

**PART I
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39.001 Purposes and intent; personnel standards and screening.--

(1) PURPOSES OF CHAPTER.--The purposes of this chapter are:

(a) To provide for the care, safety, and protection of children in an environment that fosters healthy social, emotional, intellectual, and physical development; to ensure secure and safe custody; to promote the health and well-being of all children under the state's care; and to prevent the occurrence of child abuse, neglect, and abandonment.

(b) To recognize that most families desire to be competent caregivers and providers for their children and that children achieve their greatest potential when families are able to support and nurture the growth and development of their children. Therefore, the Legislature finds that policies and procedures that provide for prevention and intervention through the department's child protection system should be based on the following principles:

1. The health and safety of the children served shall be of paramount concern.

2. The prevention and intervention should engage families in constructive, supportive, and nonadversarial relationships.

3. The prevention and intervention should intrude as little as possible into the life of the family, be focused on clearly defined objectives, and take the most parsimonious path to remedy a family's problems.

4. The prevention and intervention should be based upon outcome evaluation results that demonstrate success in protecting children and supporting families.

(c) To provide a child protection system that reflects a partnership between the department, other agencies, and local communities.

(d) To provide a child protection system that is sensitive to the social and cultural diversity of the state.

(e) To provide procedures which allow the department to respond to reports of child abuse, abandonment, or neglect in the most efficient and effective manner that ensures the health and safety of children and the integrity of families.

(f) To preserve and strengthen the child's family ties whenever possible, removing the child from parental custody only when his or her welfare cannot be adequately safeguarded without such removal.

(g) To ensure that the parent or legal custodian from whose custody the child has been taken assists the department to the fullest extent possible in locating relatives suitable to serve as caregivers for the child.

(h) To ensure that permanent placement with the biological or adoptive family is achieved as soon as possible for every child in foster care and that no child remains in foster care longer than 1 year.

(i) To secure for the child, when removal of the child from his or her own family is necessary, custody, care, and discipline as nearly as possible equivalent to that which should have been given by the parents; and to ensure, in all cases in which a child must be removed from parental custody, that the child is placed in an approved relative home, licensed foster home, adoptive home, or independent living program that provides the most stable and potentially permanent living arrangement for the child, as determined by the court. All placements shall be in a safe environment where drugs and alcohol are not abused.

(j) To ensure that, when reunification or adoption is not possible, the child will be prepared for alternative permanency goals or placements, to include, but not be limited to, long-term foster care, independent living, custody to a relative on a permanent basis with or without legal guardianship, or custody to a foster parent or legal custodian on a permanent basis with or without legal guardianship.

(k) To make every possible effort, when two or more children who are in the care or under the supervision of the department are siblings, to place the siblings in the same home; and in the event of permanent placement of the siblings, to place them in the same adoptive home or, if the siblings are separated, to keep them in contact with each other.

(l) To provide judicial and other procedures to assure due process through which children, parents, and guardians and other interested parties are assured fair hearings by a respectful and respected court or other tribunal and the recognition, protection, and enforcement of their constitutional and other legal rights, while ensuring that public safety interests and the authority and dignity of the courts are adequately protected.

(m) To ensure that children under the jurisdiction of the courts are provided equal treatment with respect to goals, objectives, services, and case plans, without regard to the location of their placement. It is the further intent of the Legislature that, when children are removed from their homes, disruption to their education be minimized to the extent possible.

(n) To create and maintain an integrated prevention framework that enables local communities, state agencies, and organizations to collaborate to implement efficient and properly applied evidence-based child abuse prevention practices.

(2) DEPARTMENT CONTRACTS.--The department may contract with the Federal Government, other state departments and agencies, county and municipal governments and agencies, public and private agencies, and private individuals and corporations in carrying out the purposes of, and the responsibilities established in, this chapter.

(a) When the department contracts with a provider for any program for children, all personnel, including owners, operators, employees, and volunteers, in the facility must be of good moral character. A volunteer who assists on an intermittent basis for less than 40 hours per month need not be screened if the volunteer is under direct and constant supervision by persons who meet the screening requirements.

(b) The department shall require employment screening, and rescreening no less frequently than once every 5 years, pursuant to chapter 435, using the level 2 standards set forth in that chapter for personnel in programs for children or youths.

(c) The department may grant exemptions from disqualification from working with children as provided in s. 435.07.

(d) The department shall require all job applicants, current employees, volunteers, and contract personnel who currently perform or are seeking to perform child protective investigations to be drug tested pursuant to the procedures and requirements of s. 112.0455, the Drug-Free Workplace Act. The department is authorized to adopt rules, policies, and procedures necessary to implement this paragraph.

