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## Has the pendulum swung too far? a legal evaluation of Florida's child abuse and neglect registry

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HAS THE PENDULUM SWUNG TOO FAR?:  
A LEGAL EVALUATION OF FLORIDA'S CHILD  
ABUSE AND NEGLECT REGISTRY

by

JULIANNA DEBLER

A thesis submitted in partial fulfillment of the requirements  
for the Honors in the Major Program in Legal Studies  
in the College of Health and Public Affairs  
and in The Burnett Honors College  
at the University of Central Florida  
Orlando, Florida

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Thesis Chair: Dr. Gina Naccarato-Fromang, J.D.

## **ABSTRACT**

Over the past several years, increasing public emphasis on preventing child maltreatment has resulted in substantial changes to Florida's child abuse and neglect central registry. Many of these recent changes, aimed at preventing child maltreatment, have resulted in over one million false, unsubstantiated, and inconclusive reports of child abuse and neglect within the last decade. While the information held in reports may be useful for identifying and preventing potential child abuse or neglect, due process concerns have been raised with regards to the process of placing a person's name in a report without providing a hearing for challenging or removing inaccurate information. Focusing on Florida law, this research concentrates on: 1) the child maltreatment reporting process, 2) the procedures for maintaining reports, and 3) the accessibility of these reports in order to determine whether due process constitutional rights are protected under Florida's child abuse and neglect reporting laws.

The intent of this thesis is to analyze the occurrence of unsubstantiated cases of child maltreatment, incidences of false reporting, and legal remedies available for those wrongfully accused of abusing or neglecting a child. Through the analysis of case law, federal and state statutes, available statistics, child abuse resources, and personal interviews with members of the Florida Legislature, evidence shows that due process constitutional rights are not protected under Florida's child abuse and neglect reporting laws. By raising awareness of the areas of child protection that require legal re-evaluation, this thesis aims to discover the balance between protecting children from harm and protecting adults from the severe ramifications resulting from false and improper allegations of child abuse and neglect.

## **DEDICATION**

For the wrongfully accused and incarcerated;

For my mentors, Dr. Gina Naccarato-Fromang, Dr. Cory Watkins, and Dr. Brett Meltzer, for  
always encouraging me to achieve my goals;

And especially, for my parents, Craig and Ileana Debler, my biggest supporters.  
Your love and motivation has shaped the person I am today.

## **ACKNOWLEDGEMENTS**

I want to thank all those who have made my thesis possible. I must first thank the person who has had the greatest influential impact on my academic career, Dr. Gina Naccarato-Fromang. To my thesis chair and role model, I extend my deepest gratitude for all your love and support that you have shown me over the years and throughout this thesis process. Through your guidance, inspiration, and constant encouragement, you have shown me that there is no boundary to which determination can't overcome. To my thesis committee members, Dr. Cory Watkins and Dr. Brett Meltzer, thank you for all your patience and assistance throughout this thesis process. This thesis was only possible with the help of your guidance and collaboration of ideas. To my darling, Daniel Lachinski, thank you for being my de-stressor, my soul mate, and my best friend. I could not have made it without your love and support. To my loving parents, Craig and Ileana Debler, your constant support and motivation is the driving force behind my determination to succeed. Thank you for always believing in me and encouraging me to excel in all my aspirations in life.

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## INTRODUCTION

Child maltreatment, recognized as one of the most prevalent social issues affecting children and families today, has become the core of political debate and public policy reform across the United States. Through the years, the United States Congress has empowered states with full authority to enact legislation to protect children from future and potential harm. Although the goal of both federal and state legislation has been to cultivate this ideal of child protection—to safeguard children from harm while strengthening families—it has often resulted in just the opposite. Despite many years of public policy reform on this issue, little or no unanimity exists about how best to maintain records, provide due process, and limit access to records of child maltreatment.

Although excessive, the bases for both state and federal child protection laws are well-founded; child abuse is a widespread social issue affecting millions of children and families across America. According to the American Society for the Prevention of Cruelty to Children, “It is estimated that one out of two American children will be directly harmed by this epidemic” (2012). Without this primary focus on protecting children, federal and state governments and nationwide organizations may not have been as successful at promoting awareness of child abuse, providing assistance for victims, or prosecuting perpetrators.

But how do we know when child protection laws have gone too far? The research in the chapters that follow will address the problems that arise when people are subject to criminal, financial, and social ramifications as a result of alleged allegations of child abuse. The research in this thesis is not intended to undermine federal or state child protection laws, to suggest that

reporting child maltreatment is ineffective, or to create a presumption that child protection services should be invalidated. Rather, its purpose is to discover a balance between protecting children from maltreatment and protecting adults from the implications of erroneous accusations of child abuse and neglect.

Although contentious, research performed on the implications of child protection laws is important for many reasons. Stemming from the origin of public policy, the federal government has a strong interest in not interfering into areas of family responsibility. However, state governments also have an overriding compelling interest in protecting children from harm. Therefore federal and state governments must take precautions to ensure that state regulations serve only to the extent required to fulfill this interest. Thus, research into the application and implications of child protection laws is important to ensure that states are in compliance with federal law and public policy.

Moreover, research performed on the implications of child protection laws is important to raise public awareness about the ramifications of maintaining inconclusive reports of child maltreatment. Through personal interviews that I conducted with Senators and Representatives of the Florida Legislature, I found that some legislative officials are unaware of the implications of Florida's child abuse and neglect reporting procedures (Siplin, Rich, Baker, Withheld, Withheld, personal communication, 2012). Out of the five legislators interviewed, 100% stated that they were unaware of Florida's procedures for maintaining the names of alleged perpetrators in the central abuse and neglect registry. When questioned, they responded that they were unaware that reports can be accessed and the extent to which these reports can be used against alleged perpetrators. Because preventing harm to children has been the primary focus of modern

child protection legislation, some legislative officials are unaware of the implications relating to Florida's child maltreatment reporting procedures. As a result, state legislation does not always consider the corollary effects of these procedures on adults, parents, and the family. Research is thus vital to raise public awareness of the areas of child protection that require legal re-evaluation and to ensure that all members of society are given proper and fair protection under the law.

Additionally, research performed on the constitutionality of child protection laws is important because the general public has an inherent interest in being safe and protected from undue harm. Article I, Section 9, of the Florida Constitution, and the Fifth and Fourteenth Amendments to the Constitution of the United States mandate, "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law" (American Civil Liberties Union, n.d.). Therefore, through research state child protection laws can be monitored to ensure that they do not abridge the privileges or immunities of any person in the United States without providing fair and impartial judicial proceedings under a court of law.

Similarly, research performed on the constitutionality of child protection laws is important because the general public has an inherent interest in being free from confusion, mistake, and deception. Article I, Section 9, of the Florida Constitution, and the Fifth and Fourteenth Amendments to the Constitution of the United States mandate that the legislature, in the creation of legislation, uses clear and concise language sufficient to provide a definite warning to those to whom it applies what conduct on their behalf is prohibited (*State v. Wershow*, (Fla. 1977)). Essentially, research on the constitutionality of child protection laws is

significant because the government has a compelling interest in preventing harm of all forms to the general public.

Furthermore, research performed on the effectiveness of child protection laws is vital to serving the government's strong financial interest in publicly funded programs. Certain social welfare agencies, such as the Florida Department of Children and Families (DCF), rely primarily on government allocated funds to develop and operate a wide range of child protection programs and services. For example, for the 2012–2013 state fiscal year, the DCF required an annual budget of more than 14.6 billion dollars (Florida General Appropriations Act, 2012), inclusive of federal grants and state allocated funds, to operate abuse reporting, protection, prevention, and family preservation programs for children and vulnerable adults. By researching the effectiveness of requiring mandatory reporting laws, this thesis will examine how efficiently Florida's reporting laws have identified actual perpetrators of child abuse or neglect. In effect, research on child protection laws is important to indicate how to efficiently identify and investigate actual cases of child maltreatment, which in turn will create stronger and more effective child protective programs and services.

In conclusion, this research is essential because it can provide support for any person who was falsely or wrongfully accused of child abuse or neglect, contribute to the transformation of child protection efforts, and ultimately assist government officials in their legislative decisions. Increasing awareness about the implications of child protection laws is not intended to undermine the issue of child abuse and neglect, but rather to advocate for equal and fair protection under law for all members of society, regardless of age.

## **BACKGROUND**

The subsequent sections contain background information on the transformation of child protection efforts, including definitions and explanations of child maltreatment as defined under the 2012 Florida Statutes. For the reason that many states differ in their definition and classification of child abuse and neglect, this thesis will only focus on the application of Florida law. The following information is vital to establishing the concepts that will be used throughout this thesis and to understanding the foundation upon which the following research was built.

