

PART II
REPORTING CHILD ABUSE

- 39.201 Mandatory reports of child abuse, abandonment, or neglect; mandatory reports of death; central abuse hotline.
- 39.202 Confidentiality of reports and records in cases of child abuse or neglect.
- 39.2021 Release of confidential information.
- 39.203 Immunity from liability in cases of child abuse, abandonment, or neglect.
- 39.204 Abrogation of privileged communications in cases involving child abuse, abandonment, or neglect.
- 39.205 Penalties relating to reporting of child abuse, abandonment, or neglect.
- 39.206 Administrative fines for false report of abuse, abandonment, or neglect of a child; civil damages.

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

(1)(a) Any person who knows, or has reasonable cause to suspect, that a child is abused, abandoned, or neglected by a parent, legal custodian, caregiver, or other person responsible for the child's welfare, as defined in this chapter, or that a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care shall report such knowledge or suspicion to the department in the manner prescribed in subsection (2).

(b) Reporters in the following occupation categories are required to provide their names to the hotline staff:

1. Physician, osteopathic physician, medical examiner, chiropractic physician, nurse, or hospital personnel engaged in the admission, examination, care, or treatment of persons;
2. Health or mental health professional other than one listed in subparagraph 1.;
3. Practitioner who relies solely on spiritual means for healing;
4. School teacher or other school official or personnel;
5. Social worker, day care center worker, or other professional child care, foster care, residential, or institutional worker;
6. Law enforcement officer; or
7. Judge.

The names of reporters shall be entered into the record of the report, but shall be held confidential and exempt as provided in s. 39.202.

(c) A professional who is hired by or enters into a contract with the department for the purpose of treating or counseling any person, as a result of a report of child abuse, abandonment, or neglect, is not required to again report to the central abuse hotline the abuse, abandonment, or neglect that was the subject of the referral for treatment.

(d) An officer or employee of the judicial branch is not required to again provide notice of reasonable cause to suspect child abuse, abandonment, or neglect when that child is currently being investigated by the department, there is an existing dependency case, or the matter has previously been reported to the department, provided there is reasonable cause to believe the information is already known to the department. This paragraph applies only when the information has been provided to the officer or employee in the course of carrying out his or her official duties.

(e) Nothing in this chapter or in the contracting with community-based care providers for foster care and related services as specified in s. 409.1671 shall be construed to remove or reduce the duty and

responsibility of any person, including any employee of the community-based care provider, to report a suspected or actual case of child abuse, abandonment, or neglect or the sexual abuse of a child to the department's central abuse hotline.

(2)(a) Each report of known or suspected child abuse, abandonment, or neglect by a parent, legal custodian, caregiver, or other person responsible for the child's welfare as defined in this chapter, except those solely under s. 827.04(3), and each report that a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care shall be made immediately to the department's central abuse hotline. Such reports may be made on the single statewide toll-free telephone number or via fax or web-based report. Personnel at the department's central abuse hotline shall determine if the report received meets the statutory definition of child abuse, abandonment, or neglect. Any report meeting one of these definitions shall be accepted for the protective investigation pursuant to part III of this chapter.

(b) If the report is of an instance of known or suspected child abuse by someone other than a parent, legal custodian, caregiver, or other person responsible for the child's welfare as defined in this chapter, the report or call shall be immediately electronically transferred to the appropriate county sheriff's office by the central abuse hotline.

(c) If the report is of an instance of known or suspected child abuse, abandonment, or neglect that occurred out of state and the alleged perpetrator and the child alleged to be a victim live out of state, the central abuse hotline shall not accept the report or call for investigation, but shall transfer the information on the report to the appropriate state.

(d) If the report is of an instance of known or suspected child abuse involving impregnation of a child under 16 years of age by a person 21 years of age or older solely under s. 827.04(3), the report shall be made immediately to the appropriate county sheriff's office or other appropriate law enforcement agency. If the report is of an instance of known or suspected child abuse solely under s. 827.04(3), the reporting provisions of this subsection do not apply to health care professionals or other persons who provide medical or counseling services to pregnant children when such reporting would interfere with the provision of medical services.