(e) The department shall develop and implement a written and performance-based testing and evaluation program to ensure measurable competencies of all employees assigned to manage or supervise cases of child abuse, abandonment, and neglect.

(3) GENERAL PROTECTIONS FOR CHILDREN.--It is a purpose of the Legislature that the children of this state be provided with the following protections:

(a) Protection from abuse, abandonment, neglect, and exploitation.

(b) A permanent and stable home.

(c) A safe and nurturing environment which will preserve a sense of personal dignity and integrity.

(d) Adequate nutrition, shelter, and clothing.

(e) Effective treatment to address physical, social, and emotional needs, regardless of geographical location.

(f) Equal opportunity and access to quality and effective education, which will meet the individual needs of each child, and to recreation and other community resources to develop individual abilities.

(g) Access to preventive services.

(h) An independent, trained advocate, when intervention is necessary and a skilled guardian or caregiver in a safe environment when alternative placement is necessary.

(4) SUBSTANCE ABUSE SERVICES.--

(a) The Legislature recognizes that early referral and comprehensive treatment can help combat substance abuse in families and that treatment is cost effective.

(b) The Legislature establishes the following goals for the state related to substance abuse treatment services in the dependency process:

1. To ensure the safety of children.

2. To prevent and remediate the consequences of substance abuse on families involved in protective supervision or foster care and reduce substance abuse, including alcohol abuse, for families who are at risk of being involved in protective supervision or foster care.

3. To expedite permanency for children and reunify healthy, intact families, when appropriate.

4. To support families in recovery.

(c) The Legislature finds that children in the care of the state's dependency system need appropriate health care services, that the impact of substance abuse on health indicates the need for health care services to include substance abuse services to children and parents where appropriate, and that it is in the state's best interest that such children be provided the services they need to enable them to become and remain independent of state care. In order to provide these services, the state's dependency system must have the ability to identify and provide appropriate intervention and treatment for children with personal or family-related substance abuse problems.

(d) It is the intent of the Legislature to encourage the use of the drug court program model established by s. 397.334 and authorize courts to assess children and persons who have custody or are requesting custody of children where good cause is shown to identify and address substance abuse problems as the court deems appropriate at every stage of the dependency process. Participation in treatment, including a treatment-based drug court program, may be required by the court following adjudication. Participation in assessment and treatment prior to adjudication shall be voluntary, except as provided in s. 39.407(16).

(e) It is therefore the purpose of the Legislature to provide authority for the state to contract with community substance abuse treatment providers for the development and operation of specialized support

and overlay services for the dependency system, which will be fully implemented and used as resources permit.

(f) Participation in the treatment-based drug court program does not divest any public or private agency of its responsibility for a child or adult, but is intended to enable these agencies to better meet their needs through shared responsibility and resources.

(5) PARENTAL, CUSTODIAL, AND GUARDIAN RESPONSIBILITIES.--Parents, custodians, and guardians are deemed by the state to be responsible for providing their children with sufficient support, guidance, and supervision. The state further recognizes that the ability of parents, custodians, and guardians to fulfill those responsibilities can be greatly impaired by economic, social, behavioral, emotional, and related problems. It is therefore the policy of the Legislature that it is the state's responsibility to ensure that factors impeding the ability of caregivers to fulfill their responsibilities are identified through the dependency process and that appropriate recommendations and services to address those problems are considered in any judicial or nonjudicial proceeding.

(6) LEGISLATIVE INTENT FOR THE PREVENTION OF ABUSE, ABANDONMENT, AND NEGLECT OF CHILDREN.--The incidence of known child abuse, abandonment, and neglect has increased rapidly over the past 5 years. The impact that abuse, abandonment, or neglect has on the victimized child, siblings, family structure, and inevitably on all citizens of the state has caused the Legislature to determine that the prevention of child abuse, abandonment, and neglect shall be a priority of this state. To further this end, it is the intent of the Legislature that an Office of Adoption and Child Protection be established.

(7) OFFICE OF ADOPTION AND CHILD PROTECTION.--

(a) For purposes of establishing a comprehensive statewide approach for the promotion of adoption, support of adoptive families, and prevention of child abuse, abandonment, and neglect, the Office of Adoption and Child Protection is created within the Executive Office of the Governor. The Governor shall appoint a Chief Child Advocate for the office.

(b) The Chief Child Advocate shall:

1. Assist in developing rules pertaining to the promotion of adoption, support of adoptive families, and implementation of child abuse prevention efforts.
2. Act as the Governor's liaison with state agencies, other state governments, and the public and private sectors on matters that relate to the promotion of adoption, support of adoptive families, and child abuse prevention.
3. Work to secure funding and other support for the state's promotion of adoption, support of adoptive families, and child abuse prevention efforts, including, but not limited to, establishing cooperative relationships among state and private agencies.
4. Develop a strategic program and funding initiative that links the separate jurisdictional activities of state agencies with respect to promotion of adoption, support of adoptive families, and child abuse prevention. The office may designate lead and contributing agencies to develop such initiatives.
5. Advise the Governor and the Legislature on statistics related to the promotion of adoption, support of adoptive families, and child abuse prevention trends in this state, the status of current adoption programs and services, current child abuse prevention programs and services, the funding of adoption, support of adoptive families, and child abuse prevention programs and services, and the status of the office with regard to the development and implementation of the state strategy for the promotion of adoption, support of adoptive families, and child abuse prevention.
6. Develop public awareness campaigns to be implemented throughout the state for the promotion of adoption, support of adoptive families, and child abuse prevention.

(c) The office is authorized and directed to:

1. Oversee the preparation and implementation of the state plan established under subsection (8) and revise and update the state plan as necessary.
2. Provide for or make available continuing professional education and training in the prevention of child abuse and neglect.
3. Work to secure funding in the form of appropriations, gifts, and grants from the state, the Federal Government, and other public and private sources in order to ensure that sufficient funds are available for the promotion of adoption, support of adoptive families, and child abuse prevention efforts.
4. Make recommendations pertaining to agreements or contracts for the establishment and development of:
 - a. Programs and services for the promotion of adoption, support of adoptive families, and prevention of child abuse and neglect.
 - b. Training programs for the prevention of child abuse and neglect.
 - c. Multidisciplinary and discipline-specific training programs for professionals with responsibilities affecting children, young adults, and families.
 - d. Efforts to promote adoption.
 - e. Postadoptive services to support adoptive families.
5. Monitor, evaluate, and review the development and quality of local and statewide services and programs for the promotion of adoption, support of adoptive families, and prevention of child abuse and neglect and shall publish and distribute an annual report of its findings on or before January 1 of each year to the Governor, the Speaker of the House of Representatives, the President of the Senate, the head of each state agency affected by the report, and the appropriate substantive committees of the Legislature. The report shall include:
 - a. A summary of the activities of the office.
 - b. A summary of the adoption data collected and reported to the federal Adoption and Foster Care Analysis and Reporting System (AFCARS) and the federal Administration for Children and Families.
 - c. A summary of the child abuse prevention data collected and reported to the National Child Abuse and Neglect Data System (NCANDS) and the federal Administration for Children and Families.
 - d. A summary detailing the timeliness of the adoption process for children adopted from within the child welfare system.
 - e. Recommendations, by state agency, for the further development and improvement of services and programs for the promotion of adoption, support of adoptive families, and prevention of child abuse and neglect.
 - f. Budget requests, adoption promotion and support needs, and child abuse prevention program needs by state agency.
6. Work with the direct-support organization established under s. 39.011 to receive financial assistance.

(8) PLAN FOR COMPREHENSIVE APPROACH.--

(a) The office shall develop a state plan for the promotion of adoption, support of adoptive families, and prevention of abuse, abandonment, and neglect of children and shall submit the state plan to the Speaker of the House of Representatives, the President of the Senate, and the Governor no later than December 31, 2008. The Department of Children and Family Services, the Department of Corrections, the Department of Education, the Department of Health, the Department of Juvenile Justice, the Department of Law Enforcement, the Agency for Persons with Disabilities, and the Agency for Workforce Innovation shall participate and fully cooperate in the development of the state plan at both the state and local levels. Furthermore, appropriate local agencies and organizations shall be provided an opportunity to participate in the development of the state plan at the local level. Appropriate local groups and organizations shall include, but not be limited to, community mental health centers; guardian ad litem programs for children under the circuit court; the school boards of the local school districts; the Florida local advocacy councils;

community-based care lead agencies; private or public organizations or programs with recognized expertise in working with child abuse prevention programs for children and families; private or public organizations or programs with recognized expertise in working with children who are sexually abused, physically abused, emotionally abused, abandoned, or neglected and with expertise in working with the families of such children; private or public programs or organizations with expertise in maternal and infant health care; multidisciplinary child protection teams; child day care centers; law enforcement agencies, and the circuit courts, when guardian ad litem programs are not available in the local area. The state plan to be provided to the Legislature and the Governor shall include, as a minimum, the information required of the various groups in paragraph (b).

(b) The development of the state plan shall be accomplished in the following manner:

1. The office shall establish a Child Abuse Prevention and Permanency Advisory Council composed of an adoptive parent who has adopted a child from within the child welfare system and representatives from each state agency and appropriate local agencies and organizations specified in paragraph (a). The advisory council shall serve as the research arm of the office and shall be responsible for:

a. Assisting in developing a plan of action for better coordination and integration of the goals, activities, and funding pertaining to the promotion and support of adoption and the prevention of child abuse, abandonment, and neglect conducted by the office in order to maximize staff and resources at the state level. The plan of action shall be included in the state plan.

b. Assisting in providing a basic format to be utilized by the districts in the preparation of local plans of action in order to provide for uniformity in the district plans and to provide for greater ease in compiling information for the state plan.

c. Providing the districts with technical assistance in the development of local plans of action, if requested.

d. Assisting in examining the local plans to determine if all the requirements of the local plans have been met and, if they have not, informing the districts of the deficiencies and requesting the additional information needed.

e. Assisting in preparing the state plan for submission to the Legislature and the Governor. Such preparation shall include the incorporation into the state plan of information obtained from the local plans, the cooperative plans with the members of the advisory council, and the plan of action for coordination and integration of state departmental activities. The state plan shall include a section reflecting general conditions and needs, an analysis of variations based on population or geographic areas, identified problems, and recommendations for change. In essence, the state plan shall provide an analysis and summary of each element of the local plans to provide a statewide perspective. The state plan shall also include each separate local plan of action.

f. Conducting a feasibility study on the establishment of a Children's Cabinet.

g. Working with the specified state agency in fulfilling the requirements of subparagraphs 2., 3., 4., and 5.

2. The office, the department, the Department of Education, and the Department of Health shall work together in developing ways to inform and instruct parents of school children and appropriate district school personnel in all school districts in the detection of child abuse, abandonment, and neglect and in the proper action that should be taken in a suspected case of child abuse, abandonment, or neglect, and in caring for a child's needs after a report is made. The plan for accomplishing this end shall be included in the state plan.

3. The office, the department, the Department of Law Enforcement, and the Department of Health shall work together in developing ways to inform and instruct appropriate local law enforcement personnel in the detection of child abuse, abandonment, and neglect and in the proper action that should be taken in a suspected case of child abuse, abandonment, or neglect.

4. Within existing appropriations, the office shall work with other appropriate public and private agencies to emphasize efforts to educate the general public about the problem of and ways to detect child

abuse, abandonment, and neglect and in the proper action that should be taken in a suspected case of child abuse, abandonment, or neglect. The plan for accomplishing this end shall be included in the state plan.

5. The office, the department, the Department of Education, and the Department of Health shall work together on the enhancement or adaptation of curriculum materials to assist instructional personnel in providing instruction through a multidisciplinary approach on the identification, intervention, and prevention of child abuse, abandonment, and neglect. The curriculum materials shall be geared toward a sequential program of instruction at the four progressional levels, K-3, 4-6, 7-9, and 10-12. Strategies for encouraging all school districts to utilize the curriculum are to be included in the state plan for the prevention of child abuse, abandonment, and neglect.

6. Each district of the department shall develop a plan for its specific geographical area. The plan developed at the district level shall be submitted to the advisory council for utilization in preparing the state plan. The district local plan of action shall be prepared with the involvement and assistance of the local agencies and organizations listed in this paragraph, as well as representatives from those departmental district offices participating in the promotion of adoption, support of adoptive families, and treatment and prevention of child abuse, abandonment, and neglect. In order to accomplish this, the office shall establish a task force on the promotion of adoption, support of adoptive families, and prevention of child abuse, abandonment, and neglect. The office shall appoint the members of the task force in accordance with the membership requirements of this section. The office shall ensure that individuals from both urban and rural areas and an adoptive parent who has adopted a child from within the child welfare system are represented on the task force. The task force shall develop a written statement clearly identifying its operating procedures, purpose, overall responsibilities, and method of meeting responsibilities. The district plan of action to be prepared by the task force shall include, but shall not be limited to:

- a. Documentation of the magnitude of the problems of child abuse, including sexual abuse, physical abuse, and emotional abuse, and child abandonment and neglect in its geographical area.
- b. A description of programs currently serving abused, abandoned, and neglected children and their families and a description of programs for the prevention of child abuse, abandonment, and neglect, including information on the impact, cost-effectiveness, and sources of funding of such programs.
- c. Information concerning the number of children within the child welfare system available for adoption who need child-specific adoption promotion efforts.
- d. A description of programs currently promoting and supporting adoptive families, including information on the impact, cost-effectiveness, and sources of funding of such programs.
- e. A description of a comprehensive approach for providing postadoption services. The continuum of services shall include, but not be limited to, sufficient and accessible parent and teen support groups; case management, information, and referral services; and educational advocacy.
- f. A continuum of programs and services necessary for a comprehensive approach to promotion of adoption and the prevention of all types of child abuse, abandonment, and neglect as well as a brief description of such programs and services.
- g. A description, documentation, and priority ranking of local needs related to the promotion of adoption, support of adoptive families, and prevention of child abuse, abandonment, and neglect based upon the continuum of programs and services.
- h. A plan for steps to be taken in meeting identified needs, including the coordination and integration of services to avoid unnecessary duplication and cost, and for alternative funding strategies for meeting needs through the reallocation of existing resources, utilization of volunteers, contracting with local universities for services, and local government or private agency funding.
- i. A description of barriers to the accomplishment of a comprehensive approach to the promotion of adoption, support of adoptive families, and prevention of child abuse, abandonment, and neglect.
- j. Recommendations for changes that can be accomplished only at the state program level or by legislative action.

(9) FUNDING AND SUBSEQUENT PLANS.--

(a) All budget requests submitted by the office, the department, the Department of Health, the Department of Education, the Department of Juvenile Justice, the Department of Corrections, the Agency for Persons with Disabilities, the Agency for Workforce Innovation, or any other agency to the Legislature for funding of efforts for the promotion of adoption, support of adoptive families, and prevention of child abuse, abandonment, and neglect shall be based on the state plan developed pursuant to this section.

(b) The office and the other agencies and organizations listed in paragraph (8)(a) shall readdress the state plan and make necessary revisions every 5 years, at a minimum. Such revisions shall be submitted to the Speaker of the House of Representatives and the President of the Senate no later than June 30 of each year divisible by 5. At least biennially, the office shall review the state plan and make any necessary revisions based on changing needs and program evaluation results. An annual progress report shall be submitted to update the state plan in the years between the 5-year intervals. In order to avoid duplication of effort, these required plans may be made a part of or merged with other plans required by either the state or Federal Government, so long as the portions of the other state or Federal Government plan that constitute the state plan for the promotion of adoption, support of adoptive families, and prevention of child abuse, abandonment, and neglect are clearly identified as such and are provided to the Speaker of the House of Representatives and the President of the Senate as required above.

(10) LIBERAL CONSTRUCTION.--It is the intent of the Legislature that this chapter be liberally interpreted and construed in conformity with its declared purposes.

(11) RULEMAKING.--The Executive Office of the Governor shall adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this section.

(12) EVALUATION.--By February 1, 2009, the Legislature shall evaluate the office and determine whether it should continue to be housed in the Executive Office of the Governor or transferred to a state agency.

History.--s. 1, ch. 26880, 1951; s. 1, ch. 73-231; s. 1, ch. 78-414; s. 1, ch. 82-62; s. 62, ch. 85-81; s. 1, ch. 85-206; s. 10, ch. 85-248; s. 19, ch. 86-220; s. 1, ch. 90-53; ss. 1, 2, ch. 90-208; s. 2, ch. 90-306; s. 2, ch. 91-33; s. 68, ch. 91-45; s. 13, ch. 91-57; s. 5, ch. 93-156; s. 23, ch. 93-200; s. 19, ch. 93-230; s. 14, ch. 94-134; s. 14, ch. 94-135; ss. 9, 10, ch. 94-209; s. 1332, ch. 95-147; s. 7, ch. 95-152; s. 8, ch. 95-158; ss. 15, 30, ch. 95-228; s. 116, ch. 95-418; s. 1, ch. 96-268; ss. 128, 156, ch. 97-101; s. 69, ch. 97-103; s. 3, ch. 97-237; s. 119, ch. 97-238; s. 8, ch. 98-137; s. 18, ch. 98-403; s. 1, ch. 99-193; s. 13, ch. 2000-139; s. 5, ch. 2000-151; s. 5, ch. 2000-263; s. 2, ch. 2006-97; s. 1, ch. 2006-194; s. 2, ch. 2006-227; s. 1, ch. 2007-124; s. 3, ch. 2008-6.

Note.--Former s. 39.20; subsections (3)-(5) former s. 39.002, s. 409.70, subsections (6)-(8) former s. 415.501.

39.0011 Direct-support organization.--

(1) The Office of Adoption and Child Protection may establish a direct-support organization to assist the state in carrying out its purposes and responsibilities regarding the promotion of adoption, support of adoptive families, and prevention of child abuse, abandonment, and neglect by raising money; submitting requests for and receiving grants from the Federal Government, the state or its political subdivisions, private foundations, and individuals; and making expenditures to or for the benefit of the office. The sole purpose for the direct-support organization is to support the office. Such a direct-support organization is an organization that is:

(a) Incorporated under chapter 617 and approved by the Department of State as a Florida corporation not for profit;

(b) Organized and operated to make expenditures to or for the benefit of the office; and

(c) Approved by the office to be operating for the benefit of and in a manner consistent with the goals of the office and in the best interest of the state.

(2) The number of members on the board of directors of the direct-support organization shall be determined by the Chief Child Advocate. Membership on the board of directors of the direct-support organization shall include, but not be limited to, a guardian ad litem; a member of a local advocacy council; a representative

from a community-based care lead agency; a representative from a private or public organization or program with recognized expertise in working with child abuse prevention programs for children and families; a representative of a private or public organization or program with recognized expertise in working with children who are sexually abused, physically abused, emotionally abused, abandoned, or neglected and with expertise in working with the families of such children; an individual working at a state adoption agency; and the parent of a child adopted from within the child welfare system.

(3) The direct-support organization shall operate under written contract with the office.

(4) All moneys received by the direct-support organization shall be deposited into an account of the direct-support organization and shall be used by the organization in a manner consistent with the goals of the office.

History.--s. 2, ch. 2007-124.

39.0014 Responsibilities of public agencies.--All state, county, and local agencies shall cooperate, assist, and provide information to the Office of Adoption and Child Protection and the department as will enable them to fulfill their responsibilities under this chapter.

History.--s. 2, ch. 99-193; s. 2, ch. 2006-194; s. 3, ch. 2007-124.

39.00145 Records concerning children.--

(1) The case record of every child under the supervision of or in the custody of the department, the department's authorized agents, or providers contracting with the department, including community-based care lead agencies and their subcontracted providers, must be maintained in a complete and accurate manner. The case record must contain, at a minimum, the child's case plan required under part VIII of this chapter and the full name and street address of all shelters, foster parents, group homes, treatment facilities, or locations where the child has been placed.

(2) Notwithstanding any other provision of this chapter, all records in a child's case record must be made available for inspection, upon request, to the child who is the subject of the case record and to the child's caregiver, guardian ad litem, or attorney.

(a) A complete and accurate copy of any record in a child's case record must be provided, upon request and at no cost, to the child who is the subject of the case record and to the child's caregiver, guardian ad litem, or attorney.

(b) The department shall release the information in a manner and setting that are appropriate to the age and maturity of the child and the nature of the information being released, which may include the release of information in a therapeutic setting, if appropriate. This paragraph does not deny the child access to his or her records.

(c) If a child or the child's caregiver, guardian ad litem, or attorney requests access to the child's case record, any person or entity that fails to provide any record in the case record under assertion of a claim of exemption from the public-records requirements of chapter 119, or fails to provide access within a reasonable time, is subject to sanctions and penalties under s. 119.10.

(d) For the purposes of this subsection, the term "caregiver" is limited to parents, legal custodians, permanent guardians, or foster parents; employees of a residential home, institution, facility, or agency at which the child resides; and other individuals legally responsible for a child's welfare in a residential setting.

(3) If a court determines that sharing information in the child's case record is necessary to ensure access to appropriate services for the child or for the safety of the child, the court may approve the release of confidential records or information contained in them.

(4) Notwithstanding any other provision of law, all state and local agencies and programs that provide services to children or that are responsible for a child's safety, including the Department of Juvenile Justice, the Department of Health, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Education, the Department of Revenue, the school districts, the Statewide Guardian Ad Litem Office, and any provider contracting with such agencies, may share with each other confidential records or information that are confidential or exempt from disclosure under chapter 119 if the records or information are reasonably necessary to ensure access to appropriate services for the child, including child support enforcement services, or for the safety of the child. However:

(a) Records or information made confidential by federal law may not be shared.

(b) This subsection does not apply to information concerning clients and records of certified domestic violence centers, which are confidential under s. 39.908 and privileged under s. 90.5036.

History.--s. 2, ch. 2009-43; s. 1, ch. 2009-34.

39.0015 Child abuse prevention training in the district school system.--

(1) **SHORT TITLE.**--This section may be cited as the "Child Abuse Prevention Training Act of 1985."

(2) **LEGISLATIVE INTENT.**--It is the intent of the Legislature that primary prevention training for all children in kindergarten through grade 12 be encouraged in the district school system through the training of school teachers, guidance counselors, parents, and children.

(3) **DEFINITIONS.**--As used in this section:

(a) "Department" means the Department of Education.

(b) "Child abuse" means abandonment, abuse, harm, mental injury, neglect, physical injury, or sexual abuse of a child as those terms are defined in s. 39.01, 827.04, and 984.03.

(c) "Primary prevention and training program" means a training and educational program for children, parents, and teachers which is directed toward preventing the occurrence of child abuse, including sexual abuse, physical abuse, child abandonment, child neglect, and drug and alcohol abuse, and toward reducing the vulnerability of children through training of children and through including coordination with, and training for, parents and school personnel.

(d) "Prevention training center" means a center as described in subsection (5).

(4) **PRIMARY PREVENTION AND TRAINING PROGRAM.**--A primary prevention and training program shall include all of the following, as appropriate for the persons being trained:

(a) Information provided in a clear and nonthreatening manner, describing the problem of child abuse, sexual abuse, physical abuse, abandonment, neglect, and alcohol and drug abuse, and the possible solutions.

(b) Information and training designed to counteract common stereotypes about victims and offenders.

(c) Crisis counseling techniques.

(d) Available community resources and ways to access those resources.

(e) Physical and behavioral indicators of abuse.

(f) Rights and responsibilities regarding reporting.

(g) School district procedures to facilitate reporting.

(h) Caring for a child's needs after a report is made.

- (i) How to disclose incidents of abuse.
- (j) Child safety training and age-appropriate self-defense techniques.
- (k) The right of every child to live free of abuse.
- (l) The relationship of child abuse to handicaps in young children.
- (m) Parenting, including communication skills.
- (n) Normal and abnormal child development.
- (o) Information on recognizing and alleviating family stress caused by the demands required in caring for a high-risk or handicapped child.
- (p) Supports needed by school-age parents in caring for a young child.

(5) PREVENTION TRAINING CENTERS; FUNCTIONS; SELECTION PROCESS; MONITORING AND EVALUATION.--

- (a) Each training center shall perform the following functions:
 - 1. Act as a clearinghouse to provide information on prevention curricula which meet the requirements of this section and the requirements of s. 39.001.
 - 2. Assist the local school district in selecting a prevention program model which meets the needs of the local community.
 - 3. At the request of the local school district, design and administer training sessions to develop or expand local primary prevention and training programs.
 - 4. Provide assistance to local school districts, including, but not limited to, all of the following: administration, management, program development, multicultural staffing, and community education, in order to better meet the requirements of this section and of s. 39.001.
 - 5. At the request of the department or the local school district, provide ongoing program development and training to achieve all of the following:
 - a. Meet the special needs of children, including, but not limited to, the needs of disabled and high-risk children.
 - b. Conduct an outreach program to inform the surrounding communities of the existence of primary prevention and training programs and of funds to conduct such programs.
 - 6. Serve as a resource to the Department of Children and Family Services and its districts.
- (b) The department, in consultation with the Department of Children and Family Services, shall select and award grants by January 1, 1986, for the establishment of three private, nonprofit prevention training centers: one located in and serving South Florida, one located in and serving Central Florida, and one located in and serving North Florida. The department, in consultation with the Department of Children and Family Services, shall select an agency or agencies to establish three training centers which can fulfill the requirements of this section and meet the following requirements:
 - 1. Have demonstrated experience in child abuse prevention training.
 - 2. Have shown capacity for training primary prevention and training programs as provided for in subsections (3) and (4).
 - 3. Have provided training and organizing technical assistance to the greatest number of private prevention and training programs.
 - 4. Have employed the greatest number of trainers with experience in private child abuse prevention and training programs.
 - 5. Have employed trainers which represent the cultural diversity of the area.
 - 6. Have established broad community support.
- (c) The department shall monitor and evaluate primary prevention and training programs utilized in the local school districts and shall monitor and evaluate the impact of the prevention training centers on the implementation of primary prevention programs and their ability to meet the required responsibilities of a center as described in this section.

(6) The department shall administer this section and in so doing is authorized to adopt rules and standards necessary to implement the specific provisions of this section.

History.--ss. 1, 2, 3, 4, 5, 6, ch. 85-248; s. 49, ch. 86-220; s. 129, ch. 97-101; s. 67, ch. 97-190; s. 42, ch. 98-280; s. 19, ch. 98-403; s. 3, ch. 99-193; s. 3, ch. 2000-135; s. 14, ch. 2000-139; s. 11, ch. 2001-60; s. 884, ch. 2002-387; s. 28, ch. 2006-86; s. 3, ch. 2006-194; s. 24, ch. 2008-245.

Note.--Former s. 415.5015.

39.0016 Education of abused, neglected, and abandoned children; agency agreements; children having or suspected of having a disability.--

(1) DEFINITIONS.--As used in this section, the term:

(a) "Children known to the department" means children who are found to be dependent or children in shelter care.

(b) "Department" means the Department of Children and Family Services or a community-based care lead agency acting on behalf of the Department of Children and Family Services, as appropriate.

(c) "Surrogate parent" means an individual appointed to act in the place of a parent in educational decisionmaking and in safeguarding a child's rights under the Individuals with Disabilities Education Act and this section.