### **Legal Classes of Persons**

This section defines several important terms that will be commonly used throughout this thesis. This section also explains how people are legally classified into separate categories as a result of age, employment, and marital status. Understanding how all members of society are legally classified is vital to comprehending how the law is individually applied to each group.

#### ***Child***

Under Florida law, “child” refers to “any unmarried person under the age of 18 years who has not been emancipated by order of the court” (Fla. Stat. §39.01(12) (2012)). For purposes of investigating child maltreatment, a child who is the subject of a report of alleged child maltreatment is classified into one of the following categories: 1) victim or 2) alleged victim. A child is classified according to the level of evidence available to support or maintain a finding of child abuse or neglect (see the Reporting Child Abuse chapter). However the term victim is used in this thesis, it shall refer to one of the following definitions, unless stated otherwise.

**Child victim.** A “victim” specifically means “any child who has sustained or is threatened with physical, mental, or emotional injury identified in a report involving child abuse, neglect, or abandonment . . .” (Fla. Stat. §39.01(76) (2012)). Although the term victim presumes a finding of maltreatment, a final determination of harm or a risk of potential harm to a child has not been determined by a court of law.

**Alleged child victim.** On the contrary, an “alleged victim” specifically means a child about whom a report regarding child abuse, neglect, or abandonment has been made, but not verified (U.S. Department of Health and Human Services [HHS], 2011, p. 122). In general, an alleged victim is the subject of a report that resulted in no finding or an inconclusive finding of child maltreatment, as determined by a child protective services investigation.

### ***Adult***

Conversely, “adult” is broadly defined as “any natural person other than a child” (Fla. Stat. §39.01(5) (2012)). This definition of adult encompasses a wide range of persons. For example, an adult includes any one of the following persons listed in the subsections below.

**Caregiver.** “Caregiver” specifically means “the parent, legal custodian, permanent guardian, adult household member, or other person responsible for a child’s welfare” (Fla. Stat. §39.01 (10) (2012)).

**Parent.** “Parent” specifically means the biological mother or father of a child, or a person whose consent would be required for another person to adopt a child. However, if a child has

been legally adopted, the term parent means the child's adoptive mother or father (Fla. Stat. §39.01(49) (2012)).

**Legal custodian.** When the term "parent or legal custodian" is used, it specifically refers to the rights or responsibilities of a person who has assumed the role of a parent when "there is no living parent with intact parental rights" (Fla. Stat. §39.01(49) (2012)).

**Permanent guardian.** "Permanent guardian" specifically means "the relative or other adult in a permanent guardianship of a dependent child" (Fla. Stat. §39.01(54) (2012)).

**Other person responsible for a child's welfare.** "Other person responsible for a child's welfare" includes any of the following persons:

The child's legal guardian or foster parent; an employee of any school, public or private child day care center, residential home, institution, facility, or agency; a law enforcement officer employed in any facility, service, or program for children that is operated or contracted by the Department of Juvenile Justice; or any other person legally responsible for the child's welfare in a residential setting; and also includes an adult sitter or relative entrusted with a child's care. (Fla. Stat. §39.01(47) (2012))

However, the following are an example of persons who are not included in this definition when they are acting in an official capacity: "law enforcement officers, except as otherwise provided . . . ; employees of municipal or county detention facilities; or employees of the Department of Corrections" (Fla. Stat. §39.01(47) (2012)).



## ***Perpetrator***

For purposes of investigating child maltreatment, there are essentially two classifications of a perpetrator: 1) perpetrator or 2) alleged perpetrator. A perpetrator is classified according to the level of evidence available to support or maintain a finding of child abuse or neglect (see the Reporting Child Abuse chapter). However the term perpetrator is used in this thesis, it shall refer to one of the following definitions, unless stated otherwise.

**Perpetrator.** “Perpetrator” specifically means a person named in a report “who has been determined [by a child protective services investigation] to have caused or knowingly allowed the maltreatment of a child” (HHS, 2011, p. 131). Although the term perpetrator presumes a finding of guilt, a final determination of a person’s guilt or innocence has not been made by a court or body of law.

**Alleged perpetrator.** Conversely, “alleged perpetrator” specifically means a person who has been named by a reporter as the individual allegedly responsible for causing or knowingly allowing the abuse or neglect of a child (HHS, 2011, p. 122). In essence, an alleged perpetrator is the subject of a report that resulted in no finding or an inconclusive finding of child maltreatment, as determined by a child protective services investigation.

## **Child Maltreatment**

Child maltreatment, also known as harm committed to a child, in pertinent part includes physical and psychological abuse and neglect of a child. Although federal law establishes minimum standards that constitute child maltreatment, there is no specific universally applied

definition of child abuse or neglect. Consequentially, definitions may vary from state to state, making it difficult to research child maltreatment amongst the states.

In an effort to create a common understanding of child maltreatment, federal and state legislatures, agency administrators, and researchers have established definitions of maltreatment for distinct purposes. However, definitions still differ amongst these groups and individually within them. For example, definitions of child maltreatment for reporting purposes are typically different from definitions used for criminal prosecution purposes. Although these legal definitions are primarily embedded in state statutes, definitions may still vary within each state.

Similarly, most research done on this issue is inconclusive because researchers have used different standards to define, measure, and study child maltreatment. Therefore, when the term child maltreatment is used in this thesis it shall include references to both child abuse and neglect, unless stated otherwise. By establishing a common understanding of what constitutes child abuse and neglect, this thesis will provide for more effective research.

### ***Child Abuse***

Child abuse in the simplest terms is violence against children. Florida Statute section 39.01(2) (2012) defines child “abuse” as “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.” Under this definition, child abuse includes acts or omissions that result in any one of the following injuries listed below.

**Physical injury.** “Physical injury” specifically means “death, permanent or temporary disfigurement, or impairment of any bodily part” (Fla. Stat. §39.01(56) (2012)).

**Mental injury.** “Mental injury” specifically means “injury to the intellectual or psychological capacity of a child as evidenced by a discernible and substantial impairment in the ability of the child to function within the normal range of performance and behavior as supported by expert testimony” (Fla. Stat. §827.03(1)(d) (2012)).

**Sexual injury.** “Sexual injury” also referred to as “sexual battery,” specifically means the “oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object” (Fla. Stat. §827.071(1)(f) (2012)). However this definition does not include “an act done for a bona fide medical purpose” (Fla. Stat. §827.071(1)(f) (2012)). Although sexual injury is a component of child abuse, sexual battery on a child is prosecuted as a separate crime under Florida law.

**Harm.** “Harm” to a child’s health or well-being can occur as a result or likely result of physical, mental, or sexual injury. Florida Statute section 39.01(32) (2012) defines that harm to a child occurs when any person:

- (a) Inflicts or allows to be inflicted upon the child physical, mental, or emotional injury. In determining whether harm has occurred, the following factors must be considered in evaluating any physical, mental, or emotional injury to a child: the age of the child; any prior history of injuries to the child; the location of the injury on the body of the child; the multiplicity of the injury; and the type of trauma inflicted. Such injury includes, but is not limited to:
  - 1) Willful acts that produce the following specific injuries:
    - a. Sprains, dislocations, or cartilage damage.
    - b. Bone or skull fractures.

- c. Brain or spinal cord damage.
- d. Intracranial hemorrhage or injury to other internal organs.
- e. Asphyxiation, suffocation, or drowning.
- f. Injury resulting from the use of a deadly weapon.
- g. Burns or scalding.
- h. Cuts, lacerations, punctures, or bites.
- i. Permanent or temporary disfigurement.
- j. Permanent or temporary loss or impairment of a body part or function.

As used in this definition, “willful” specifically refers to a person’s intent to execute an action, not to the intent to attain a result or to specifically cause an injury to a child (Fla. Stat. §39.01(32) (2012)).

### ***Child Neglect***

Child neglect, also referred to as the act of failing to provide for the basic needs of a child, includes physical, medical, educational, and emotional neglect. More specifically, Florida Statute section 39.01(44) (2012) defines “neglect” as an instance that occurs when:

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

However, under section 39.01(44), certain circumstances are exempt from classification as child neglect if caused by: lack of financial ability, unless services for financial assistance

have been presented to and rejected by such person; legitimate religious beliefs practiced in agreement with a recognized church or religious organization; however, under this exception a court may still order any health or medical services to be delivered to a child.

