

HB 1439

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1                   A bill to be entitled  
2           An act relating to the confidential records of children  
3           and vulnerable adults; creating s. 39.00145, F.S.;  
4           requiring that the case file of a child under the  
5           supervision or in the custody of the Department of  
6           Children and Family Services be maintained in a complete  
7           and accurate manner; specifying who has access to the case  
8           file and records in the file; providing sanctions and  
9           penalties for specified failure to provide records in a  
10          case file or failure to provide access within a reasonable  
11          time; authorizing the court to directly release the  
12          child's records to certain entities; providing that  
13          entities that have access to confidential information  
14          concerning a child may share it with other entities that  
15          provide services benefiting children; amending s. 39.202,  
16          F.S.; limiting the public records exemption provided for  
17          reports relating to child abandonment, abuse, or neglect  
18          to personal identifying information in the reports;  
19          revising the list of persons or entities that have access  
20          to such information; authorizing the secretary of the  
21          department to release certain records in the public  
22          domain; amending s. 415.107, F.S.; limiting the public  
23          records exemption provided for reports relating to adult  
24          abuse, neglect, or exploitation to personal identifying  
25          information in the reports; revising the list of persons  
26          or entities that have access to such information;  
27          authorizing the secretary of the department to release  
28          certain records in the public domain; amending ss. 39.01

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29 and 39.201, F.S.; conforming cross-references; providing  
30 an effective date.  
31

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

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

36 39.00145 Records concerning children.--The case file of  
37 every child under the supervision of or in the custody of the  
38 department, the department's authorized agents, or providers  
39 contracting with the department, including community-based care  
40 lead agencies and their subcontracted providers, must be  
41 maintained in a complete and accurate manner. Such file must  
42 contain the child's case plan required under part VIII of this  
43 chapter and the full name and street address of all shelters,  
44 foster parents, group homes, treatment facilities, or locations  
45 where the child is placed.

46 (1) Notwithstanding any other provision of this chapter,  
47 all records in a child's case file must be made available for  
48 inspection without cost to the child who is the subject of the  
49 case file and the child's caregiver, guardian ad litem, or  
50 attorney. A request for inspection by the child's attorney must  
51 be submitted in writing.

52 (a) The child and the child's caregiver, guardian ad  
53 litem, or attorney shall be provided any records in the case  
54 file or a complete and accurate copy of the records, at no cost,  
55 upon the request of that child or the child's caregiver,  
56 guardian ad litem, or attorney on behalf of the child.

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57        (b) The department shall release the information in a  
58 manner and setting that is appropriate to the age and maturity  
59 of the child and the nature of the information being released,  
60 which may include the release of such information in a  
61 therapeutic setting, if appropriate. This paragraph does not  
62 deny the child access to his or her records.

63        (c) If a child or the child's caregiver, guardian ad  
64 litem, or attorney requests access to the child's case file, any  
65 person or entity that fails to provide records in the case file  
66 under assertion of a claim of exemption from the public records  
67 requirements of chapter 119, or fails to provide access within a  
68 reasonable time, is subject to sanctions and penalties under s.  
69 119.10.

70        (2) If a court determines that sharing information in the  
71 child's case file is necessary to ensure access to appropriate  
72 services for the child or for the safety of the child, the court  
73 may approve the release of confidential records or information  
74 contained in them. Any information that is released retains its  
75 confidential or exempt status.

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

80        (4) Notwithstanding any other provision of law, all state  
81 and local agencies and programs that provide services to  
82 children or that are responsible for a child's safety, including  
83 the Department of Juvenile Justice, the Department of Health,  
84 the Agency for Health Care Administration, the Agency for

85 Persons with Disabilities, the Department of Education, the  
 86 school districts, the Statewide Guardian Ad Litem Office, and  
 87 any provider contracting with such agencies, may share with each  
 88 other confidential records or information that is confidential  
 89 or exempt from disclosure under chapter 119 if the records or  
 90 information is reasonably necessary to ensure access to  
 91 appropriate services for the child or for the safety of the  
 92 child. However:

93 (a) Records or information made confidential by federal  
 94 law may not be shared.

