

Selected Florida Statutes

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Chapter 44

Mediation Alternatives to Judicial Action

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44.1011 Definitions.--As used in this chapter:

- (1) "Arbitration" means a process whereby a neutral third person or panel, called an arbitrator or arbitration panel, considers the facts and arguments presented by the parties and renders a decision which may be binding or nonbinding as provided in this chapter.
- (2) "Mediation" means a process whereby a neutral third person called a mediator acts to encourage and facilitate the resolution of a dispute between two or more parties. It is an informal and nonadversarial process with the objective of helping the disputing parties reach a mutually acceptable and voluntary agreement. In mediation, decisionmaking authority rests with the parties. The role of the mediator includes, but is not limited to, assisting the parties in identifying issues, fostering joint problem solving, and exploring settlement alternatives. "Mediation" includes:

- (a) "Appellate court mediation," which means mediation that occurs during the pendency of an appeal of a civil case.
- (b) "Circuit court mediation," which means mediation of civil cases, other than family matters, in circuit court. If a party is represented by counsel, the counsel of record must appear unless stipulated to by the parties or otherwise ordered by the court.
- (c) "County court mediation," which means mediation of civil cases within the jurisdiction of county courts, including small claims. Negotiations in county court mediation are primarily conducted by the parties. Counsel for each party may participate. However, presence of counsel is not required.
- (d) "Family mediation" which means mediation of family matters, including married and unmarried persons, before and after judgments involving dissolution of marriage; property division; shared or sole parental responsibility; or child support, custody, and visitation involving emotional or financial considerations not usually present in other circuit civil cases. Negotiations in family mediation are primarily conducted by the parties. Counsel for each party may attend the mediation conference and privately communicate with their clients. However, presence of counsel is not required, and, in the discretion of the mediator, and with the agreement of the parties, mediation may proceed in the absence of counsel unless otherwise ordered by the court.
- (e) "Dependency or in need of services mediation," which means mediation of dependency, child in need of services, or family in need of services matters. Negotiations in dependency or in need of services mediation are primarily conducted by the parties. Counsel for each party may attend the mediation conference and privately communicate with their clients. However, presence of counsel is not required and, in the discretion of the mediator and with the agreement of the parties, mediation may proceed in the absence of counsel unless otherwise ordered by the court.

44.102 Court-ordered mediation.--

- (1) Court-ordered mediation shall be conducted according to rules of practice and procedure adopted by the Supreme Court.
- (2) A court, under rules adopted by the Supreme Court:
 - (a) Must, upon request of one party, refer to mediation any filed civil action for monetary damages, provided the requesting party is willing and able to pay the costs of the mediation or the costs can be equitably divided between the parties, unless:
 - 1. The action is a landlord and tenant dispute that does not include a claim for personal injury.

2. The action is filed for the purpose of collecting a debt.
3. The action is a claim of medical malpractice.
4. The action is governed by the Florida Small Claims Rules.
5. The court determines that the action is proper for referral to nonbinding arbitration under this chapter.
6. The parties have agreed to binding arbitration.
7. The parties have agreed to an expedited trial pursuant to s. 45.075.
8. The parties have agreed to voluntary trial resolution pursuant to s. 44.104.

(b) May refer to mediation all or any part of a filed civil action for which mediation is not required under this section.

(c) In circuits in which a family mediation program has been established and upon a court finding of a dispute, shall refer to mediation all or part of custody, visitation, or other parental responsibility issues as defined in s. 61.13. Upon motion or request of a party, a court shall not refer any case to mediation if it finds there has been a history of domestic violence that would compromise the mediation process.

(d) In circuits in which a dependency or in need of services mediation program has been established, may refer to mediation all or any portion of a matter relating to dependency or to a child in need of services or a family in need of services.

(3) All written communications in a mediation proceeding, other than an executed settlement agreement, shall be exempt from the requirements of chapter 119.

(4) The chief judge of each judicial circuit shall maintain a list of mediators who have been certified by the Supreme Court and who have registered for appointment in that circuit.

(a) Whenever possible, qualified individuals who have volunteered their time to serve as mediators shall be appointed. If a mediation program is funded pursuant to s. 44.108, volunteer mediators shall be entitled to reimbursement pursuant to s. 112.061 for all actual expenses necessitated by service as a mediator.

(b) Nonvolunteer mediators shall be compensated according to rules adopted by the Supreme Court. If a mediation program is funded pursuant to s. 44.108, a mediator may be compensated by the county or by the parties.

(5)(a) When an action is referred to mediation by court order, the time periods for responding to an offer of settlement pursuant to s. 45.061, or to an offer or demand for judgment pursuant to s. 768.79, respectively, shall be tolled until:

1. An impasse has been declared by the mediator; or
2. The mediator has reported to the court that no agreement was reached.

(b) Sections 45.061 and 768.79 notwithstanding, an offer of settlement or an offer or demand for judgment may be made at any time after an impasse has been declared by the mediator, or the mediator has reported that no agreement was reached. An offer is deemed rejected as of commencement of trial.

44.103 Court-ordered, nonbinding arbitration.--

- (1) Court-ordered, nonbinding arbitration shall be conducted according to the rules of practice and procedure adopted by the Supreme Court.
- (2) A court, pursuant to rules adopted by the Supreme Court, may refer any contested civil action filed in a circuit or county court to nonbinding arbitration.
- (3) Arbitrators shall be selected and compensated in accordance with rules adopted by the Supreme Court. Arbitrators shall be compensated by the parties, or, upon a finding by the court that a party is indigent, an arbitrator may be partially or fully compensated from state funds according to the party's present ability to pay. At no time may an arbitrator charge more than \$1,500 per diem, unless the parties agree otherwise. Prior to approving the use of state funds to reimburse an arbitrator, the court must ensure that the party reimburses the portion of the total cost that the party is immediately able to pay and that the party has agreed to a payment plan established by the clerk of the court that will fully reimburse the state for the balance of all state costs for both the arbitrator and any costs of administering the payment plan and any collection efforts that may be necessary in the future. Whenever possible, qualified individuals who have volunteered their time to serve as arbitrators shall be appointed. If an arbitration program is funded pursuant to s. 44.108, volunteer arbitrators shall be entitled to be reimbursed pursuant to s. 112.061 for all actual expenses necessitated by service as an arbitrator.
- (4) An arbitrator or, in the case of a panel, the chief arbitrator, shall have such power to administer oaths or affirmations and to conduct the proceedings as the rules of court shall provide. The hearing shall be conducted informally. Presentation of testimony and evidence shall be kept to a minimum, and matters shall be presented to the arbitrators primarily through the statements and arguments of counsel. Any party to the arbitration may petition the court in the underlying action, for good cause shown, to authorize the arbitrator to issue subpoenas for the attendance of witnesses and the production of books, records, documents, and other evidence at the arbitration and may petition the court for orders compelling such attendance and production at the arbitration. Subpoenas shall be served and shall be enforceable in the manner provided by law.
- (5) The arbitration decision shall be presented to the parties in writing. An arbitration decision shall be final if a request for a trial de novo is not filed within the time provided

by rules promulgated by the Supreme Court. The decision shall not be made known to the judge who may preside over the case unless no request for trial de novo is made as herein provided or unless otherwise provided by law. If no request for trial de novo is made within the time provided, the decision shall be referred to the presiding judge in the case who shall enter such orders and judgments as are required to carry out the terms of the decision, which orders shall be enforceable by the contempt powers of the court, and for which judgments execution shall issue on request of a party.