### ***Corporal Punishment***

Child discipline is a central part of child learning that teaches children what behaviors are acceptable and what are not. However, parental or adult discipline of a child habitually results in the use of psychological or physical punishment as a method of teaching. The most common method of physical punishment, commonly referred to as corporal discipline, entails the use of bodily force to discipline children. According to a study performed by Zolotor, Theodore, Runyan, Chang, and Laskey (2002), although corporal punishment has decreased since 1975, it remains to be the most commonly used method of child discipline (as cited in University of North Carolina [UNC], 2010). In fact, the statewide study found that 79% of the preschool-aged children in the survey were spanked and approximately half of the children between the ages eight and nine were hit with blunt objects such as a belt or a paddle (UNC, 2010). In essence, corporal punishment is one of the most commonly used methods of child discipline in the United States today.

But, where does the line draw between privileged corporal punishment and child abuse? Determining what legal rights parents and adults are afforded in disciplining their children has been a major area of concern and public policy debate. Under Florida law, “Corporal discipline of a child by a parent or legal custodian for disciplinary purposes does not in itself constitute abuse when it *does not result in harm to the child*” [emphasis added] (Fla. Stat. §39.01(2))

(2012)). However, under Florida law a child can be harmed for criminal prosecution purposes if corporal discipline is *likely to result* in physical, mental, or emotional injury to a child (Fla. Stat. §39.01(32)(a)(4) (2012)). Thus, a child can be abused for statutory purposes even if there is no present harm to the child.

## **Child Welfare**

Child welfare in the broadest sense refers to the health, happiness, and prosperity of a child. To protect the welfare of all children in the United States, the federal government developed the child welfare system. The child welfare system consists of a group of state government agencies, such as the DCF, who strive to promote the basic well-being and protection of all children. Among other things, the federal government offers funding to state welfare agencies to create programs and services for preventing the abuse and neglect of children and protecting those children who have already been maltreated. The overarching objective of the child welfare system is to “promote the well-being of children by ensuring safety, achieving permanency, and *strengthening families* [emphasis added] to care for their children successfully” (Child Welfare Information Gateway, 2012, p. 1). Using this objective as a model, this thesis will examine whether in fact adults and families are indeed strengthened by Florida’s current child protection laws.

## **HISTORY OF CHILD PROTECTION**

Throughout the history of the United States, parents have held the fundamental parental rights to raise their children without any government intervention. In fact, until the end of the 1800's children were legally considered the property of their fathers. However, as public awareness about child abuse has increased over the years, the significance of child protective services has received greater interest by government officials. As a result, recent child abuse legislation has evolved according to society's shifting beliefs and attitudes about what position the government should play in the family.

The most significant transformation of child welfare efforts in the early twentieth century was the creation of the United States Children's Bureau. Enacted into law in 1912 by President William Howard Taft, the Children's Bureau was the first federal government agency to research and administer child welfare programs in the United States. The stated objective of the Children's Bureau was to investigate and report "upon all matters pertaining to the welfare of children and child life among all classes of our people" (Oettinger, 1962). The Children's Bureau created a nationwide awareness of child welfare and established the basis upon which child protection programs and legislation developed in the twentieth century.

In response to increased awareness of child maltreatment, in 1974 the United States Congress passed the first federal child protection legislation, the Child Abuse Prevention and Treatment Act (CAPTA). CAPTA is the original federal law that established the framework for state child protective systems today (Child Welfare Information Gateway, 2011b).

The purpose of CAPTA was to nationally address the issues of child abuse and neglect, and provide funding to states for furtherance of child prevention, assessment, and investigation programs. Since its original enactment in 1974, CAPTA has been amended by Congress numerous times, most recently by the CAPTA Reauthorization Act of 2010. Through each reauthorization, amendments made to CAPTA have greatly increased the restrictions, guidelines, and laws in their application to the states. These amendments include changes to the federal definition of child abuse and neglect. While Congress has passed twenty-seven federal child welfare laws since the original enactment of CAPTA in 1974, CAPTA remains the key federal legislation and the underlying foundation for state child protection legislation (Child Welfare Information Gateway, 2011b).

The CAPTA has played a major role in influencing state legislation. States who receive funding from CAPTA must abide by specific federal regulations and standards to qualify for funding. For example, states must comply with the minimum standards established by federal law for defining child maltreatment in order to receive funding from CAPTA. Under CAPTA, each state is accountable for establishing its own definitions of child abuse and neglect using the minimum requirements set by federal law. As a result, there is no single universally applied definition of child abuse or neglect in the United States. Thus it is legally permissible for every state to have their respective definitions and criminal offenses for child abuse and neglect.

Similar to other states who receive funding from CAPTA, Florida complies with federal law in establishing its definitions of child maltreatment. To ensure compliance with CAPTA and other federal grants, in 1997 the Florida legislature amended the statutory definition of child abuse and neglect to include acts or omissions that “could reasonably be expected” to result in a



risk of harm to a child (Fla. Stat. §827.03(1) (1997)). This marked the first time in the history of Florida that an adult could legally be reported, arrested, and convicted for child abuse or neglect when there was no physical or mental harm to a child, just a future expectation of risk. As trivial as the changes in the language may appear, this amendment completely altered and continues to alter the application and enforcement of Florida's child protection laws.

## **METHOD**

Research for this thesis was performed by reviewing all relevant 2012 Florida Statutes, federal statutes, and court opinions relating to constitutional due process, and the procedures for reporting, maintaining, and releasing information contained in reports of child abuse and neglect. In addition, this thesis reviewed articles and internal reports issued by the DCF and the Florida Senate, and statistical reports published by the DCF to the National Child Abuse and Neglect Data System (NCANDS). This study also involved discussions with the staff at the Florida Abuse Hotline and interviews with five members of the Florida Legislature. While this thesis recognizes that there are other important areas of Florida's child protection laws that require legal re-evaluation, research for this thesis only focuses on: 1) the child maltreatment reporting process, 2) the procedures for maintaining reports, and 3) the accessibility of these reports to determine whether due process constitutional rights are protected under Florida's child abuse and neglect reporting laws.

## **FEDERAL STATUTORY ANALYSIS**

Federal law not only sets the minimum standards for defining child abuse and neglect, it also explains how the law is applied in Florida. Additionally, examining federal law pertaining to child maltreatment can also be used to demonstrate the national perception of child abuse and neglect, particularly among the federal legislators. For further information on federal law relating to child protection, please review the History of Child Protection chapter in this thesis.

### **Child Abuse Prevention and Treatment Act (CAPTA)**

CAPTA, originally enacted in 1974, is the key federal law concerning the prevention of child maltreatment. Through its most recent amendment, the CAPTA Reauthorization Act of 2010 defines the minimum standards for a set of acts or behaviors that define child abuse and neglect. Under CAPTA, child abuse and neglect is defined as, at minimum:

- Any recent act or failure to act on the part of a parent or caretaker which results in death, serious physical or emotional harm, sexual abuse or exploitation; or
- An act or failure to act which presents an imminent risk of serious harm. (42 U.S.C. §5101 (2010))

Although federal law provides the foundation for defining child abuse, each state is responsible for creating its own definition based on the minimum guidelines set forth by federal law.

Therefore, there is no one specific definition of child abuse or neglect, and it is legally permissible for each state in the United States to require its residents to conform to its own delineations.

## **FLORIDA STATUTORY ANALYSIS**

Florida's child protection statutes appear to provide equal and fair protection to all members of society in their language. Research into the application and enforcement of Florida's child protection laws is important to ensure that these laws are not being subjectively enforced and that all age groups are provided equal protection. Therefore, this chapter will define and explain pertinent statutes relating to child maltreatment, and the following chapters in this thesis will examine how these statutes are applied and enforced in present-day.

In this chapter, only the current child maltreatment statutes relevant to this thesis will be examined. Accordingly, statutes referring to aggravated child abuse or sexual battery on a child will not be considered because they are separate crimes. In addition, all Florida Statutes referred to in this thesis will be based on the current year in which this thesis was written, the 2012 Florida Statutes.

### **Types of Maltreatment**

Florida law recognizes different levels of offenses for child maltreatment. While it is important to have a general understanding between the different types of child maltreatment, this thesis will focus solely on the elements of child abuse and neglect. Although these two types of child maltreatment are often referred to in conjunction, they are two entirely separate and distinct offenses committed against a child.

### ***Child Abuse***

Florida has established its own respective definition of “child abuse.” Florida Statute section 827.03(1)(b) (2012) defines child abuse, a felony of the third degree, as any of the following:

- 1) Intentional infliction of physical or mental injury upon a child;
- 2) An intentional act that could reasonably be expected to result in physical or mental injury to a child; or
- 3) Active encouragement of any person to commit an act that results or could reasonably be expected to result in physical or mental injury to a child.