(e) Reports involving known or suspected institutional child abuse or neglect shall be made and received in the same manner as all other reports made pursuant to this section.

(f) Reports involving a known or suspected juvenile sexual offender or a child who has exhibited inappropriate sexual behavior shall be made and received by the department.

1. The department shall determine the age of the alleged ~~juvenile sexual~~ offender, if known.

2. ~~If~~ When the alleged ~~juvenile sexual~~ offender is 12 years of age or younger, the central abuse hotline shall immediately electronically transfer the report or call to the county sheriff's appropriate law enforcement agency office. The department shall conduct an assessment and assist the family in receiving appropriate services pursuant to s. 39.307, and send a written report of the allegation to the appropriate county sheriff's office within 48 hours after the initial report is made to the central abuse hotline.

3. ~~If~~ When the alleged ~~juvenile sexual~~ offender is 13 years of age or older, the central abuse hotline department shall immediately electronically transfer the report or call to the appropriate county sheriff's office ~~by the central abuse hotline~~, and send a written report to the appropriate county sheriff's office within 48 hours after the initial report to the central abuse hotline.

(g) Reports involving surrendered ~~abandoned~~ newborn infants as described in s. 383.50 shall be made and received by the department.

1. If the report is of a surrendered ~~an abandoned~~ newborn infant as described in s. 383.50 and there is no indication of abuse, neglect, or abandonment other than that necessarily entailed in the infant having been left at a hospital, emergency medical services station, or fire station, the department shall provide to the caller the name of a licensed child-placing agency on a rotating basis from a list of licensed child-

placing agencies eligible and required to accept physical custody of and to place newborn infants left at a hospital, emergency medical services station, or fire station. The report shall not be considered a report of abuse, neglect, or abandonment solely because the infant has been left at a hospital, emergency medical services station, or fire station pursuant to s. 383.50.

2. If the call, fax, or web-based report includes ~~caller reports~~ indications of abuse or neglect beyond that necessarily entailed in the infant having been left at a hospital, emergency medical services station, or fire station, the report shall be considered as a report of abuse, neglect, or abandonment and shall be subject to the requirements of s. 39.395 and all other relevant provisions of this chapter, notwithstanding any provisions of chapter 383.

(h) Hotline counselors shall receive periodic training in encouraging reporters to provide their names when reporting abuse, abandonment, or neglect. Callers shall be advised of the confidentiality provisions of s. 39.202. The department shall secure and install electronic equipment that automatically provides to the hotline the number from which the call or fax is placed or the Internet protocol (IP) address from which the report is received. This number shall be entered into the report of abuse, abandonment, or neglect and become a part of the record of the report, but shall enjoy the same confidentiality as provided to the identity of the reporter ~~caller~~ pursuant to s. 39.202.

(i) The department shall voice-record all incoming or outgoing calls that are received or placed by the central abuse hotline which relate to suspected or known child abuse, neglect, or abandonment. The department shall maintain an electronic copy of each fax and web-based report. The recording or electronic copy of each fax or web-based report shall become a part of the record of the report but, notwithstanding s. 39.202, shall be released in full only to law enforcement agencies and state attorneys for the purpose of investigating and prosecuting criminal charges pursuant to s. 39.205, or to employees of the department for the purpose of investigating and seeking administrative penalties pursuant to s. 39.206. Nothing in this paragraph shall prohibit the use of the recordings, the electronic copies of faxes, and web-based reports by hotline staff for quality assurance and training.

(3) Any person required to report or investigate cases of suspected child abuse, abandonment, or neglect who has reasonable cause to suspect that a child died as a result of child abuse, abandonment, or neglect shall report his or her suspicion to the appropriate medical examiner. The medical examiner shall accept the report for investigation and shall report his or her findings, in writing, to the local law enforcement agency, the appropriate state attorney, and the department. Autopsy reports maintained by the medical examiner are not subject to the confidentiality requirements provided for in s. 39.202.

(4) The department shall establish and maintain a central abuse hotline to receive all reports made pursuant to this section in writing, via fax, via web-based reporting, or through a single statewide toll-free telephone number, which any person may use to report known or suspected child abuse, abandonment, or neglect at any hour of the day or night, any day of the week. The central abuse hotline shall be operated in such a manner as to enable the department to:

(a) Immediately identify and locate prior reports or cases of child abuse, abandonment, or neglect through utilization of the department's automated tracking system.

