

# Chapter 415, Florida Statutes

## Title XXX SOCIAL WELFARE

### Chapter 415 ADULT PROTECTIVE SERVICES

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### **415.102 Definitions of terms used in ss. 415.101-415.113.—As used in ss. 415.101-415.113, the term:**

- (1) “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.
- (2) “Activities of daily living” means functions and tasks for self-care, including ambulation, bathing, dressing, eating, grooming, toileting, and other similar tasks.
- (3) “Alleged perpetrator” means a person who has been named by a reporter as the person responsible for abusing, neglecting, or exploiting a vulnerable adult.
- (4) “Capacity to consent” means that a vulnerable adult has sufficient understanding to make and communicate responsible decisions regarding the vulnerable adult’s person or property, including whether or not to accept protective services offered by the department.
- (5) “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. “Caregiver” includes, but is not limited to, relatives, household members, guardians, neighbors, and employees and volunteers of facilities as defined in subsection (9). For the purpose of departmental investigative jurisdiction, the term “caregiver” does not include law enforcement officers or employees of municipal or county detention facilities or the Department of Corrections while acting in an official capacity.
- (6) “Deception” means a misrepresentation or concealment of a material fact relating to services rendered, disposition of property, or the use of property intended to benefit a vulnerable adult.
- (7) “Department” means the Department of Children and Families.
- (8)(a) “Exploitation” means a person who:
  1. Stands in a position of trust and confidence with a vulnerable adult and knowingly, by deception or intimidation, obtains or uses, or endeavors to obtain or use, a vulnerable adult’s funds, assets, or property with the intent to temporarily or permanently deprive a vulnerable adult of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the vulnerable adult; or
  2. Knows or should know that the vulnerable adult lacks the capacity to consent, and obtains or uses, or endeavors to obtain or use, the vulnerable adult’s funds, assets, or property with the

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intent to temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the vulnerable adult.

(b) “Exploitation” may include, but is not limited to:

1. 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;
2. Unauthorized taking of personal assets;
3. Misappropriation, misuse, or transfer of moneys belonging to a vulnerable adult from a personal or joint account; or
4. Intentional or negligent failure to effectively use a vulnerable adult’s income and assets for the necessities required for that person’s support and maintenance.

(9) “Facility” means any location providing day or residential care or treatment for vulnerable adults. The term “facility” may include, but is not limited to, any hospital, state institution, nursing home, assisted living facility, adult family-care home, adult day care center, residential facility licensed under chapter 393, adult day training center, or mental health treatment center.

(10) “False report” means a report of abuse, neglect, or exploitation of a vulnerable adult to the central abuse hotline which is not true and is maliciously made for the purpose of:

- (a) Harassing, embarrassing, or harming another person;
- (b) Personal financial gain for the reporting person;
- (c) Acquiring custody of a vulnerable adult; or
- (d) Personal benefit for the reporting person in any other private dispute involving a vulnerable adult.

The term “false report” does not include a report of abuse, neglect, or exploitation of a vulnerable adult which is made in good faith to the central abuse hotline.

(11) “Fiduciary relationship” means a relationship based upon the trust and confidence of the vulnerable adult in the caregiver, relative, household member, or other person entrusted with the use or management of the property or assets of the vulnerable adult. The relationship exists where there is a special confidence reposed in one who in equity and good conscience is bound to act in good faith and with due regard to the interests of the vulnerable adult. For the purposes of this part, a fiduciary relationship may be formed by an informal agreement between the vulnerable adult and the other person and does not require a formal declaration or court order for

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its existence. A fiduciary relationship includes, but is not limited to, court-appointed or voluntary guardians, trustees, attorneys, or conservators of a vulnerable adult's assets or property.

(12) "Guardian" means a person who has been appointed by a court to act on behalf of a person; a preneed guardian, as provided in chapter 744; or a health care surrogate expressly designated as provided in chapter 765.