### ***Child Neglect***

Florida has also established its own respective definition of “child neglect.” Florida Statute section 827.03(1)(e) (2012) defines child neglect, a felony of the third degree, as any one of the following:

- 1) A caregiver’s failure or omission to provide a child with the care, supervision, and services necessary to maintain the child’s physical and mental health, including, but not limited to, food, nutrition, clothing, shelter, supervision, medicine, and medical services that a prudent person would consider essential for the well-being of the child; or
- 2) A caregiver’s failure to make a reasonable effort to protect a child from abuse, neglect, or exploitation by another person.

Under this section, neglect of a child can occur from a single or recurring act or omission that results in, or could reasonably be expected to result in, great physical injury, mental injury, or a significant risk of death to a child.

## **REPORTING CHILD ABUSE AND NEGLECT**

The growing concern over false and unfounded allegations of child abuse and neglect is one recent manifestation of Florida's child maltreatment reporting laws. Research into the implementation and administration of the procedures for reporting child abuse and neglect is important to determine if there are legal remedies available for those who are falsely or wrongfully accused of maltreating a child. Thus, this research is vital to analyze whether or not both children *and* adults are provided equal and fair protection under Florida's child maltreatment reporting laws.

### **Mandatory Reporting**

Florida has its own system of procedures for accepting and responding to reports of potential child abuse and neglect. Concerned citizens may report concerns of potential child maltreatment to the statewide central abuse hotline, child protective services, or local law enforcement agencies. Currently, all reports are voluntarily made by concerned citizens and by those required by law to do so: parents, legal guardians, caregivers, and certain licensed professionals. However, the following section will explain how recent changes to Florida law will completely revolutionize mandatory reporting requirements and provide severe criminal penalties for any person who fails to do so.

### ***Protection of Vulnerable Persons Act (PVPA)***

Although every individual has an inherent moral duty to report suspected child abuse and neglect, as of October 1, 2012, all individuals will be required to do so under the Florida

Protection of Vulnerable Persons Act (PVPA) of 2012. Enacted into law by House Bill 1355 (2012), the PVPA is the most extensive state legislation reforming Florida's child abuse and neglect reporting laws. The PVPA increases current mandatory reporting provisions, by requiring *all* adults, regardless of professional or relationship status to a child, "who know or have reasonable cause to suspect," that a child has been abused or neglected by any adult, to "report such knowledge or suspicion" to the DCF (Fla. Stat. §39.201(1)(b) (2012)). Accordingly, every adult in the state of Florida is legally accountable for reporting child abuse and neglect, even in instances where they are uncertain that the abuse or neglect actually occurred. While the intent of the legislature is honorable—to protect abused and neglected children by strongly encouraging the reporting of potential child maltreatment—recent changes in legislation may have a significant negative impact on adults.

The PVPA may result in significant criminal consequences for adults who fail to report known or suspected instances of child abuse or neglect. Adults may be criminally prosecuted for failing to report suspected instances of child abuse or neglect, regardless if the abuse or neglect actually occurred or not. As amended, Florida Statute section 39.205(1) (2012) provides that:

A person who is required to report known or suspected child abuse, abandonment, or neglect and who knowingly and willfully fails to do so, or who knowingly and willfully prevents another person from doing so, commits a felony of the third degree.

In effect, a person who fails to report child abuse or neglect will be criminally prosecuted and sentenced to the same terms of imprisonment, fines, and penalties as a perpetrator convicted of abusing or neglecting a child. Thus, Florida law now provides the nation's harshest penalties for failing to report known or suspected instances of child maltreatment.



Legislators opposed to the PVPA are concerned that it will result in excessive unwarranted reports of child abuse and neglect. During the 2012 Florida Legislative Session debate on the PVPA, several senators expressed their concerns that because the criminal penalties for not reporting child abuse or neglect are so severe the amendment will likely cause people to excessively report child abuse and neglect, even when the report is unwarranted. Additionally, the DCF projects the PVPA to result in an increase of forty thousand additional phone reports of child maltreatment annually (as cited in H.B. 1355, 2012, p. 7). Thus, the PVPA will result in the likely increase of thousands of false and unsubstantiated reports of child maltreatment—a grave concern for thousands of adults living in Florida.

### **Florida Abuse Hotline**

All reports of child maltreatment are made to the Florida Abuse Hotline (Hotline), the central reporting center for all allegations of abuse, neglect, and exploitation of children in Florida. The Hotline receives reports of child maltreatment through phone calls, faxes, and web-based applications from all citizens throughout the state of Florida. The Hotline collects and stores the information provided by reporters, including all the names of children and their alleged abusers, into a central registry database maintained by the DCF (The Florida Senate Committee on Children, Families, and Elder Affairs [Florida Senate], 2010). The information in this database is used to assess and investigate reports of alleged child abuse and neglect. Although the Hotline receives all initial reports of child maltreatment, the Hotline will only accept and respond to reports that involve abuse or neglect allegedly committed by a person of familiar relationship to a child.

### ***Responding to Reports of Child Abuse and Neglect***

The DCF has its own set of procedures and guidelines for responding to reports of child abuse and neglect received by the Hotline. Beginning with the intake process, a DCF worker assesses an initial report of child abuse, called a “referral,” to determine: 1) if the referral is within the department’s jurisdiction and 2) if the referral meets the state’s minimum definition of child abuse or neglect. A DCF worker follows the following agency guidelines for accepting or denying a referral of alleged child abuse or neglect (see Appendix A for a visual overview of the child maltreatment reporting process). The Hotline will accept a referral when there is reasonable cause to believe that a child:

- 1) Is a Florida resident, and can be located in Florida, or is temporarily out of the state but expected to return; has been harmed or is believed to be threatened with harm as defined by statute; by a parent, legal custodian, caregiver, or other person responsible for the child’s welfare. Or;
- 2) Is not a Florida resident but can be located in Florida and has been harmed in Florida or is believed to be threatened with harm in Florida as defined by statute; by a parent, legal custodian, caregiver, or other person responsible for the child's welfare. (Florida Department of Children Families, 2007, p. 6)

A referral that does not meet the statutory guidelines listed above is screened-out and does not receive further examination. Conversely, a referral that meets the statutory guidelines is screened-in for further examination. A screened-in referral, also called a “report,” is then set for further investigation by a child protective investigator (CPI) or law enforcement official to determine if a child was maltreated or at-risk of maltreatment (HHS, 2011).

Following an initial investigation, a CPI worker then makes a determination about the allegation(s) of child abuse or neglect into one of the three main case dispositions below:

- **Intentionally false:** As a result of an investigation, a determination that the person who made the allegation of child maltreatment knew that the allegation was not accurate, or made the report with malicious intent (HHS, 2011, p. 6).
- **Not substantiated (Unsubstantiated):** As a result of an investigation, a determination that there is no evidence or insufficient credible evidence, which satisfies the standard of being a preponderance, to conclude or suspect that the particular harm was the result of abuse or neglect (HHS, 2011, p. 158). This category also includes reports of “no indication” of child maltreatment.
- **Verified (Substantiated):** “As a result of an investigation, a determination that a preponderance of the credible evidence supports the conclusion that the specific injury, harm or threatened harm was the result of abuse or neglect that occurred” (HHS, 2011, p. 158).

While reports of child maltreatment are also classified by other additional case dispositions under Florida law, the above-mentioned dispositions are used for federal reporting purposes for the reason that they are the most important and conclusive. As such, only these dispositions will be used throughout this thesis for all statistical measurements of child abuse and neglect.

For the reason that report dispositions are not easily understood *prima facie*, it is important to explain the differences between the dispositions to fully comprehend how child abuse and neglect statistics are measured. As used in the dispositions above, a preponderance of the evidence simply requires that only 51% or more of the evidence suggests that the specific

harm or threatened harm was the result of abuse or neglect (Cornell University, 2010).

Therefore, the dispositions of “intentionally false” and “not substantiated” generally refer to reports that did not result in findings of child abuse or neglect. In the broadest sense, the only report disposition that signifies that the harm or risk of threatened harm to the child was more likely than not the result of child abuse or neglect is a “verified report” of child maltreatment. While a verified report presumes a finding of child abuse or neglect, a verified report is often inconclusive of a final determination of maltreatment because:

- The level of evidence (preponderance) needed to support a finding of maltreatment is so low, that almost any act or omission could “more likely than not” result in harm to a child.
- A verified report does not represent the judicial or prosecutorial outcome of a case; a court has not heard the evidence and live testimony of the accused to make a final determination of whether in fact the specific harm or risk of harm to the child was a result of abuse or neglect (Ceijay Jackson, DCF, personal communication, July 25, 2012).
- A verified report does not change in disposition if a court of law determined that there was no abuse or neglect to a child.

Although a verified report is the only report that identifies a “perpetrator” of child abuse or neglect, all reports of child maltreatment, which also include the names of “alleged perpetrators,” are stored in the central registry, regardless if the outcome of a CPI investigation resulted in an intentionally false or unsubstantiated finding of maltreatment.

