Child Welfare Pre-Service Training

Legal I: Legal Basis for Child Protection

Participant Guide

July 2012
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Module 1: Legal Basis for Child Protection

Legal References for Child Protection

United States Constitution
- forms the outline for our governmental system
- upholds the rights of families to “due process of law” in dependency cases

Federal Statutes
- focuses on what states are required to do (as opposed to what parents, children, and you must do)
- failure to follow federal law often results in loss of federal funding
- quoted by attorneys and relied on by judges when making decisions regarding reasonable efforts, placements, judicial reviews and permanency

Administrative Codes
- also known as “Rules,” which is short for “Rules of Practice and Procedure”
- provides clarification where there are questions in applying state or federal law
- fills in the details necessary to turn a principle into daily reality

The Florida Rules of Juvenile Procedure
- govern court procedures for dependency cases
- provide content requirements for petitions
- explain the purposes and requirements for court hearings
- supply practical information missing from the laws by explaining how the laws are to be put into daily court practice
- guide attorneys to follow court procedures
- these rules are not laws in the strictest sense, the court will not accept any document or practice not in accordance with the rules
- everything prepared for court must be done in conjunction with the rules for juvenile procedure

Operating Procedures
- further clarify the Administrative Codes (Rules)
- provide details for day-to-day job activities
- are agency specific
Florida Statutes

Chapter 39

- Florida Statute, Chapter 39 is the foundational law and primary legal reference for dependency cases in Florida.
- Follows the chronological development of a case from reporting, to investigations, to removal, and on through to permanency.
- Provides most of the legal guidance necessary for drafting court documents and preparing for court hearings.
- Reflects the philosophy of federal laws as expressed in:
  - PL 105-89, The Adoption and Safe Families Act of 1997 (ASFA)
- Many state laws are developed to meet the requirements the federal government has tied to the department’s funding sources.
- More than 50% of DCF’s budget comes from federal funding sources. Lack of compliance with federal requirements results in loss of federal funding.

Finding Chapter 39 Cites

- Familiarity with Florida statutes is central to your job tasks.
- It is important to develop the ability to quickly reference the law.
- The Quality of Practice Standards Model references the statutes on each page of daily job tasks.
- The following are examples of how to read the statutes:
  - Chapter Number and Title: 39
  - Sections: 39.001
  - Subsections: 39.001 (7)
  - Paragraphs: 39.001 (7) (c)
  - Subparagraphs: 39.001 (7) (c) 4
  - Sub, subparagraphs: 39.001 (7) (c) 4. a
# Using the Florida Statutes

**Chapter 39**
- Chapter 39 is the foundational law and primary legal reference for dependency cases in Florida.

**Directions:**
- Refer to Chapter 39 to locate the cite addressing each issue below.
- Record the chapter number, section, subsection, etc., of the appropriate statute.
- Briefly read each cite and answer the questions.

<table>
<thead>
<tr>
<th>Citation</th>
<th>Chapter</th>
<th>Section</th>
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<td>Abuse (definition)</td>
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<td>Does corporal punishment constitute abuse?</td>
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<td>Neglect (definition)</td>
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<td>Does financial instability constitute neglect?</td>
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<td>Abandonment (definition)</td>
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<td>If parents are incarcerated, have they abandoned their children?</td>
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<td>Reporting child abuse: Reporters who must provide their names to hotline.</td>
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<td>Is an elementary school librarian required to provide his/her name when reporting child abuse?</td>
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<td>Timeframe for an arraignment hearing.</td>
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<td>When must an arraignment hearing be held?</td>
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<td>Harm (definition)</td>
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<td>What are some of the factors that must be considered in evaluating the physical, mental, or emotional injury to a child and deciding if harm to a child has occurred?</td>
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<td>Grounds for Termination of Parental Rights (focus on egregious abuse)</td>
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<td>Does egregious abuse apply to only the child victim?</td>
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## Using the Florida Administrative Codes (F.A.C.)

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<td>Additional Investigation Intake (Report) (Definition)</td>
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<td>What type of information is added to an intake (report) to make it an additional?</td>
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<td>Critical Junctures (Definition)</td>
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<td>What are some examples of critical junctures?</td>
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<td>Diligent Search - Involving an American Indian or Alaskan Native child</td>
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<td>What must be documented in the case file when a diligent search involves and American Indian or Alaskan Native child?</td>
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<td>Home Studies for Relative and Non-Relative Placements (Requirements for summary content)</td>
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<td>What information/categories must be included in the summary of the results of the home study?</td>
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Introduction to Federal Laws Impacting Child Protection

The Adoption Assistance and Child Welfare Act of 1980
- Public Law 96-272; modified by Public Law 105-89 (ASFA)
- Sets national minimum standards for key activities within states’ child welfare (licensed out-of-home care) systems.
- Designed to address “foster care drift,” or situations when children are trapped in the system and move from foster home to foster home with no hope of having a permanent family.
- Applies to all children in out-of-home placements who have not achieved permanency; including a relative/non-relative placement.
- Designed to move children toward a permanency goal as quickly as possible while protecting their best interests.
- Requires that case plans develop permanency goals and are reviewed every six months to ensure goals are revised and updated.

The Adoption and Safe Families Act of 1997 (ASFA)
- In 1997, Public Law 105-89, the Adoption and Safe Families Act, was enacted by the federal government and amended P.L. 96-272.
- Declares that the child’s health and safety must be the paramount concern.
- Although safety is the top concern, ASFA still requires that states:
  - preserve and reunify families (when accomplishable without jeopardizing child safety)
  - place the child in a timely manner
  - finalize permanent placement within 12 months
- When child safety cannot be ensured and the child may not return to the parents’ care, and reasonable efforts have been made consistent with the case plan, the state must petition for the termination of the parental rights of each parent to achieve permanency for the child in a timely manner unless:
  - The child is being cared for by a fit and willing relative.
  - The child is placed in care of an individual under legal guardianship.
  - Compelling reasons have been documented as to how reunification, adoption, placement with a relative, guardianship are not appropriate for the child but another planned permanent living arrangement has been identified and is in the child’s best interest.
  - The state has not provided the services necessary for the safe return of the child.
• The federal government provides technical assistance to communities to reach targets for adoptions or alternative permanent placements for children in licensed out-of-home care.

• ASFA preserves reasonable parenting by stating: “nothing in this act is intended to disrupt the family unnecessarily or to intrude inappropriately into family life, to prohibit the use of reasonable methods of parental discipline, or prescribe a particular method of parenting.”

**Seven Outcomes:** (S-safety, P-permanency, WB-well-being) for the child must be documented & are audited by the Federal government for quality:

Outcome S1: Children are first and foremost, protected from abuse and neglect.
Outcome S2: Children are safely maintained in their homes whenever possible and appropriate.
Outcome P1: Children have permanency and stability in their living situations.
Outcome P2: The continuity of family relationships and connections is preserved for children.
Outcome WB1: Families have enhanced capacity to provide for their children’s needs.
Outcome WB2: Children receive appropriate services to meet their educational needs.
Outcome WB3: Children receive adequate services to meet their physical and mental health needs.

**Quality of Practice Standards:** (CPI and CM)

• Relates the federal outcomes, and state guidelines to specific job tasks of each child protection role.

**Multi Ethnic Placement Act/Inter Ethnic Placement Provision**

• Prohibits the delay or denial of any adoption or placement in foster care due to the race, color, or national origin of the child or of the foster or adoptive parents.