- (6) Upon motion made by either party within 30 days after entry of judgment, the court may assess costs against the party requesting a trial de novo, including arbitration costs, court costs, reasonable attorney's fees, and other reasonable costs such as investigation expenses and expenses for expert or other testimony which were incurred after the arbitration hearing and continuing through the trial of the case in accordance with the guidelines for taxation of costs as adopted by the Supreme Court. Such costs may be assessed if:
 - (a) The plaintiff, having filed for a trial de novo, obtains a judgment at trial which is at least 25 percent less than the arbitration award. In such instance, the costs and attorney's fees pursuant to this section shall be set off against the award. When the costs and attorney's fees pursuant to this section total more than the amount of the judgment, the court shall enter judgment for the defendant against the plaintiff for the amount of the costs and attorney's fees, less the amount of the award to the plaintiff. For purposes of a determination under this paragraph, the term "judgment" means the amount of the net judgment entered, plus all taxable costs pursuant to the guidelines for taxation of costs as adopted by the Supreme Court, plus any postarbitration collateral source payments received or due as of the date of the judgment, and plus any postarbitration settlement amounts by which the verdict was reduced; or
 - (b) The defendant, having filed for a trial de novo, has a judgment entered against the defendant which is at least 25 percent more than the arbitration award. For purposes of a determination under this paragraph, the term "judgment" means the amount of the net judgment entered, plus any postarbitration settlement amounts by which the verdict was reduced.

44.104 Voluntary binding arbitration and voluntary trial resolution.--

- (1) Two or more opposing parties who are involved in a civil dispute may agree in writing to submit the controversy to voluntary binding arbitration, or voluntary trial resolution, in lieu of litigation of the issues involved, prior to or after a lawsuit has been filed, provided no constitutional issue is involved.
- (2) If the parties have entered into an agreement which provides in voluntary binding arbitration for a method for appointing of one or more arbitrators, or which provides in voluntary trial resolution a method for appointing a member of The Florida Bar in good standing for more than 5 years to act as trial resolution judge, the court shall proceed with the appointment as prescribed. However, in voluntary binding arbitration at least

one of the arbitrators, who shall serve as the chief arbitrator, shall meet the qualifications and training requirements adopted pursuant to s. 44.106. In the absence of an agreement, or if the agreement method fails or for any reason cannot be followed, the court, on application of a party, shall appoint one or more qualified arbitrators, or the trial resolution judge, as the case requires.

- (3) The arbitrators or trial resolution judge shall be compensated by the parties according to their agreement.
- (4) Within 10 days after the submission of the request for binding arbitration, or voluntary trial resolution, the court shall provide for the appointment of the arbitrator or arbitrators, or trial resolution judge, as the case requires. Once appointed, the arbitrators or trial resolution judge shall notify the parties of the time and place for the hearing.
- (5) Application for voluntary binding arbitration or voluntary trial resolution shall be filed and fees paid to the clerk of court as if for complaints initiating civil actions. The clerk of the court shall handle and account for these matters in all respects as if they were civil actions, except that the clerk of court shall keep separate the records of the applications for voluntary binding arbitration and the records of the applications for voluntary trial resolution from all other civil actions.
- (6) Filing of the application for binding arbitration or voluntary trial resolution will toll the running of the applicable statutes of limitation.
- (7) The chief arbitrator or trial resolution judge may administer oaths or affirmations and conduct the proceedings as the rules of court shall provide. At the request of any party, the chief arbitrator or trial resolution judge shall issue subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence and may apply to the court for orders compelling attendance and production. Subpoenas shall be served and shall be enforceable in the manner provided by law.
- (8) A voluntary binding arbitration hearing shall be conducted by all of the arbitrators, but a majority may determine any question and render a final decision. A trial resolution judge shall conduct a voluntary trial resolution hearing. The trial resolution judge may determine any question and render a final decision.
- (9) The Florida Evidence Code shall apply to all proceedings under this section.
- (10) An appeal of a voluntary binding arbitration decision shall be taken to the circuit court and shall be limited to review on the record and not de novo, of:
 - (a) Any alleged failure of the arbitrators to comply with the applicable rules of procedure or evidence.
 - (b) Any alleged partiality or misconduct by an arbitrator prejudicing the rights of any party.

(c) Whether the decision reaches a result contrary to the Constitution of the United States or of the State of Florida.

(11) Any party may enforce a final decision rendered in a voluntary trial by filing a petition for final judgment in the circuit court in the circuit in which the voluntary trial took place. Upon entry of final judgment by the circuit court, any party may appeal to the appropriate appellate court. Factual findings determined in the voluntary trial are not subject to appeal.

(12) The harmless error doctrine shall apply in all appeals. No further review shall be permitted unless a constitutional issue is raised.

(13) If no appeal is taken within the time provided by rules promulgated by the Supreme Court, then the decision shall be referred to the presiding judge in the case, or if one has not been assigned, then to the chief judge of the circuit for assignment to a circuit judge, who shall enter such orders and judgments as are required to carry out the terms of the decision, which orders shall be enforceable by the contempt powers of the court and for which judgments execution shall issue on request of a party.

(14) This section shall not apply to any dispute involving child custody, visitation, or child support, or to any dispute which involves the rights of a third party not a party to the arbitration or voluntary trial resolution when the third party would be an indispensable party if the dispute were resolved in court or when the third party notifies the chief arbitrator or the trial resolution judge that the third party would be a proper party if the dispute were resolved in court, that the third party intends to intervene in the action in court, and that the third party does not agree to proceed under this section.