## STATISTICAL ANALYSIS

During federal fiscal year (FFY) 2010, the Hotline received an estimated 300,000 phone calls that referred, reported, and inquired about child abuse and neglect (Florida Legislature, 2012). Of these calls, 151,441 reports of child abuse and neglect were screened-in and received an investigation (HHS, 2011). Of these reports that received an investigation, 77.75% (117,749) were not substantiated, 0.05% (80) were intentionally false, and only 22.20% (33,612) were found to be verified (pp. 11-13). Although a combined average of 78% (117,829) of all reports in FFY 2010 did not constitute child abuse or neglect, 100% of all reports, containing the names of an estimated 130,000<sup>1</sup> innocent “alleged perpetrators” and 37,212 “perpetrators,” (p. 78) remain on the Hotline’s registry as a result of inconclusive findings of child maltreatment (see Figure 1).

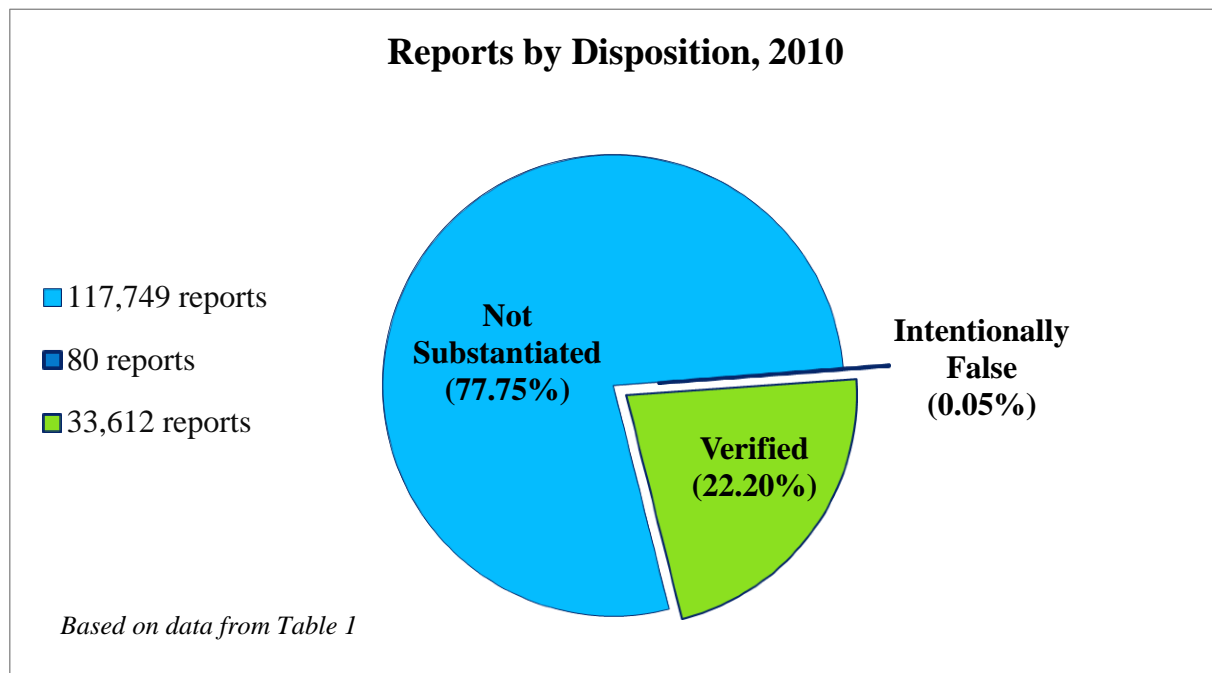


Figure 1. Reports submitted by the Florida Hotline to the National Child Abuse and Neglect Data System for FFY 2010 (October 1, 2009–September 30, 2010). Percentages are presented as the average of all reports with similar case dispositions. Adapted from HHS, 2011, *Child Maltreatment 2010*, pp. 11-13.

<sup>1</sup> Due to the lack of available statistics for “alleged perpetrators” in FFY 2010, the amount of alleged perpetrators is estimated based on the given ratio of “perpetrators” to “verified reports” of child maltreatment.

While the numbers of false and unsubstantiated reports investigated during FFY 2010 are staggering, these amounts only constitute a small percentage of the total amount investigated within the last decade. In fact, within the last 10 years of available data (as shown in Table 1), over 1.2 million false and unsubstantiated reports of child abuse and neglect have been added to the Hotline’s central registry as a result of investigations that determined there was no evidence or insufficient evidence to support a finding of child maltreatment. In total, a combined estimate of four-fifths (79.56%) of all reports within the last decade did not result in child abuse or neglect. Despite the fact that only one-fifth (20.44%) of all reports of child abuse and neglect within the last decade have resulted in verified findings of maltreatment, over one million names of innocent “alleged perpetrators” and “perpetrators” have been added to the Hotline’s registry.

**Table 1**  
**2001-2010 Reports of Child Abuse and Neglect to the Florida Hotline**

<b>Year</b>	<b>Verified</b>	<b>Not Substantiated</b>	<b>Intentionally False</b>	<b>Missing or Unknown</b>	<b>Total Reports</b>
<b>2010</b>	33,612	117,749	80	0	151,441
<b>2009</b>	30,134	123,486	113	0	153,733
<b>2008</b>	31,310	141,839	69	0	173,218
<b>2007</b>	31,656	123,094	N/A	201	154,951
<b>2006</b>	33,622	117,812	139	249	151,822
<b>2005</b>	32,669	114,907	246	182	148,004
<b>2004</b>	33,705	111,149	285	254	145,393
<b>2003</b>	33,427	122,190	135	1,722	157,474
<b>2002</b>	27,514	114,216	192	625	142,547
<b>2001</b>	24,966	125,001	201	871	151,039
<b>TOTAL</b>	<b>312,615</b>	<b>1,211,443</b>	<b>1,460</b>	<b>4,104</b>	<b>1,529,622</b>

*Note.* The data presented in this table are a comprehensive summary of all screened-in reports by disposition that received an investigation by a child protective investigator during FFYs 2001–2010 (October 1, 2001–September 30, 2010). Adapted from “Child Maltreatment 2010–2001,” by HHS, 2011–2002, Reports by Disposition Tables.

<sup>a</sup>The disposition category “Verified” only includes reports that met the standard of a preponderance of the evidence to conclude that there was child abuse or neglect. <sup>b</sup>In addition, the disposition category “Not Substantiated” includes dispositions of “Indicated,” “No Indication,” and “Other,” which represent reports that did not meet the standard of being a preponderance to support a conclusion of child abuse or neglect. <sup>c</sup>Moreover, the disposition category of “Missing or Unknown” represents data that were not completely captured or are missing (HHS, 2011, p. 134).

Many have wondered and debated the question, “what happens to the names of the hundreds of thousands of individuals—perpetrators, alleged perpetrators, and children—who are named in reports of child maltreatment each year”? The chapters that follow will explain how the information contained within a report of child maltreatment is maintained, disseminated, and accessed for different purposes.

## **PROCEDURES FOR MAINTAINING REPORTS**

The DCF preserves all reports and case records of child abuse and neglect made to the Hotline in a central registry. Under Florida Statute section 39.301(3) (2012), the DCF must maintain all reports of child maltreatment in individual electronic case files for each unique child who is the subject of a report that received an investigation by the DCF. Among other things, section 39.301 also requires that each individual case file contain all single and repeated reports of child maltreatment made to the Hotline concerning that child, including reports of unsubstantiated or intentionally false case dispositions. Furthermore, each unique electronic case file is required to contain the names, addresses, and other personal identifying information that is available for all the individuals—perpetrators, alleged perpetrators, and children—named in a report of child maltreatment.

As a result of changes to Florida law in 1995, there is no longer a hearing process by which an individual can appeal the information contained within a report of child maltreatment (Florida Senate, 2010). According to the Florida House of Representatives Select Committee on Child Abuse and Neglect (1995), Florida law no longer allows name-clearing hearings because in the past verified reports were only upheld in less than 50% of the hearings (as cited in Florida Senate, 2010, p. 4). Consequentially, a perpetrator or alleged perpetrator does not have any rights to review and challenge records for the removal of their name from the registry (Florida Senate, 2010). Furthermore, the DCF is not required to remove a name from the registry even if a court ruled an individual not guilty.



In addition, the DCF is not required to expunge or remove a report from the registry even after the statutory time period. While the law states that the DCF must maintain reports until the child who is the subject of an investigation reaches the age of 30, the DCF has full discretion over disposing of a report after this time period (Fla. Stat. §39.202(7) (2012)). Therefore, a perpetrator or alleged perpetrator's name can technically remain on the central registry for the rest of his or her life.