(b) Monitor and evaluate the effectiveness of the department's program for reporting and investigating suspected abuse, abandonment, or neglect of children through the development and analysis of statistical and other information.

(c) Track critical steps in the investigative process to ensure compliance with all requirements for any report of abuse, abandonment, or neglect.

(d) Maintain and produce aggregate statistical reports monitoring patterns of child abuse, child abandonment, and child neglect. The department shall collect and analyze child-on-child sexual abuse reports and include the information in aggregate statistical reports.

(e) Serve as a resource for the evaluation, management, and planning of preventive and remedial services for children who have been subject to abuse, abandonment, or neglect.

(f) Initiate and enter into agreements with other states for the purpose of gathering and sharing information contained in reports on child maltreatment to further enhance programs for the protection of children.

(5) The department shall be capable of receiving and investigating, 24 hours a day, 7 days a week, reports of known or suspected child abuse, abandonment, or neglect and reports that a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care. If it appears that the immediate safety or well-being of a child is endangered, that the family may flee or the child will be unavailable for purposes of conducting a child protective investigation, or that the facts otherwise so warrant, the department shall commence an investigation immediately, regardless of the time of day or night. In all other child abuse, abandonment, or neglect cases, a child protective investigation shall be commenced within 24 hours after receipt of the report. In an institutional investigation, the alleged perpetrator may be represented by an attorney, at his or her own expense, or accompanied by another person, if the person or the attorney executes an affidavit of understanding with the department and agrees to comply with the confidentiality provisions of s. 39.202. The absence of an attorney or other person does not prevent the department from proceeding with other aspects of the investigation, including interviews with other persons. In institutional child abuse cases when the institution is not operating and the child cannot otherwise be located, the investigation shall commence immediately upon the resumption of operation. If requested by a state attorney or local law enforcement agency, the department shall furnish all investigative reports to that agency.

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

(7) On an ongoing basis, the department's quality assurance program shall review calls, fax reports, and web-based reports to the hotline involving three or more unaccepted reports on a single child, where jurisdiction applies, in order to detect such things as harassment and situations that warrant an investigation because of the frequency or variety of the source of the reports. The Program Director for Family Safety may refer a case for investigation when it is determined, as a result of this review, that an investigation may be warranted.

History.--ss. 1, 2, 3, 4, 5, 6, ch. 63-24; s. 941, ch. 71-136; ss. 1, 1A, ch. 71-97; s. 32, ch. 73-334; s. 65, ch. 74-383; s. 1, ch. 75-101; s. 1, ch. 75-185; s. 4, ch. 76-237; s. 1, ch. 77-77; s. 3, ch. 77-429; ss. 1, 2, ch. 78-322; s. 3, ch. 78-326; s. 22, ch. 78-361; s. 1, ch. 78-379; s. 181, ch. 79-164; s. 1, ch. 79-203; s. 7, ch. 84-226; s. 37, ch. 85-54; s. 68, ch. 86-163; s. 34, ch. 87-238; s. 21, ch. 88-337; s. 33, ch. 89-294; s. 6, ch. 90-50; s. 51, ch. 90-306; s. 7, ch. 91-57; s. 17, ch. 91-71; s. 6, ch. 93-25; s. 59, ch. 94-164; ss. 22, 44, ch. 95-228; s. 9, ch. 95-266; s. 51, ch. 95-267; s. 133, ch. 95-418; s. 1, ch. 96-215; s. 14, ch. 96-268; s. 14, ch. 96-402; s. 271, ch. 96-406; s. 1041, ch. 97-103; s. 43, ch. 97-264; s. 257, ch. 98-166; s. 31, ch. 98-403; s. 4, ch. 99-168; s. 10, ch. 99-193; s. 41, ch. 2000-139; s. 3, ch. 2000-188; s. 1, ch. 2000-217; s. 1, ch. 2001-53; s. 1, ch. 2003-127; s. 7, ch. 2006-86; s. 2, ch. 2008-90. As of June 18, 2008, pending signature by the Governor.