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

99 Section 2. Subsections (1) and (2) of section 39.202,  
 100 Florida Statutes, are amended, and subsection (9) is added to  
 101 that section, to read:

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

104 (1) All personal identifying information for the  
 105 following persons contained in records held by the department  
 106 relating to child abandonment, abuse, abandonment, or neglect is  
 107 ~~In order to protect the rights of the child and the child's~~  
 108 ~~parents or other persons responsible for the child's welfare,~~  
 109 ~~All records held by the department concerning reports of child~~  
 110 ~~abandonment, abuse, or neglect, including reports made to the~~  
 111 ~~central abuse hotline and all records generated as a result of~~  
 112 ~~such reports, shall be confidential and exempt from the~~

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113 ~~provisions of s. 119.07(1); and shall not be disclosed except as~~  
 114 ~~specifically authorized by this chapter. Such exemption from s.~~  
 115 ~~119.07(1) applies to information in the possession of those~~  
 116 ~~entities granted access as set forth in this section.~~

117 (a) The child or the child's siblings.

118 (b) The child's caregiver, unless the caregiver is  
 119 arrested as a result of the report of child abuse, abandonment,  
 120 or neglect or is the subject of an injunction issued pursuant to  
 121 s. 39.504.

122 (c) The reporter of the alleged abuse, abandonment, or  
 123 neglect.

124 (2) Except as provided in subsection (4), access to the  
 125 personal identifying information of individuals listed in  
 126 subsection (1) such records, excluding the name of the reporter  
 127 which shall be released only as provided in subsection (5),  
 128 shall be granted only to the following ~~persons, officials, and~~  
 129 ~~agencies:~~

130 (a) Any employee, authorized agent, or provider  
 131 contracting with the department; any agency that provides  
 132 services to the child or the child's family; and any federal,  
 133 state, or local governmental entity that needs the information  
 134 to carry out its legal responsibility to protect the child from  
 135 abuse, abandonment, or neglect.

136 ~~(a) Employees, authorized agents, or contract providers of~~  
 137 ~~the department, the Department of Health, the Agency for Persons~~  
 138 ~~with Disabilities, or county agencies responsible for carrying~~  
 139 ~~out:~~

140 ~~1. Child or adult protective investigations;~~

- 141           ~~2. Ongoing child or adult protective services;~~
- 142           ~~3. Early intervention and prevention services;~~
- 143           ~~4. Healthy Start services;~~
- 144           ~~5. Licensure or approval of adoptive homes, foster homes,~~  
 145 ~~child care facilities, facilities licensed under chapter 393, or~~  
 146 ~~family day care homes or informal child care providers who~~  
 147 ~~receive subsidized child care funding, or other homes used to~~  
 148 ~~provide for the care and welfare of children; or~~
- 149           ~~6. Services for victims of domestic violence when provided~~  
 150 ~~by certified domestic violence centers working at the~~  
 151 ~~department's request as case consultants or with shared clients.~~

152

153 ~~Also, employees or agents of the Department of Juvenile Justice~~  
 154 ~~responsible for the provision of services to children, pursuant~~  
 155 ~~to chapters 984 and 985.~~

156           ~~(b) Criminal justice agencies of appropriate jurisdiction.~~

157           ~~(c) The state attorney of the judicial circuit in which~~  
 158 ~~the child resides or in which the alleged abuse or neglect~~  
 159 ~~occurred.~~

160           (b)(d) The parent or legal custodian of any child who is  
 161 alleged to have been abused, abandoned, or neglected, and the  
 162 child, and their attorneys, including any attorney representing  
 163 a child in civil or criminal proceedings. This access must ~~shall~~  
 164 be made available within ~~no later than~~ 30 days after the  
 165 department receives the initial report of abuse, neglect, or  
 166 abandonment. However, any information otherwise made  
 167 confidential or exempt by law may ~~shall~~ not be released pursuant  
 168 to this paragraph.

169        ~~(c)(e)~~ Any person alleged in the report as having caused  
 170 the abuse, abandonment, or neglect of a child. This access must  
 171 ~~shall~~ be made available within ~~no later than~~ 30 days after the  
 172 department receives the initial report ~~of abuse, abandonment, or~~  
 173 ~~neglect~~ and, if ~~when~~ the alleged perpetrator is not a parent, is  
 174 ~~shall be~~ limited to information involving the protective  
 175 investigation only and may ~~shall~~ not include any information  
 176 relating to subsequent dependency proceedings. However, any  
 177 information otherwise made confidential or exempt by law may  
 178 ~~shall~~ not be released pursuant to this paragraph.

179        ~~(d)(f)~~ A court upon ~~its~~ finding that access to such  
 180 information records may be necessary for determining the  
 181 ~~determination of~~ an issue before the court. ~~;~~ However, such  
 182 access is ~~shall be~~ limited to inspection in camera, unless the  
 183 court determines that public disclosure of the information  
 184 ~~contained therein~~ is necessary for the resolution of an issue  
 185 ~~then~~ pending before it.