The DCF states that all reports of child maltreatment, regardless of case disposition, are maintained in the central registry in order to identify and track patterns of suspected abuse or neglect by an individual (Florida Senate, 2010). Before the 1995 legislative changes, Florida law previously required that "unfounded" reports be expunged within 30 days (Florida Senate, 2010). However, the DCF stated that this resulted in CPIs not being able to follow a pattern of suspected abuse or neglect by an individual because the expunction and removal of the report would erase all evidence relating to the pattern (Florida Senate, 2010). Although Florida's procedures for maintaining reports may assist child protective investigators in tracking past investigations concerning the same child, they often lead to false or misleading presumptions of "verified perpetrators" of child maltreatment.

## **ACCESSIBILITY OF REPORTS**

In order to protect the rights of all those who are named in a report of child maltreatment, Florida law states that all records and reports of child maltreatment are to be confidentially maintained and restricted from public use. More specifically, Florida law states that all records “held by the department concerning reports of child abandonment, abuse, or neglect, including reports made to the central abuse hotline and all records generated . . . shall be confidential . . . and shall not be disclosed except as specifically authorized by this chapter” (Fla. Stat. §39.202(1) (2012)). Although the information held in the Hotline’s central registry is theoretically not accessible by the public, the exceptions to the law are fundamentally limitless.

### **Persons Who Have Access to Reports**

Under Florida Statute section 39.202 (2012), the information contained in a report of child maltreatment, excluding the name of the reporter, is accessible to anyone of the following individuals, administrators, and agencies:

- a) Employees, authorized personnel, or contract providers of the DCF, the Department of Health (DOH), the Agency for Persons with Disabilities (APD), Department of Juvenile Justice (DJJ), Department of Revenue (DOR), and county agencies responsible for conducting:
  - 1. Child protective investigations and services;
  - 2. Child maltreatment intervention and prevention services;
  - 3. Child support enforcement; and
  - 4. Employment and continuing employment screening of personnel (DCF and APD).

b) Employees, authorized personnel, or contract providers of county agencies responsible for the licensing or approval of:

1. Adoptive homes;
2. Foster homes;
3. Child care facilities;
4. Family day care homes; and
5. Other homes that provide for the care of children.

c) Employees and authorized agents of the following agencies:

1. Criminal justice agencies;
2. The State attorney's office in the appropriate jurisdiction;
3. Agencies in other states that have similar jurisdictions; and
4. The local public or private school where the child is a student, including a designated employee and principal.

d) The following persons and entities:

1. The parent or legal custodian of any child who is the victim or alleged victim of a report of abuse or neglect;
2. Any attorney(s) representing a child who is the victim or alleged victim of a report of abuse or child;
3. Any attorney(s) representing a child in civil or criminal proceedings;
4. Any person included in a report to have allegedly abused or neglected a child;
5. A court of law;

6. A grand jury, if determined that access may be necessary to make a final determination of a defendant's guilt;
7. A licensed physician, psychologist, or mental health professional;
8. Any person authorized by the APD to perform research, statistics, or audit analyses;
9. Any person with whom the DCF may place a child, including adoptive parents;
10. Any person if the death of a child was determined to be a result of abuse or neglect; and
11. Other persons, agencies, or entities as provided under section 39.202 (2012).

### **When Reports Are Used**

In general, the Hotline's registry is checked for four main purposes: 1) prospective employment with the APD or DCF, 2) placement of children, 3) approval of prospective adoptive and foster parents, and 4) licensure of child care facilities. While there are other purposes for which the registry is accessed, overall these are the most important.

The Hotline's registry is checked to screen a person for employment with the APD, DCF, or contracted service providers of the DCF (Fla. Stat. §39.202(2)(h)(3) (2012)). Although the records contained within the Hotline are checked to qualify a person for employment, "there are no automatic disqualifiers to employment" (Florida Senate, 2010, p. 5). For example, if a screening of the Hotline discovers a verified report in which the applicant is named as an alleged perpetrator or perpetrator, this is "not an automatic bar to employment" (Florida Senate, 2010, p. 5). By law, the only automatic disqualifier for employment is if a criminal background check

reveals that an individual: 1) has been arrested and is awaiting final disposition of a court or 2) an individual has been found guilty of child abuse or neglect (Fla. Stat. §435.04(2) (2012)). However, the DCF or APD employee who is performing the screening does inspect and consider all reports of child maltreatment in which the individual is named, this includes verified, unsubstantiated, and intentionally false reports. While the DCF maintains that the decision for employment is “not based solely on any findings in the Hotline record,” the DCF admits that they do consider all reports of child maltreatment when making a decision for approving or denying a candidate for employment with the department (as cited in Florida Senate, 2010, p. 5).

The Hotline is also checked for approving plans and making decisions concerning the placement of a child (Fla. Stat. §39.0138(1) (2012)). Florida law requires the DCF to conduct a check of the Hotline “on all persons, including parents, being considered by the department for placement of a child” (Fla. Stat. §39.0138(1) (2012)). The only automatic disqualifier for the placement of a child is if the person being considered for the placement has been convicted of child abuse, child neglect, or another felony involving a child (Fla. Stat. §39.0138(2) (2012)). However, a DCF employee performing the search will consider all reports obtained from the Hotline that involve the individual when making a placement decision (Florida Senate, 2010).

In addition, a Hotline screening is performed on prospective adoptive and foster parents for the preliminary placement of a child for an adoption or entrance into a foster care or group home (American Public Human Services Association [APHSA], 2002). Under the Interstate Compact on the Placement of Children (ICPC) of 1974, any state “to which a child is sent, brought, or caused to be sent or brought” from another state is required to “initiate an assessment of the proposed placement to determine its safety and suitability” (Fla. Stat. §409.401 (2012)).

According to the ICPC, an assessment requires states to check state child abuse and neglect registries to reveal if a prospective adoptive or foster parent has had any previous interactions with public or social services agencies (APHSA, 2002). The ICPC further requires “child abuse and neglect clearances for all household members” over the age of 18 (APHSA, 2002, p. 40). Even though a verified or unsubstantiated report of child maltreatment is only recorded in Florida, all records are accessible by other state agencies and organizations of similar jurisdiction to screen prospective adoptive and foster parents (Fla. Stat. §39.202(2)(1) (2011)).

Furthermore, the information contained in the Hotline may also be used as part of the licensure or registration processes for child care facilities and foster care or family day care homes (Fla. Stat. §402.305 (2012)). Florida law requires the DCF, DOH, and their authorized agents or contract providers to establish minimum licensing standards that all child care facilities must meet in order to receive or maintain a license to operate. In addition, Florida law mandates that owners and operators of facilities or homes that offer child care services must employ personnel that have “good moral character based upon screening” to obtain or maintain a license (Fla. Stat. §402.305(2)(a) (2012)). To determine that these minimum standards have been met, the DCF, DOH, and their agents or contact providers use the information contained within the Hotline to screen applicants and to ensure licensees are in compliance with department regulations.

## **CONSTITUTIONAL ANALYSIS**

While Florida's child abuse and neglect registry is essential to protect children from maltreatment, due process concerns have been raised about the process for placing and maintaining a person's name in a report of child maltreatment. For example, when a perpetrator is included in a verified report of child maltreatment and the individual is found not guilty by a court, are any fundamental rights violated when a person is not afforded the right to remove their name from the central registry?

For the reason that the concept of due process is inherently complex and broad in nature, explanation on the history and application of the requirements of due process is warranted to provide a basic understanding of due process under federal and state constitutional law. Therefore, this chapter will review the conceptual application of due process of law in conformity with both federal and state constitutions, statutes, and case law.

### **Due Process**

One of the most deeply embedded principles in the history of American jurisprudence is the theory of due process of law (Hornberger, 2005). Applied to the federal government by the Fifth Amendment and to all the states by the Fourteenth Amendment to the Constitution of the United States (Constitution), the Due Process Clause prohibits all levels of government from depriving "any person . . . of life, liberty, or property, without due process of law" (National Archives, n.d., "Amendment V"). At its core, the Due Process Clause provides a promise that all levels of government will abide by the law and provide equal and fair procedures to all persons

(Strauss, n.d.). This promise represents the most fundamental value of fairness and justice in American constitutional law.

Stemming from the origins of English common law, the notion of due process is not a new concept or a recent manifestation of modern ideals or beliefs. Rather, the concept of due process of law is deeply rooted in the origins of American law. Dating back to the year 1215, the concept of due process was first exercised when the King of England signed into law the Magna Carta—the charter that prohibited the “exercise of arbitrary seizure of people or their property by government officials” (Hornberger, 2005). The Magna Carta provided that:

No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgement [*sic*] of his equals or by the law of the land. (The British Library Board, n.d., para. 3)

Thus, the Magna Carta laid the foundation upon which our American ancestors implemented the concept of due process through the adoption of the Fifth Amendment to the Constitution and through Article I, Section 9, of the Florida Constitution.