• Requires states to provide for diligent recruitment of potential foster and adoptive families who reflect the ethnic and racial diversity of children for whom homes are needed.

**Interstate Compact on the Placement of Children (ICPC)**

• Establishes procedures for all states when placing children across state lines.

• Sending state retains court jurisdiction during placement to ensure that the child can return, if necessary, and are financially responsible for the child if parents, relatives, or other financial assistance are not available in the receiving state.
• Placement of a dependent child under court jurisdiction from one state into another state without the approval of the receiving state Compact Administrator is an illegal child placement and a violation that may be subject to penalties of the Compact.

The Indian Child Welfare Act (ICWA)
• Protects Native American heritage under federal law.
• If a Native American child is the subject of a dependency case, the tribal court may have control over the case or be permitted to intervene in the circuit court case.
• Requires you to always determine if a child is of American Indian descent recognized by the federal government under ICWA.
• The % of Indian blood necessary to qualify varies by tribe; the chief of the tribe determines eligibility.
• DCF and its providers have no authority on an Indian reservation unless there is a signed agreement to the contrary.
• DCF does have the authority to respond in situations if the Indian child does not live on a reservation; however, immediate contact must be made with the tribal liaison.
• Upon receipt of an intake, no matter where the child lives, you must locate and follow any agreement existing between the Indian tribe and Agency.
• While emergency removal is allowed off the reservation, the child’s Indian parents, custodians, and the tribe must be notified.
• In order for the Court to shelter the child, expert testimony regarding Indian issues must be heard. Findings of “clear and convincing” are the legal standard. (Legal standard is higher than for other removals.)

Immigrant Children - Special Immigrant Juvenile Status
• Immigrant children and families who do not have the legal authority to reside in the U.S. are affected by two federal laws passed by Congress in 1996.
• These laws make drastic changes to the eligibility of immigrant families and children to a host of federal benefits.
• Immigration Reform: Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (PL 104-208)
• Special Immigrant Juvenile Status (SIJS) is a federal law that assists certain undocumented children in obtaining legal permanent residency.
• Persons under the jurisdiction of a juvenile court who are eligible for another planned permanent living arrangement due to drug abuse, or maltreatment may qualify for SIJS and based on that, apply for adjustment of status to a Lawful Permanent Resident.
• Typically SIJS is granted to children in dependency court who are placed in foster care.
• Children under the jurisdiction of the juvenile delinquency court may also be eligible for SIJS.
• Special Immigrant Juvenile States (SIJS) is a way for a dependent child to become a permanent resident of the United States (i.e., get a “green card”).
• If the juvenile applies for this status and is successful, he or she may
  • remain in the U.S.,
  • work legally,
  • qualify for in-state tuition at college, and
  • in five years apply for U.S. citizenship.

If the application is denied, the child might be deported.
Your Rights in Shelter or Foster Care

Why We Wrote This Document

Your health and safety are very important to the state of Florida. You can help us make sure that you are safe and healthy by speaking up for yourself. In order to help you do that, we wrote this document so you can know what your rights are and what you can expect from the Department of Children and Families.

Where Do Your Rights Come From?

There are many sources for the right of children and youth in the shelter and foster families. Some rights come from the United States Constitution, other from the Florida Constitution. Florida statutes (laws) and federal statutes also tell the state how it is supposed to treat you.

My Commitment to you

As Secretary of the Department of Children and Families, I will do my best to make sure that everyone responsible for providing care and services to children in foster care will protect the rights listed here. I will also do my best to make sure that they meet the expectations listed after the rights.

Bob Butterworth
Secretary of the Department of Children and Families

What Rights Do You Have?

You have the right:

To Know Your Rights:
- To be given a copy of this document,
- To have your rights explained to you in words you can understand, and
- To have any person who asks you to fill out a form explain it to you, and
- To have your rights explained when you enter into care and every time you move to a different placement

To Have Your Rights Respected:
The people responsible for your care and protection must respect your civil and legal rights.

To Privacy:
- To have your privacy protected,
- To send and receive mail without anyone reading it unless the judge says someone else can open your mail to protect your safety, and
- To make telephone calls at reasonable times, unless the judge says you cannot

To Have Your Property Protected:
- To have your property (for example, your clothes, books, electronics, money and other things you own) kept safe where you live,
- To bring your property with you when you move,
- To be told how money being held by the Department is being used
- To ask that your money be used for specific things, and
- To ask that your money be saved for future use.

To Live in a Safe Place:
- To live in a home where no one will touch you without your permission, scare you, or hurt you, and
- To live in a home where you will not get into trouble for telling people that your rights or safety is not being protected.

To Understand Documents You are Asked to Sign:
- To understand what you are signing and why you are being asked to sign it.

To Complain About Your Care or Services:
- To make a grievance (a complaint) to the Department about how your are being cared for by your foster parents, services worker, or other people providing you services
- To make a grievance to the Department if any of your rights are violated,
- To be taken to doctors and dentists, including eye doctors, for medical evaluation and treatment.

To Education:
- To attend school, and to obtain special educational services if you need them

To Permanency:
- To have all efforts in court made without delay because time is of the essence (very important).
- To have a permanent home or family,
- To enjoy the same rights established in the Constitutions of the United States and Florida as every other person in the state. That means you have the right to individual dignity, liberty, privacy, pursuit of happiness, and the protection of your civil and legal rights.
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Module 1: Legal Basis for Child Protection

What You Can Expect From the Department of Children & Families
You can expect:

SAFETY
A Professional Investigation: The adults who investigate whether you are at risk of harm will have the professional training to make the best decision possible for your protection.

The Assistance of a Services Worker
You Can Expect:

To have regular contact with your services worker by phone and in person,
To meet with your services worker at a minimum every 30 days,

To meet with your services worker in private, if you want,

For your services worker to meet with your foster parent in person at least every 30 days, and

For your services worker to see the place you live at least every 30 days.

The Department Will Keep Important Records
You Can Expect:

That your Department records are complete, accurate, and kept up to date,

That you, your guardian and your attorney can review and receive a copy of your records free of charge,

Your photographs and fingerprints taken and kept in your file, and

Your birth certificate and health information will be kept in your file and provided to you when you need it.

Safety Plan
You can expect to participate with your caregivers and professionals in writing a plan to help with any of your needs or behaviors that could present a risk to you, other children or adults

Being Heard in Court and at Meetings
You Can Expect:

To have the opportunity to go to court and talk to the judge or other persons making decisions about you,

To attend hearings or meetings where decisions about you are being made, unless the judge decides it would not be best for you to do so

SERVICES
Appropriate Evaluations: You can expect to be tested to see if you are having problems, are healthy, doing well in school, or if you need to be treated by a doctor or psychologist.

Case Plan That Meets Your Needs
You Can Expect:

To participate in writing your case plan,
To make sure your case plan addresses your needs and the needs of your family,

To have the plan and all its services explained to you in a way you understand,

Department of Children & Families
You Can Expect:

To have a plan that respects your race and culture,

To have the opportunity to give your opinion about anything in the plan you do not like, and

To have the responses to your opinions clearly explained to you.

Counseling
You Can Expect:

To have trained professionals you help and services you need for any problems you may be having, and

To have the opportunity for counseling to help you better understand your thoughts and feelings about past experiences and what is currently happening in your life.

Government Benefits:
You can expect that the Department will apply for all state and federal benefits programs that you are eligible for and need without delay. Government benefits include Medicaid, Supplemental Security Income, disability benefits, medical, and other programs for children and youth who are in foster care, or who are emotionally, behaviorally, or physically disabled.