44.106 Standards and procedures for mediators and arbitrators; fees.—

The Supreme Court shall establish minimum standards and procedures for qualifications, certification, professional conduct, discipline, and training for mediators and arbitrators who are appointed pursuant to this chapter. The Supreme Court is authorized to set fees to be charged to applicants for certification and renewal of certification. The revenues generated from these fees shall be used to offset the costs of administration of the certification process. The Supreme Court may appoint or employ such personnel as are necessary to assist the court in exercising its powers and performing its duties under this chapter.

44.107 Immunity for arbitrators, mediators, and mediator trainees.--

(1) Arbitrators serving under s. 44.103 or s. 44.104, mediators serving under s. 44.102, and trainees fulfilling the mentorship requirements for certification by the Supreme Court as a mediator shall have judicial immunity in the same manner and to the same extent as a judge.

(2) A person serving as a mediator in any noncourt-ordered mediation shall have immunity from liability arising from the performance of that person's duties while acting within the scope of the mediation function if such mediation is:

(a) Required by statute or agency rule or order;

- (b) Conducted under ss. 44.401-44.406 by express agreement of the mediation parties; or
- (c) Facilitated by a mediator certified by the Supreme Court, unless the mediation parties expressly agree not to be bound by ss. 44.401-44.406.

The mediator does not have immunity if he or she acts in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

- (3) A person serving under s. 44.106 to assist the Supreme Court in performing its disciplinary function shall have absolute immunity from liability arising from the performance of that person's duties while acting within the scope of that person's appointed function.

44.108 Funding of mediation and arbitration.--

- (1) Mediation and arbitration should be accessible to all parties regardless of financial status. A filing fee of \$1 is levied on all proceedings in the circuit or county courts to fund mediation and arbitration services which are the responsibility of the Supreme Court pursuant to the provisions of s. 44.106. The clerk of the court shall forward the moneys collected to the Department of Revenue for deposit in the state courts' Mediation and Arbitration Trust Fund.
- (2) When court-ordered mediation services are provided by a circuit court's mediation program, the following fees, unless otherwise established in the General Appropriations Act, shall be collected by the clerk of court:
 - (a) One-hundred twenty dollars per person per scheduled session in family mediation when the parties' combined income is greater than \$50,000, but less than \$100,000 per year;
 - (b) Sixty dollars per person per scheduled session in family mediation when the parties' combined income is less than \$50,000; or
 - (c) Sixty dollars per person per scheduled session in county court cases.

No mediation fees shall be assessed under this subsection in residential eviction cases, against a party found to be indigent, or for any small claims action. Fees collected by the clerk of court pursuant to this section shall be remitted to the Department of Revenue for deposit into the state courts' Mediation and Arbitration Trust Fund to fund court-ordered mediation. The clerk of court may deduct \$1 per fee assessment for processing this fee. The clerk of the court shall submit to the chief judge of the circuit and to the Office of the State Courts Administrator, no later than 30 days after the end of each quarter of the fiscal year, beginning July 1, 2008, a report specifying the amount of funds collected and remitted to the state courts' Mediation and Arbitration Trust Fund under this section and any other section during the previous quarter of the fiscal year. In

addition to identifying the total aggregate collections and remissions from all statutory sources, the report must identify collections and remissions by each statutory source.

44.201 Citizen Dispute Settlement Centers; establishment; operation; confidentiality.--

- (1) The chief judge of a judicial circuit, after consultation with the board of county commissioners of a county or with two or more boards of county commissioners of counties within the judicial circuit, may establish a Citizen Dispute Settlement Center for such county or counties, with the approval of the Chief Justice.
- (2)(a) Each Citizen Dispute Settlement Center shall be administered in accordance with rules adopted by a council composed of at least seven members. The chief judge of the judicial circuit shall serve as chair of the council and shall appoint the other members of the council. The membership of the council shall include a representative of the state attorney, each sheriff, a county court judge, and each board of county commissioners within the geographical jurisdiction of the center. In addition, council membership shall include two members of the general public who are not representatives of such officers or boards. The membership of the council also may include other interested persons.
 - (b) The council shall establish qualifications for and appoint a director of the center. The director shall administer the operations of the center.
 - (c) A council may seek and accept contributions from counties and municipalities within the geographical jurisdiction of the Citizen Dispute Settlement Center and from agencies of the Federal Government, private sources, and other available funds and may expend such funds to carry out the purposes of this section.
- (3) The Citizen Dispute Settlement Center, subject to the approval of the council and the Chief Justice, shall formulate and implement a plan for creating an informal forum for the mediation and settlement of disputes. Such plan shall prescribe:
 - (a) Objectives and purposes of the center;
 - (b) Procedures for filing complaints with the center and for scheduling informal mediation sessions with the parties to a complaint;
 - (c) Screening procedures to ensure that each dispute mediated by the center meets the criteria of fitness for mediation as set by the council;
 - (d) Procedures for rejecting any dispute which does not meet the established criteria of fitness for mediation;
 - (e) Procedures for giving notice of the time, place, and nature of the mediation session to the parties and for conducting mediation sessions;
 - (f) Procedures to ensure that participation by all parties is voluntary; and

- (g) Procedures by which any dispute that was referred to the center by a law enforcement agency, state attorney, court, or other agency and that fails at mediation, or that reaches settlement that is later breached, is reported to the referring agency.
- (4)(a) Each mediation session conducted by a Citizen Dispute Settlement Center shall be nonjudicial and informal. No adjudication, sanction, or penalty may be made or imposed by the mediator or the center.
 - (b) A Citizen Dispute Settlement Center may refer the parties to judicial or nonjudicial supportive service agencies.
- (5) Any information relating to a dispute obtained by any person while performing any duties for the center from the files, reports, case summaries, mediator's notes, or other communications or materials is exempt from the provisions of s. 119.07(1).
- (6) No officer, council member, employee, volunteer, or agent of a Citizen Dispute Settlement Center shall be held liable for civil damages for any act or omission in the scope of employment or function, unless such person acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of the rights, safety, or property of another.
- (7) Any Citizen Dispute Settlement Center in operation on October 1, 1985, may continue its operations in its current form with the approval of the chief judge of the judicial circuit in which such center is located, except that paragraph (4)(b) and subsections (5) and (6) shall apply to such centers.
- (8) Any utility regulated by the Florida Public Service Commission is excluded from the provisions of this act.

44.401 Mediation Confidentiality and Privilege Act.--Sections 44.401-44.406 may be known by the popular name the "Mediation Confidentiality and Privilege Act."