186        ~~(e)(g)~~ A grand jury, by subpoena, upon determining its  
 187 ~~determination~~ that access to such information records is  
 188 necessary in the conduct of its official business.

189        ~~(h)~~ ~~Any appropriate official of the department or the~~  
 190 ~~Agency for Persons with Disabilities who is responsible for:~~

191        1. ~~Administration or supervision of the department's~~  
 192 ~~program for the prevention, investigation, or treatment of child~~  
 193 ~~abuse, abandonment, or neglect, or abuse, neglect, or~~  
 194 ~~exploitation of a vulnerable adult, when carrying out his or her~~  
 195 ~~official function;~~

196        2. ~~Taking appropriate administrative action concerning an~~

197 ~~employee of the department or the agency who is alleged to have~~  
 198 ~~perpetrated child abuse, abandonment, or neglect, or abuse,~~  
 199 ~~neglect, or exploitation of a vulnerable adult; or~~

200 ~~3. Employing and continuing employment of personnel of the~~  
 201 ~~department or the agency.~~

202 (f) ~~(i)~~ Any person authorized by the department who is  
 203 engaged in the use of such ~~records or~~ information for bona fide  
 204 research, statistical, or audit purposes. Such individual or  
 205 entity must ~~shall~~ enter into a privacy and security agreement  
 206 with the department and ~~shall~~ comply with all laws and rules  
 207 governing the use of such ~~records and~~ information for research  
 208 and statistical purposes. The identifying information must  
 209 ~~identifying the subjects of such records or information shall~~ be  
 210 treated as confidential by the researcher and may ~~shall~~ not be  
 211 released in any form.

212 (g) ~~(j)~~ The Division of Administrative Hearings for  
 213 purposes of any administrative challenge.

214 (h) ~~(k)~~ Any appropriate official of a Florida advocacy  
 215 council investigating a report of known or suspected child  
 216 abuse, abandonment, or neglect. †

217 (i) The Auditor General or the Office of Program Policy  
 218 Analysis and Government Accountability for the purpose of  
 219 conducting audits or examinations pursuant to law. † ~~or~~

220 (j) The guardian ad litem for the child.

221 (k) ~~(l)~~ Employees or agents of an agency of another state  
 222 that has comparable jurisdiction to the agencies jurisdiction  
 223 described in paragraph (a).

224 ~~(m) The Public Employees Relations Commission for the sole~~



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225 ~~purpose of obtaining evidence for appeals filed pursuant to s.~~  
226 ~~447.207. Records may be released only after deletion of all~~  
227 ~~information which specifically identifies persons other than the~~  
228 ~~employee.~~

229 ~~(n) Employees or agents of the Department of Revenue~~  
230 ~~responsible for child support enforcement activities.~~

231 (l) ~~(o)~~ Any person in the event of the death of a child  
232 determined to be a result of abuse, abandonment, or neglect.  
233 ~~Information identifying the person reporting abuse, abandonment,~~  
234 ~~or neglect shall not be released.~~ Any information otherwise made  
235 confidential or exempt by law may ~~shall~~ not be released pursuant  
236 to this paragraph.

237 (m) ~~(p)~~ The principal of a public school, private school,  
238 or charter school where the child is a student. Identifying  
239 information contained in ~~the~~ records that ~~which~~ the principal  
240 determines are necessary for a school employee to effectively  
241 provide a student with educational services may be released to  
242 that employee.

243 (n) ~~(q)~~ Staff of a children's advocacy center that is  
244 established and operated under s. 39.3035.

245 (o) Persons with whom the department is seeking to place  
246 the child or placement has been granted, including foster  
247 parents for whom an approved home study has been conducted, the  
248 designee of a licensed residential group home described in s.  
249 39.523, an approved relative or nonrelative with whom a child is  
250 placed pursuant to s. 39.521(1)(b)3., preadoptive parents for  
251 whom a favorable preliminary adoptive home study has been  
252 conducted, adoptive parents, or an adoption entity acting on

253 behalf of preadoptive or adoptive parents.

254 (9) Notwithstanding any other provision of law, the  
 255 secretary may release any record reasonably related to a case  
 256 that is already in the public domain, but must redact the  
 257 identity of the child unless the child's name is also in the  
 258 public domain in the context of the case or the child is already  
 259 reasonably identifiable from information in the public domain.