Note.--Former ss. 828.041, 827.07(3), (4), (9), (13); s. 415.504.

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

(1) In order to protect the rights of the child and the child's parents or other persons responsible for the child's welfare, all records held by the department concerning reports of child abandonment, abuse, or neglect, including reports made to the central abuse hotline and all records generated as a result of such reports, shall be confidential and exempt from the provisions of s. 119.07(1) and shall not be disclosed except as specifically authorized by this chapter. Such exemption from s. 119.07(1) applies to information in the possession of those entities granted access as set forth in this section.

(2) Except as provided in subsection (4), access to such records, excluding the name of the reporter which shall be released only as provided in subsection (5), shall be granted only to the following persons, officials, and agencies:

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

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

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

(b) Criminal justice agencies of appropriate jurisdiction.

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

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

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

(f) A court upon its finding that access to such records may be necessary for the determination of an issue before the court; however, such access shall be limited to inspection in camera, unless the court determines that public disclosure of the information contained therein is necessary for the resolution of an issue then pending before it.

(g) A grand jury, by subpoena, upon its determination that access to such records is necessary in the conduct of its official business.

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

1. Administration or supervision of the department's program for the prevention, investigation, or treatment of child abuse, abandonment, or neglect, or abuse, neglect, or exploitation of a vulnerable adult, when carrying out his or her official function;
2. Taking appropriate administrative action concerning an employee of the department or the agency who is alleged to have perpetrated child abuse, abandonment, or neglect, or abuse, neglect, or exploitation of a vulnerable adult; or
3. Employing and continuing employment of personnel of the department or the agency.

(i) Any person authorized by the department who is engaged in the use of such records or information for bona fide research, statistical, or audit purposes. Such individual or entity shall enter into a

privacy and security agreement with the department and shall comply with all laws and rules governing the use of such records and information for research and statistical purposes. Information identifying the subjects of such records or information shall be treated as confidential by the researcher and shall not be released in any form.

(j) The Division of Administrative Hearings for purposes of any administrative challenge.

(k) Any appropriate official of a Florida advocacy council investigating a report of known or suspected child abuse, abandonment, or neglect; the Auditor General or the Office of Program Policy Analysis and Government Accountability for the purpose of conducting audits or examinations pursuant to law; or the guardian ad litem for the child.

(l) Employees or agents of an agency of another state that has comparable jurisdiction to the jurisdiction described in paragraph (a).

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

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

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

(p) The principal of a public school, private school, or charter school where the child is a student. Information contained in the records which the principal determines are necessary for a school employee to effectively provide a student with educational services may be released to that employee.

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

(3) The department may release to professional persons such information as is necessary for the diagnosis and treatment of the child or the person perpetrating the abuse or neglect.

(4) Notwithstanding any other provision of law, when a child under investigation or supervision of the department or its contracted service providers is determined to be missing, the following shall apply:

(a) The department may release the following information to the public when it believes the release of the information is likely to assist efforts in locating the child or to promote the safety or well-being of the child:

1. The name of the child and the child's date of birth;
2. A physical description of the child, including at a minimum the height, weight, hair color, eye color, gender, and any identifying physical characteristics of the child; and
3. A photograph of the child.

(b) With the concurrence of the law enforcement agency primarily responsible for investigating the incident, the department may release any additional information it believes likely to assist efforts in locating the child or to promote the safety or well-being of the child.

(c) The law enforcement agency primarily responsible for investigating the incident may release any information received from the department regarding the investigation, if it believes the release of the information is likely to assist efforts in locating the child or to promote the safety or well-being of the child.

The good-faith publication or release of this information by the department, a law enforcement agency, or any recipient of the information as specifically authorized by this subsection shall not subject the person, agency or entity releasing the information to any civil or criminal penalty. This subsection does not authorize the release of the name of the reporter, which may be released only as provided in subsection (5).