Through the centuries, due process remains to be one of the most fundamental promises of protection provided to citizens against the actions of the federal and state governments in the United States. Due process applies protection when a state or federal government has taken action against an individual, and it protects citizens from both criminal and civil acts (Strauss, n.d.). Through the years, the application of constitutional due process has been essentially separated into two areas of law: 1) substantive due process and 2) procedural due process. While



these two areas offer a distinction between the two types of due process of law, these two areas coincide for one purpose—to provide all citizens with the equal and fair protection of the law and an opportunity to defend against unjustified harm.

### ***Substantive Due Process***

In the broadest sense, “substantive due process” forbids any level of government from infringing on the fundamental constitutional rights or liberties of citizens (“Substantive Due Process,” n.d.). Substantive due process is the principle that “require[s] legislation to be fair and reasonable in content as well as application” (National Paralegal College, n.d., para. 2). In determining whether a citizen’s right to substantive due process has been violated, the courts must first determine whether or not a *liberty* has been deprived of. In essence, substantive law defines, regulates, and advocates for the protection of the fundamental rights and liberties afforded to all citizens under the Constitution (“Due Process of Law,” n.d.).

The Supreme Court of the United States has recognized two different categories of fundamental liberties: 1) liberties expressly granted in the Bill of Rights to the Constitution and 2) liberties that are not expressly stated in the Constitution, but are essential for ensuring the freedom and equality of all citizens (Substantive Due Process,” n.d.). Although there is no definitive list embedded in the Constitution, the Supreme Court has recognized certain fundamental liberties that are inherent in state citizenship (*Logan v. Zimmerman Brush Co.*, (1982)); (*Board of Regents v. Roth*, (1972)); and (*Goldberg v. Kelly*, (1970)), such rights include:

- 1) The right to property;
- 2) The right to work for a living;

- 3) The right to procreate;
- 4) The right to privacy (although not unlimited);
- 5) The right to be presumed innocent until proven guilty;
- 6) The right to be heard;
- 7) The right to be confronted with the witnesses against him;
- 8) The right to equal protection under the law; and
- 9) The right to due process of the law.

While this list contains a selective few of the fundamental rights and liberties recognized at the federal level, there are other inherent rights and liberties established by both federal and state courts.

Among the liberties listed above, the “right to property” includes both tangible and intellectual property rights. Under the Due Process Clause, “property” encompasses “not only land and personal property, but also entitlements, including government-provided benefits, licenses, and positions” (“Due Process of Law,” n.d., Procedural section, para. 3). Additionally, “the monetary benefits of employment are considered property,” and the denial of this property right without a hearing would violate due process (HHS, 2009, Due Process Considerations section, para. 3).

Furthermore, the entitlement to the right to work for a living or to obtain a license is also considered a property “right,” not a “privilege.” The Supreme Court has repeatedly held, “that the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the [Fourteenth] Amendment to secure” (*Board of Regents v. Roth*, (1972)). One Supreme Court Justice further explains:

In my view, every citizen who applies for a government job is entitled to it unless the government can establish some reason for denying the employment. This is the “property” right that I believe is protected by the Fourteenth Amendment and that cannot be denied “without due process of law.” And it is also liberty—liberty to work—which is the “very essence of the personal freedom and opportunity” secured by the Fourteenth Amendment. (*Board of Regents v. Roth*, (1972))

Thus, the Supreme Court has provided the foundation upon which courts and legislators are required to abide by when reviewing or enacting legislation that requires a distinction between “rights” and “privileges” (Strauss, n.d.).

### ***Procedural Due Process***

The principle of “procedural due process” refers to the elements of the Due Process Clause that apply to the *procedure* by which a government deprives an individual of life, liberty, or property (“Due Process of Law,” n.d.). More specifically, procedural due process “limits the exercise of power by the state and federal governments by requiring that they follow certain procedures in criminal and civil matters” when depriving an individual of their fundamental liberties (“Due Process of Law,” n.d., Procedural section, para. 1). In determining whether procedural due process has been violated, a court must first determine “whether a citizen is being deprived of ‘life, liberty, or property’” (“Due Process of Law,” n.d., Procedural section, para. 1).

Under law, procedural protections are due when an individual is deprived of a fundamental “right” or “liberty,” not a “privilege”. More specifically, “Deprivation of liberty occurs when a person loses significant freedom of action or when a person is denied a

constitutional or statutory right” (Florida Senate, 2010, p. 6). If a court determines that an individual has been or may potentially be illegally deprived of life, liberty, or property, the court will make a determination on “what procedural protections are ‘due’ to that individual” (“Due Process of Law,” n.d., Procedural section, para. 1).

The Supreme Court has established guidelines and regulations that courts must follow in determining what procedural protections are due to a person under the Due Process Clause. The Supreme Court has previously held that the most essential requirement of procedural due process is providing an opportunity to be heard (*Grannis v. Ordean*, (1914)). In said context, the Supreme Court mandates that states provide a recipient with an “effective opportunity to defend by confronting any adverse witnesses and by presenting his own arguments and evidence orally” (*Goldberg v. Kelly*, (1970)). States must also provide the right to a “notice” and “hearing” which is to take place at a “meaningful time and in a meaningful manner” (*Armstrong v. Manzo*, (1965)). Although the requirement to be heard normally presents itself in criminal proceedings, the requirement for a hearing applies to both criminal and civil actions and proceedings taken against an individual. The Supreme Court has determined the importance of the right to a notice and hearing in civil and criminal cases “where recipients have challenged proposed terminations as resting on incorrect or misleading factual premises or on misapplication of rules or policies to the facts of particular cases” (*Goldberg v. Kelly*, (1970)).

### ***Due Process Challenges to Registries in Other States***

In numerous states, the courts have examined whether state child abuse and neglect registries infringe upon due process constitutional rights. More specifically, the courts have

examined “whether adequate protections for individuals’ rights are available before an individual’s name is included in a child abuse registry” (HHS, 2009, Due Process Considerations section, para. 4). The courts have used a specific standard of “adequate protection” which necessitated that: “a relatively strong standard of proof be required for substantiation; that the individual has been notified of the finding and its implications; and that adequate procedures exist for hearings or appeals with respect to investigators’ decisions to substantiate maltreatment” (HHS, 2009, Due Process Considerations section, para. 4). In several states, the courts have determined that state registries’ procedures do not meet the standard of adequate protection as required under the Due Process Clause. Thus, substantial changes have been made to the procedures by which state registries operate and maintain reports of child maltreatment (HHS, 2009).

Furthermore, according to the Florida Senate Committee on Children, Families, and Elder Affairs (2010), state child abuse and neglect registries have been found to be unconstitutional in the following states:

- **North Carolina.** In March 2010, a North Carolina appeals court ruled that the North Carolina registry is unconstitutional because suspected abusers on the child abuse list were not given an opportunity to defend themselves before being listed. Thus, placing an individual’s name on an abuse registry used for employment screening prior to a hearing violates the North Carolina constitution. (p. 7, para. 1)
- **New York.** In New York a class-action settlement was approved “on behalf of thousands of people who were improperly denied the chance for a hearing to get removed from the statewide Abuse and Maltreatment Registry.” The New York State

Office of Children and Family Services was reportedly closing cases without the opportunity for a hearing. The settlement will allow the class members the opportunity for a hearing and a chance to clear their names. (p. 7, para. 2)

- **California.** The U.S. Supreme Court will hear an appeal of a 2008 California appellate decision holding the state's child abuse and neglect reporting Act unconstitutional because there was no mechanism by which the innocent could clear their names. (p.7, para. 3)
- **Missouri.** The Missouri Supreme Court held that nurses' due process rights were violated when their names were placed on a state child abuse registry prior to a hearing. (p. 7, para. 4)
- **Georgia.** The Georgia Supreme Court found in 1998 that the entire state scheme for registering child abusers was unconstitutional, holding that due process requires that individuals have a right to compel and confront witnesses in a name clearing hearing. (p. 7, para. 6)

As referred to in the cases above, many similarities can be identified between the state registries that were deemed unconstitutional and the components of Florida's central registry. Thus, these highly influential court decisions may be laying the foundation for a countrywide reform of state child abuse and neglect registries.