260 Section 3. Section 415.107, Florida Statutes, is amended  
 261 to read:

262 415.107 Confidentiality of reports and records.--

263 (1) All personal identifying information for the following  
 264 persons contained in records relating to the abuse, neglect, or  
 265 exploitation of a vulnerable adult is ~~In order to protect the~~  
 266 ~~rights of the individual or other persons responsible for the~~  
 267 ~~welfare of a vulnerable adult, all records concerning reports of~~  
 268 ~~abuse, neglect, or exploitation of the vulnerable adult,~~  
 269 ~~including reports made to the central abuse hotline, and all~~  
 270 ~~records generated as a result of such reports shall be~~  
 271 ~~confidential and exempt from s. 119.07(1); and may not be~~  
 272 ~~dislosed except as specifically authorized by ss. 415.101-~~  
 273 ~~415.113.~~

274 (a) The adult victim.

275 (b) The adult victim's guardian or legal counsel, unless  
 276 the guardian or legal counsel is arrested as a result of the  
 277 report of abuse, neglect, or exploitation or is the subject of  
 278 an injunction issued by a court.

279 (c) The reporter of the alleged abuse, neglect, or  
 280 exploitation.

281 ~~(2) Upon the request of the committee chairperson, access~~  
 282 ~~to all records shall be granted to staff of the legislative~~  
 283 ~~committees with jurisdiction over issues and services related to~~  
 284 ~~vulnerable adults, or over the department. All confidentiality~~  
 285 ~~provisions that apply to the Department of Children and Family~~  
 286 ~~Services continue to apply to the records made available to~~  
 287 ~~legislative staff under this subsection.~~

288 (2)~~(3)~~ Access to personal identifying information of  
 289 individuals listed in subsection (1) ~~all records~~, excluding the  
 290 name of the reporter which shall be released only as provided in  
 291 subsection (4) ~~(6)~~, shall be granted only to the following  
 292 persons, officials, and agencies:

293 (a) Employees, authorized agents, and providers  
 294 contracting with the department; any agency that provides  
 295 services to vulnerable adults; and any federal, state, or local  
 296 governmental entity that needs the information to carry out its  
 297 legal responsibility to protect the vulnerable adult from abuse,  
 298 neglect, or exploitation ~~or agents of the department, the Agency~~  
 299 ~~for Persons with Disabilities, the Agency for Health Care~~  
 300 ~~Administration, or the Department of Elderly Affairs who are~~  
 301 ~~responsible for carrying out protective investigations, ongoing~~  
 302 ~~protective services, or licensure or approval of nursing homes,~~  
 303 ~~assisted living facilities, adult day care centers, adult~~  
 304 ~~family-care homes, home care for the elderly, hospices,~~  
 305 ~~residential facilities licensed under chapter 393, or other~~  
 306 ~~facilities used for the placement of vulnerable adults.~~

307 ~~(b) A criminal justice agency investigating a report of~~  
 308 ~~known or suspected abuse, neglect, or exploitation of a~~

309 ~~vulnerable adult.~~

310 ~~(c) The state attorney of the judicial circuit in which~~  
 311 ~~the vulnerable adult resides or in which the alleged abuse,~~  
 312 ~~neglect, or exploitation occurred.~~

313 ~~(b)(d)~~ The Any victim;; the victim's guardian, caregiver,  
 314 or legal counsel;; and any person who the department has  
 315 determined might be abusing, neglecting, or exploiting the  
 316 victim.

317 ~~(c)(e)~~ A court, by subpoena, upon ~~its~~ finding that access  
 318 to such information records may be necessary for determining the  
 319 ~~determination of~~ an issue before the court; however, such access  
 320 is ~~must be~~ limited to inspection in camera, unless the court  
 321 determines that public disclosure of the information ~~contained~~  
 322 ~~in such records~~ is necessary for the resolution of an issue ~~then~~  
 323 pending before it.

324 ~~(d)(f)~~ A grand jury, by subpoena, upon determining its  
 325 ~~determination~~ that access to such information records is  
 326 necessary in the conduct of its official business.

327 ~~(e)(g)~~ Any appropriate official of the Florida advocacy  
 328 council or long-term care ombudsman council investigating a  
 329 report of known or suspected abuse, neglect, or exploitation of  
 330 a vulnerable adult.

