

CF OPERATING PROCEDURE
NO. 175-19

STATE OF FLORIDA
DEPARTMENT OF
CHILDREN AND FAMILIES
TALLAHASSEE, May 9, 2001

Family Safety

ADMINISTRATIVE FINES AND OTHER PENALTIES FOR FALSE REPORTING OF ABUSE, NEGLECT AND ABANDONMENT

1. Purpose. This operating procedure discusses a uniform system for determining that a false report of abuse, neglect or abandonment has been made, within the authority provided by Chapter 39, Florida Statutes (F.S.), and for seeking an administrative fine or other penalty for such false report.
2. Scope. This operating procedure applies to all Family Safety staff and designees, including abuse hotline and legal staff, involved in the investigation and judicial handling of child abuse, abandonment, and neglect reports.
3. Identifying False Reports.
 - a. "False report" is defined at ss. 39.01(27), F.S., as follows: a report of abuse, neglect, or abandonment of a child to the central abuse hotline, which report is maliciously made for the purpose of: (a) harassing, embarrassing, or harming another person; (b) personal financial gain for the reporting person; (c) acquiring custody of a child; or (d) personal benefit for the reporting person in any other private dispute involving a child." The term "false report" does not include a report of abuse, neglect, or abandonment of a child made in good faith to the central abuse hotline.
 - b. The department may become aware of a potential false report either through staff observation or as the result of information received from third parties or a complaint submitted by the alleged perpetrator.
 - c. When appropriate, the protective investigation staff will make a request to law enforcement to use all means possible, including polygraph tests and voice stress analysis, to assist in determining that a false report has been made.
 - d. When an investigator suspects that a false report has been made, the investigator must advise the reporter of the potential administrative fines, civil and/or criminal penalties which may result if a false report has occurred.
 - e. When an investigator suspects that a false report has been made, the investigator must advise the falsely alleged perpetrator of that person's rights to pursue civil and or criminal penalties against the false reporter. The investigator must provide the brochure CF/PI 175-32 to the alleged perpetrator and others involved in the report. The case file chronology must document the name of the person to whom the brochure was given and the date it was given.
 - f. In determining whether a report has been filed maliciously, the department shall consider the following where applicable. It shall not be necessary for all factors to be considered or present in each case in order to determine that a report constitutes a false report.

- (1) Have the facts alleged in the report been determined to be untrue?

This operating procedure supersedes CFOP 175-19 dated November 1, 1999.

OPR: PDFS

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- (2) Has the reporter admitted that the report is untrue or that it is a false report?
- (3) Have criminal charges been filed for false reporting?
- (4) Has the reporter made contradictory statements?
- (5) Have prior reports by this reporter been determined to be false or to have no indicators of abuse, neglect or abandonment?
- (6) Have statements been made during the investigation, which indicate retaliation?
- (7) Is there a history of family disputes?
- (8) Are custody issues being decided concurrently with the report?
- (9) Is the reported information patently false relative to what is observable?
- (10) Is information provided by an individual who witnessed the reporting of false information or to whom the reporter admitted to false reporting?
- (11) Is there likelihood of personal or financial gain for the reporter?
- (12) Did the responsible caregiver have access to the alleged victim at the time the alleged maltreatment occurred?
- (13) Is there any other relevant information from neighbors, relatives, professionals or other persons?

g. Protective investigation staff shall, in consultation with the child welfare attorney, evaluate and document the reasons to believe that a false report has been made. The alleged perpetrator of a false report must be notified of the right to pursue administrative and criminal remedies.

h. If a child is alleged or strongly suspected to be a false reporter, the district shall first consider a referral for counseling or other therapeutic services in lieu of any consideration for imposing an administrative fine or other penalty.

i. Hotline counselors must document the Caller ID in the reporter section of each report received at the Hotline.

4. Determination of Amount of Administrative Fine (s. 39.206, F.S.).

a. In determining the amount of the administrative fine, the department shall consider the following where applicable:

- (1) Gravity of the violation, including the severity of real or probable physical or emotional harm resulting from the false report and its investigation by the department.
- (2) Actions taken by the false reporter to retract the report, or actions by the false reporter to encourage the investigation on the basis of false information.
- (3) The number of prior occurrences of false reporting by this reporter.

(4) Nature of the false allegation (alleged maltreatment), including:

- (a) Number of victims alleged to be abused, neglected or abandoned.
- (b) Whether the report required an immediate response.
- (c) The extent to which normal family or institutional routines were disrupted.
- (d) The necessity of any physical, medical or mental health examinations or evaluations and the invasiveness of the procedures required.
- (e) The actual expense of the investigation to the subjects of the report and to the department.
- (f) The number of interviews required to fully investigate the report.
- (g) The risk of harm to which department staff was subjected and any resultant real harm.

b. The fine shall not exceed **\$10,000** for each determination of false reporting.

5. Notice of Proposed Agency Action.

a. When it has been determined that a false report has been made and the amount of the administrative fine has been determined, a notice of proposed agency action shall be sent to the alleged false reporter and the person's legal counsel, if known. The notice shall provide an opportunity to correct any errors the agency may have made or to receive any information that the alleged false reporter wishes to submit by way of correction, clarification or defense. This notice of proposed agency action (sample attached as appendix A to this operating procedure) shall be sent by certified mail, return receipt requested. The return receipt shall be retained in the case file when received back from the Post Office.

b. The notice shall advise the alleged false reporter of the date and time the report was made, the penalty for false reporting, the names of the alleged victims, and the facts alleged in the alleged false report.

c. If, within 20 days from the alleged false reporter's receipt of the Notice of Proposed Agency Action, no information is received by the department which alters its intent to impose an administrative fine or if no response is received, the department shall issue a Notice of Intent (sample attached as appendix B to this operating procedure) as described in ss. 39.206, F.S.