44.402 Scope.--

- (1) Except as otherwise provided, ss. 44.401-44.406 apply to any mediation:
 - (a) Required by statute, court rule, agency rule or order, oral or written case-specific court order, or court administrative order;
 - (b) Conducted under ss. 44.401-44.406 by express agreement of the mediation parties; or
 - (c) Facilitated by a mediator certified by the Supreme Court, unless the mediation parties expressly agree not to be bound by ss. 44.401-44.406.
- (2) Notwithstanding any other provision, the mediation parties may agree in writing that any or all of s. 44.405(1), s. 44.405(2), or s. 44.406 will not apply to all or part of a mediation proceeding.

44.403 Definitions.--As used in ss. 44.401-44.406, the term:

- (1) "Mediation communication" means an oral or written statement, or nonverbal conduct intended to make an assertion, by or to a mediation participant made during the course of a mediation, or prior to mediation if made in furtherance of a mediation. The commission of a crime during a mediation is not a mediation communication.
- (2) "Mediation participant" means a mediation party or a person who attends a mediation in person or by telephone, videoconference, or other electronic means.
- (3) "Mediation party" or "party" means a person participating directly, or through a designated representative, in a mediation and a person who:
 - (a) Is a named party;
 - (b) Is a real party in interest; or
 - (c) Would be a named party or real party in interest if an action relating to the subject matter of the mediation were brought in a court of law.
- (4) "Mediator" means a neutral, impartial third person who facilitates the mediation process. The mediator's role is to reduce obstacles to communication, assist in identifying issues, explore alternatives, and otherwise facilitate voluntary agreements to resolve disputes, without prescribing what the resolution must be.
- (5) "Subsequent proceeding" means an adjudicative process that follows a mediation, including related discovery.

44.404 Mediation; duration.--

- (1) A court-ordered mediation begins when an order is issued by the court and ends when:
 - (a) A partial or complete settlement agreement, intended to resolve the dispute and end the mediation, is signed by the parties and, if required by law, approved by the court;
 - (b) The mediator declares an impasse by reporting to the court or the parties the lack of an agreement;
 - (c) The mediation is terminated by court order, court rule, or applicable law; or
 - (d) The mediation is terminated, after party compliance with the court order to appear at mediation, by:
 - (1) Agreement of the parties; or
 - (2) One party giving written notice to all other parties in a multiparty mediation that the one party is terminating its participation in the mediation. Under this circumstance, the termination is effective only for the withdrawing party.

- (2) In all other mediations, the mediation begins when the parties agree to mediate or as required by agency rule, agency order, or statute, whichever occurs earlier, and ends when:
- (a) A partial or complete settlement agreement, intended to resolve the dispute and end the mediation, is signed by the parties and, if required by law, approved by the court;
 - (b) The mediator declares an impasse to the parties;
 - (c) The mediation is terminated by court order, court rule, or applicable law; or
 - (d) The mediation is terminated by:
 - (1) Agreement of the parties; or
 - (2) One party giving notice to all other parties in a multiparty mediation that the one party is terminating its participation in the mediation. Under this circumstance, the termination is effective only for the withdrawing party.

44.405 Confidentiality; privilege; exceptions.--

- (1) Except as provided in this section, all mediation communications shall be confidential. A mediation participant shall not disclose a mediation communication to a person other than another mediation participant or a participant's counsel. A violation of this section may be remedied as provided by s. 44.406. If the mediation is court ordered, a violation of this section may also subject the mediation participant to sanctions by the court, including, but not limited to, costs, attorney's fees, and mediator's fees.
- (2) A mediation party has a privilege to refuse to testify and to prevent any other person from testifying in a subsequent proceeding regarding mediation communications.
- (3) If, in a mediation involving more than two parties, a party gives written notice to the other parties that the party is terminating its participation in the mediation, the party giving notice shall have a privilege to refuse to testify and to prevent any other person from testifying in a subsequent proceeding regarding only those mediation communications that occurred prior to the delivery of the written notice of termination of mediation to the other parties.
- (4)(a) Notwithstanding subsections (1) and (2), there is no confidentiality or privilege attached to a signed written agreement reached during a mediation, unless the parties agree otherwise, or for any mediation communication:
 - (1) For which the confidentiality or privilege against disclosure has been waived by all parties;
 - (2) That is willfully used to plan a crime, commit or attempt to commit a crime, conceal ongoing criminal activity, or threaten violence;

- (3) That requires a mandatory report pursuant to chapter 39 or chapter 415 solely for the purpose of making the mandatory report to the entity requiring the report;
 - (4) Offered to report, prove, or disprove professional malpractice occurring during the mediation, solely for the purpose of the professional malpractice proceeding;
 - (5) Offered for the limited purpose of establishing or refuting legally recognized grounds for voiding or reforming a settlement agreement reached during a mediation; or
 - (6) Offered to report, prove, or disprove professional misconduct occurring during the mediation, solely for the internal use of the body conducting the investigation of the conduct.
- (b) A mediation communication disclosed under any provision of subparagraph (a)3., subparagraph (a)4., subparagraph (a)5., or subparagraph (a)6. remains confidential and is not discoverable or admissible for any other purpose, unless otherwise permitted by this section.
- (5) Information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery by reason of its disclosure or use in mediation.
 - (6) A party that discloses or makes a representation about a privileged mediation communication waives that privilege, but only to the extent necessary for the other party to respond to the disclosure or representation.

44.406 Confidentiality; civil remedies.--

- (1) Any mediation participant who knowingly and willfully discloses a mediation communication in violation of s. 44.405 shall, upon application by any party to a court of competent jurisdiction, be subject to remedies, including:
 - (a) Equitable relief.
 - (b) Compensatory damages.
 - (c) Attorney's fees, mediator's fees, and costs incurred in the mediation proceeding.
 - (d) Reasonable attorney's fees and costs incurred in the application for remedies under this section.
- (2) Notwithstanding any other law, an application for relief filed under this section may not be commenced later than 2 years after the date on which the party had a reasonable opportunity to discover the breach of confidentiality, but in no case more than 4 years after the date of the breach.
- (3) A mediation participant shall not be subject to a civil action under this section for lawful compliance with the provisions of s. 119.07.

Chapter 28

Clerks of the Circuit Courts

28.241 Filing fees for trial and appellate proceedings.--

(1)(a) The party instituting any civil action, suit, or proceeding in the circuit court shall pay to the clerk of that court a filing fee of up to \$295 in all cases in which there are not more than five defendants and an additional filing fee of up to \$2.50 for each defendant in excess of five. Of the first \$85 in filing fees, \$80 must be remitted by the clerk to the Department of Revenue for deposit into the General Revenue Fund, and \$5 must be remitted to the Department of Revenue for deposit into the Department of Financial Services' Administrative Trust Fund to fund the contract with the Florida Clerks of Court Operations Corporation created in s. 28.35. The next \$15 of the filing fee collected shall be deposited in the state courts' Mediation and Arbitration Trust Fund. One-third of any filing fees collected by the clerk of the circuit court in excess of \$100 shall be remitted to the Department of Revenue for deposit into the Department of Revenue Clerks of the Court Trust Fund. An additional filing fee of \$4 shall be paid to the clerk. The clerk shall remit \$3.50 to the Department of Revenue for deposit into the Court Education Trust Fund and shall remit 50 cents to the Department of Revenue for deposit into the Department of Financial Services Administrative Trust Fund to fund clerk education. An additional filing fee of up to \$18 shall be paid by the party seeking each severance that is granted. The clerk may impose an additional filing fee of up to \$85 for all proceedings of garnishment, attachment, replevin, and distress. Postal charges incurred by the clerk of the circuit court in making service by certified or registered mail on defendants or other parties shall be paid by the party at whose instance service is made. No additional fees, charges, or costs shall be added to the filing fees imposed under this section, except as authorized herein or by general law.

Chapter 29

Court System Funding

29.004 State courts system.

For purposes of implementing s. 14, Art. V of the State Constitution, the elements of the state courts system to be provided from state revenues appropriated by general law are as follows:

.....(11) Mediation and arbitration, limited to trial court referral of a pending judicial case to a mediator or a court-related mediation program, or to an arbitrator or a court-related arbitration program, for the limited purpose of encouraging and assisting the litigants in partially or completely settling the case prior to adjudication on the merits by the court. This does not include citizen dispute settlement centers under s. 44.201 and community arbitration programs under s. 985.16.

Chapter 34

County Courts

34.041 Filing fees.--

(1)(a) Upon the institution of any civil action, suit, or proceeding in county court, the party shall pay the following filing fee, not to exceed:

1. For all claims less than \$100 \$50.
2. For all claims of \$100 or more but not more than \$500 \$75.
3. For all claims of more than \$500 but not more than \$2,500 \$170.
4. For all claims of more than \$2,500 \$295.
5. In addition, for all proceedings of garnishment, attachment, replevin, and distress \$85.
6. For removal of tenant action \$265.

(b) The first \$80 of the filing fee collected under subparagraph (a)4. shall be remitted to the Department of Revenue for deposit into the General Revenue Fund. The next \$15 of the filing fee collected under subparagraph (a)4., and the first \$15 of each filing fee collected under subparagraph (a)6., shall be deposited in the state courts' Mediation and Arbitration Trust Fund. One-third of any filing fees collected by the clerk under this section in excess of the first \$95 collected under subparagraph (a)4. shall be remitted to the Department of Revenue for deposit into the Department of Revenue Clerks of the Court Trust Fund. An additional filing fee of \$4 shall be paid to the clerk. The clerk shall transfer \$3.50 to the Department of Revenue for deposit into the Court Education Trust Fund and shall transfer 50 cents to the Department of Revenue for deposit into the Department of Financial Services' Administrative Trust Fund to fund clerk education. Postal charges incurred by the clerk of the county court in making service by mail on defendants or other parties shall be paid by the party at whose instance service is made. Except as provided herein, filing fees and service charges for performing duties of the clerk relating to the county court shall be as provided in ss. 28.24 and 28.241. Except as otherwise provided herein, all filing fees shall be retained as fee income of the office of the clerk of circuit court. Filing fees imposed by this section may not be added to any penalty imposed by chapter 316 or chapter 318.

Chapter 39; Proceedings Relating to Children

Reporting Child Abuse

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

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

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

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

1. Physician, osteopathic physician, medical examiner, chiropractic physician, nurse, or hospital personnel engaged in the admission, examination, care, or treatment of persons;
2. Health or mental health professional other than one listed in subparagraph 1.;
3. Practitioner who relies solely on spiritual means for healing;
4. School teacher or other school official or personnel;
5. Social worker, day care center worker, or other professional child care, foster care, residential, or institutional worker;
6. Law enforcement officer; or
7. Judge. The names of reporters shall be entered into the record of the report, but shall be held confidential and exempt as provided in s. 39.202.

- (c) A professional who is hired by or enters into a contract with the department for the purpose of treating or counseling any person, as a result of a report of child abuse, abandonment, or neglect, is not required to again report to the central abuse hotline the abuse, abandonment, or neglect that was the subject of the referral for treatment.
- (c) An officer or employee of the judicial branch is not required to again provide notice of reasonable cause to suspect child abuse, abandonment, or neglect when that child is currently being investigated by the department, there is an existing dependency case, or the matter has previously been reported to the department, provided there is reasonable cause to believe the information is already known to the department. This paragraph applies only when the information has been provided to the officer or employee in the course of carrying out his or her official duties.
- (d) Nothing in this chapter or in the contracting with community-based care providers for foster care and related services as specified in s. 409.1671 shall be construed to remove or reduce the duty and responsibility of any person, including any employee of the community-based care provider, to report a suspected or actual case of child abuse, abandonment, or neglect or the sexual abuse of a child to the department's central abuse hotline.

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

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

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

(d) If the report is of an instance of known or suspected child abuse involving impregnation of a child under 16 years of age by a person 21 years of age or older solely

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

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

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

1. The department shall determine the age of the alleged offender, if known.
2. If the alleged offender is 12 years of age or younger, the central abuse hotline shall immediately electronically transfer the report or call to the county sheriff's office. The department shall conduct an assessment and assist the family in receiving appropriate services pursuant to s. 39.307, and send a written report of the allegation to the appropriate county sheriff's office within 48 hours after the initial report is made to the central abuse hotline.
3. If the alleged offender is 13 years of age or older, the central abuse hotline shall immediately electronically transfer the report or call to the appropriate county sheriff's office and send a written report to the appropriate county sheriff's office within 48 hours after the initial report to the central abuse hotline.

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

- (1) If the report is of a surrendered newborn infant as described in s. 383.50 and there is no indication of abuse, neglect, or abandonment other than that necessarily entailed in the infant having been left at a hospital, emergency medical services station, or fire station, the department shall provide to the caller the name of a licensed child-placing agency on a rotating basis from a list of licensed child-placing agencies eligible and required to accept physical custody of and to place newborn infants left at a hospital, emergency medical services station, or fire station. The report shall not be considered a report of abuse, neglect, or abandonment solely because the infant has been left at a hospital, emergency medical services station, or fire station pursuant to s. 383.50.

