

By Senator Dockery

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1 A bill to be entitled
2 An act relating to the confidential records of
3 children and vulnerable adults; creating s. 39.00145,
4 F.S.; requiring that the case file of a child under
5 the supervision or in the custody of the Department of
6 Children and Family Services be maintained in a
7 complete and accurate manner; specifying who has
8 access to the case file and records in the file;
9 authorizing the court to directly release the child's
10 records to certain entities; providing that entities
11 that have access to confidential information
12 concerning a child may share it with other entities
13 that provide services benefiting children; amending s.
14 39.202, F.S.; limiting the public-records exemption
15 provided for reports relating to child abandonment,
16 abuse, or neglect to personally identifying
17 information in the reports; revising the list of
18 persons or entities that have access to such
19 information; authorizing the secretary of the
20 department to release certain records in the public
21 domain; amending s. 415.107, F.S.; limiting the
22 public-records exemption provided for reports relating
23 to adult abuse, neglect, or exploitation to personally
24 identifying information in the reports; revising the
25 list of persons or entities that have access to such
26 information; authorizing the secretary of the
27 department to release certain records in the public
28 domain; amending ss. 39.01 and 39.201, F.S.;
29 conforming cross-references; providing an effective

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

57 (b) The department shall release the information in a
58 manner and setting that is appropriate to the age and maturity

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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 litem,
64 or attorney requests access to the child's case file, any person
65 or entity that fails to provide records in the case file under
66 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

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88 other confidential records or information that is confidential
89 or exempt from disclosure under chapter 119 if the records or
90 information are 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 law
94 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 following
105 persons contained in records held by the department relating to
106 child abandonment, abuse, abandonment, or neglect is ~~In order to~~
107 ~~protect the rights of the child and the child's parents or other~~
108 ~~persons responsible for the child's welfare, All records held by~~
109 ~~the department concerning reports of child abandonment, abuse,~~
110 ~~or neglect, including reports made to the central abuse hotline~~
111 ~~and all records generated as a result of such reports, shall be~~
112 ~~confidential and exempt from the provisions of s. 119.07(1); and~~
113 ~~shall not be disclosed except as specifically authorized by this~~
114 ~~chapter. Such exemption from s. 119.07(1) applies to information~~
115 ~~in the possession of those entities granted access as set forth~~
116 ~~in this section.~~

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

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 contracting
 131 with the department; any agency that provides services to the
 132 child or the child's family; and any federal, state, or local
 133 governmental entity that needs the information to carry out its
 134 legal responsibility to protect the child from abuse,
 135 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~~

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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 the~~
158 ~~child resides or in which the alleged abuse or neglect occurred.~~

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

168 ~~(c)-(e)~~ Any person alleged in the report as having caused
169 the abuse, abandonment, or neglect of a child. This access must
170 ~~shall~~ be made available within ~~no later than~~ 30 days after the
171 department receives the initial report ~~of abuse, abandonment, or~~
172 ~~neglect~~ and, if ~~when~~ the alleged perpetrator is not a parent, is
173 ~~shall be~~ limited to information involving the protective
174 investigation only and may ~~shall~~ not include any information

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175 relating to subsequent dependency proceedings. However, any
 176 information otherwise made confidential or exempt by law may
 177 ~~shall~~ not be released pursuant to this paragraph.

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

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

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

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

195 ~~2. Taking appropriate administrative action concerning an~~
 196 ~~employee of the department or the agency who is alleged to have~~
 197 ~~perpetrated child abuse, abandonment, or neglect, or abuse,~~
 198 ~~neglect, or exploitation of a vulnerable adult; or~~

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

201 (f) ~~(i)~~ Any person authorized by the department who is
 202 engaged in the use of such ~~records~~ ~~or~~ information for bona fide
 203 research, statistical, or audit purposes. Such individual or

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204 entity must ~~shall~~ enter into a privacy and security agreement
205 with the department and ~~shall~~ comply with all laws and rules
206 governing the use of such ~~records and~~ information for research
207 and statistical purposes. The identifying information must
208 ~~identifying the subjects of such records or information shall~~ be
209 treated as confidential by the researcher and may ~~shall~~ not be
210 released in any form.

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

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

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

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

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

223 ~~(m) The Public Employees Relations Commission for the sole~~
224 ~~purpose of obtaining evidence for appeals filed pursuant to s.~~
225 ~~447.207. Records may be released only after deletion of all~~
226 ~~information which specifically identifies persons other than the~~
227 ~~employee.~~

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

230 (l) ~~(o)~~ Any person in the event of the death of a child
231 determined to be a result of abuse, abandonment, or neglect.
232 ~~Information identifying the person reporting abuse, abandonment,~~

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233 ~~or neglect shall not be released.~~ Any information otherwise made
234 confidential or exempt by law may ~~shall~~ not be released pursuant
235 to this paragraph.

