⁵ This includes reports made to the central abuse hotline and all records generated as a result of such reports.

The exemption authorizes release of the confidential and exempt⁶ information to certain agencies and persons or under certain circumstances. For example, in cases relating to children the department may release such information to the Department of Health, the Agency for Persons with Disabilities, county agencies responsible for carrying out: child or adult protective investigations; ongoing child or adult protective services; early intervention and prevention services; Healthy Start services; licensure or approval of adoptive homes, foster homes, or child care facilities; or services for victims of domestic violence.⁷

Information in cases relating to adults may be released to employees or agents of the department, the Agency for Persons with Disabilities, the Agency for Health Care Administration, or the Department of Elderly Affairs who are responsible for carrying out protective investigations, ongoing protective services, or licensure or approval of nursing homes, assisted living facilities, adult day care centers, adult family-care homes, home care for the elderly, hospices, residential facilities licensed under chapter 393, or other facilities used for the placement of vulnerable adults.

If a child under investigation or supervision is determined to be missing, the department may release to the public the name of the child and the child's date of birth, a physical description of the child,⁸ and a photograph of the child. The law enforcement agency primarily responsible for the investigation may release any information received from the department regarding the investigation, if it believes release is likely to assist efforts in locating the child or to promote the safety or well-being of the child.⁹

Current law also authorizes any person or organization, including the department, to petition the court for an order making public the records of the department pertaining to investigations of alleged abuse, abandonment, or neglect of a child¹⁰ or vulnerable adult.¹¹ The court must determine whether good cause exists for public access. In making this determination, the court must balance the best interests of the:

- Child and that child's siblings, together with the privacy rights of other persons identified in the reports, against the public interest.¹²
- Vulnerable adult together with the privacy right of other persons identified in the reports against the public interest.¹³

³ See chapters 39 and 415, Florida Statutes.

⁴ See s. 39.202(1), Florida Statutes.

⁵ See s. 415.107(1), Florida Statutes.

⁶ There is a difference between records that are exempt from public records requirements and those that are confidential and exempt. If the Legislature makes a record confidential and exempt, such record cannot be released by an agency to anyone other than to the persons or entities designated in the statute. See Attorney General Opinion 85-62. If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances. See *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

⁷ See ss. 39.202(2)(a) and 415.107(3)(a), Florida Statutes.

⁸ The physical description includes, at a minimum, the height, weight, hair color, eye color, gender, and any identifying physical characteristics of the child.

⁹ See s.39.202(4)(c), Florida Statutes.

¹⁰ See s. 39.2021(1), Florida Statutes.

¹¹ See s. 415.1071(1), Florida Statutes.

¹² See s. 39.2021(1), Florida Statutes.

¹³ See s. 415.1071(1), Florida Statutes.

The law also authorizes the department to petition¹⁴ the court for an order for the immediate public release of department records pertaining to such investigations. The court, within 24 hours after the department files the petition,¹⁵ must determine whether good cause exists.¹⁶ If the court determines that good cause exists for public access, the court must direct the department to redact¹⁷ the name and other identifying information of any person identified in any protective investigation report until the court finds that there is probable cause to believe that the person identified committed an act of alleged abuse, abandonment, or neglect.¹⁸

THE BILL:

- Requires that a case file for a child under the supervision of or in the custody of DCF be maintained in a complete and accurate manner; specifies the information the file is to contain; requires that the child and others must be allowed to inspect or receive a copy of the file at no cost; requires a request to inspect the file by the child's attorney be submitted in writing; requires the release of information to a child to be in a manner and setting age appropriate to the child; and provides relief under certain circumstances.
- Authorizes the court to determine whether sharing information in the case file is necessary to ensure access to appropriate services or for the safety of the child. If such determination is made, the court may approve release of the records but such information retains its confidential and exempt status.
- Authorizes the sharing of confidential and exempt information between all state and local agencies and programs that provide services that benefit children, including the Department, the Department of Juvenile Justice, the Department of Health, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Education, individual school districts, the Statewide Guardian Ad Litem program, and the Office of Child Abuse Prevention. Exceptions are provided for information made confidential under federal law and records of certified domestic violence centers.
- Authorizes the sharing of confidential and exempt information between employees or agents of the department, the Agency for Persons with Disabilities, the Agency for Health Care Administration, or the Department of Elderly Affairs who are responsible for carrying out protective investigations, ongoing protective services, or licensure or approval of nursing homes, assisted living facilities, adult day care centers, adult family-care homes, home care for the elderly, hospices, residential facilities licensed under chapter 393, or other facilities used for the placement of vulnerable adults.
- Clarifies which information in those records is confidential and exempt and which entities may have access to that information. The bill grants authority to the secretary of the department to release records related to a case that is already in the public domain with redaction of the identity of the child unless the name of the child is also in the public domain or the child is reasonably identifiable from information in the public domain.