Trained Staff: You can expect that the people who provide services to you will be properly trained in order to meet your needs.

LIVING SITUATION
Brothers & Sisters (siblings)
You Can Expect:

To be placed in the same home with your brothers & sisters, or

If it is not possible to live with them, to have private contact with your siblings at least once a week, unless the judge says you cannot.

Moving
You can expect to remain in the same foster home without being moved to another placement unless

The Department explains to you why it is necessary for you to move, and

Helps you get the services you need to be comfortable during the move and in the new home.

Other Children & Youth
You can expect to live in a family home with no more than one other foster child, unless

You are placed with your brothers and sisters.

You are placed in a group home if it is the least restrictive setting appropriate for you.

People Who Know You
You can expect to live in a shelter or foster home in which the parents know and understand your personal history, needs, and problems.

PERMANENCY
Visiting Your Parents or Legal Caregivers:
You can expect to have at least one visit each month with your parents or legal caregivers, unless the judge says you cannot visit with them. If you were sexually abused, the court must hold a hearing before allowing the person accused of abusing you to visit with you. You will have an attorney or guardian ad litem represent you at that hearing. You can tell your representative whether or not you want to visit.

Reunification Case Plan
You Can Expect:

To make sure your case plan and services will enable you to be reunited with your family or caregivers as soon as it is safe to do so and as soon as the judge permits your reunification

To be told that you have a right to a family, and that you should not have long delays in your case.

Permanent Home and Family
You can expect the Department to make every effort to find you a permanent home and family if reunification is not possible.

EDUCATION
You Can Expect:

To go to the school that is best for you to attend,

To go to school every day with the fewest disruptions possible for court or other meetings related to your case,

To have a referral to an educational evaluation team if you are not making progress in school,

To get special education services if you need them, to have a surrogate parent appointed if your own parents cannot make educational decisions for you, and

To have your school records shared with the Department to make sure the Department knows you are attending and making progress in school.

To have a quiet place to do homework

To participate in school activities, and

When you are older, to have assistance in choosing a career and planning for it NORMALCY

You Can Expect:

To participate with your foster or group home parent and services working in ways that are appropriate for you, including activities such as sports, clubs, youth group, diving, volunteer work and working

To participate in activities that you could enjoy and that your other friends get to do, and

To participate in activities that provide good life experiences and opportunities and help you become independent and self-sufficient when you become an adult.

Money
You Can Expect:

To receive an allowance every month from money provided by the Department,

To open your own bank account when you have taken financial literacy classes,

To work if your job does not interfere with your schooling.

Independent Living for Ages 13-17
You Can Expect:

To participate in the Independent Living Program,

To participate in classes and activities needed to help you transition to adulthood and self-sufficiency when you are old enough,

To participate in making your individual transitional plan, and

To exercise your rights and responsibilities under the Road to Independence Program and to participate in other financial aid programs you may need to go to college or vocational school.

Foster Youth Organizations
If You Want to Participate You May:

Communicate with other youth in foster care for the purpose of organizing as a group to advocate for better services and living conditions,

Work toward improvements in the child welfare system and

Provide support for one another while in the custody of the Department.
Definitions/Elements of Abandonment, Abuse, Neglect and Harm

Each element of the statutory definition of “abuse,” “abandonment” and “neglect” must be addressed for legal purposes.

- Each element of the definition must be proven to substantiate the allegation.
- While the definition of harm is not broken into “specific elements,” the definition of harm must be applied.

Elements of Abandonment, F.S. 39.01(1)

“Abandoned” or “Abandonment” means a situation in which:

- the parent/legal custodian of a child, or in the absence of a parent/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 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.
- Does not include a surrendered newborn infant; a “child in need of services” or a “family in need of services”.
- 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.

Elements of Abuse, F.S. 39.01(2)

“Abuse” means any:

- willful act or threatened act that results in any:
  - physical, mental, or sexual 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/legal custodian for disciplinary purposes does not in itself constitute abuse when it does not result in harm to the child.
Elements of Neglect, F.S. 39.01(44)

“Neglect” occurs when

- a child is deprived of or is allowed to be deprived of:
  - necessary food, clothing, shelter, or medical treatment
  or
- 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 in danger of being significantly impaired. The foregoing circumstances are not considered neglect if caused primarily by:
    - financial inability unless services for relief have been offered to and rejected by such person.
    - a parent/legal custodian legitimately practicing religious beliefs with a recognized church or religious organization who does not provide specific medical treatment for a child may not, for that reason alone, be considered a negligent parent/legal custodian; this does not preclude a court from ordering the following services when the health of the child requires:
      - Medical services from a licensed physician, dentist, optometrist, podiatric physician, or other qualified health-care provider, or
      - Treatment by a duly accredited practitioner who relies solely on spiritual means for healing in accordance with the tenets and practices of a well-recognized church or religious organization.

- Neglect of a child includes acts or omissions.

Definition of Harm, F.S. 39.01(32)

“Harm” to a child’s health or welfare can occur when any person:

- Inflicts or allows to be inflicted upon the child physical, mental, or emotional injury.

In assessing if harm occurred, you must consider the following factors in evaluating any physical, mental, or emotional injury to a child:

- child’s age
- child’s prior history of injuries
- location of the injury on the child
- multiplicity of the injury and
- type of trauma inflicted.

Such injury includes, but is not limited to willful acts that produce the following specific injuries:

- Sprains, dislocations, or cartilage damage
- Bone or skull fractures
- Brain or spinal cord damage
- Intracranial hemorrhage or injury to other internal organs
- Asphyxiation, suffocation, or drowning
- Injury resulting from the use of a deadly weapon
- Burns or scalding
- Cuts, lacerations, punctures, or bites
• Permanent or temporary disfigurement
• Permanent or temporary loss or impairment of a body part or function.

The term “willful” refers to the intent to perform an action, not to the intent to achieve a result or to cause an injury.

Definition of Harm (Continued)
• Purposely giving a child poison, alcohol, drugs, or other substances that substantially affect the child's behavior, motor coordination, or judgment or that results in sickness or internal injury. The term "drugs" means prescription drugs not prescribed for the child or not administered as prescribed, and controlled substances.
• Leaving a child without adult supervision or arrangements appropriate for the child's age, mental or physical condition, so the child is unable to care for the child's own needs or another's basic needs or is unable to exercise good judgment in responding to any kind of physical or emotional crisis.
• Inappropriate or excessively harsh disciplinary likely to result in physical, mental or emotional injury. The injuries significance must be evaluated using the following factors: child's age; prior history of injuries; location of the injury; multiplicity of the injury; type of trauma inflicted. Corporal discipline may be considered excessive or abusive if it results in any of the following or other similar injuries:
  • Sprains, dislocations, or cartilage damage.
  • Bone or skull fractures.
  • Brain or spinal cord damage.
  • Intracranial hemorrhage or injury to other internal organs.
  • Asphyxiation, suffocation, or drowning.
  • Injury resulting from the use of a deadly weapon.
  • Burns or scalding.
  • Cuts, lacerations, punctures, or bites.
  • Permanent or temporary disfigurement.
  • Permanent or temporary loss or impairment of a body part or function.
  • Significant bruises or welts.
• Commits, or allows to be committed, sexual battery or lewd or lascivious acts against the child.
• Allows, encourages, or forces the sexual exploitation of a child, including allowing, encouraging, or forcing a child to:
  • Solicit for or engage in prostitution; or
  • Engage in a sexual performance
  • Exploits a child, or allows a child to be exploited.
Definition of Harm (Continued)

- Abandons the child. Meaning a situation in which the parent/legal custodian/caregiver while able, has make no significant contribution to the child’s care and maintenance or fails 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 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. Does not include a surrendered newborn infant. A child in need of services as defined in chapter 984, or a family in need of services as defined in chapter 984. 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.