- (2) If the call, fax, or web-based report includes indications of abuse or neglect beyond that necessarily entailed in the infant having been left at a hospital, emergency medical services station, or fire station, the report shall be considered as a report of abuse, neglect, or abandonment and shall be subject to the requirements of s. 39.395 and all other relevant provisions of this chapter, notwithstanding any provisions of chapter 383.
- (h) Hotline counselors shall receive periodic training in encouraging reporters to provide their names when reporting abuse, abandonment, or neglect. Callers shall be advised of the confidentiality provisions of s. 39.202. The department shall secure and install electronic equipment that automatically provides to the hotline the number from which the call or fax is placed or the Internet protocol (IP) address from which the report is received. This number shall be entered into the report of abuse, abandonment, or neglect and become a part of the record of the report, but shall enjoy the same confidentiality as provided to the identity of the reporter pursuant to s. 39.202.
- (i) The department shall voice-record all incoming or outgoing calls that are received or placed by the central abuse hotline which relate to suspected or known child abuse, neglect, or abandonment. The department shall maintain an electronic copy of each fax and web-based report. The recording or electronic copy of each fax and web-based report shall become a part of the record of the report but, notwithstanding s. 39.202, shall be released in full only to law enforcement agencies and state attorneys for the purpose of investigating and prosecuting criminal charges pursuant to s. 39.205, or to employees of the department for the purpose of investigating and seeking administrative penalties pursuant to s. 39.206. Nothing in this paragraph shall prohibit the use of the recordings, the electronic copies of faxes, and web-based reports by hotline staff for quality assurance and training.
- (3) Any person required to report or investigate cases of suspected child abuse, abandonment, or neglect who has reasonable cause to suspect that a child died as a result of child abuse, abandonment, or neglect shall report his or her suspicion to the appropriate medical examiner. The medical examiner shall accept the report for investigation and shall report his or her findings, in writing, to the local law enforcement agency, the appropriate state attorney, and the department. Autopsy reports maintained by the medical examiner are not subject to the confidentiality requirements provided for in s. 39.202.
- (4) The department shall establish and maintain a central abuse hotline to receive all reports made pursuant to this section in writing, via fax, via web-based reporting, or through a single statewide toll-free telephone number, which any person may use to report known or suspected child abuse, abandonment, or neglect at any hour of the day or night, any day of the week. The central abuse hotline shall be operated in such a manner as to enable the department to:

- (a) Immediately identify and locate prior reports or cases of child abuse, abandonment, or neglect through utilization of the department's automated tracking system.
 - (b) Monitor and evaluate the effectiveness of the department's program for reporting and investigating suspected abuse, abandonment, or neglect of children through the development and analysis of statistical and other information.
 - (c) Track critical steps in the investigative process to ensure compliance with all requirements for any report of abuse, abandonment, or neglect.
 - (d) Maintain and produce aggregate statistical reports monitoring patterns of child abuse, child abandonment, and child neglect. The department shall collect and analyze child-on-child sexual abuse reports and include the information in aggregate statistical reports.
 - (e) Serve as a resource for the evaluation, management, and planning of preventive and remedial services for children who have been subject to abuse, abandonment, or neglect.
 - (f) Initiate and enter into agreements with other states for the purpose of gathering and sharing information contained in reports on child maltreatment to further enhance programs for the protection of children.
- (5) The department shall be capable of receiving and investigating, 24 hours a day, 7 days a week, reports of known or suspected child abuse, abandonment, or neglect and reports that a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care. If it appears that the immediate safety or well-being of a child is endangered, that the family may flee or the child will be unavailable for purposes of conducting a child protective investigation, or that the facts otherwise so warrant, the department shall commence an investigation immediately, regardless of the time of day or night. In all other child abuse, abandonment, or neglect cases, a child protective investigation shall be commenced within 24 hours after receipt of the report. In an institutional investigation, the alleged perpetrator may be represented by an attorney, at his or her own expense, or accompanied by another person, if the person or the attorney executes an affidavit of understanding with the department and agrees to comply with the confidentiality provisions of s. 39.202. The absence of an attorney or other person does not prevent the department from proceeding with other aspects of the investigation, including interviews with other persons. In institutional child abuse cases when the institution is not operating and the child cannot otherwise be located, the investigation shall commence immediately upon the resumption of operation. If requested by a state attorney or local law enforcement agency, the department shall furnish all investigative reports to that agency.

- (6) Information in the central abuse hotline may not be used for employment screening, except as provided in s. 39.202(2)(a) and (h). Information in the central abuse hotline and the department's automated abuse information system may be used by the department, its authorized agents or contract providers, the Department of Health, or county agencies as part of the licensure or registration process pursuant to ss. 402.301-402.319 and ss. 409.175-409.176.
- (7) On an ongoing basis, the department's quality assurance program shall review calls, fax reports, and web-based reports to the hotline involving three or more unaccepted reports on a single child, where jurisdiction applies, in order to detect such things as harassment and situations that warrant an investigation because of the frequency or variety of the source of the reports. The Program Director for Family Safety may refer a case for investigation when it is determined, as a result of this review, that an investigation may be warranted.

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

- (1) In order to protect the rights of the child and the child's parents or other persons responsible for the child's welfare, all records held by the department concerning reports of child abandonment, abuse, or neglect, including reports made to the central abuse hotline and all records generated as a result of such reports, shall be confidential and exempt from the provisions of s. 119.07(1) and shall not be disclosed except as specifically authorized by this chapter. Such exemption from s. 119.07(1) applies to information in the possession of those entities granted access as set forth in this section.
- (2) Except as provided in subsection (4), access to such records, excluding the name of the reporter which shall be released only as provided in subsection (5), shall be granted only to the following persons, officials, and agencies:
 - (a) Employees, authorized agents, or contract providers of the department, the Department of Health, the Agency for Persons with Disabilities, or county agencies responsible for carrying out:
 1. Child or adult protective investigations;
 2. Ongoing child or adult protective services;
 3. Early intervention and prevention services;
 4. Healthy Start services;
 5. Licensure or approval of adoptive homes, foster homes, child care facilities, facilities licensed under chapter 393, or family day care homes or informal child care providers who receive subsidized child care funding, or other homes used to provide for the care and welfare of children; or