331 ~~(h) Any appropriate official of the department, the Agency~~  
 332 ~~for Persons with Disabilities, the Agency for Health Care~~  
 333 ~~Administration, or the Department of Elderly Affairs who is~~  
 334 ~~responsible for:~~

335 ~~1. Administration or supervision of the programs for the~~  
 336 ~~prevention, investigation, or treatment of abuse, neglect, or~~

337 ~~exploitation of vulnerable adults when carrying out an official~~  
338 ~~function; or~~

339 ~~2. Taking appropriate administrative action concerning an~~  
340 ~~employee alleged to have perpetrated abuse, neglect, or~~  
341 ~~exploitation of a vulnerable adult in an institution.~~

342 ~~(i) Any person engaged in bona fide research or auditing.~~  
343 ~~However, information identifying the subjects of the report must~~  
344 ~~not be made available to the researcher.~~

345 ~~(f)~~ (j) Employees or agents of an agency of another state  
346 that has jurisdiction comparable to the jurisdiction described  
347 in paragraph (a).

348 ~~(k) The Public Employees Relations Commission for the sole~~  
349 ~~purpose of obtaining evidence for appeals filed pursuant to s.~~  
350 ~~447.207. Records may be released only after deletion of all~~  
351 ~~information that specifically identifies persons other than the~~  
352 ~~employee.~~

353 ~~(g)~~ (l) Any person in the event of the death of a  
354 vulnerable adult determined to be a result of abuse, neglect, or  
355 exploitation. ~~Information identifying the person reporting~~  
356 ~~abuse, neglect, or exploitation shall not be released. Any~~  
357 ~~information otherwise made confidential or exempt by law may~~  
358 ~~shall not be released pursuant to this paragraph.~~

359 ~~(4) The Department of Health, the Department of Business~~  
360 ~~and Professional Regulation, and the Agency for Health Care~~  
361 ~~Administration may have access to a report, excluding the name~~  
362 ~~of the reporter, when considering disciplinary action against a~~  
363 ~~licensee or certified nursing assistant pursuant to allegations~~  
364 ~~of abuse, neglect, or exploitation.~~

365        ~~(3)-(5)~~ The department may release to any professional  
 366 person such personal identifying information as is necessary for  
 367 the diagnosis and treatment of, and service delivery to, a  
 368 vulnerable adult or the person perpetrating the abuse, neglect,  
 369 or exploitation.

370        ~~(4)-(6)~~ The identity of any person reporting abuse,  
 371 neglect, or exploitation of a vulnerable adult may not be  
 372 released~~7~~ without that person's written consent~~7~~ to any person  
 373 other than employees of the department responsible for  
 374 protective services, the central abuse hotline, or the  
 375 appropriate state attorney or law enforcement agency. This  
 376 subsection grants protection only for the person who reported  
 377 the abuse, neglect, or exploitation and protects only the fact  
 378 that the person is the reporter. This subsection does not  
 379 prohibit the subpoena of a person reporting the abuse, neglect,  
 380 or exploitation if ~~when~~ deemed necessary by the state attorney  
 381 or the department to protect a vulnerable adult who is the  
 382 subject of a report~~7~~, if the fact that the person made the report  
 383 is not disclosed.

384        ~~(5)-(7)~~ For the purposes of this section, the term "access  
 385 to personal identifying information" refers to information ~~means~~  
 386 ~~a visual inspection or copy of the hard-copy record~~ maintained  
 387 in the district.

388        ~~(6)-(8)~~ Personal identifying information in the central  
 389 abuse hotline may not be used for employment screening.

390        (7) Notwithstanding any other provision of law, the  
 391 secretary may release any record reasonably related to a case  
 392 that is already in the public domain, but must redact the

393 identity of the victim unless the victim's name is also in the  
 394 public domain in the context of the case or is already  
 395 reasonably identifiable from information in the public domain.

396 Section 4. Subsection (10) of section 39.01, Florida  
 397 Statutes, is amended to read:

398 39.01 Definitions.--When used in this chapter, unless the  
 399 context otherwise requires:

400 (10) "Caregiver" means the parent, legal custodian,  
 401 permanent guardian, adult household member, or other person  
 402 responsible for a child's welfare as defined in subsection (47)  
 403 ~~(46)~~.

404 Section 5. Subsection (6) of section 39.201, Florida  
 405 Statutes, is amended to read:

406 39.201 Mandatory reports of child abuse, abandonment, or  
 407 neglect; mandatory reports of death; central abuse hotline.--

408 (6) Information in the central abuse hotline may not be  
 409 used for employment screening, ~~except as provided in s.~~  
 410 ~~39.202(2)(a) and (h)~~. Information in the central abuse hotline  
 411 and the department's automated abuse information system may be  
 412 used by the department, its authorized agents or contract  
 413 providers, the Department of Health, or county agencies as part  
 414 of the licensure or registration process provided in ~~pursuant to~~  
 415 ss. 402.301-402.319 and ss. 409.175-409.176.

416 Section 6. This act shall take effect July 1, 2009.