



ABUSE REPORTING and AFFIRMATIVE DUTIES

Chapter 415, F.S. and Chapter 39, F.S.

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INTRODUCTION

Everyone in Florida is a mandated reporter but some people are professionally mandated reporters. Every person has a responsibility to report suspected abuse or neglect. In addition, Florida Law specifies professionals in certain occupations as required to do so. These professionals are mandated to make a report if they have reasonable cause to suspect abuse, neglect or exploitation is of a child or a vulnerable adult. Providers of substance abuse services shall adhere to the statutory requirements for reporting abuse, neglect, and deaths of children under Chapter 39, F.S., and of adults under Section 415.1034 and paragraph 397.501(7)(c), F.S.

LAWS RELATING TO CHILDREN

More than 1 million children are victims of child abuse and neglect each year. Many of these victims do not receive the help they need because their abuse or neglect isn't reported to the proper authorities to intervene or investigate.

Chapter 39 of the Florida Statute (F.S.) mandates that any person who knows, or has reasonable cause to suspect, that a child is abused, neglected, or abandoned by a parent, legal custodian, caregiver, or other person responsible for the child's welfare shall immediately report such knowledge or suspicion to the Florida Abuse Hotline of the Department of Children and Families (DCF). Any person, who fails to do so or prevents another from reporting, commits a felony of the third degree.

In addition, some people are professionally mandated reporters, including:

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

Definitions for Child Reports

Abandoned or Abandonment –means a situation in which the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the caregiver, while being able, has made no significant contribution to the child's care and maintenance or has failed to establish or maintain a substantial and positive relationship with the child, or both. "Establish or maintain a substantial and positive relationship" includes, but is not limited to, frequent and regular contact with the child through frequent and regular visitation or frequent and regular communication to or with the child, and the exercise of parental rights and responsibilities. Marginal efforts and incidental or token visits or communications are not sufficient to establish or maintain a substantial and positive relationship with a child. The incarceration, repeated incarceration, or extended incarceration of a parent, legal custodian, or caregiver responsible for a child's welfare may support a finding of abandonment.

Abuse—means any willful act or threatened act that results in any physical, mental, or sexual abuse, injury, or harm that causes or is likely to cause the child’s physical, mental, or emotional health to be significantly impaired. Abuse of a child includes acts or omissions. Corporal discipline of a child by a parent or legal custodian for disciplinary purposes does not in itself constitute abuse when it does not result in harm to the child.

Caregiver—means the parent, legal custodian, permanent guardian, adult household member, or other person responsible for a child’s welfare.

Neglect—occurs when a child is deprived of, or is allowed to be deprived of, necessary food, clothing, shelter, or medical treatment or a child is permitted to live in an environment when such deprivation or environment causes the child’s physical, mental, or emotional health to be significantly impaired or to be in danger of being significantly impaired.

Medical neglect is:

- The refusal or failure on the part of the person responsible for the child’s care to seek, obtain, and/or maintain those services for necessary medical, dental, or mental health care.
- Withholding medically indicated treatment from disabled infants with life-threatening conditions.

Emotional and Moral Neglect is the denial of proper care and attention to the child, emotionally and/or morally, by the person responsible for the child’s care that may result in the child’s maladaptive functioning.

Harmful behaviors by the person responsible include, but are not limited to, the following:

- Encouraging the child to steal or engage in other illegal activities
- Encouraging the child to use drugs and/or alcohol
- Recognizing the child’s need but failing to provide the child with emotional nurturance
- Having inappropriate expectations of the child given the child’s developmental level.

The Florida Abuse Hotline will accept a report on a child when there is reasonable cause to suspect that a child (unmarried person who is born under the age of 18 and who has not been emancipated by order of the court):

- Is a Florida resident, and can be located in Florida, or is temporarily out of the state but expected to return,
- Has been harmed or is believed to be threatened with harm as defined by statute, by a parent, legal custodian, caregiver, or other person responsible for the child’s welfare, or
- Is not a Florida resident but can be located in Florida and has been harmed in Florida or is believed to be threatened with harm in Florida as defined by statute, by a parent, legal custodian, caregiver, or other person responsible for the child's welfare.

DCF is responsible for immediately evaluating and classifying all reports of suspected abuse/neglect/imminent risk. If the report contains information to warrant an investigation, DCF must make its best effort to begin an investigation within two hours if there is an imminent risk of physical harm to a child or another emergency; and within three days for all other reports. In all cases, DCF must complete the investigation in 30 calendar days.

LAWS RELATING TO VULNERABLE ADULTS

The majority of abusers to the elderly are family members, most often adult children, spouses, and partners. Research shows that family members who abuse drugs or alcohol, who have a mental/emotional illness, and who feel burdened by their caregiving responsibilities abuse at higher rates than those who do not.

The Legislature recognizes that there are many people in Florida who, because of age or disability, are in need of protective services. It is the intent of the Legislature to provide for the detection and correction of abuse, neglect, and exploitation through social services and criminal investigations as well as establish a program of protective services for all vulnerable adults in need of them. It is intended that the mandatory reporting of such cases will cause the protective services of the state to be brought to bear in an effort to prevent further abuse, neglect, and exploitation of vulnerable adults. The Legislature intends to encourage the involvement of families in the care and protection of vulnerable adults. As mandated by Chapter 415, F.S. the department is responsible for providing services to detect, and correct abuse, neglect, and exploitation of vulnerable adults.

Definitions for Adult Reports

Vulnerable adult—a vulnerable adult means a person age 18 or older whose ability to perform the normal activities of daily living, and/or to provide for his or her own care or protection, is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or due to the infirmities of aging.

Abuse—means any willful act or threatened act by a relative, caregiver, or household member which causes or is likely to cause significant impairment to a vulnerable adult's physical, mental, or emotional health. Abuse includes acts and omissions. (415.102(1), Florida Statutes)

Caregiver—means a person who has been entrusted with or has assumed the responsibility for frequent and regular care of or services to a vulnerable adult on a temporary or permanent basis and who has a commitment, agreement, or understanding with that person or that person's guardian that a caregiver role exists. (415.102(4), Florida Statutes)

Exploitation—means knowingly, by deception or intimidation, obtaining, or using, or attempting to obtain or use the adult's funds, assets, or property with the intent to temporarily or permanently deprive the adult of the use, benefit, or possession of funds, assets, or property for the benefit of someone other than the vulnerable adult. A person who exploits is a person who knows or who should know that the vulnerable adult lacks the capacity to consent. "Exploitation" may include, but is not limited to:

- Breaches of fiduciary relationships, such as the misuse of a power of attorney or the abuse of guardianship duties, resulting in the unauthorized appropriation, sale or transfer of property.
- Unauthorized taking of personal assets.
- Misappropriation, misuse, or transfer of moneys belonging to a vulnerable adult's income and assets for the necessities required for that person's support and maintenance.

Neglect—means the failure or omission on the part of the caregiver or vulnerable adult to provide the care, supervision, and services necessary to maintain the physical and mental health of the vulnerable adult. This includes but is not limited to, food, clothing, medicine, shelter, supervision, and medical services, which a prudent person would consider essential for the well-being of a vulnerable adult. The term *neglect* also means the failure of a caregiver or vulnerable adult to make a reasonable effort to protect a vulnerable adult from abuse, neglect, or exploitation by others. *Neglect* is repeated conduct or a single incident of carelessness which produces or could reasonably be expected to result in serious physical or psychological injury or a substantial risk of death.

There are certain barriers to reporting abuse such as:

- Victims may be afraid of retaliation, are ashamed that a family member mistreats them, or victims think no one will believe them.
- Sometimes people do not report abuse because they may not recognize the signs and symptoms, they may not know how to make a report, or may not want to get involved.
- Victims fear loss of a caregiver, even an abusing caregiver.
- Persons with disabilities are often taught to be compliant and passive and are sometimes unable to distinguish between appropriate and inappropriate physical contact.
- People, including professionals and law enforcement, often do not recognize abuse of persons with disabilities when they see it; they are often quick to dismiss the visible signs of abuse by saying it was probably caused by the person's disability.

Mandatory Reporters—although every person has a responsibility to report suspected abuse or neglect, some occupations are specified in Florida law as required to do so.

Any person, including, but not limited to, any:

- Physician, osteopathic physician, medical examiner, chiropractic physician, nurse, paramedic, emergency medical technician, or hospital personnel engaged in the admission, examination, care, or treatment of vulnerable adults.
- Health professional or mental health professional.
- Practitioner who relies solely on spiritual means for healing.
- Nursing home staff; assisted living facility staff; adult day care center staff; adult family-care home staff; social worker; or other professional adult care, residential, or institutional staff.
- State, county, or municipal criminal justice employee or law enforcement officer.
- An employee of the Department of Business and Professional Regulation conducting inspections of public lodging establishments.
- Florida advocacy council member or long-term care ombudsman council member.
- Bank, savings and loan, or credit union officer, trustee, or employee, who knows, or has reasonable cause to suspect, that a vulnerable adult has been or is being abused, neglected, or exploited shall immediately report such knowledge or suspicion to the central abuse hotline.