- Neglects the child. Means the parent/other person responsible fails to supply the child with adequate food, clothing, shelter, or health care, although financially able to do so or although offered financial or other means to do so. However, a parent/legal custodian who, by reason of the legitimate practice of religious beliefs, does not provide specified medical treatment for a child may not be considered abusive or neglectful for that reason alone, but such an exception does not:
  - Eliminate the requirement that such a case be reported to the department;
  - Prevent the department from investigating such a case; or
  - Preclude a court from ordering, the provision of medical services by a physician, or treatment by a duly accredited practitioner who relies solely on spiritual means for healing in accordance with the tenets and practices of a well-recognized church or religious organization.

- Exposes a child to a controlled substance or alcohol. Exposure to a controlled substance or alcohol is established by:
  - A test, administered at birth, indicating that the child’s blood, urine, or meconium contained any amount of alcohol/controlled substance/metabolites of such substances, the presence of which was not the result of medical treatment administered to the mother or the newborn infant; or
  - Evidence of extensive, abusive, and chronic use of a controlled substance or alcohol by a parent when the child is demonstrably adversely affected by such usage.
  - The term "controlled substance" means prescription drugs not prescribed for the parent or not administered as prescribed and controlled substances.
  - Uses mechanical devices, unreasonable restraints, or extended periods of isolation to control a child.
  - Engages in violent behavior that demonstrates a wanton disregard for the presence of a child and could reasonably result in serious injury to the child.
  - Negligently fails to protect a child in his or her care from inflicted physical, mental, or sexual injury caused by the acts of another.
  - Has allowed a child’s sibling to die as a result of abuse, abandonment, or neglect.
  - Makes the child unavailable for the purpose of impeding or avoiding a protective investigation unless the court determines that the parent, legal custodian, or caregiver
was fleeing from a situation involving domestic violence.

Identifying the Elements

- Read the following narratives and identify examples of statutory elements.

Scenario #4 applies to the definition of harm. Provide specific information from the scenario that supports the definition of harm.

Scenarios

Abuse: A grandmother alleges that her granddaughter has a lump, bruise, and several cuts on her face. The child sustained the injury when her father threw a vase at mom and hit his daughter instead. The caller claims that the son-in-law has beaten her daughter repeatedly; however, her daughter refuses to leave her husband and remove her 8-year-old child from the home.

Abandonment: A neighbor's call alleges that the two children (ages 12 and 14) living next door are without parents. The caller alleges that the father has a girlfriend who lives across town and the father has moved in with her. The father claims that his girls are responsible and are fine with his occasional visits home. The father claims to give the girls $50 each, monthly.

Neglect: An apartment manager alleges that a 5-year-old is playing on the seventh-floor fire-escape landing while his “mother is sleeping.” This is the third time the caller has seen the boy playing on the fire escape and claims to have talked to the mother several times. Once, the caller had to free the boy’s head from the bars of the fire escape. The caller claims that the mother feels the boy is old enough to behave properly and safely.

Harm: An intake alleges that a child’s toxicology report reveals that a two and a half year old has Ambien (a prescription sleep aid for adults) in her system. She was brought to the hospital after the preschool called 911 and the mother due to the child’s lethargic behavior. The child was unable to keep her head up during activity time at the pre-school. The mother admitted to giving the child one of her pills the previous night as the child was running around the house tirelessly at 10pm and the mother, who is 27 years old, was tired and wanted the child to go to sleep. She did not think that giving the child one of the pills would be a problem.
Module 2: Introduction to Evidence

Fact Finding Scenarios

Directions:
Read each scenario and provide a list of the different types of evidence (direct, demonstrative, circumstantial and expert) that you would obtain. Refer to PG20 for definitions of the four categories of evidence.

Xavier
Xavier has bruises on his thigh and buttock area. According to him and his mother the bruises are a result of the mother hitting him with an extension cord. The mother states that she cannot control his behavior unless she hits him. She advises you that she has had the child to every counselor in the area.

Marvin
The mother's paramour, Marvin, has a very violent history. Allegedly he beats the mother regularly and the children are usually in the home when the beatings occur. Both children attend Harborview elementary school.

Lisa
Lisa's father, Arthur, molested her when she was a child. He was arrested as a result of the abuse and was recently released from prison. Lisa is now 20 and has allowed her father to move into her residence with her and her two female children. Lisa told the children's day care teacher that she believes that her father has learned his lesson and that she can keep her children safe.
Evidence Needed to Prove Maltreatments

Domestic Violence Cases

- Interview the parents (individually) regarding:
  - what specifically happened and severity of the incident.
  - whether DV was an isolated incident or if there is a history of prior instances.
- Assess if:
  - substance abuse was involved in the incident.
  - children are aware of the DV; witnessed the DV; were involved in the DV incident.
- Interview neighbors, relatives and children about the DV incident and other instances that may have occurred.
- Obtain copies of:
  - petitions or orders on any injunctions (from current incident as well as past incidents).
  - all law enforcement reports relating to DV, violent conduct or substance abuse.
- Obtain photos of any injuries sustained by the victim as well as the aftermath of the incident.
- Obtain 911 tape.

Substance Abuse Cases

- Interview parents (individually) regarding:
  - substance abuse history and any past treatment that they may have received.
  - what type of substance was/is used.
  - the frequency of usage to assess if the substance abuse is chronic or severe.
- Assess if the child was adversely affected by the parental substance abuse.
- Assess if the parents’ substance abuse resulted in their inability to provide an adequate level of care to the child.
- Interview neighbors, relatives and children about the parents’ substance abuse.
  - Have they ever witnessed substance abuse or indicators of substance abuse?
  - Has the parent admitted substance abuse to any of the witnesses?
- Obtain:
  - drug test for individuals and if positive, confront the parent regarding the results.
  - copies of any/all law enforcement reports that indicate drug or alcohol usage.
  - any records from previous drug treatment programs.
- Photograph any evidence in the home that may be indicative of substance abuse.
- Assess if parental substance abuse resulted in neglect regarding the child’s care:
  - children being left unsupervised
  - spending all finances on purchase of drugs
  - lack of appropriate clothing, food, etc.
Physical Abuse Cases

- Obtain:
  - clear, accurate photos of any injury.
  - CPT medical examination and opinion/recommendations regarding the injury.
  - forensic interview with the child.
  - medical reports from child’s pediatrician, etc.
  - copies of all law enforcement reports that indicate violence or substance abuse.
  - a mental health evaluation to determine whether the abuse resulted in any mental injury to the child.

- Interview:
  - the child about the circumstances surrounding the incident as well as any previous incidents.
  - the alleged perpetrator about the circumstances surrounding the incident.
  - the non-offending parent about the circumstances surrounding the incident and their ability/willingness to protect the child.

- Assess the severity and frequency of the abuse.

- If perpetrator is unknown:
  - Obtain estimation regarding date of injury
  - Assess who was responsible for the child at the time the injury was sustained.

- All interviews with the child, alleged perpetrator, non-offending parent should be conducted with Law Enforcement taking the lead.

Sexual Abuse Cases

- Interview the:
  - child about the sexual abuse.
  - alleged perpetrator about the sexual abuse.
  - non-offending parent about the abuse and their willingness/ability to protect the child.

- Obtain:
  - medical exam with opinion whether there are physical findings consistent with sexual abuse.
  - forensic interview of the alleged victim.
  - video tape of victim’s interview.
  - opinion from mental health professional to determine whether child should testify in court.
  - reports from law enforcement regarding the sexual abuse criminal investigation.

- Refer child to therapist or psychologist.

- All interviews with the child, alleged perpetrator, non-offending parent should be conducted with Law Enforcement taking the lead.
Neglect – Hazardous Conditions Cases

- Obtain:
  - digital photographs of the residence.
  - all law enforcement reports regarding the family.

- Interview:
  - the parents about the conditions of the home while going through the home.
  - neighbors, relatives, landlord and children about the condition of the home.

- Contact Code Enforcement or Environmental Health to examine the home and provide a report.
- Assess if the hazardous conditions are a pattern or one time occurrence.

Neglect due to Mental Illness Cases

- Obtain:
  - the parents’ mental health history, diagnoses as well as information regarding any/all treatment attempts.
  - a release of information from the parent to obtain all mental health records and obtain all records.

- Refer parent for psychological and possibly psychiatric evaluation, if there are no recent evaluations in the mental health records.

Medical Neglect/Failure to Thrive Cases

- Obtain:
  - all of the child’s medical records including immunizations.
  - CPT medical examination and/or consult regarding whether the condition resulted from medical or nutritional neglect

Prospective Abuse and Neglect Cases (Threatened Harm)

- Obtain:
  - prior intakes/investigations showing history of abuse or neglect of child.
  - expert testimony to render opinion that child may be at risk of abuse or neglect based on prior and current circumstances.
Evidence and Standard of Proof

Types of Evidence

Reliable evidence is divided into four categories.

Direct evidence
- an eyewitness account of an event.
- the actual statements of witnesses.

Demonstrative evidence
- includes the “things” or “objects” which help prove a case.

Circumstantial evidence
- evidence that may allow a judge to deduce a certain fact from other facts that have been proven.
- a step away from the eyewitness account and is less persuasive in court.
- Example: A neighbor heard a child scream but did not witness the abuse.

Expert testimony
- given by people who have specialized knowledge or experience that relates directly to a problem in a case.

Standard of Proof

Probable Cause
- The judge has enough evidence to create the probability in his mind that significant impairment to the child’s safety may occur if the child is left in the home.
- Applies to shelter hearing.

Preponderance of the Evidence
- There is more evidence for than against the point being argued.
- Example: At the adjudicatory hearing there is more evidence to show that the neglect, abuse, or abandonment occurred than that it did not.
- Applies to all other dependency hearings.

Clear and Convincing
- The evidence must answer almost all of the questions in the judge’s mind about whether or not a termination decision is warranted.
- If the evidence at the adjudicatory hearing is not overwhelming, more evidence will have to be presented at the termination of parental rights trial.
- Applies to TPR proceedings.
Module 3: Exposure to Liability

Falsification of Records

Florida Statute 839.13(2)

- Per s.839.13 (2), F.S. ...if any public officer, employee or agent of or contractor with a public agency, or any person, steals, embezzles, alters, corruptly withdraws, falsifies or avoids any record, process, charter, gift, grant, conveyance, or contract, or any paper filed in any judicial proceeding in any court of this state, or knowingly and willfully takes off, discharges or conceals any issue, forfeited recognizance, or other forfeiture, or other paper above mentioned, or forges, defaces, or falsifies any document or instrument recorded, or filed in any court, or any registry, acknowledgment, or certificate, or fraudulently alters, defaces, or falsifies any minutes, documents, books, or any proceedings of or belonging to any public office within this state; or if any person causes or procures any of the offenses aforesaid to be committed, or be in anywise concerned therein, the person so offending is guilty of a misdemeanor of the first degree…

Altering, Destroying, Defacing, Overwriting, Removing, Discarding Records

- Per s.839.13 (2) (a), F.S., “Any person who knowingly falsifies by altering, destroying, defacing, overwriting, removing, or discarding an official record relating to an individual in the care and custody of a state agency, which act has the potential to detrimentally affect the health, safety, or welfare of that individual, commits a felony of the third degree…”

- Per s.839.13 (2) (b), F.S., “Any person who commits a violation of paragraph (a) which contributes to great bodily harm to or the death of an individual in the care and custody of a state agency commits a felony of the second degree, …The term “care and custody” includes, but is not limited to, a child abuse investigation, Judicial In-Home Services, foster care and related services, or a protective investigation or Judicial In-Home Services of a vulnerable adult.”

- Per s.839.13 (2) (c), F.S., “Any person who knowingly falsifies by altering, destroying, defacing, overwriting, removing, or discarding records of DCF or its contract provider with the intent to conceal a fact material to a child abuse protective investigation, Judicial In-Home Services, foster care and related services, a protective investigation or Judicial In-Home Services of a vulnerable adult, commits a felony of the third degree….”

Disposing/Archiving or Correcting/Updating Records

- Per s.839.13 (2) (d), F.S., “This section does not prohibit the disposing or archiving of records as otherwise provided by law and does not prohibit any person from correcting or updating records.”
Module 4: Confidentiality and Case Records
Confidentiality Requirements
F.S. 39.00145 and 39.202
- Information in case records generated as a result of child abuse investigations is confidential and may be released only under specific circumstances outlined in the referenced Florida Statutes.
- Read and become familiar with F.S. 39.202(1)-(8), F.S. 39.00145 and consult with the agency attorneys prior to responding to requests for information.

Reporter’s Name and the Intake
- The name and any identifying information about the person reporting maltreatment is strictly confidential and must not be released (without the written consent of the person reporting) to any person other than:
  - employees of the department/agency responsible for child protective services
  - the abuse hotline
  - the appropriate state attorney
  - Child Protection Team
  - Law Enforcement.
- Under law the following are not agents and are, therefore, not authorized to have reporter information:
  - Services staff employed by an independent contractor/CBC
  - Reporter name and all identifying information must be blacked out (redacted) before allowing access by persons authorized by law to examine copies of records.
  - The redaction process must be coordinated and approved by agency legal counsel.
  - Final investigations can be printed without reporter information but must still be reviewed to ensure any/all information identifying the reporter is deleted.

Case Records
- F.S. 39.00145(1): Children records must contain at a minimum:
  - Child’s case plan
  - Full name and street address of all shelters, foster parents, group homes, treatment centers or locations where child has been placed.
- Any information in the case record that pertains to the adoption of a child or a child’s sibling must not be released without first consulting with the agency legal counsel.
  - Access to adoption records is governed by the provisions of section 63.162, F.S., and usually requires a court order.
- F.S. 39.0132(3) allows access to reports, records and other information that has been filed in the official court record by the child, parents and their attorney, GAL, law enforcement agencies, and the agency and its designees. See also F.S. 39.0132(4)(a)-(b).
All records and reports of the child protection team (CPT) are confidential and must 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, or by order of the court.

Access to Records and Reports

- **39.202(2) F.S.** outlines the persons or entities having access to records and intakes of child maltreatment excluding the name of the reporter. Several of these persons/entities are listed below. F.S. 39.202(2) must be consulted for the comprehensive list.

- Employees, authorized agents or contract providers of DCF, The Department of Health, the Agency for Persons with Disabilities, or county agencies responsible for carrying out
  - child or adult protective investigations
  - ongoing child or adult protective services
  - Healthy Start services
  - licensure or approval of foster/adoptive homes, or 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
  - services for victims of domestic violence
  - employees or agents of the Department of Juvenile Justice who are responsible for the provision of services to children
  - early intervention and prevention services

- Criminal justice agencies of appropriate jurisdiction

- The state attorney of the judicial circuit in which the child resides or in which the alleged maltreatment occurred (access includes name of reporter)

- The parent/legal custodian of a child who is alleged to have been maltreated and the child, and their attorneys, including any attorney representing a child in civil or criminal proceedings

- Any person alleged in the intake as having caused the maltreatment of a child
  - Access must be granted no later than 30 days after the receipt of the initial intake.

- Florida Statewide and Local Advocacy Councils

- Employees or agents of an agency of another state that has comparable jurisdiction, if related to case-specific activity

- The principal of a public school, private school, or charter school where the child is a student
- **F.S. 39.00145(4):** Agencies which may share with each other confidential records under Chapter 119
  - Department of Juvenile Justice
  - Department of Health
  - Agency for Health Care Administration
  - Agency for Persons with Disabilities
  - Department of Education
  - School Districts
  - Department of Revenue
  - Guardian ad Litem
  - Any provider contracting with such agencies

- **F.S. 39.00145(4):** Court may authorize release of the record to ensure appropriate services or for the safety of the child.

  Case records must be made available and, upon request, provided at no cost to the child, child’s attorney, caregiver, and GAL.

  The case records must be provided to a child in a manner and setting that are appropriate for the age and maturity of the child.

- **Records that may not be shared:**
  - records of information made **confidential by federal law; F.S. 39.00145(4)(a)**
  - Information concerning clients
  - records of certified **domestic violence centers; F.S. 39.00145(4)(b)**

- **F.S. 39.202(2)(a-s):** Access to reports and records of child abuse (excluding reporter information) must be granted to:
  - foster parents with approved home study (if being considered for placement)
  - designee of a licensed residential group home
  - approved relative or non-relative with whom the child is placed
  - pre-adoptive parents with favorable preliminary adoptive home study and adoption entity acting on their behalf
  - adoptive parents
  - an adoption entity acting on behalf of pre-adoptive or adoptive parents

- **F.S. 39.202(7):** Preservation of Records and Access by the Child
  - Reports and records of all cases under Chapter 39 pertaining to a child and family must be preserved until the child who is the subject of the record is 30 years of age.

  - F.S. 39.202(7)(a): Within 90 days after the child leaves Department custody, notice must be given to the person having legal custody of the child or to the young adult who was in the Department’s custody how to obtain the records.
Guardian Ad Litem (GAL) Access to Records

Authority to Access Records: s. 39.822(3); 39.00145

- An agency must allow the GAL to inspect/copy records related to the best interests of the child to include confidential records.

Penalties - Unlawful Disclosure of Confidential Information

- F. S. 39.205(3): “A person who knowingly and willfully makes public or discloses any confidential information contained in the records of any child abuse case, except as provided in this chapter, commits a misdemeanor of the second degree.

Penalties and Fines, ~ s. 775.082 and s. 775.083, F. S

s. 775.082, F. S., Penalties; applicability of sentencing structures; mandatory minimum sentences for certain re-offenders previously released from prison.

4) A person who has been convicted of a designated misdemeanor may be sentenced as follows:
   a) For a misdemeanor of the first degree, by a definite term of imprisonment not exceeding 1 year;
   b) For a misdemeanor of the second degree, by a definite term of imprisonment not exceeding 60 days.

s. 775.083, F. S., Fines.

1) A person who has been convicted of an offense other than a capital felony may be sentenced to pay a fine in addition to any punishment described in s. 775.082; when specifically authorized by statute, he or she may be sentenced to pay a fine in lieu of any punishment described in s. 775.082. A person who has been convicted of a non-criminal violation may be sentenced to pay a fine. Fines for designated crimes and for non-criminal violations must not exceed:
   a) $15,000, when the conviction is of a life felony.
   b) $10,000, when the conviction is of a felony of the first or second degree.
   c) $5,000, when the conviction is of a felony of the third degree.
   d) $1,000, when the conviction is of a misdemeanor of the first degree.
   e) $500, when the conviction is of a misdemeanor of the second degree or a non-criminal violation.
   f) Any higher amount equal to double the pecuniary gain derived from the offense by the offender or double the pecuniary loss suffered by the victim.
   g) Any higher amount specifically authorized by statute.

HIV/AIDS Records

A person who unlawfully discloses HIV/AIDS information is subject to a penalty. The following procedures apply to HIV/AIDS records and information access:

- Case narrative must not contain statements directly reflecting the child is infected with HIV or suffers from AIDS.
- The agency must disclose to prospective adoptive/substitute care parents the medical condition, but not the identity, of a child who suffers from HIV or AIDS positive child:
  - prior to the decision of the individual to pursue adoption or accept the child into their home
• only after the individual has committed to pursue adoption/accept the child into the home is the identity of the child disclosed.

• The substitute care parents must be provided with documentation of the complete medical history and condition of a child placed in their care, including HIV/AIDS status.
  • This documentation must be maintained by the substitute care parents and held as confidential information.
  • Access is strictly limited to the child’s physician(s) and other providers of medical and dental care when treatment is required.

• Medical documentation needed for school enrollment, day care or similar purpose must be provided separately by the physician and may not contain any reference to the child’s HIV/AIDS status.

• With the exception of the child’s medical records provided to substitute care parents (and to the child’s natural parents or other legal guardian), case material disclosing that the child has HIV infection or AIDS is kept in the file in a “Confidential Information” envelope used to safeguard sensitive case information.

• The child’s case records must not be segregated or flagged in any way to permit their identification as case records of HIV infected children.

• Documentation must be recorded as “suppressed immune system” or “suppressed immune disease” and not HIV and/or AIDS.

**Missing Children**

**Information That May be Released to the Public F.S. 39.202(4):**

If a child under investigation or services is missing, the following information may be released to the public if it will assist in locating the child or promote the safety/well-being of the child:

• Child's name and date of birth
• Physical description of the child
• Photograph of the child
• Any additional information believed likely to assist in efforts to locate the child or to promote the safety/well-being of the child (must concur with law enforcement agency responsible for the investigation)
• Law enforcement may release any information regarding the investigation if it believes the information may assist in locating the child or to promote the safety/well-being of the child.

**Note:** The reporter’s name may not be released.
Criminal Record Checks

CFOP 175-94 provides additional information/clarification:

CPIs, Department attorneys and the courts can view sealed and expunged information. CPIs can request rap sheets containing sealed and expunged information in the course of their investigation.

Case Managers cannot view sealed or expunged information, and CPIs cannot request a rap sheet containing sealed or expunged information for a Case Manager.

National Crime Information Center

Specific details of NCIC results (detailed national arrest and conviction history records from outside Florida) must not be provided to or shared with anyone other than authorized Department staff.

Department staff are not to disseminate specific details of an NCIC records check nor make reference to such record or details in FSFN.

Florida Crime Information Center

FCIC criminal history records are public record and may be disseminated. The exception is any portion of the report that is identified as a sealed or expunged record.

Sealed and expunged records are not public record and may not be disseminated outside of the Department.

Only that portion of the criminal history record that is not “sealed or expunged” is public record and may be shared with CBC’s and referenced in FSFN.

Department of Juvenile Justice

The Information Access program (InfoAccess) allows access to the juvenile data contained in the expanded face sheet located within the Juvenile Justice Information System (JJIS).

Information received under the InfoAccess program must not be shared with anyone outside this agency, Department designees, and the courts.

All information obtained from JJISWeb must be kept in the appropriate client file and may not be viewed by anyone other than those authorized to view child or adult welfare case files and client records.

Individuals directly responsible for child protective investigation, placement, or services must submit requests for delinquency record checks. This includes Community Based Care contracted providers who are acting on behalf of or in place of the Department.

Guardians Ad-Litem may view delinquency rap sheets.
Cautions When Using Social Media

Representing Yourself and Your Agency Online

What is Social Media?
- Any online communication used by individuals for the purpose of social interaction and networking. Examples:
  - Facebook
  - MySpace
  - YouTube
  - LinkedIn
  - Foursquare
  - Wikipedia
  - Twitter
  - Yelp
  - Flickr
  - Blogs

Why is social media policy important?
- Protection
  - Protecting clients’ personal information, even if you think no one will see it.
  - Divulging too much information can lead to threats, violence and/or loss of employment
  - Protecting your agency from misrepresentation, loss of credibility, respect and possibly funding.
  - Protection from lawsuits
- Professionalism
  - Agencies and staff are bound by law and professional ethics, including:
  - Treating clients with dignity and respect
  - Honoring clients’ rights to confidentiality
  - Maintaining appropriate boundaries with clients
  - Representing yourself online must be done with the same level of professionalism displayed in any other public arena
The Do’s and Don’ts

Do
- Make your profile “private” and limit access to your personal information.
- Remember you are always representing your agency.
- Write smart - always think before you type.
- Be aware of the dangers of posting photographs - once out in cyberspace, anyone can find them.
- Consider what would happen if a supervisor/coworker/client stumbled upon your site.

Don’t
- Publish anything you wouldn’t put on a billboard.
- “Friend” clients, former clients, or their families.
- Use the Internet as a forum to “vent” about work, your agency, or clients’ information.

This information obtained from: Florida’s Supervised Visitation Programs: Protecting Children, Connecting Families; The Clearinghouse on Supervised Visitation, Institute for Family Violence Studies, College of Social Work, Florida State University
Access to Child Protection Case Records

Open Records

The following guidelines for the release of case records of children who were subject to an investigation that did not result in a removal, those who were in out of home care and subsequently returned to a parent or relative and youth who age out of care.

- Within 90 days after a child leaves the agency’s custody, information must be provided to a person with legal custody of the child/young adult who was in custody on how to obtain a case record. CLS is required to include in all court orders where custody of a child is changed, notification that records are available to the child, the child’s caregiver, GAL, or attorney until the child reaches the age of 30 years.

- The brochure describing the child protection process that CPIs are required to provide to parents and caretakers has been updated to clearly state the right to obtain copies of case records. Creole and Spanish versions are only available in DCF Forms.

- When a CPI, CM or other provider in the local system of care receives a request from an authorized party for a case record, notification of such request must be transferred in writing to the single point of contact. This request must be submitted no later than 24 hours after receipt of the request.

- The single point of contact for the CPI must be either the identified department or sheriff’s representative. The single point of contact for a CM/provider must be the identified lead agency representative.

- A written communication on local protocol establishing the regional single point of contact who must be notified of all requests for case records received from authorized parties by CPIs, CM and other professionals who may receive such requests must be developed and submitted to the Assistant Secretary for Operations.

- An initial reaction of documents must be performed by the custodian of the record and submitted to the single point of contact within 14 days of the receipt of the request. Following redaction, the case record must be submitted to Regional General Counsel Offices by the single point of contact for review and approval of release which must occur within 14 days of receipt of Regional General Counsel.

- The single point of contact must notify the requesting party within two days of receipt of the record of the time and place to be provided the case record.

- The timeframes are developed to ensure the case record is provided to the authorized party no later than 30 days after the request is received by the single point of contact. The written communication establishing local protocol may depart from the 14 day redaction and legal review timeframes proposed so long as the case record is provided to the authorized party no later than 30 days after the request is made.

- The authorized party will be notified by the single point of contact if there are any delays in the ability to respond to the request for the case record within this established 30 day timeframe.

- All case records must be presented free of charge in hard copy and not by electronic means to maintain integrity of the careful review and redaction of the documents.

- A complete and accurate copy of the case record includes the full name and street address of all shelters, foster and group homes, treatment facilities or locations where the child has been
placed. It also includes case plans, pre-disposition reports, judicial reviews reports, court orders, GAL reports, evaluations and comprehensive assessments, medical health history, school records and report cards, mental health reports, hospitalization/residential setting records, any letters, photographs and all other information contained in the case record as directed under law.

- All local procedures for the destruction of records must be revised in accordance with the new statutory requirement to preserve the case record pertaining to a child and family until the child who is the subject of the record is 30 years of age.

The following guidelines are offered by the General Counsel’s Office of the Department:

- Confidential information regarding other individuals (adult or child) contained in the case record must be redacted if the information is specifically confidential by a state of federal law to be withheld.

- The law is meant to apply only to a child’s case record, which includes the investigation and any subsequent services provided.

- Each custodian of records is responsible to redact the records in their custody. DCF Regional General Counsel Offices is the final review of the case record before it is released to the requesting party.
Sharing Records with Children

The following sections of Chapter 39, F.S., allow a child access to his or her dependency records:

- **Section 39.6011(1)(a), F.S.:** The case plan must be developed in a face-to-face conference with the parent of the child, any court-appointed GAL, and, if appropriate, the child and the temporary custodian of the child.

- **Section 39.504(4), F.S.:** Copy of injunction order must be delivered to the protected party, or to a parent, caregiver or individual acting in the place of a parent who is not the respondent. (section 39.01(51) includes child in the definition of party)

- **Section 39.521(1)(a), F.S.:** Copy of predisposition study and case plan must be furnished to all parties.

- **Section 39.00145, F.S.:** Case record must be made available and, upon request, provided at no cost to the child...

**General Procedures**

- **The child has clear right under 39.0132(3), F.S. and 39.00145, F.S., to inspect the official record;**
  
  “official record” includes any documents that were considered by the judge in reaching the court’s determination. **No document must be released without review and approval of legal counsel.**

- **Care, concern, and sensitivity must guide sharing of records with children.**
  
  You must be aware that some records could be disturbing to the child and be prepared to appropriately respond to the child’s reaction.

  Considering the child’s maturity and age, it is recommended that the record sharing take place during a face-to-face meeting with the child and an adult the child knows and trusts. **In no case must copies of records simply be handed over to the child.**

- **The child is entitled to copies of any official court records, except adoption records, pertaining to his or her case at no cost. Copies of any documents filed with the court and also in the case record may be provided to the child.**

  This includes petitions, orders, PDS reports, JRSS/CPU, psychological reports, CPT reports, medical reports, and any other report/record filed in the official court record.

  **The agency legal counsel must be consulted prior to release of any information** (other statutory confidentiality provisions may be applicable so as to require referral of the requesting party to the originating source). In addition, the child may be given copies of notes or minutes of case planning meetings.
Slide 1

LEGAL I: LEGAL BASIS FOR CHILD PROTECTION

Slide 2

Module 1: Legal Basis for Child Welfare

Objectives:

- Describe primary legal references used in dependency cases.
- Describe main principles of federal laws that impact child protection.
- Identify legislature’s goals for dependent children.
- Identify statutory definitions of abandonment, abuse, neglect, & harm.
- Identify elements of abandonment, neglect (AAN), to decide if allegation warrant meets the definition of AAN.

Slide 3

The Legal Hierarchy

- Constitution
- Federal Statutes
- State Statutes
- Administrative Rules
- FL Rules of Juvenile Procedures
- Operating Procedures
Reading the Statutes

Chapter Number/Title: 39
Sections: 39.001
Subsections: 39.001(7)
Paragraphs: 39.001(7)(c)
Subparagraphs: 39.001(7)(c)(4)

Reading the F.A.C.

Chapter Number/Title: 65C-30
Sections: 65C-30.007
Subsections: 65C-30.007(10)
Paragraphs: 65C-30.007(10)(g)
Subparagraphs: 65C-30.007(10)(g)(3.a.)

Florida Administrative Codes

65C-28: Guidelines: how to carry out the Florida statutes that pertain to children living in out-of-home care
65C-29: Guidelines: how to carry out statutory requirements for the Abuse Hotline and Protective Investigation functions
65C-30: Describes services, interventions, geographic & case conduct expectations specific to the child protection system
65C-31: Explains the scope of responsibilities attached to various positions at critical stages throughout the case
**Slide 7**

**Federal Laws**

- Adoption and Safe Families Act: P.L. 105-89
- Multi Ethnic Placement Act: P.L. 105-382
- Inter Ethnic Adoption Provision: P.L. 104-188
- Interstate Compact on the Placement of Children: P.L. 109-239
- Indian Child Welfare Act: P.L. 95-608
- Immigrant Children: P.L. 104-93
- P.L. 104-208

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**Slide 8**

**Adoption Assistance and Child Welfare Act of 1980**

Case plan permanency goals must be reviewed, revised & updated every 6 months at a minimum.

Focus: "Foster Care Drift": Move children toward permanency goal as quickly as possible.

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**Slide 9**

**Adoption and Safe Families Act**

- Preserve & reunify families
- Timely placements
- Finalize permanent placement within 12 months
Adoption & Safe Families Act of 1997

NOT intended to:

- unnecessarily disrupt families
- inappropriately intrude into family life
- prescribe particular parenting method(s)

Allows for reasonable methods of parental discipline.

___________________________________

Module 2: Introduction to Evidence

- Define evidence in child protection cases.
- Identify examples of the four types of evidence.
- Describe evidence collection and documentation.
- Explain the standard of proof required by the evidence in judicial dependency cases.

___________________________________

Gathering Evidence

- Make & document observations of home & household members.
- Evaluate interactions among family members.
- Assess if alleged victims & other children are in proper stages of development.
- Evaluate prior histories (abuse and criminal).
Slide 13

**Gathering Evidence**
- Conduct victim, caregiver & perpetrator interviews.
- Take photographs when necessary.
- Consider input from relevant collateral contacts.
- Decide if maltreatment is occurring.
- Involve other stakeholders as needed to complete thorough investigation & provide services.

Slide 14

**Types of Evidence**

- **Direct Evidence**
  - Eyewitness account of an event

- **Circumstantial Evidence**
  - Judge may deduce a certain fact from other proven facts

- **Demonstrative Evidence**
  - Things or objects

- **Expert Testimony**
  - Presented by someone with relevant, specialized knowledge/experience

Slide 15

**Collecting Evidence**
- Document all observable information accurately.
- Work effectively with law enforcement.
- Evidence connected to criminal investigation must be secured by law enforcement.
- If drugs or weapons are present - notify LE immediately (if LE is not already present).
- Never place personal safety at risk.
You may take (or arrange to have taken) photographs of any visible trauma on a child.

CPT must photograph any visible areas of trauma to a child during examination.

Copies of all photographs become part of the case file.

**Exception:** Photographs of sexual abuse trauma are only kept in the CPT file.

Law Enforcement is responsible for taking photographs when completing a criminal investigation, & then, only when appropriate.

Handle all photographs according to agency protocol.

Note & photograph any injury you observe.

Note any inconsistencies or circumstances surrounding the maltreatment.

Out of court statements by a child under age 11 describing a child maltreatment act is admissible evidence as a hearsay exception.

**Direct evidence**

- Written description of the witnessed event
- Name, address, physical description & any other contact information about the witness
**Slide 19**

**Documentation**
- **Demonstrative Evidence**
  - describe the object
  - identify who will present the object in court
  - record how the object was discovered & maintained
- **Circumstantial Evidence**
  - document as you would direct evidence
- **Expert Witnesses**
  - make sure they are available & provide identifying information to CLS

**Slide 20**

**Medical Evidence**
- CPT will
  - Assess extent of the injury
  - Protect case from defense accusations that the injury occurred after the crime scene incident
  - Find corroborating evidence of acute or chronic trauma
  - Photograph any injuries

**Slide 21**

**Sexual Abuse**
- Within 72 hours of intake:
  - Take child to rape treatment center or hospital
  - Collect physical evidence
- Outside 72 hour timeframe:
  - Schedule appointment with CPT or rape treatment center
  - Determine presence of old injuries
Slide 22

**Evidence Required at Shelter Hearing**
- 39.402(8)(e)-(f)

- Copies of: available LE/medical/other professional reports; abuse hotline intakes (excluding reporter information), any current or previous case plan
- Information on any of the parents/caregivers' adjudication(s) of delinquency
- Past/current injunctions for domestic violence protection
- All child's residences during the prior 12 months

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Slide 23

**Standards of Proof**

- Probable Cause
- Preponderance of the Evidence
- Clear & Convincing Evidence

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Slide 24

**Summary**

- Evidence collected & documented at case onset is used during entire life of case.
- Provide all evidence to CLS.
- Judge uses full, formal "rules of evidence" at hearings (except shelter hearings).
Module 3: Exposure to Liability

Objectives
- Describe how you can avoid exposure to liability claims.
- Recognize the legal consequences for falsifying records.

Module 3: Exposure to Liability

Liability is...
- an obligation imposed by law
- responsibility for an act or failure to act
- the state of being legally obliged & responsible

Falsification:
Misrepresentation, falsification or omission of any fact (verbal or written) on such records as, but not limited to:
- Case notes
- Court documents/reports
- Other forms
- Time sheets
- Mileage reports
Slide 28

Module 4: Confidentiality and Case Records

Objectives

Identify who has access to dependency case records.

Identify records that may be shared with children.

Slide 29

Releasing Information on Missing Children

Name & date of birth

Physical description (at a minimum): height, weight, hair color, eye color, gender, & any identifying physical characteristics

Photograph

In concurrence with law enforcement, any additional information likely to help locate the child or promote their safety/well-being

Slide 30

FSFN Access

Only for legitimate business purposes

Do not access FSFN for the following reasons:

Persons/Cases in the news or about which you are curious

Persons/Cases involving you or family members

Persons/Cases of friends, neighbors or acquaintances

Any other Person/Case for which there is no legitimate business reason for you to access
Sharing Records with Children

- Must receive approval from attorney prior to release
  - Exception: Adoption records

- s.83.182, F.S.: Governs access to adoption records

- Consider child's age and maturity level

- Know your agency/unit protocol

- Never simply hand over records to the child

Exception: Adoption records

- s.63.162, F.S.: Governs access to adoption records