6. Administrative Hearing to Impose an Administrative Fine for False Reporting.

a. To the extent possible, the identity of the subjects of the report shall be kept confidential. The hearing shall be closed. Upon publication, the recommended and final orders shall identify the subjects of the report only by initials. The identity of the alleged false reporter shall be protected only until such time as there is a judicial or administrative finding of false reporting by such individual.

b. At hearing the department must prove by a preponderance of the evidence the falseness of the report and the identity of the reporter.

c. If not called as witnesses or otherwise informed of the hearing, the subjects of the report must be notified of the outcome of the hearing.

d. All fines collected pursuant to s. 39.206, F.S., shall be deposited into the local clearing fund account and journal transferred to the Deputy Secretary, Administrative Trust Fund.

7. Referral to Law Enforcement.

a. Subsections 39.205(5) and (6), F.S., provide as follows:

(1) 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(27). During the pendency of the investigation by the local law enforcement agency, the department must notify the local law enforcement agency of, and the local law enforcement agency must respond to all subsequent reports concerning 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 assure 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.

(2) 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.

b. Each district must work with local law enforcement to establish procedures within local agreements that deal with the false reporting provisions. These shall include procedures for notifying the department if law enforcement identifies abuse, neglect or abandonment, in order to assure the safety of the children.

c. Each district must ensure that all available data collection resources are being utilized in order to collect false reporting data that will be needed for statutorily required reports.

d. At the close of each investigation, the protective investigator shall document suspected false reporting in the investigative level of the FAHIS report.

e. The districts must ensure the collection, compilation and storage of the following data:

- (1) Number of reports referred to law enforcement.
- (2) Number of reports reviewed for pursuit of an administrative fine.
- (3) Number of fines actually imposed along with the amount of the fine.
- (4) Number of civil cases where the department is called as a party.

8. Civil Damages.

a. Subsection 39.206(10), F.S., provides as follows:

“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 falsely alleged perpetrator may submit witness affidavits to assist the court in making this initial determination.”

b. The district legal counsel or child welfare legal services managing attorney shall be responsible for responding to lawsuits for civil damages based on false reporting in which the department is named as a party.

(Signed original copy on file)

KATHLEEN A. KEARNEY
Secretary

SUMMARY OF REVISED, DELETED OR ADDED MATERIAL

This publication has been revised to further clarify the department’s policy and procedures regarding administrative fines for false reports. No substantive changes have been made.

SAMPLE NOTICE

Date:

Alleged False Reporter
Local Address
City, State Zip Code

Re: Notice of Proposed Agency Action Imposing An Administrative Fine

Dear Alleged False Reporter:

Pursuant to Section 39.206, Florida Statutes, you are hereby notified that the Department of Children and Family Services intends to impose an administrative fine upon you for knowingly and willfully making a false report of abuse, neglect or abandonment regarding:

Name: _____
 Age: _____
 Address: _____

 Amount of Fine: \$ _____
 Abuse Report No. _____

based on the following facts:

Because the agency is sincere in its desire to afford an opportunity to correct any mistake in the information above before it imposes this fine, you are hereby given an opportunity to bring any error, any additional information, or any defense of which you are aware to the agency's attention by calling _____ or by writing _____ giving full details of why you believe the fine should not be imposed. You may also request a copy of the report at that time.

IF YOU DO NOTHING WITHIN 20 DAYS FROM THE RECEIPT OF THIS LETTER THE AGENCY WILL IMPOSE THE ADMINISTRATIVE FINE DESCRIBED. ANY RIGHT TO AN APPEAL WILL BE DESCRIBED TO YOU AT THAT TIME.

Very truly yours,

District Administrator or Designee

SAMPLE NOTICE

STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILY SERVICES

IN RE THE IMPOSITION OF
AN ADMINISTRATIVE FINE UPON:

False Reporter _____

NOTICE OF INTENT PURSUANT TO
SEC. 39.206, FLORIDA STATUTES
and
ORDER IMPOSING AN ADMINISTRATIVE FINE

TO: Alleged False Reporter and Attorney, if any
c/o Anyone Necessary such as Parent or Guardian
Local Address
City, State ZIP

Pursuant to Section 39.206, Florida Statutes, the STATE OF FLORIDA, DEPARTMENT OF CHILDREN AND FAMILY SERVICES hereby imposes an administrative fine for making a false report of abuse, neglect or abandonment upon:

Name: _____
Age: _____
Address: _____

Amount of Fine: \$ _____
Abuse Report No. _____

based upon the following facts:

You are entitled to contest the imposition of this fine in an administrative hearing pursuant to Chapter 120, Florida Statutes, before the imposition of the fine becomes final. To do so you must request an administrative hearing within SIXTY (60) DAYS after receipt of this Notice by filling a request for an administrative hearing with:

Your request must comply with the requirements of Rule 28-106.201, Florida Administrative Code (Copy Attached). FAILURE TO REQUEST AN ADMINISTRATIVE HEARING WITHIN SIXTY (60) DAYS AFTER RECEIPT OF THIS NOTICE CONSTITUTES A WAIVER OF THE RIGHT TO A HEARING and will make the imposition of the fine final WITHOUT ANY FURTHER NOTICE AND WITHOUT ANY FURTHER ACTION BY THE DEPARTMENT.

Dated the _____ day of _____, 200__.

District Administrator or Designee

Copy Furnished:
Agency Clerk