¹⁴ In cases involving a child, the petition must be personally served upon the child, the child's parent or guardian, and any person named as an alleged perpetrator in the report of abuse, abandonment, or neglect. In cases involving a vulnerable adult, the petition must be personally served upon the vulnerable adult, the vulnerable adult's legal guardian, if any, and any person named as an alleged perpetrator in the report of abuse, neglect, or exploitation.

¹⁵ If the court does not grant or deny the petition within the 24-hour period, the department may release to the public summary information that includes a confirmation that an investigation has been conducted concerning the alleged victim; the dates and brief description of procedural activities undertaken during the department's investigation; and the date of each judicial proceeding, a summary of each participant's recommendations made at the judicial proceeding, and the ruling of the court. The information cannot include the name of, or other identifying information with respect to, any person identified in any investigation.

¹⁶ See s. 39.2021(2), Florida Statutes.

¹⁷ See s. 119.011(12), Florida Statutes, defines "redact" to mean "to conceal from a copy of an original public record, or to conceal from an electronic image that is available for public viewing, that portion of the record containing exempt or confidential information."

¹⁸ See ss. 39.2021(3) and 415.1071(3), Florida Statutes.

- Clarifies which information in records relating to the abuse, neglect, or exploitation of a vulnerable adult is confidential and exempt and which entities may have access to that information. The bill grants authority to the secretary of the department to release records related to a case that is already in the public domain with redaction of the identity of the victim unless the name of the victim is also in the public domain or the victim is reasonably identifiable from information in the public domain.

B. SECTION DIRECTORY:

Section 1. Creates s. 39.00145, Florida Statutes, relating to records concerning children.

Section 2. Amends s. 39.202, Florida Statutes, relating to confidentiality of reports and records in cases of child abuse or neglect.

Section 3. Amends s. 415.107, Florida Statutes, relating to confidentiality of reports and records.

Section 4. Amends s. 39.01, Florida Statutes, relating to definitions.

Section 5. Amends s. 39.201, Florida Statutes, relating to mandatory reports of child abuse, abandonment or neglect, the central abuse hotline, and mandatory reports of a child death.

Section 6. Provides an effective date of July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

- On **lines 47-56** of the bill, it is unclear how an “inspection” of the file would create a cost. It is also unclear why a request to inspect the file must be made in writing but no written requirement is required for a complete copy of the record.
- On **lines 80- 92** of the bill, numerous state agencies are granted access to confidential records or information relating to children under the supervision of or in custody of the department. The list does not include the Department of Revenue which provides child support enforcement services on behalf of such children. The Department of Revenue has reported that their inability to obtain information related to children in out of home care limits the agency’s ability to effectively establish, modify, and enforce child support. Information needed includes the location of the child, the name and address of the child’s caregiver, dates the child is in DCF custody, and whether the court has entered a support order or made findings as to the ability of a parent to pay support.
- Lines **254-259 and 390-395** contain provisions that allow the DCF secretary the discretion to release records reasonably related to a case that is already in the public domain. The records must also be redacted to eliminate certain identifiers. This would provide authority to an appointed state official to release public records which currently requires the approval of the court. This provision was not in the bill that passed the House in 2008. The Commission on Open Government in their January 2009 report commented that the removal of this controversial provision should address both constitutional and policy concerns raised by Legislative staff.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES