



## Informational

### All about adult protective investigations

In the state of Florida the Dept. of children and families and its division of adult protective services is the only agency empowered to investigate complaints of elder abuse neglect and exploitation. The department operates on a very strict set of rules and policies. Primary relevant sections of those rules and policies are summarized below.

The purpose of this document is to educate families of victims of elder abuse in guardianship to enable them to effectively create reports of abuse of their loved ones which have the highest likelihood of being properly investigated by APS personnel and the highest likelihood of being referred to law enforcement including states attorneys for prosecution.

All investigative authority and processes For DCF and APS are detailed in Chapter 415, Florida Statutes, and in operational policy, CFOP 140-2.

Below is a link found on the Department of Children and families website that takes you to both.

<http://www.myflfamilies.com/service-programs/adult-protective-services/policies>

### What happens after a complaint is made to the DCF by any modality (phone, letter or email)

Once an allegation of abuse, neglect of exploitation by a guardian is reported to the Florida Abuse Hotline, the Hotline then forwards the report to the **Adult Protective Investigations** unit for the county in which the vulnerable adult is located. This may be different from county in which the complainant resides. **Immediately**, the appropriate judicial **court** having authority

over the guardianship of the vulnerable adult **is notified** and provided a copy of the initial report. The adult protective investigator is required to see and assess the vulnerable adult victim within 24 hours to begin their investigation. If the adult protective investigator has a reasonable suspicion that abuse, neglect or exploitation has occurred, they must **immediately notify law enforcement and notify the state attorney's office** within one working day. Whether any other agency(ies) is notified is dependent on where the vulnerable adult is located, and who is involved in the care of the vulnerable adult.

<http://www.dcf.state.fl.us/admin/publications/cfops/140%20Adult%20Services%20%28CFOP%20140-XX%29/CFOP%20140-02,%20Adult%20Protective%20Services.pdf>

Those two primary agencies are

*State Attorney.*

*e. The state attorney determines whether his/her office will conduct a criminal investigation based on the information provided by the department and from information gathered by his office, and whether prosecution of any individual in the investigation will occur. The state attorney's office will report their findings to the department within 15 days following the completion of their investigation, and include a determination of whether or not prosecution is justified and warranted.*

*f. Law Enforcement. (1) The department should, per section 415.1055, F.S., immediately notify law enforcement, when the department has reasonable cause to suspect that abuse, neglect, or exploitation has occurred and was perpetrated by a second party. Law enforcement will determine whether to conduct a criminal investigation, and if they conduct it concurrently or independently of the department's investigation.*

What are the investigators looking for? What is exploitation?

Statute Defining Exploitation

(8)(a) "Exploitation" means a person who:

1. Stands in a position of trust and confidence with a vulnerable adult and knowingly, by deception or intimidation, obtains or uses, or endeavors to obtain or use, a vulnerable adult's funds, assets, or property with the intent to temporarily or permanently deprive a vulnerable adult of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the vulnerable adult; or
2. Knows or should know that the vulnerable adult lacks the capacity to consent, and obtains or uses, or endeavors to obtain or use, the vulnerable adult's funds, assets, or property with the intent to

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

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

1. Breaches of fiduciary relationships, such as the misuse of a power of attorney or the abuse of guardianship duties, resulting in the unauthorized appropriation, sale, or transfer of property;
2. Unauthorized taking of personal assets;
3. Misappropriation, misuse, or transfer of moneys belonging to a vulnerable adult from a personal or joint account; or
4. Intentional or negligent failure to effectively use a vulnerable adult's income and assets for the necessities required for that person's support and maintenance.

How does the Hotline work?