(13) "In-home services" means the provision of nursing, personal care, supervision, or other services to vulnerable adults in their own homes.

(14) "Intimidation" means the communication by word or act to a vulnerable adult that that person will be deprived of food, nutrition, clothing, shelter, supervision, medicine, medical services, money, or financial support or will suffer physical violence.

(15) "Lacks capacity to consent" means a mental impairment that causes a vulnerable adult to lack sufficient understanding or capacity to make or communicate responsible decisions concerning person or property, including whether or not to accept protective services.

(16) "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, including, but 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.

(17) "Obtains or uses" means any manner of:

- (a) Taking or exercising control over property;
- (b) Making any use, disposition, or transfer of property;
- (c) Obtaining property by fraud, willful misrepresentation of a future act, or false promise; or
- (d)1. Conduct otherwise known as stealing; larceny; purloining; abstracting; embezzlement; misapplication; misappropriation; conversion; or obtaining money or property by false pretenses, fraud, or deception; or

2. Other conduct similar in nature.

(18) "Office" has the same meaning as in s. 400.0060.

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(19) “Position of trust and confidence” with respect to a vulnerable adult means the position of a person who:

- (a) Is a parent, spouse, adult child, or other relative by blood or marriage;
- (b) Is a joint tenant or tenant in common;
- (c) Has a legal or fiduciary relationship, including, but not limited to, a court-appointed or voluntary guardian, trustee, attorney, or conservator; or
- (d) Is a caregiver or any other person who has been entrusted with or has assumed responsibility for the use or management of the vulnerable adult’s funds, assets, or property.

(20) “Protective investigation” means acceptance of a report from the central abuse hotline alleging abuse, neglect, or exploitation as defined in this section; investigation of the report; determination as to whether action by the court is warranted; and referral of the vulnerable adult to another public or private agency when appropriate.

(21) “Protective investigator” means an authorized agent of the department who receives and investigates reports of abuse, neglect, or exploitation of vulnerable adults.

(22) “Protective services” means services to protect a vulnerable adult from further occurrences of abuse, neglect, or exploitation. Such services may include, but are not limited to, protective supervision, placement, and in-home and community-based services.

(23) “Protective supervision” means those services arranged for or implemented by the department to protect vulnerable adults from further occurrences of abuse, neglect, or exploitation.

(24) “Psychological injury” means an injury to the intellectual functioning or emotional state of a vulnerable adult as evidenced by an observable or measurable reduction in the vulnerable adult’s ability to function within that person’s customary range of performance and that person’s behavior.

(25) “Records” means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, videotapes, or other material, regardless of physical form or characteristics, made or received pursuant to a protective investigation.

(26) “Sexual abuse” means acts of a sexual nature committed in the presence of a vulnerable adult without that person’s informed consent. “Sexual abuse” includes, but is not limited to, the acts defined in s. 794.011(1)(h), fondling, exposure of a vulnerable adult’s sexual organs, or the use of a vulnerable adult to solicit for or engage in prostitution or sexual performance. “Sexual

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abuse” does not include any act intended for a valid medical purpose or any act that may reasonably be construed to be normal caregiving action or appropriate display of affection.

(27) “Victim” means any vulnerable adult named in a report of abuse, neglect, or exploitation.

(28) “Vulnerable adult” means 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 a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging.

(29) “Vulnerable adult in need of services” means a vulnerable adult who has been determined by a protective investigator to be suffering from the ill effects of neglect not caused by a second party perpetrator and is in need of protective services or other services to prevent further harm.

History.—ss. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, ch. 73-176; s. 1, ch. 77-174; ss. 3, 5, ch. 79-287; s. 15, ch. 79-298; s. 1, ch. 80-293; s. 1, ch. 83-82; s. 28, ch. 86-220; s. 29, ch. 87-238; s. 26, ch. 89-294; s. 1, ch. 90-50; s. 44, ch. 90-306; s. 1, ch. 91-57; s. 35, ch. 95-210; s. 94, ch. 95-418; s. 9, ch. 97-98; s. 127, ch. 97-101; s. 41, ch. 97-264; s. 1, ch. 98-182; s. 68, ch. 2000-153; s. 26, ch. 2000-349; s. 4, ch. 2003-57; s. 1, ch. 2006-131; s. 57, ch. 2006-227; s. 2, ch. 2010-31; s. 234, ch. 2014-19; s. 28, ch. 2015-31.

### **415.103 Central abuse hotline.—**

(1) The department shall establish and maintain a central abuse hotline that receives all reports made pursuant to s. 415.1034 in writing or through a single statewide toll-free telephone number. Any person may use the statewide toll-free telephone number to report known or suspected abuse, neglect, or exploitation of a vulnerable adult at any hour of the day or night, any day of the week. The central abuse hotline must be operated in such a manner as to enable the department to:

(a) Accept reports for investigation when there is a reasonable cause to suspect that a vulnerable adult has been or is being abused, neglected, or exploited.

(b) Determine whether the allegations made by the reporter require an immediate, 24-hour, or next-working-day response priority.

(c) When appropriate, refer calls that do not allege the abuse, neglect, or exploitation of a vulnerable adult to other organizations that might better resolve the reporter’s concerns.

(d) Immediately identify and locate prior reports of abuse, neglect, or exploitation through the central abuse hotline.

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(e) Track critical steps in the investigative process to ensure compliance with all requirements for all reports.

(f) Maintain data to facilitate the production of aggregate statistical reports for monitoring patterns of abuse, neglect, or exploitation.

(g) Serve as a resource for the evaluation, management, and planning of preventive and remedial services for vulnerable adults who have been subject to abuse, neglect, or exploitation.

(2) Upon receiving an oral or written report of known or suspected abuse, neglect, or exploitation of a vulnerable adult, the central abuse hotline must determine if the report requires an immediate onsite protective investigation. For reports requiring an immediate onsite protective investigation, the central abuse hotline must immediately notify the department's designated protective investigative district staff responsible for protective investigations to ensure prompt initiation of an onsite investigation. For reports not requiring an immediate onsite protective investigation, the central abuse hotline must notify the department's designated protective investigative district staff responsible for protective investigations in sufficient time to allow for an investigation to be commenced within 24 hours. At the time of notification of district staff with respect to the report, the central abuse hotline must also provide any known information on any previous report concerning a subject of the present report or any pertinent information relative to the present report or any noted earlier reports. If the report is of known or suspected abuse of a vulnerable adult by someone other than a relative, caregiver, or household member, the report shall be immediately transferred to the appropriate county sheriff's office.

(3) The department shall set standards, priorities, and policies to maximize the efficiency and effectiveness of the central abuse hotline.

History.—ss. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, ch. 73-176; s. 1, ch. 77-174; ss. 3, 5, ch. 79-287; s. 15, ch. 79-298; s. 1, ch. 80-293; s. 1, ch. 83-82; s. 67, ch. 86-163; s. 29, ch. 86-220; s. 30, ch. 87-238; s. 16, ch. 88-337; s. 27, ch. 89-294; s. 2, ch. 90-50; s. 45, ch. 90-306; s. 2, ch. 91-57; s. 14, ch. 91-71; s. 36, ch. 95-210; s. 95, ch. 95-418; s. 27, ch. 2000-349; s. 3, ch. 2010-31.

### **415.1034 Mandatory reporting of abuse, neglect, or exploitation of vulnerable adults; mandatory reports of death.—**

(1) MANDATORY REPORTING.—

(a) Any person, including, but not limited to, any:



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1. 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;
2. Health professional or mental health professional other than one listed in subparagraph 1.;
3. Practitioner who relies solely on spiritual means for healing;
4. 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;
5. State, county, or municipal criminal justice employee or law enforcement officer;
6. Employee of the Department of Business and Professional Regulation conducting inspections of public lodging establishments under s. 509.032;
7. Florida advocacy council or Disability Rights Florida member or a representative of the State Long-Term Care Ombudsman Program;
8. Bank, savings and loan, or credit union officer, trustee, or employee; or
9. Dealer, investment adviser, or associated person under chapter 517, who knows, or has reasonable cause to suspect, that a vulnerable adult has been or is being abused, neglected, or exploited must immediately report such knowledge or suspicion to the central abuse hotline.

(b) To the extent possible, a report made pursuant to paragraph (a) must contain, but need not be limited to, the following information:

1. Name, age, race, sex, physical description, and location of each victim alleged to have been abused, neglected, or exploited.
2. Names, addresses, and telephone numbers of the victim's family members.
3. Name, address, and telephone number of each alleged perpetrator.
4. Name, address, and telephone number of the caregiver of the victim, if different from the alleged perpetrator.
5. Name, address, and telephone number of the person reporting the alleged abuse, neglect, or exploitation.
6. Description of the physical or psychological injuries sustained.
7. Actions taken by the reporter, if any, such as notification of the criminal justice agency.
8. Any other information available to the reporting person which may establish the cause of abuse, neglect, or exploitation that occurred or is occurring.

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(2) **MANDATORY REPORTS OF DEATH.**—Any person who is required to investigate reports of abuse, neglect, or exploitation and who has reasonable cause to suspect that a vulnerable adult died as a result of abuse, neglect, or exploitation shall immediately report the suspicion to the appropriate medical examiner, to the appropriate criminal justice agency, and to the department, notwithstanding the existence of a death certificate signed by a practicing physician. The medical examiner shall accept the report for investigation pursuant to s. 406.11 and shall report the findings of the investigation, in writing, to the appropriate local criminal justice agency, the appropriate state attorney, and the department. Autopsy reports maintained by the medical examiner are not subject to the confidentiality requirements provided for in s. 415.107.

**History.**—s. 96, ch. 95-418; s. 10, ch. 97-98; s. 42, ch. 97-264; s. 256, ch. 98-166; s. 21, ch. 2000-263; s. 2, ch. 2000-318; s. 28, ch. 2000-349; s. 29, ch. 2015-31; s. 1, ch. 2020-157.

### **415.1036 Immunity.**—

(1) Any person who participates in making a report under s. 415.1034 or participates in a judicial proceeding resulting therefrom is presumed to be acting in good faith and, unless lack of good faith is shown by clear and convincing evidence, is immune from any liability, civil or criminal, that otherwise might be incurred or imposed. This section does not grant immunity, civil or criminal, to any person who is suspected of having abused, neglected, or exploited, or committed any illegal act upon or against, a vulnerable adult. Further, a resident or employee of a facility that serves vulnerable adults may not be subjected to reprisal or discharge because of the resident's or employee's actions in reporting abuse, neglect, or exploitation pursuant to s. 415.1034.

(2) Any person who makes a report under s. 415.1034 has a civil cause of action for appropriate compensatory and punitive damages against any person who causes detrimental changes in the employment status of the reporting party by reason of the reporting party's making the report. Any detrimental change made in the residency or employment status of such a person, such as, but not limited to, discharge, termination, demotion, transfer, or reduction in pay or benefits or work privileges, or negative evaluations, within 120 days after the report is made establishes a rebuttable presumption that the detrimental action was retaliatory.

**History.**—s. 98, ch. 95-418; s. 30, ch. 2000-349.

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### 415.107 Confidentiality of reports and records.—

(1) In order to protect the rights of the individual or other persons responsible for the welfare of a vulnerable adult, all records concerning reports of abuse, neglect, or exploitation of the vulnerable adult, including reports made to the central abuse hotline, and all records generated as a result of such reports shall be confidential and exempt from s. 119.07(1) and may not be disclosed except as specifically authorized by ss. 415.101-415.113.

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

(3) Access to all records, excluding the name of the reporter which shall be released only as provided in subsection (6), shall be granted only to the following persons, officials, and agencies:

(a) Employees or agents of the department, the Agency for Persons with Disabilities, the Agency for Health Care Administration, or the Department of Elderly Affairs who are responsible for carrying out protective investigations, ongoing protective services, or licensure or approval of nursing homes, assisted living facilities, adult day care centers, adult family-care homes, home care for the elderly, hospices, residential facilities licensed under chapter 393, or other facilities used for the placement of vulnerable adults.

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

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

(d) Any victim, the victim's guardian, caregiver, or legal counsel, and any person who the department has determined might be abusing, neglecting, or exploiting the victim.

(e) A court, pursuant to s. 825.1035(4)(h); or by subpoena, upon its finding that access to such records may be necessary for the determination of an issue before the court; however, such access must be limited to inspection in camera, unless the court determines that public disclosure of the information contained in such records is necessary for the resolution of an issue then pending before it.

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

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- (g) Any appropriate official of the Florida advocacy council, State Long-Term Care Ombudsman Program, or long-term care ombudsman council investigating a report of known or suspected abuse, neglect, or exploitation of a vulnerable adult.
- (h) Any appropriate official of the department, the Agency for Persons with Disabilities, the Agency for Health Care Administration, or the Department of Elderly Affairs who is responsible for:
1. Administration or supervision of the programs for the prevention, investigation, or treatment of abuse, neglect, or exploitation of vulnerable adults when carrying out an official function; or
  2. Taking appropriate administrative action concerning an employee alleged to have perpetrated abuse, neglect, or exploitation of a vulnerable adult in an institution.
- (i) Any person engaged in bona fide research or auditing. However, information identifying the subjects of the report must not be made available to the researcher.
- (j) Employees or agents of an agency of another state that has jurisdiction comparable to the jurisdiction described in paragraph (a).
- (k) The Public Employees Relations Commission for the sole purpose of obtaining evidence for appeals filed pursuant to s. 447.207. Records may be released only after deletion of all information that specifically identifies persons other than the employee.
- (l) Any person in the event of the death of a vulnerable adult determined to be a result of abuse, neglect, or exploitation. Information identifying the person reporting abuse, neglect, or exploitation shall not be released. Any information otherwise made confidential or exempt by law shall not be released pursuant to this paragraph.
- (4) The Department of Health, the Department of Business and Professional Regulation, and the Agency for Health Care Administration may have access to a report, excluding the name of the reporter, when considering disciplinary action against a licensee or certified nursing assistant pursuant to allegations of abuse, neglect, or exploitation.
- (5) The department may release to any professional person such information as is necessary for the diagnosis and treatment of, and service delivery to, a vulnerable adult or the person perpetrating the abuse, neglect, or exploitation.
- (6) The identity of any person reporting abuse, neglect, or exploitation of a vulnerable adult may not be released, without that person's written consent, to any person other than employees of the department responsible for protective services, the central abuse hotline, or the appropriate state attorney or law enforcement agency. This subsection grants protection only for the person

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who reported the abuse, neglect, or exploitation and protects only the fact that the person is the reporter. This subsection does not prohibit the subpoena of a person reporting the abuse, neglect, or exploitation when deemed necessary by the state attorney or the department to protect a vulnerable adult who is the subject of a report, if the fact that the person made the report is not disclosed.

(7) For the purposes of this section, the term “access” means a visual inspection or copy of the hard-copy record maintained in the district.

(8) Information in the central abuse hotline may not be used for employment screening.

History.—ss. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, ch. 73-176; s. 1, ch. 77-174; ss. 3, 5, ch. 79-287; s. 15, ch. 79-298; s. 1, ch. 80-293; s. 1, ch. 83-82; s. 33, ch. 86-220; s. 32, ch. 87-238; s. 7, ch. 88-219; s. 18, ch. 88-337; s. 4, ch. 89-170; s. 30, ch. 89-294; s. 4, ch. 90-50; s. 7, ch. 90-208; s. 47, ch. 90-306; s. 4, ch. 91-57; s. 15, ch. 91-71; ss. 43, 47, ch. 92-58; s. 31, ch. 93-39; s. 15, ch. 93-214; s. 57, ch. 94-218; s. 38, ch. 95-210; s. 106, ch. 95-418; s. 267, ch. 96-406; s. 1, ch. 98-111; s. 9, ch. 98-182; s. 2, ch. 98-255; s. 41, ch. 98-280; s. 70, ch. 2000-153; s. 25, ch. 2000-263; s. 38, ch. 2000-349; s. 3, ch. 2006-131; s. 60, ch. 2006-227; s. 235, ch. 2014-19; s. 33, ch. 2015-31; s. 5, ch. 2018-100.

### **415.1071 Release of confidential information.—**

(1) Any person or organization, including the Department of Children and Families, may petition the court for an order making public the records of the Department of Children and Families which pertain to investigations of alleged abuse, neglect, or exploitation of a vulnerable adult. The court shall determine whether good cause exists for public access to the records sought or a portion thereof. In making this determination, the court shall balance the best interests of the vulnerable adult who is the focus of the investigation together with the privacy right of other persons identified in the reports against the public interest. The public interest in access to such records is reflected in s. 119.01(1), and includes the need for citizens to know of and adequately evaluate the actions of the Department of Children and Families and the court system in providing vulnerable adults of this state with the protections enumerated in s. 415.101. However, this subsection does not contravene s. 415.107, which protects the name of any person reporting the abuse, neglect, or exploitation of a vulnerable adult.

(2) In cases involving serious bodily injury to a vulnerable adult, the Department of Children and Families may petition the court for an order for the immediate public release of records of the department which pertain to the protective investigation. The petition must be personally served upon the vulnerable adult, the vulnerable adult’s legal guardian, if any, and any person

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named as an alleged perpetrator in the report of abuse, neglect, or exploitation. The court must determine whether good cause exists for the public release of the records sought no later than 24 hours, excluding Saturdays, Sundays, and legal holidays, after the date the department filed the petition with the court. If the court does not grant or deny the petition within the 24-hour time period, the department may release to the public summary information including:

- (a) A confirmation that an investigation has been conducted concerning the alleged victim.
- (b) The dates and brief description of procedural activities undertaken during the department's investigation.
- (c) The date of each judicial proceeding, a summary of each participant's recommendations made at the judicial proceeding, and the ruling of the court.

The summary information shall not include the name of, or other identifying information with respect to, any person identified in any investigation. In making a determination to release confidential information, the court shall balance the best interests of the vulnerable adult who is the focus of the investigation together with the privacy rights of other persons identified in the reports against the public interest for access to public records. However, this subsection does not contravene s. 415.107, which protects the name of any person reporting abuse, neglect, or exploitation of a vulnerable adult.

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

History.—s. 18, ch. 2004-335; s. 236, ch. 2014-19.

### **415.111 Criminal penalties.—**

- (1) 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, punishable as provided in s. 775.082 or s. 775.083.
- (2) 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, except as provided in

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ss. 415.101-415.113, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(3) A person who has custody of records and documents the confidentiality of which is abrogated under s. 415.1045(3) and who refuses to grant access to such records commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(4) If the department or its authorized agent has determined after its investigation that a report is false, the department shall, with the consent of the alleged perpetrator, refer the reports to the local law enforcement agency having jurisdiction for an investigation to determine whether sufficient evidence exists to refer the case for prosecution for filing a false report as defined in s.415.102. During the pendency of the investigation by the local law enforcement agency, the department must notify the local law enforcement agency of, and the local law enforcement agency must respond to, all subsequent reports concerning the same vulnerable adult in accordance with s. 415.104 or s. 415.1045. If the law enforcement agency believes that there are indicators of abuse, neglect, or exploitation, it must immediately notify the department, which must assure the safety of the vulnerable adult. If the law enforcement agency finds sufficient evidence for prosecution for filing a false report, it must refer the case to the appropriate state attorney for prosecution.

(5) 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, punishable as provided in s. 775.082 or s. 775.083.

(a) The department shall establish procedures for determining whether a false report of abuse, neglect, or exploitation of a vulnerable adult has been made and for submitting all identifying information relating to such a false report to the local law enforcement agency as provided in this subsection and shall report annually to the Legislature the number of reports referred.

(b) Anyone making a report who is acting in good faith is immune from any liability under this subsection.

History.—ss. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, ch. 73-176; s. 1, ch. 77-174; ss. 3, 5, ch. 79-287; s. 15, ch. 79-298; s. 1, ch. 80-293; s. 1, ch. 83-82; s. 36, ch. 86-220; s. 19, ch. 88-337; s. 1, ch. 89-322; s. 49, ch. 90-306; s. 5, ch. 91-57; s. 16, ch. 91-71; s. 250, ch. 91-224; s. 1, ch. 91-258; s. 4, ch. 95-140; s. 20, ch. 95-158; s. 111, ch. 95-418; s. 7, ch. 96-293; s. 2, ch. 98-111; s. 10, ch. 98-182; s. 40, ch. 2000-349; s. 4, ch. 2002-70.

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### **415.1113 Administrative fines for false report of abuse, neglect, or exploitation of a vulnerable adult.—**

- (1) In addition to any other penalty authorized by this section, chapter 120, or other law, the department may impose a fine, not to exceed \$10,000 for each violation, upon a person who knowingly and willfully makes a false report of abuse, neglect, or exploitation of a vulnerable adult, or a person who counsels another to make a false report.
- (2) If the department alleges that a person has knowingly and willfully filed a false report with the central abuse hotline, the department must file a notice of intent that alleges the name, age, and address of the individual; the facts constituting the allegation that the individual made a false report; and the administrative fine that the department proposes to impose on the person. Each time that a false report is made constitutes a separate violation.
- (3) The notice of intent to impose the administrative fine must be served by certified mail, return receipt requested, upon the person alleged to have filed the false report and upon the person's legal counsel, if any.
- (4) Any person alleged to have filed the false report is entitled to an administrative hearing under chapter 120 before the imposition of the fine becomes final. The person must request an administrative hearing within 60 days after receipt of the notice of intent by filing a request with the department. Failure to request an administrative hearing within 60 days after receipt of the notice of intent constitutes a waiver of the right to a hearing, making the administrative fine final.
- (5) At the hearing, the department must prove by clear and convincing evidence that the person knowingly and willfully filed a false report with the central abuse hotline. The person has the right to be represented by legal counsel at the hearing.
- (6) In determining the amount of fine to be imposed, if any, the following factors must be considered:
  - (a) The gravity of the violation, including the probability that serious physical or emotional harm to any person will result or has resulted, the severity of the actual or potential harm, and the nature of the false allegation.
  - (b) Actions taken by the false reporter to retract the false report as an element of mitigation, or, in contrast, to encourage an investigation on the basis of false information.
  - (c) Any previous false reports filed by the same individual.
- (7) A decision by the department, following the administrative hearing, to impose an administrative fine for filing a false report constitutes final agency action within the meaning of



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chapter 120. Notice of the imposition of the administrative fine must be served upon the person and upon the person's legal counsel, by certified mail, return receipt requested, and must state that the person may seek judicial review of the administrative fine under s. 120.68.

(8) All amounts collected under this section must be deposited into the Operations and Maintenance Trust Fund within the Adult Services Program of the department.

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

(10) Any person who makes a report and acts in good faith is immune from any liability under this section and continues to be entitled to have the confidentiality of his or her identity maintained.

History.—s. 113, ch. 95-418; s. 68, ch. 97-103; s. 3, ch. 98-111; s. 11, ch. 98-182; s. 201, ch. 99-8; s. 42, ch. 2000-349.