## **CONCLUSION**

This research on Florida's child abuse and neglect central registry has revealed many areas of Florida's child maltreatment reporting laws that require legal re-evaluation. This research found that Florida's procedures for reporting, maintaining, and disseminating the information contained within reports of child maltreatment afford little or no protection for those who are falsely or wrongfully accused of child abuse or neglect. Through an examination of Florida's child protection laws in conformity with federal and state constitutions, statutes, and case law, this research has revealed that constitutional due process rights are not protected under Florida's child abuse and neglect reporting laws.

Florida's procedures for allowing access to reports of child maltreatment violate a citizen's constitutional right to substantive due process when a person is deprived of fundamental rights as a result of suggested involvement in a report of child maltreatment. While Florida law maintains that no report of alleged maltreatment shall be used against an innocent alleged perpetrator, the DCF admits that they consider all reports of child maltreatment when making any employment, licensure, or placement decision that pertains to children (as cited in Florida Senate, 2010, p. 5). Because the information contained within the central registry is checked for 1) the prospective employment with the APD or DCF, 2) the placement of children, 3) the approval of prospective adoptive or foster parents, and 4) the licensure process for child care facilities, certain fundamental liberties that are inherently afforded to a citizen are at risk.

Florida's child abuse and neglect reporting procedures deprive a citizen of the fundamental "right to property" when the central registry is used for employment and licensure

purposes. Because the central registry is checked for employment with the DCF, APD, and their authorized contract providers, an individual is deprived of the fundamental right to property, which also includes the entitlement to the “right to work for a living” and the “right to earn the monetary benefits of employment” when he or she is denied the right to obtain a position for employment as a result of information contained in a report of child maltreatment. In addition, Florida’s child abuse and neglect reporting procedures deprive a citizen of the “right to obtain a license” when the DCF’s decision to deny an individual a license to operate a child care, day care, or foster care facility is influenced by the information received from the central registry.

Florida’s child abuse and neglect reporting procedures deprive a citizen of the fundamental “right to liberty” when the registry is used to limit freedom or equal opportunity of the law. If the DCF, APD, or any of their authorized contract providers deny a person an employment position as a result of the consideration of the information contained in a report of child maltreatment, then they have deprived that individual of the “liberty to work.” While there is no established fundamental liberty to adopt or foster a child, when the DCF denies a person the right to adopt, foster, or receive placement of a child as a direct result of the information received in the registry, then the person has been deprived of the “right to equal protection of the law.” In essence, because an individual may be deprived of “liberty” or “property” as a result of being included in a report of child maltreatment, the legislature must ensure that state legislation provides for adequate procedural process to those to whom it is due.

Furthermore, Florida’s procedures for reporting child maltreatment violate a citizen’s constitutional right to procedural due process when an individual is not provided an opportunity to be heard before their name is added to the central registry. The process for placing an



individual's name on the registry before allowing a hearing, in which a perpetrator can confront its witnesses and provide evidence to assist in its own defense, is greatly subjective and affords little, if any, protection for those individuals erroneously accused of child abuse or neglect. One of the most fundamental principles of due process is that a person has the fundamental liberty to be "presumed innocent until proven guilty," and this right is denied when an individual is deprived of the opportunity to challenge the accuracy of the information contained within a report of child maltreatment.

In its entirety, Florida's procedures for maintaining reports of child maltreatment on the central registry, without providing a hearing, violate a citizen's right to both substantive and procedural due process. Whether an individual has been named as an alleged perpetrator or a perpetrator in a report of child maltreatment, there is no process or legal remedy available by which the innocent can clear their name from the registry. As such, evidence shows that due process constitutional rights are not protected under Florida's child abuse and neglect reporting laws.

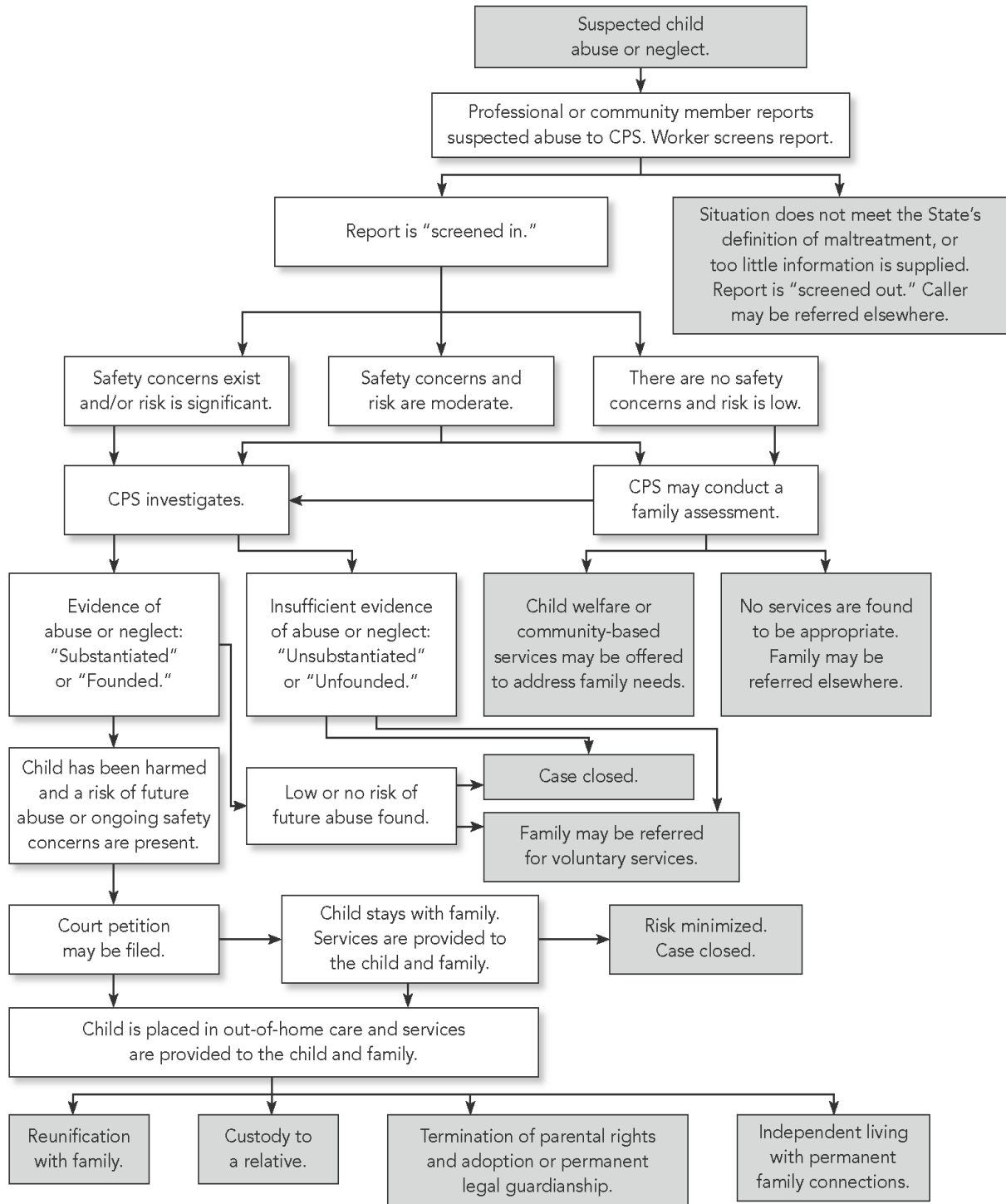
Because the statistics show that hundreds of thousands of adults living in Florida each year are subject to the deprivation of their fundamental rights and liberties as a result of current child maltreatment reporting laws, immediate state legislative action is necessary to protect citizens from undue harm. The Florida Legislature needs to enact legislation to provide all citizens with the fundamental right to due process of the law. One way due process can be provided is if the Florida Legislature mandates that the DCF implements procedures by which citizens are afforded the right to be heard and defend before being included in a report of child maltreatment. Further, the Florida Legislature needs to provide a "name clearing hearing" by

which an individual, who has been found not guilty as a result of this hearing, can remove and expunge their name from the central registry. Through the implementation of this hearing process, the balance between protecting children from harm and protecting adults from false and improper allegations of child maltreatment can be obtained.

While this thesis only focuses on the constitutionality of the child maltreatment reporting process, this research contains valuable information that can be relied upon in future research of the other areas of Florida's child protection laws. Because the information contained in a report of child maltreatment is used as the basis for conducting a criminal investigation and prosecution for child maltreatment, understanding how the information in a report is initially collected, maintained, and disseminated is vital for providing more effective research. As such, future research into other areas of child protection should be performed to determine whether due process rights are protected under all the areas of Florida's child protection laws.

## **APPENDIX A**

## The Child Welfare System: Responding to Child Abuse and Neglect



(Child Welfare Information Gateway, 2012, p. 9)

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