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## SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: March 27, 1998 Revised: 4/4/98 \_\_\_\_\_

Subject: Public Records/CFS Department

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Crosby</u>	<u>Whiddon</u>	<u>CF</u>	<u>Favorable/CS</u>
2.	<u>Rhea</u>	<u>Wilson</u>	<u>GO</u>	<u>Fav/2 amendments</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

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### I. Summary:

This bill changes references in ch. 119, F.S., the Public Records Law, from the Department of Health and Rehabilitative Services to the Department of Children and Family. The affected provisions relate to public records exemptions in cases involving the death of a child, disabled adult, or elderly person as a result of abuse, neglect, abandonment, or exploitation. Further, the bill requires the Department of Children and Family Services to release all records pertaining to such investigation. The name of the person reporting the abuse and certain other identifying information about persons other than the victim, which currently are confidential, would remain confidential under the bill.

Chapter 415, F.S., is amended to allow any person access to records involving such a death, with the exception of confidential information contained therein or information identifying the person reporting the abuse, neglect, or exploitation.

Sections 381.0022 and 402.115, F.S., are created to allow the sharing of confidential or exempt information regarding clients of both the Departments of Health and Children and Family Services.

This bill amends sections 119.107, 415.07, and 415.51, Florida Statutes, and creates sections 381.0022 and 402.115, Florida Statutes.

## II. Present Situation:

Under s. 119.07(7)(a) and (b), F.S., the records of the Department of Children and Family Services<sup>1</sup> pertaining to the investigation of abuse, neglect, abandonment, or exploitation of a child, a disabled adult, or an elderly person are confidential. The law provides that any person or organization, including the department, may petition the court for an order making public the records of the department that pertain to investigations of alleged child abuse, neglect, abandonment, or exploitation of a child, a disabled adult, or an elderly person.

Upon receipt of a petition, the court may open the records for public inspection if good cause to do so exists. In making its determination, the court must balance the public interest against the best interest of the affected child or the child's siblings, the disabled adult, or the elderly person, as well as the privacy rights of other persons identified in the reports. The statute provides that there is a public interest in access to such records because citizens need to know of and adequately evaluate the actions of the department and the court system in providing disabled adults, the elderly, and children with protection.

Subparagraphs 119.07(7)(b)1. and 2., F.S., state that in cases in which the death of a child, a disabled adult, or an elderly person occurs from abuse, neglect, abandonment, or exploitation, a presumption exists that the best interests of the child, disabled adult, or elderly person are served by full public disclosure of the circumstances of the investigation of the death of the child, disabled adult, or elderly person.

Sections 415.107(1)(b) and 415.51(1)(b), F.S., state that, except for certain information identifying individuals, all records involving the death of a child, a disabled adult, or an elderly person that is determined to be the result of abuse, abandonment, or neglect are released to the public within 10 days after the completion of the investigation.

Prior to the divestiture of the Department of Health and Rehabilitative Services (HRS), confidential information regarding HRS clients was shared and accessible to caseworkers and other department employees as necessary. In January of 1997, when HRS was split into the Departments of Health and Children and Family Services, no provision was made in law to allow for the continuing practice of sharing certain information regarding clients of both departments, though this practice is often necessary.

## III. Effect of Proposed Changes:

**Section 1** amends subsection (7) of 119.07, F.S., regarding public records exemptions, in cases involving the death of a child, a disabled adult, or an elderly person as a result of abuse, neglect, abandonment, or exploitation. The bill strikes language authorizing the department to petition the

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<sup>1</sup>Section 119.07(7), F.S., currently refers to the Department of Health and Rehabilitative Services, even though many of its duties were transferred to the Department of Children and Family Services. This bill changes the references to correctly reflect the duties assigned to the Department of Children and Family Services.

court for an order for the immediate public release of records of the department in such cases, as well as strikes language requiring the department to serve specified family members or guardians with the petition. Further, the bill strikes language requiring the court to determine if good cause exists for the release of the records. Finally, the bill strikes language that requires the court to perform a balancing test in making a determination whether to release the information.

The bill does not change the current statutory procedures for obtaining records in cases involving serious bodily injury to a child, a disabled adult, or an elderly person.

**Section 2** amends s. 415.107, F.S., which lists the persons, officials, and agencies that may receive confidential records and reports in cases involving the death of a disabled adult or elderly person. The bill inserts a new paragraph (l) which permits any person to have access to all records, except for the name of the person who reported the abuse, neglect, or exploitation and other information made confidential or exempt by law (e.g., provisions contained in the Baker Act).

**Section 3** amends s. 415.51, F.S., which lists the persons, officials, and agencies that may receive confidential records and reports in cases involving the death of a child due to abuse or neglect. The bill inserts a new paragraph (n) which permits any person to have access to all records, except for the name of the person who reported the abuse, neglect, or exploitation and other information made confidential or exempt by law (e.g., provisions contained in the Baker Act).

**Section 4** creates s. 381.0022, F.S., to allow the Departments of Health and Children and Family Services the share confidential or exempt information on clients served by both departments.

**Section 5** creates s.402.115, F.S., to allow the Departments of Health and Children and Family Services the share confidential or exempt information on clients served by both departments.

**Section 6** provides that the act takes effect upon becoming a law.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

The bill does not create a new public records exemption. Instead, s.119.07, F.S., is amended to permit public access to records or reports regarding the inspection, examination, and duplication of records in cases involving the death of a child, disabled adult or an elderly person as the result of abuse, neglect, abandonment, or exploitation. These records are currently closed.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The department reports that constitutional privacy issues may arise with regard to the release of records which include the names of persons other than the person who reported the abuse, such as a sibling.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

A similar bill was passed out of committee last year as Committee Substitute for Senate Bill 888. CS/SB 888 required the Department of Children and Family Services to release records which pertained to the investigation of the alleged abuse, neglect, abandonment, or exploitation of a child, disabled adult, or elderly person for cases in which the abuse, neglect, abandonment, or exploitation resulted in death. As in the present bill, the name of the person reporting the abuse and identifying information about certain persons other than the victim were protected from release to the public. CS/SB 888 provided that any person opposing the release of the records could file a petition with the court and, in considering the petition, the court could order that the records remained confidential on a showing of a compelling interest. The companion to CS/SB 888, House Bill 1433, was filed last year and this year passed as a committee substitute out of the House Governmental Operations Committee.

**VIII. Amendments:**

#1 by Governmental Reform and Oversight:

Technical amendment that deletes the word “may” and inserts the word “shall” to conform with to the CS/HB 1433.

#2 by Governmental Reform and Oversight:

Removes sections 4 and 5 from the bill to conform with the CS/HB 1433 and to eliminate provisions authorizing the Department of Health and the Department of Children and Family Services to share confidential information.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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