

Mandatory Reporting

Presented by:

Ebony Tucker, Esq.
Florida Council Against Sexual Violence

This project was supported by Grant No.2006-WL-AX-0012 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions, and recommendations expressed in this publication are those of the author and do not necessarily reflect the views of the Department of Justice, Office of Violence Against Women.

Overview

- Mandatory reporting process and requirements.
- Providing counseling services to minors.
- Privilege/Confidentiality as it relates to minors.

Who is a mandatory reporter?

- **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. Fla. Stat. 39.201(1)(a)
- **Any person** who knows, or has reasonable cause to suspect, that a vulnerable adult is being abused, neglected or exploited. Fla. Stat. 415.034(1)(a)

Two Types of Mandatory Reporters

- **Mandatory reporter** – applies to the general public; anyone who is legally obligated to report the known abuse of a child or vulnerable adult; may remain anonymous
- **Professionally mandatory reporter** – anyone who is legally obligated to not only report known abuse but identify themselves when reporting.

Professionally Mandatory Reporters

- Physician, osteopathic physician, medical examiner, chiropractic physician, nurse, or hospital personnel engaged in the admission, examination, care, or treatment of persons;
- Health or mental health professional;
- Practitioner who relies solely on spiritual means for healing;
- School teacher or other school official or personnel;
- Social worker, day care center worker, or other professional child care, foster care, residential or institutional worker;
- Law enforcement officer; or
- Judge

See Fla. Stat. 39.201(1)(b)

What must be reported?

- 1) Child abuse, abandonment or neglect by a parent, legal custodian, caregiver, or other person responsible for the child's welfare; or
- 2) that a child is in need of supervision and has no parent, legal custodian or responsible adult.
Fla. Stat. 39.201(1)(a)

Who is a “caregiver”?

- A caregiver is a parent, adult household member or other person responsible for a child’s welfare. Fla. Stat. 827.01.
- A teacher falls within the plain meaning of “caregiver” during school hours, as the word is defined in Fla. Stat. 827.01.
- (See, State v. Christie, 939 So.2d 1078 (Fla. 3d DCA 2005)).

What Details Should be Reported?

- Name, date, birth, race and gender of all adults and children involved
- Addresses and current locations of all involved parties
- Any information regarding disabilities or limitations of victims
- Relationship of the perpetrator to the victim

Child Abuse By Someone Other Than a Parent, Legal Guardian or Caregiver

- It is **not** a mandatory report to DCF;
- If the report is made to the abuse registry, the abuse registry is required to transfer the call *immediately* to the sheriff's office. An abuse report will not be taken by the hotline staff. Fla. Stat. 39.201(2)(b)

Reports to Law Enforcement

- Fla. Stat. 39.201-206 (mandatory reporting statute) does not require mandatory reports to law enforcement by anyone but hotline staff.
- Fla. Stat. 497.027 requires a report to law enforcement when you have knowledge of a sexual battery.
 - However, victim-advocate communications are not sufficient to establish the 'knowledge' requirement of this statute.

Florida Statute 794.027

A person who observes the commission of the crime of sexual battery and who:

- 1) has reasonable grounds to believe that he or she has observed the commission of a sexual battery;
- 2) has the present ability to seek assistance for the victim or victims by immediately reporting such offense to a law enforcement officer;
- 3) fails to seek such assistance;

Florida Statute 794.027 cont.

- 4) would not be exposed to any threat of physical violence for seeking such assistance;
- 5) is not the husband, wife, parent, grandparent, child, grandchild, brother or sister of the offender or victim, by consanguinity or affinity; **and**
- 6) is not the victim of such sexual battery is guilty of a 1st degree misdemeanor.

Problem 1

A 13 year old boy presents to your rape crisis center and tells you he was sexually assaulted by a friend at school.

- 1) Should you contact law enforcement?
- 2) Can you provide counseling services?

Problem 1 cont.

- 1) It depends. This is not a mandatory report to DCF or law enforcement. However, if the boy has no parent or guardian then a report to law enforcement may be proper.
- 2) Yes, you can provide services to him, but the services cannot exceed 2 visits during any one-week period before parental consent is required for anything further.
 - If there is no parent, then consent would have to be obtained from the court-appointed guardian ad litem or DCF dependency caseworker.