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

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

244 (o) Persons with whom the department is seeking to place
245 the child or placement has been granted, including foster
246 parents for whom an approved home study has been conducted, the
247 designee of a licensed residential group home described in s.
248 39.523, an approved relative or nonrelative with whom a child is
249 placed pursuant to s. 39.402(4), preadoptive parents for whom a
250 favorable preliminary adoptive home study has been conducted,
251 adoptive parents, or an adoption entity acting on behalf of
252 preadoptive or adoptive parents.

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

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

261 415.107 Confidentiality of reports and records.-

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

273 (a) The adult victim;

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

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

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

287 ~~(2)-(3)~~ Access to personal identifying information ~~all~~
288 ~~records~~, excluding the name of the reporter which shall be
289 released only as provided in subsection (5) ~~(6)~~, shall be
290 granted only to the following ~~persons, officials, and agencies:~~

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

305 ~~(b) A criminal justice agency investigating a report of~~
306 ~~known or suspected abuse, neglect, or exploitation of a~~
307 ~~vulnerable adult.~~

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

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

315 ~~(c)-(e) A court, by subpoena, upon its~~ finding ~~that access~~
316 to such information records ~~may be necessary for determining the~~
317 ~~determination of an issue before the court; however, such access~~
318 is ~~must be~~ limited to inspection in camera, unless the court
319 determines that public disclosure of the information contained

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320 ~~in such records~~ is necessary for the resolution of an issue then
321 pending before it.

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

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

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

333 ~~1. Administration or supervision of the programs for the~~
334 ~~prevention, investigation, or treatment of abuse, neglect, or~~
335 ~~exploitation of vulnerable adults when carrying out an official~~
336 ~~function; or~~

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

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

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

346 ~~(k) The Public Employees Relations Commission for the sole~~
347 ~~purpose of obtaining evidence for appeals filed pursuant to s.~~
348 ~~447.207. Records may be released only after deletion of all~~

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349 ~~information that specifically identifies persons other than the~~
350 ~~employee.~~

351 (g) ~~(1)~~ Any person in the event of the death of a vulnerable
352 adult determined to be a result of abuse, neglect, or
353 exploitation. ~~Information identifying the person reporting~~
354 ~~abuse, neglect, or exploitation shall not be released.~~ Any
355 information otherwise made confidential or exempt by law may
356 ~~shall~~ not be released pursuant to this paragraph.

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

363 (3) ~~(5)~~ The department may release to any professional
364 person such personal identifying information as is necessary for
365 the diagnosis and treatment of, and service delivery to, a
366 vulnerable adult or the person perpetrating the abuse, neglect,
367 or exploitation.

368 (4) ~~(6)~~ The identity of any person reporting abuse, neglect,
369 or exploitation of a vulnerable adult may not be released,
370 without that person's written consent, to any person other than
371 employees of the department responsible for protective services,
372 the central abuse hotline, or the appropriate state attorney or
373 law enforcement agency. This subsection grants protection only
374 for the person who reported the abuse, neglect, or exploitation
375 and protects only the fact that the person is the reporter. This
376 subsection does not prohibit the subpoena of a person reporting
377 the abuse, neglect, or exploitation if ~~when~~ deemed necessary by

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378 the state attorney or the department to protect a vulnerable
379 adult who is the subject of a report, if the fact that the
380 person made the report is not disclosed.

381 (5)~~(7)~~ For the purposes of this section, the term "access
382 to personal identifying information" means information ~~a visual~~
383 ~~inspection or copy of the hard-copy record~~ maintained in the
384 district.

385 (6)~~(8)~~ Personal identifying information in the central
386 abuse hotline may not be used for employment screening.

387 (7) Notwithstanding any other provision of law, the
388 secretary may release any record reasonably related to a case
389 that is already in the public domain, but must redact the
390 identity of the victim unless the victim's name is also in the
391 public domain in the context of the case or is already
392 reasonably identifiable from information in the public domain.

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

395 39.01 Definitions.—When used in this chapter, unless the
396 context otherwise requires:

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

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

403 39.201 Mandatory reports of child abuse, abandonment, or
404 neglect; mandatory reports of death; central abuse hotline.—

405 (6) Information in the central abuse hotline may not be
406 used for employment screening, ~~except as provided in s.~~

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407 ~~39.202(2)(a) and (h)~~. Information in the central abuse hotline
408 and the department's automated abuse information system may be
409 used by the department, its authorized agents or contract
410 providers, the Department of Health, or county agencies as part
411 of the licensure or registration process provided in ~~pursuant to~~
412 ss. 402.301-402.319 and ss. 409.175-409.176.

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