6. Services for victims of domestic violence when provided by certified domestic violence centers working at the department's request as case consultants or with shared clients. Also, employees or agents of the Department of Juvenile Justice responsible for the provision of services to children, pursuant to chapters 984 and 985.
 - (b) Criminal justice agencies of appropriate jurisdiction.
 - (c) The state attorney of the judicial circuit in which the child resides or in which the alleged abuse or neglect occurred.
 - (d) The parent or legal custodian of any child who is alleged to have been abused, abandoned, or neglected, and the child, and their attorneys, including any attorney representing a child in civil or criminal proceedings. This access shall be made available no later than 30 days after the department receives the initial report of abuse, neglect, or abandonment. However, any information otherwise made confidential or exempt by law shall not be released pursuant to this paragraph.
 - (e) Any person alleged in the report as having caused the abuse, abandonment, or neglect of a child. This access shall be made available no later than 30 days after the department receives the initial report of abuse, abandonment, or neglect and, when the alleged perpetrator is not a parent, shall be limited to information involving the protective investigation only and shall not include any information relating to subsequent dependency proceedings. However, any information otherwise made confidential or exempt by law shall not be released pursuant to this paragraph.
 - (f) A court upon its finding that access to such records may be necessary for the determination of an issue before the court; however, such access shall be limited to inspection in camera, unless the court determines that public disclosure of the information contained therein is necessary for the resolution of an issue then pending before it.
 - (g) A grand jury, by subpoena, upon its determination that access to such records is necessary in the conduct of its official business.
 - (h) Any appropriate official of the department or the Agency for Persons with Disabilities who is responsible for:
 1. Administration or supervision of the department's program for the prevention, investigation, or treatment of child abuse, abandonment, or neglect, or abuse, neglect, or exploitation of a vulnerable adult, when carrying out his or her official function;
 2. Taking appropriate administrative action concerning an employee of the department or the agency who is alleged to have perpetrated child

abuse, abandonment, or neglect, or abuse, neglect, or exploitation of a vulnerable adult; or

3. Employing and continuing employment of personnel of the department or the agency.

- (i) Any person authorized by the department who is engaged in the use of such records or information for bona fide research, statistical, or audit purposes. Such individual or entity shall enter into a privacy and security agreement with the department and shall comply with all laws and rules governing the use of such records and information for research and statistical purposes. Information identifying the subjects of such records or information shall be treated as confidential by the researcher and shall not be released in any form.
 - (j) The Division of Administrative Hearings for purposes of any administrative challenge.
 - (k) Any appropriate official of a Florida advocacy council investigating a report of known or suspected child abuse, abandonment, or neglect; the Auditor General or the Office of Program Policy Analysis and Government Accountability for the purpose of conducting audits or examinations pursuant to law; or the guardian ad litem for the child.
 - (l) Employees or agents of an agency of another state that has comparable jurisdiction to the jurisdiction described in paragraph (a).
 - (m) The Public Employees Relations Commission for the sole purpose of obtaining evidence for appeals filed pursuant to s. 447.207. Records may be released only after deletion of all information which specifically identifies persons other than the employee.
 - (n) Employees or agents of the Department of Revenue responsible for child support enforcement activities.
 - (o) Any person in the event of the death of a child determined to be a result of abuse, abandonment, or neglect. Information identifying the person reporting abuse, abandonment, or neglect shall not be released. Any information otherwise made confidential or exempt by law shall not be released pursuant to this paragraph.
 - (p) The principal of a public school, private school, or charter school where the child is a student. Information contained in the records which the principal determines are necessary for a school employee to effectively provide a student with educational services may be released to that employee.
- (3) The department may release to professional persons such information as is necessary for the diagnosis and treatment of the child or the person perpetrating the abuse or neglect.

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

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

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

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

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

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

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

(6) All records and reports of the child protection team of the Department of Health are confidential and exempt from the provisions of ss. 119.07(1) and 456.057, and shall not

be disclosed, except, upon request, to the state attorney, law enforcement, the department, and necessary professionals, in furtherance of the treatment or additional evaluative needs of the child, by order of the court, or to health plan payors, limited to that information used for insurance reimbursement purposes.

- (7) The department shall make and keep reports and records of all cases under this chapter relating to child abuse, abandonment, and neglect and shall preserve the records pertaining to a child and family until 7 years after the last entry was made or until the child is 18 years of age, whichever date is first reached, and may then destroy the records. Department records required by this chapter relating to child abuse, abandonment, and neglect may be inspected only upon order of the court or as provided for in this section.
- (8) A person who knowingly or willfully makes public or discloses to any unauthorized person any confidential information contained in the central abuse hotline is subject to the penalty provisions of s. 39.205. This notice shall be prominently displayed on the first sheet of any documents released pursuant to this section.

39.2021 Release of confidential information.--

- (1) Any person or organization, including the Department of Children and Family Services, may petition the court for an order making public the records of the Department of Children and Family Services which pertain to investigations of alleged abuse, abandonment, or neglect of a child. The court shall determine whether good cause exists for public access to the records sought or a portion thereof. In making this determination, the court shall balance the best interests of the child who is the focus of the investigation and the interest of that child's siblings, together with the privacy rights of other persons identified in the reports, against the public interest. The public interest in access to such records is reflected in s. 119.01(1), and includes the need for citizens to know of and adequately evaluate the actions of the Department of Children and Family Services and the court system in providing children of this state with the protections enumerated in s. 39.001. However, this subsection does not contravene s. 39.202, which protects the name of any person reporting the abuse, abandonment, or neglect of a child.
- (2) In cases involving serious bodily injury to a child, the Department of Children and Family Services may petition the court for an order for the immediate public release of records of the department which pertain to the protective investigation. The petition must be personally served upon the child, the child's parent or guardian, and any person named as an alleged perpetrator in the report of abuse, abandonment, or neglect. The court must determine whether good cause exists for the public release of the records sought no later than 24 hours, excluding Saturdays, Sundays, and legal holidays, after the date the department filed the petition with the court. If the court does not grant or deny the petition within the 24-hour time period, the department may release to the public summary information including:

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

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

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

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

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

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

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

(b) Any person making a report under this section shall have a civil cause of action for appropriate compensatory and punitive damages against any person who causes detrimental changes in the employment status of such reporting party by reason of his or her making such report. Any detrimental change made in the residency or employment status of such person, including, but not limited to, discharge, termination, demotion, transfer, or reduction in pay or benefits or work privileges, or negative evaluations within a prescribed period of time shall establish a rebuttable presumption that such action was retaliatory.