Problem 1 cont.

What if the boy were 12? Can you still provide services?

Problem 1 cont.

- No. When a minor 13 and older experiences an emotional crisis to such degree that they perceive the need for professional assistance, they have the right to request, consent to, and receive outpatient crisis intervention services including individual psychotherapy, group therapy and counseling. **Fla. Stat. 394.4784.**
- Florida courts have ruled that minors 12 years of age and younger are not able to consent to therapy.

Problem 2

A 16 year old runaway who is not in the care of DCF or DJJ, presents to your rape crisis center and says that she was sexually assaulted by an 18 year old at her school.

Are you legally obligated to report?

What if she asks to have a forensic exam?

Problem 2 cont.

- Determine whether she has a parent or caretaker at home.
 - If she does, you may provide services and no mandatory report is required.
 - If she does not have a parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care, then a report must be made immediately to DCF's central abuse hotline. F.S. 39.201(2)(a).
- If a report is made, the department personnel will then determine if the report meets the statutory definition of child abuse, abandonment, or neglect and a protective investigation may ensue. The hotline staff person will probably make a report to the sheriff's office as well.

Problem 2 – Minors and Forensic Exams

- Minors cannot consent to medical treatment. Only in the event of a life threatening emergency can a medical procedure be performed with no parental consent. Fla. Stat. 743.064.
- However, if you have the consent of the DCF or DJJ caseworker, juvenile probation officer, or person primarily responsible for the case management of the child, you can take the minor in for a forensic exam.

Unavailable Parent/Guardian

If parent/guardian is unavailable, other persons may provide consent in the following order of priority:

- A person who possesses a power of attorney to provide consent for the minor;
- Step-parent;
- Minor's grandparent;
- Adult brother or sister of minor; or
- Adult aunt or uncle of minor

See Fla. Stat. 743.0645(1)(c).

Problem 3

A 12 year old girl presents to the local hospital with her mother for a forensic exam because she has been sexually assaulted by a boy in her class. Your first contact with her is at the hospital and she has told you that she does not wish to report the alleged crime to the authorities because she does not want her friends at school to find out. Her mother agrees.

Are you legally obligated to report the sexual assault to the police?

Are hospital staff required to report?

Problem 3 cont.

- 1) No, advocates have no duty to report under Fla. Stat. 39.201 as it applies to this situation. Fla. Stat. 794.027 requires the reporting of sexual assaults that you have witnessed, not ones that were reported to you.
- 2) Maybe. Hospital staff may have a duty to report if there is a serious injury.

Duty of Hospital Staff

- Under 790.24, F.S., any physician, nurse, or employee thereof and any employee of a hospital, sanitarium, clinic, or nursing home, knowingly treating any person suffering from a **gunshot wound or life-threatening injury** indicating an act of violence, or receiving a request for such treatment, shall report this to the local sheriff's office.
- This law does **not** apply to rape crisis program advocates.

Minors and Confidentiality

Does Fla. Stat. 90.5035 (sexual assault counselor-victim privilege) apply to minors?

Yes. Fla. Stat. 90.5035 applies to anyone who meets the statute's definition of 'victim', which makes no mention of age. Unless compelled by the court or another statute, this privilege is in place for victims under 18.

Problem 5

You receive a subpoena to appear in court for juvenile dependency proceedings and the subpoena requests both testimony of your contact with a 15 year old victim after his sexual assault, as well as your entire case file, which details the sexual assault as told to you by the victim. Will you be required to testify?

Problem 5 cont.

Maybe. The subpoena will compel you to testify. However, a motion to quash the subpoena may be filed. A motion to quash explains reasons why you should be able to keep this information confidential. If the judge grants the motion, the information will remain confidential. If not, you will have to testify and produce all documents related to the counseling.

For More Information...

- Department of Children and Families
 - 850-487-6100
- DCF Abuse Hotline
 - 1-800-96-ABUSE
 - You may also report online and download DCF's guide with helpful tips at <http://www.dcf.state.fl.us>
- Florida Council Against Sexual Violence
 - 850-297-2000
 - email Ebony Tucker at etucker@fcasv.org

Questions???