(5) The name of any person reporting child abuse, abandonment, or neglect may not be released to any person other than employees of the department responsible for child protective services, the central abuse hotline, law enforcement, the child protection team, or the appropriate state attorney, without the written consent of the person reporting. This does not prohibit the subpoenaing of a person reporting child abuse, abandonment, or neglect when deemed necessary by the court, the state attorney, or the department, provided the fact that such person made the report is not disclosed. Any person who reports a case of child abuse or neglect may, at the time he or she makes the report, request that the department notify him or her that a child protective investigation occurred as a result of the report. Any person specifically listed in s. 39.201(1) who makes a report in his or her official capacity may also request a written summary of the outcome of the investigation. The department shall mail such a notice to the reporter within 10 days after completing the child protective investigation.

(6) All records and reports of the child protection team of the Department of Health are confidential and exempt from the provisions of ss. 119.07(1) and 456.057, and shall not be disclosed, except, upon request, to the state attorney, law enforcement, the department, and necessary professionals, in furtherance of the treatment or additional evaluative needs of the child, by order of the court, or to health plan payors, limited to that information used for insurance reimbursement purposes.

(7) The department shall make and keep reports and records of all cases under this chapter relating to child abuse, abandonment, and neglect and shall preserve the records pertaining to a child and family until 7 years after the last entry was made or until the child is 18 years of age, whichever date is first reached, and may then destroy the records. Department records required by this chapter relating to child abuse, abandonment, and neglect may be inspected only upon order of the court or as provided for in this section.

(8) A person who knowingly or willfully makes public or discloses to any unauthorized person any confidential information contained in the central abuse hotline is subject to the penalty provisions of s. 39.205. This notice shall be prominently displayed on the first sheet of any documents released pursuant to this section.

History.--ss. 1, 2, 3, 4, 5, 6, ch. 63-24; s. 941, ch. 71-136; ss. 1, 1A, ch. 71-97; s. 32, ch. 73-334; s. 65, ch. 74-383; s. 1, ch. 75-101; s. 1, ch. 75-185; s. 4, ch. 76-237; s. 1, ch. 77-77; s. 3, ch. 77-429; ss. 1, 2, ch. 78-322; s. 3, ch. 78-326; s. 22, ch. 78-361; s. 1, ch. 78-379; s. 181, ch. 79-164; s. 1, ch. 79-203; s. 488, ch. 81-259; s. 11, ch. 84-226; s. 39, ch. 85-54; s. 14, ch. 85-224; s. 36, ch. 87-238; s. 2, ch. 88-80; s. 8, ch. 88-219; s. 26, ch. 88-337; s. 5, ch. 89-170; s. 5, ch. 89-278; s. 36, ch. 89-294; s. 2, ch. 89-535; s. 8, ch. 90-50; s. 7, ch. 90-208; s. 54, ch. 90-306; s. 9, ch. 91-57; s. 20, ch. 91-71; ss. 43, 48, ch. 92-58; s. 32, ch. 93-39; s. 16, ch. 93-214; s. 58, ch. 94-218; ss. 25, 46, ch. 95-228; s. 28, ch. 95-267; s. 15, ch. 96-402; s. 275, ch. 96-406; s. 1044, ch. 97-103; s. 15, ch. 97-276; s. 3, ch. 97-299; s. 15, ch. 98-137; s. 32, ch. 98-166; s. 3, ch. 98-255; s. 45, ch. 98-280; s. 32, ch. 98-403; s. 5, ch. 99-168; s. 11, ch. 99-193; s. 1, ch. 99-369; s. 18, ch. 2000-139; s. 2, ch. 2000-217; s. 6, ch. 2000-263; s. 51, ch. 2000-349; s. 12, ch. 2001-60; s. 27, ch. 2001-266; s. 2, ch. 2003-146; s. 1, ch. 2005-173; s. 6, ch. 2006-194; s. 3, ch. 2006-227.

Note.--Former ss. 828.041, 827.07(15); s. 415.51.

Note.--s. 1, 2005-213, effective October 1, 2005, also created a new subsection (2)(g): "The executive director or equivalent, and his or her designee, of a children's advocacy center that is established and operated under s. 39.3035."

39.2021 Release of confidential information.--

(1) Any person or organization, including the Department of Children and Family Services, may petition the court for an order making public the records of the Department of Children and Family Services which pertain to investigations of alleged abuse, abandonment, or neglect of a child. The court shall determine whether good cause exists for public access to the records sought or a portion thereof. In making this determination, the court shall balance the best interests of the child who is the focus of the investigation and the interest of that child's siblings, together with the privacy rights of other persons identified in the reports, against the public interest. The public interest in access to such records is reflected in s. 119.01(1), and includes the need for citizens to know of and adequately evaluate the actions of the Department of Children and Family Services and the court system in providing children of this state with the protections enumerated

in s. 39.001. However, this subsection does not contravene s. 39.202, which protects the name of any person reporting the abuse, abandonment, or neglect of a child.

(2) In cases involving serious bodily injury to a child, the Department of Children and Family Services may petition the court for an order for the immediate public release of records of the department which pertain to the protective investigation. 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. The court must determine whether good cause exists for the public release of the records sought no later than 24 hours, excluding Saturdays, Sundays, and legal holidays, after the date the department filed the petition with the court. If the court does not grant or deny the petition within the 24-hour time period, the department may release to the public summary information including:

(a) A confirmation that an investigation has been conducted concerning the alleged victim.

(b) The dates and brief description of procedural activities undertaken during the department's investigation.

(c) 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 summary information shall not include the name of, or other identifying information with respect to, any person identified in any investigation. In making a determination to release confidential information, the court shall balance the best interests of the child who is the focus of the investigation and the interests of that child's siblings, together with the privacy rights of other persons identified in the reports against the public interest for access to public records. However, this subsection does not contravene s. 39.202, which protects the name of any person reporting abuse, abandonment, or neglect of a child.

(3) When the court determines that good cause for public access exists, the court shall direct that the department redact the name of, and other identifying information with respect to, any person identified in any protective investigation report until such time as the court finds that there is probable cause to believe that the person identified committed an act of alleged abuse, abandonment, or neglect.

History.-- s. 1, ch. 2004-335.

39.203 Immunity from liability in cases of child abuse, abandonment, or neglect.--

(1)(a) Any person, official, or institution participating in good faith in any act authorized or required by this chapter, or reporting in good faith any instance of child abuse, abandonment, or neglect to the department or any law enforcement agency, shall be immune from any civil or criminal liability which might otherwise result by reason of such action.

(b) Except as provided in this chapter, nothing contained in this section shall be deemed to grant immunity, civil or criminal, to any person suspected of having abused, abandoned, or neglected a child, or committed any illegal act upon or against a child.

(2)(a) No resident or employee of a facility serving children may be subjected to reprisal or discharge because of his or her actions in reporting abuse, abandonment, or neglect pursuant to the requirements of this section.

(b) Any person making a report under this section shall have a civil cause of action for appropriate compensatory and punitive damages against any person who causes detrimental changes in the employment status of such reporting party by reason of his or her making such report. Any detrimental change made in the residency or employment status of such person, including, but not limited to, discharge, termination,

demotion, transfer, or reduction in pay or benefits or work privileges, or negative evaluations within a prescribed period of time shall establish a rebuttable presumption that such action was retaliatory.

History.--ss. 1, 2, 3, 4, 5, 6, ch. 63-24; s. 941, ch. 71-136; ss. 1, 1A, ch. 71-97; s. 32, ch. 73-334; s. 65, ch. 74-383; s. 1, ch. 75-101; s. 1, ch. 75-185; s. 4, ch. 76-237; s. 1, ch. 77-77; s. 3, ch. 77-429; ss. 1, 2, ch. 78-322; s. 3, ch. 78-326; s. 22, ch. 78-361; s. 1, ch. 78-379; s. 181, ch. 79-164; s. 1, ch. 79-203; s. 27, ch. 88-337; s. 55, ch. 90-306; s. 63, ch. 94-164; s. 73, ch. 97-103; s. 33, ch. 98-403; s. 12, ch. 99-193.

Note.--Former ss. 828.041, 827.07(7); s. 415.511.