39.204 Abrogation of privileged communications in cases involving child abuse, abandonment, or neglect.—

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

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

- (1) A person who is required to report known or suspected child abuse, abandonment, or neglect and who knowingly and willfully fails to do so, or who knowingly and willfully prevents another person from doing so, is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. A judge subject to discipline pursuant to s. 12, Art. V of the Florida Constitution shall not be subject to criminal prosecution when the information was received in the course of official duties.
- (2) Unless the court finds that the person is a victim of domestic violence or that other mitigating circumstances exist, a person who is 18 years of age or older and lives in the same house or living unit as a child who is known or suspected to be a victim of child abuse, neglect of a child, or aggravated child abuse, and knowingly and willfully fails to report the child abuse commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
- (3) A person who knowingly and willfully makes public or discloses any confidential information contained in the central abuse hotline or in the records of any child abuse, abandonment, or neglect case, except as provided in this chapter, is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.
- (4) The department shall establish procedures for determining whether a false report of child abuse, abandonment, or neglect has been made and for submitting all identifying information relating to such a report to the appropriate law enforcement agency and shall report annually to the Legislature the number of reports referred.
- (5) If the department or its authorized agent has determined after its investigation that a report is false, the department shall, with the consent of the alleged perpetrator, refer the report to the local law enforcement agency having jurisdiction for an investigation to determine whether sufficient evidence exists to refer the case for prosecution for filing a false report as defined in s. 39.01. During the pendency of the investigation, the department must notify the local law enforcement agency of, and the local law enforcement agency must respond to, all subsequent reports concerning children in that same family in accordance with s. 39.301. If the law enforcement agency believes

that there are indicators of abuse, abandonment, or neglect, it must immediately notify the department, which must ensure the safety of the children. If the law enforcement agency finds sufficient evidence for prosecution for filing a false report, it must refer the case to the appropriate state attorney for prosecution.

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

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

- (1) In addition to any other penalty authorized by this section, chapter 120, or other law, the department may impose a fine, not to exceed \$10,000 for each violation, upon a person who knowingly and willfully makes a false report of abuse, abandonment, or neglect of a child, or a person who counsels another to make a false report.
- (2) If the department alleges that a person has filed a false report with the central abuse hotline, the department must file a Notice of Intent which alleges the name, age, and address of the individual, the facts constituting the allegation that the individual made a false report, and the administrative fine the department proposes to impose on the person. Each time that a false report is made constitutes a separate violation.
- (3) The Notice of Intent to impose the administrative fine must be served upon the person alleged to have filed the false report and the person's legal counsel, if any. Such Notice of Intent must be given by certified mail, return receipt requested.
- (4) Any person alleged to have filed the false report is entitled to an administrative hearing, pursuant to chapter 120, before the imposition of the fine becomes final. The person must request an administrative hearing within 60 days after receipt of the Notice of Intent by filing a request with the department. Failure to request an administrative hearing within 60 days after receipt of the Notice of Intent constitutes a waiver of the right to a hearing, making the administrative fine final.
- (5) At the administrative hearing, the department must prove by a preponderance of the evidence that the person filed a false report with the central abuse hotline. The administrative hearing officer shall advise any person against whom a fine may be imposed of that person's right to be represented by counsel at the administrative hearing.
- (6) In determining the amount of fine to be imposed, if any, the following factors shall be considered:
 - (a) The gravity of the violation, including the probability that serious physical or emotional harm to any person will result or has resulted, the severity of the actual or potential harm, and the nature of the false allegation.

- (b) Actions taken by the false reporter to retract the false report as an element of mitigation, or, in contrast, to encourage an investigation on the basis of false information.
 - (c) Any previous false reports filed by the same individual.
- (7) A decision by the department, following the administrative hearing, to impose an administrative fine for filing a false report constitutes final agency action within the meaning of chapter 120. Notice of the imposition of the administrative fine must be served upon the person and the person's legal counsel, by certified mail, return receipt requested, and must state that the person may seek judicial review of the administrative fine pursuant to s. 120.68.
- (8) All amounts collected under this section shall be deposited into an appropriate trust fund of the department.
- (9) A person who is determined to have filed a false report of abuse, abandonment, or neglect is not entitled to confidentiality. Subsequent to the conclusion of all administrative or other judicial proceedings concerning the filing of a false report, the name of the false reporter and the nature of the false report shall be made public, pursuant to s. 119.01(1). Such information shall be admissible in any civil or criminal proceeding.
- (10) A person who knowingly and willfully makes a false report of abuse, abandonment, or neglect of a child, or a person who counsels another to make a false report may be civilly liable for damages suffered, including reasonable attorney fees and costs, as a result of the filing of the false report. If the name of the person who filed the false report or counseled another to do so has not been disclosed under subsection (9), the department as custodian of the records may be named as a party in the suit until the dependency court determines in a written order upon an in camera inspection of the records and report that there is a reasonable basis for believing that the report was false and that the identity of the reporter may be disclosed for the purpose of proceeding with a lawsuit for civil damages resulting from the filing of the false report. The alleged perpetrator may submit witness affidavits to assist the court in making this initial determination.
- (11) Any person making a report who is acting in good faith is immune from any liability under this section and shall continue to be entitled to have the confidentiality of their identity maintained.

Taking Children into Custody and Shelter Hearings

39.4075 Referral of a dependency case to mediation.--

- (1) At any stage in a dependency proceeding, any party may request the court to refer the parties to mediation in accordance with chapter 44 and rules and procedures developed by the Supreme Court.
- (2) A court may refer the parties to mediation. When such services are available, the court must determine whether it is in the best interests of the child to refer the parties to mediation.
- (3) The department shall advise the parties that they are responsible for contributing to the cost of the dependency mediation.
- (4) This section applies only to courts in counties in which dependency mediation programs have been established and does not require the establishment of such programs in any county.

Chapter 61

Dissolution of Marriage; Support; Time-Sharing

61.183 Mediation of certain contested issues.--

- (1) In any proceeding in which the issues of parental responsibility, primary residence, visitation, or support of a child are contested, the court may refer the parties to mediation in accordance with rules promulgated by the Supreme Court. In Title IV-D cases, any costs, including filing fees, recording fees, mediation costs, service of process fees, and other expenses incurred by the clerk of the circuit court, shall be assessed only against the nonprevailing obligor after the court makes a determination of the nonprevailing obligor's ability to pay such costs and fees.
- (2) If an agreement is reached by the parties on the contested issues, a consent order incorporating the agreement shall be prepared by the mediator and submitted to the parties and their attorneys for review. Upon approval by the parties, the consent order shall be reviewed by the court and, if approved, entered. Thereafter, the consent order may be enforced in the same manner as any other court order.
- (3) Any information from the files, reports, case summaries, mediator's notes, or other communications or materials relating to a mediation proceeding pursuant to this section obtained by any person performing mediation duties is exempt from the provisions of s. 119.07(1).

Chapter 415

Adult Protective Services

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:

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. An employee of the Department of Business and Professional Regulation conducting inspections of public lodging establishments under s. 509.032;
7. Florida advocacy council member or long-term care ombudsman council member; or
8. Bank, savings and loan, or credit union officer, trustee, or employee, who knows, or has reasonable cause to suspect, that a vulnerable adult has been or is being abused, neglected, or exploited shall immediately report such knowledge or suspicion to the central abuse hotline.

(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.

(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.

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.