The Florida Abuse Hotline will accept a report on a vulnerable adult when:

There is reasonable cause to suspect that a vulnerable adult (a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to disability, brain damage, or the infirmities of aging);

- Is a resident of Florida or currently located in Florida.
- Is believed to have been neglected or abused by a caregiver in Florida or
- Is suffering from the ill effects of neglect by self and is in need of service or
- Is being exploited by any person who stands in a position of trust or confidence, or any person who knows or should know that a vulnerable adult lacks capacity to consent and who obtains or uses, or endeavors to obtain or use their funds, assets or property.

Reports of exploitation cannot be accepted after the vulnerable adult is deceased.

HOW TO REPORT ABUSE

Everyone, including professionally mandatory reporters, should contact the Florida Abuse Hotline when they know or have reasonable cause to suspect that a child or a vulnerable adult has been abused, abandoned, neglected, or exploited. The Hotline Counselor will determine if the information provided meets legal requirements to accept a report for investigation.

There are four ways to report abuse:

1. Telephone – 1-800-962-2873
2. Fax – 1-800-914-0004
3. By TDD – 1-800-453-5145
4. Web Reporting – <http://reportabuse.dcf.state.fl.us>

**The Department of Children and Families prefers for you to call to speak to a Hotline counselor.*

When Making a Report Be Prepared to Provide:

- Victim name, address or location, approximate age, race and sex.
- A description of the abuse, neglect or exploitation.
- Signs or indications of harm or injury, including a physical description if possible.
- Name of the person responsible and their relationship to the victim.

In addition, provide any other relevant information that may expedite the process, such as directions to the victim and any risks to the investigator.

When reporting child abuse/neglect, a professionally mandatory reporter is required by Florida Statute to provide his or her name to the Abuse Hotline Counselor. A professionally mandatory reporter's name is entered into the record of the report, but is held confidential (§ 39.202, F.S. and 415.107, F.S.)

Facility's duty to inform their residents—it is the facility's duty to inform residents of their right to report abusive, neglectful, or exploitive practices. The department shall work cooperatively with the Agency for Health Care Administration, the Agency for Persons with Disabilities, and the Department of Elderly Affairs to ensure that every facility that serves vulnerable adults informs residents of their right to report abusive, neglectful, or exploitive practices. Each facility must establish appropriate policies and procedures to facilitate such reporting.

Confidentiality of records—all reports called in are confidential. Access to the reports is limited and no reports are released by the Florida Abuse Hotline other than to those persons specifically authorized under Chapter 39 and 415, F.S. The name of the person making the report may not be released to any person other than employees of the department responsible for the protective services, law enforcement, state attorney, without written consent of the person reporting. The restrictions on disclosure and use do not apply to the reporting of incidents of suspected child abuse and neglect to the appropriate state or local authorities as required by law. However, such restrictions continue to apply to the original substance abuse records maintained by the provider, including their disclosure and use for civil or criminal proceedings which may arise out of the report of suspected child abuse and neglect.

Criminal Penalties

- A person who knowingly and willfully fails to report a case of known or suspected abuse, neglect, or exploitation of a vulnerable adult, or who knowingly and willfully prevents another person from doing so, commits a misdemeanor of the second degree.
- A person who knowingly and willfully makes public or discloses any confidential information contained in the central abuse hotline, or in other computer systems, or in the records of any case of abuse, neglect, or exploitation of a vulnerable adult, commits a misdemeanor of the second degree.
- A person who knowingly and willfully makes a false report of abuse, neglect, or exploitation of a vulnerable adult, or a person who advises another to make a false report, commits a felony of the third degree. A false report is made with malicious intent. A false report is not: a) Reports made in good faith, or b) Reports based on reasonable suspicion of abuse, neglect or abandonment.

SUMMARY

As a service provider you have the duty to make a report to the Florida Abuse Hotline at **1-800-962-2873** if you have a reasonable cause to suspect that a vulnerable adult is being abuse, neglected or exploited as well as reporting child abuse, neglect, or abandonment. If you fail to report a known or suspected case of abuse, neglect, exploitation or abandonment, it is a crime and you can face legal action. When you have doubt about reporting a known or suspected case of abuse, speak to your supervisor immediately. It is always better to air on the side of safety and make a report rather than to ignore a situation.

REFERENCES

<http://www.dcf.state.fl.us/programs/abuse/publications/mandatedreporters.pdf>

http://elderaffairs.state.fl.us/doea/docs/APS_Training_for_Professionals_2013.pdf

<https://reportabuse.dcf.state.fl.us/>

<http://apd.myflorida.com/zero-tolerance/reporting/>