Statute regarding Abuse Report Hotline

[http://www.leg.state.fl.us/Statutes/index.cfm?App\\_mode=Display\\_Statute&Search\\_String=&URL=Ch0415/SEC103.HTM&Title=-%3E2008-%3ECh0415-%3ESection%20103#0415.103](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=Ch0415/SEC103.HTM&Title=-%3E2008-%3ECh0415-%3ESection%20103#0415.103)

#### **415.103 Central abuse hotline.--**

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

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

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

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

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

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

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

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

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

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

### What happens to the report?

At the conclusion of an investigation, any agency notified during the investigation, must again be notified of the case closure and its findings - including the appropriate judicial court, law enforcement (meaning local police and/or Sheriff, depending on the location and the local APS and law enforcement agreements) and the **state attorney's office**.

**Who is eligible to receive the reports and closure data?** The individuals and entities who can see the reports are listed out in section 415.107(3) or the Florida Statutes.

### **415.107 Confidentiality of reports and records.—**

(1) In order to protect the rights of the individual or other persons responsible for the welfare of a vulnerable adult, all records concerning reports of abuse, neglect, or exploitation of the vulnerable adult, including reports made to the central abuse hotline, and all records generated as a result of such

reports shall be confidential and exempt from s. 119.07(1) and may not be disclosed except as specifically authorized by ss. 415.101-415.113.

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

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

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

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

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

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

**BUT NOT TO THE PERSON MAKING THE REPORT!!!**

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

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

(g) Any appropriate official of the Florida advocacy council or long-term care ombudsman council investigating a report of known or suspected abuse, neglect, or exploitation of a vulnerable adult.

(h) Any appropriate official of the department, the Agency for Persons with Disabilities, the Agency for Health Care Administration, or the Department of Elderly Affairs who is responsible for:

1. Administration or supervision of the programs for the prevention, investigation, or treatment of abuse, neglect, or exploitation of vulnerable adults when carrying out an official function; or
2. Taking appropriate administrative action concerning an employee alleged to have perpetrated abuse, neglect, or exploitation of a vulnerable adult in an institution.

(i) Any person engaged in bona fide research or auditing. However, information identifying the subjects of the report must not be made available to the researcher.

(j) Employees or agents of an agency of another state that has jurisdiction comparable to the jurisdiction described in paragraph (a).

(k) The Public Employees Relations Commission for the sole purpose of obtaining evidence for appeals filed pursuant to s. 447.207. Records may be released only after deletion of all information that specifically identifies persons other than the employee.

(l) Any person in the event of the death of a vulnerable adult determined to be a result of abuse, neglect, or exploitation. Information identifying the person reporting abuse, neglect, or exploitation shall not be released. Any information otherwise made confidential or exempt by law shall not be released pursuant to this paragraph.

(4) The Department of Health, the Department of Business and Professional Regulation, and the Agency for Health Care Administration may have access to a report, excluding the name of the reporter, when considering disciplinary action against a licensee or certified nursing assistant pursuant to allegations of abuse, neglect, or exploitation.

(5) The department may release to any professional person such information as is necessary for the diagnosis and treatment of, and service delivery to, a vulnerable adult or the person perpetrating the abuse, neglect, or exploitation.

(6) The identity of any person reporting abuse, neglect, or exploitation of a vulnerable adult may not be released, without that person's written consent, to any person other than employees of the department responsible for protective services, the central abuse hotline, or the appropriate state attorney or law enforcement agency. This subsection grants protection only for the person who reported the abuse, neglect, or exploitation and protects only the fact that the person is the reporter. This subsection does not prohibit the subpoena of a person reporting the abuse, neglect, or exploitation when deemed necessary by the state attorney or the department to protect a vulnerable adult who is the subject of a report, if the fact that the person made the report is not disclosed.

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

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

[Can family members who initiate the investigation get them or contribute to them?](#) There is nothing in the law that automatically allows a family member who initiates the abuse report to see the final report or data. The family member would have to be one of the individuals listed in 415.107(3). As for family members contributing to an investigation, that would be up to the

investigator handling the report, and the information/evidence that family members are able to provide.

Can they use the reports with local law enforcement of SAO to press for arrests for felonies under the new law? If family members are granted access to reports pursuant to 415.107(3), they can share them with law enforcement agencies or state attorneys.