

## 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: February 5, 1998 Revised: \_\_\_\_\_

Subject: Public Records/CFS Department

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

### I. Summary:

This bill involves 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 and 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 would remain confidential.

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 substantially amends, creates, or repeals the following sections of the Florida Statutes: 119.07, 415.07, 415.51, 381.0022, and 402.115.

### II. Present Situation:

Under the provisions of s. 119.07(7)(a) and (b), F.S., the records of the Department of Children and Family Services pertaining to the investigation of abuse, neglect, abandonment, or exploitation of a child, a disabled adult, or an elderly person are confidential. Upon receipt of a petition, the court may open the records for public inspection if good cause exists. The court, in making its determination, 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.

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 language of the law regarding the court's approach to cases involving death is deleted; the language is unchanged with regard to cases involving serious bodily injury.

Section 2 amends s. 415.107, F.S., regarding confidentiality of records and reports in cases involving the death of a disabled adult or elderly person, to include language enabling any person to have access to all records, excluding the name of the reporter or information otherwise made confidential or exempt by law (e.g., provisions contained in the Baker Act).

Section 3 amends s. 415.51, F.S., regarding confidentiality of records and reports in cases involving the death of a child due to abuse or neglect, to again add language that any person shall have access to all records, excluding the name of the reporter or information otherwise 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 sharing of confidential or exempt information regarding clients of both the Departments of Health and Children and Family Services.

Section 5 creates s. 402.115, F.S., to allow the sharing of confidential or exempt information regarding clients of both the Departments of Health and Children and Family Services.

Section 6 provides that this act shall take effect upon becoming a law.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The language of s. 119.07, F.S., 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, is amended. This legislation will cause records currently closed to the public to be open.

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 reporter or those names otherwise made confidential or exempt by law (e.g., under the Baker Act).

**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:**

None.