39.204 Abrogation of privileged communications in cases involving child abuse, abandonment, or neglect.--The privileged quality of communication between husband and wife and between any professional person and his or her patient or client, and any other privileged communication except that between attorney and client or the privilege provided in s. 90.505, as such communication relates both to the competency of the witness and to the exclusion of confidential communications, shall not apply to any communication involving the perpetrator or alleged perpetrator in any situation involving known or suspected child abuse, abandonment, or neglect and shall not constitute grounds for failure to report as required by s. 39.201 regardless of the source of the information requiring the report, failure to cooperate with law enforcement or the department in its activities pursuant to this chapter, or failure to give evidence in any judicial proceeding relating to child abuse, abandonment, or neglect.

History.--ss. 1, 2, 3, 4, 5, 6, ch. 63-24; s. 941, ch. 71-136; ss. 1, 1A, ch. 71-97; s. 32, ch. 73-334; s. 65, ch. 74-383; s. 1, ch. 75-101; s. 1, ch. 75-185; s. 4, ch. 76-237; s. 1, ch. 77-77; s. 3, ch. 77-429; ss. 1, 2, ch. 78-322; s. 3, ch. 78-326; s. 22, ch. 78-361; s. 1, ch. 78-379; s. 181, ch. 79-164; s. 1, ch. 79-203; s. 2, ch. 85-28; s. 64, ch. 94-164; s. 74, ch. 97-103; s. 34, ch. 98-403; s. 3, ch. 2002-174.

Note.--Former ss. 828.041, 827.07(8); s. 415.512.

39.205 Penalties relating to reporting of child abuse, abandonment, or neglect.--

(1) A person who is required to report known or suspected child abuse, abandonment, or neglect and who knowingly and willfully fails to do so, or who knowingly and willfully prevents another person from doing so, is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. A judge subject to discipline pursuant to s. 12, Art. V of the Florida Constitution shall not be subject to criminal prosecution when the information was received in the course of official duties.

(2) Unless the court finds that the person is a victim of domestic violence or that other mitigating circumstances exist, a person who is 18 years of age or older and lives in the same house or living unit as a child who is known or suspected to be a victim of child abuse, neglect of a child, or aggravated child abuse, and knowingly and willfully fails to report the child abuse commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) A person who knowingly and willfully makes public or discloses any confidential information contained in the central abuse hotline or in the records of any child abuse, abandonment, or neglect case, except as provided in this chapter, is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(4) The department shall establish procedures for determining whether a false report of child abuse, abandonment, or neglect has been made and for submitting all identifying information relating to such a report to the appropriate law enforcement agency and shall report annually to the Legislature the number of reports referred.

(5) If the department or its authorized agent has determined after its investigation that a report is false, the department shall, with the consent of the alleged perpetrator, refer the report to the local law enforcement agency having jurisdiction for an investigation to determine whether sufficient evidence exists to refer the case for prosecution for filing a false report as defined in s. 39.01 ~~s. 39.01(28)~~. During the pendency of the

investigation by the local law enforcement agency, the department must notify the local law enforcement agency of, and the local law enforcement agency must respond to, all subsequent reports concerning children in that same family in accordance with s. 39.301. If the law enforcement agency believes that there are indicators of abuse, abandonment, or neglect, it must immediately notify the department, which must ensure ~~assure~~ the safety of the children. If the law enforcement agency finds sufficient evidence for prosecution for filing a false report, it must refer the case to the appropriate state attorney for prosecution.

(6) A person who knowingly and willfully makes a false report of child abuse, abandonment, or neglect, or who advises another to make a false report, is guilty of a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083. Anyone making a report who is acting in good faith is immune from any liability under this subsection.

History.--ss. 1, 2, 3, 4, 5, 6, ch. 63-24; s. 941, ch. 71-136; ss. 1, 1A, ch. 71-97; s. 32, ch. 73-334; s. 65, ch. 74-383; s. 1, ch. 75-101; s. 1, ch. 75-185; s. 4, ch. 76-237; s. 1, ch. 77-77; s. 3, ch. 77-429; ss. 1, 2, ch. 78-322; s. 3, ch. 78-326; s. 22, ch. 78-361; s. 1, ch. 78-379; s. 181, ch. 79-164; s. 1, ch. 79-203; s. 28, ch. 88-337; s. 56, ch. 90-306; s. 10, ch. 91-57; s. 21, ch. 91-71; s. 251, ch. 91-224; s. 10, ch. 93-25; s. 276, ch. 96-406; s. 4, ch. 98-111; s. 35, ch. 98-403; s. 6, ch. 99-168; s. 3, ch. 2000-217; s. 4, ch. 2002-70; s. 29, ch. 2006-86. As of June 18, 2008, pending signature by the Governor.

Note.--Former ss. 828.041, 827.07(18); s. 415.513.

39.206 Administrative fines for false report of abuse, abandonment, or neglect of a child; civil damages.--

(1) In addition to any other penalty authorized by this section, chapter 120, or other law, the department may impose a fine, not to exceed \$10,000 for each violation, upon a person who knowingly and willfully makes a false report of abuse, abandonment, or neglect of a child, or a person who counsels another to make a false report.

(2) If the department alleges that a person has filed a false report with the central abuse hotline, the department must file a Notice of Intent which alleges the name, age, and address of the individual, the facts constituting the allegation that the individual made a false report, and the administrative fine the department proposes to impose on the person. Each time that a false report is made constitutes a separate violation.

(3) The Notice of Intent to impose the administrative fine must be served upon the person alleged to have filed the false report and the person's legal counsel, if any. Such Notice of Intent must be given by certified mail, return receipt requested.

(4) Any person alleged to have filed the false report is entitled to an administrative hearing, pursuant to chapter 120, before the imposition of the fine becomes final. The person must request an administrative hearing within 60 days after receipt of the Notice of Intent by filing a request with the department. Failure to request an administrative hearing within 60 days after receipt of the Notice of Intent constitutes a waiver of the right to a hearing, making the administrative fine final.

(5) At the administrative hearing, the department must prove by a preponderance of the evidence that the person filed a false report with the central abuse hotline. The administrative hearing officer shall advise any person against whom a fine may be imposed of that person's right to be represented by counsel at the administrative hearing.

(6) In determining the amount of fine to be imposed, if any, the following factors shall be considered:

(a) The gravity of the violation, including the probability that serious physical or emotional harm to any person will result or has resulted, the severity of the actual or potential harm, and the nature of the false allegation.

(b) Actions taken by the false reporter to retract the false report as an element of mitigation, or, in contrast, to encourage an investigation on the basis of false information.

(c) Any previous false reports filed by the same individual.

(7) A decision by the department, following the administrative hearing, to impose an administrative fine for filing a false report constitutes final agency action within the meaning of chapter 120. Notice of the imposition of the administrative fine must be served upon the person and the person's legal counsel, by certified mail, return receipt requested, and must state that the person may seek judicial review of the administrative fine pursuant to s. 120.68.

(8) All amounts collected under this section shall be deposited into an appropriate trust fund of the department.

(9) A person who is determined to have filed a false report of abuse, abandonment, or neglect is not entitled to confidentiality. Subsequent to the conclusion of all administrative or other judicial proceedings concerning the filing of a false report, the name of the false reporter and the nature of the false report shall be made public, pursuant to s. 119.01(1). Such information shall be admissible in any civil or criminal proceeding.

(10) A person who knowingly and willfully makes a false report of abuse, abandonment, or neglect of a child, or a person who counsels another to make a false report may be civilly liable for damages suffered, including reasonable attorney fees and costs, as a result of the filing of the false report. If the name of the person who filed the false report or counseled another to do so has not been disclosed under subsection (9), the department as custodian of the records may be named as a party in the suit until the dependency court determines in a written order upon an in camera inspection of the records and report that there is a reasonable basis for believing that the report was false and that the identity of the reporter may be disclosed for the purpose of proceeding with a lawsuit for civil damages resulting from the filing of the false report. The alleged perpetrator may submit witness affidavits to assist the court in making this initial determination.

(11) Any person making a report who is acting in good faith is immune from any liability under this section and shall continue to be entitled to have the confidentiality of their identity maintained.

History.--s. 65, ch. 94-164; s. 5, ch. 98-111; s. 36, ch. 98-403; s. 13, ch. 99-193.

Note.--Former s. 415.5131.