~~(2) The provisions of this section establish goals and not rights. This section does not require the delivery of any particular service or level of service in excess of existing appropriations. A person may not maintain a cause of action against the state or any of its subdivisions, agencies, contractors, subcontractors, or agents based upon this section becoming law or failure by the Legislature to provide adequate funding for the achievement of these goals. This section does not require the expenditure of funds to meet the goals established in this section except funds specifically appropriated for such purpose.~~

(2) AGENCY AGREEMENTS.--

~~(a)(3)~~ The department shall enter into an agreement with the Department of Education regarding the education and related care of children known to the department. Such agreement shall be designed to provide educational access to children known to the department for the purpose of facilitating the delivery of services or programs to children known to the department. The agreement shall avoid duplication of services or programs and shall provide for combining resources to maximize the availability or delivery of services or programs. The agreement must require the Department of Education to access the department's Florida Safe Families Network to obtain information about children known to the department, consistent with the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. s. 1232g.

~~(b)(4)~~ The department shall enter into agreements with district school boards or other local educational entities regarding education and related services for children known to the department who are of school age and children known to the department who are younger than school age but who would otherwise qualify for services from the district school board. Such agreements shall include, but are not limited to:

~~1.(a)~~ A requirement that the department shall:

~~a.1.~~ Enroll children known to the department in school. The agreement shall provide for continuing the enrollment of a child known to the department at the same school, if possible, with the goal of avoiding disruption of education.

~~b.2.~~ Notify the school and school district in which a child known to the department is enrolled of the name and phone number of the child known to the department caregiver and caseworker for child safety purposes.

~~c.3.~~ Establish a protocol for the department to share information about a child known to the department with the school district, consistent with the Family Educational Rights and Privacy Act, since the sharing of information will assist each agency in obtaining education and related services for the benefit of the child. The protocol must require the district school boards or other local educational entities to access

the department's Florida Safe Families Network to obtain information about children known to the department, consistent with the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. s.1232g.

d.4. Notify the school district of the department's case planning for a child known to the department, both at the time of plan development and plan review. Within the plan development or review process, the school district may provide information regarding the child known to the department if the school district deems it desirable and appropriate.

2.(b) A requirement that the district school board shall:

a.1. Provide the department with a general listing of the services and information available from the district school board, ~~including, but not limited to, the current Sunshine State Standards, the Surrogate Parent Training Manual, and other resources accessible through the Department of Education or local school districts~~ to facilitate educational access for a child known to the department.

b.2. Identify all educational and other services provided by the school and school district which the school district believes are reasonably necessary to meet the educational needs of a child known to the department.

c.3. Determine whether transportation is available for a child known to the department when such transportation will avoid a change in school assignment due to a change in residential placement. Recognizing that continued enrollment in the same school throughout the time the child known to the department is in out-of-home care is preferable unless enrollment in the same school would be unsafe or otherwise impractical, the department, the district school board, and the Department of Education shall assess the availability of federal, charitable, or grant funding for such transportation.

d.4. Provide individualized student intervention or an individual educational plan when a determination has been made through legally appropriate criteria that intervention services are required. The intervention or individual educational plan must include strategies to enable the child known to the department to maximize the attainment of educational goals.

3.(e) A requirement that the department and the district school board shall cooperate in accessing the services and supports needed for a child known to the department who has or is suspected of having a disability to receive an appropriate education consistent with the Individuals with Disabilities Education Act and state implementing laws, rules, and assurances. Coordination of services for a child known to the department who has or is suspected of having a disability may include:

a.1. Referral for screening.

b.2. Sharing of evaluations between the school district and the department where appropriate.

c.3. Provision of education and related services appropriate for the needs and abilities of the child known to the department.

d.4. Coordination of services and plans between the school and the residential setting to avoid duplication or conflicting service plans.

e.5. Appointment of a surrogate parent, consistent with the Individuals with Disabilities Education Act and pursuant to subsection (3), for educational purposes for a child known to the department who ~~qualifies as soon as the child is determined to be dependent and without a parent to act for the child. The surrogate parent shall be appointed by the school district without regard to where the child known to the department is placed so that one surrogate parent can follow the education of the child known to the department during his or her entire time in state custody.~~

f.6. For each child known to the department 14 years of age and older, transition planning by the department and all providers, including the department's independent living program staff, to meet the requirements of the local school district for educational purposes.

(c) This subsection establishes standards and not rights. This subsection does not require the delivery of any particular service or level of service in excess of existing appropriations. A person may not maintain a cause of action against the state or any of its subdivisions, agencies, contractors, subcontractors, or agents based upon this subsection becoming law or failure by the Legislature to provide adequate funding for the

achievement of these standards. This subsection does not require the expenditure of funds to meet the standards established in this subsection except funds specifically appropriated for such purpose.

(3) CHILDREN HAVING OR SUSPECTED OF HAVING A DISABILITY.--

(a) 1. The Legislature finds that disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society. Improving educational results for children with disabilities is an essential element of our public policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.

2. The Legislature also finds that research and experience have shown that the education of children with disabilities can be made more effective by:

a. Having high expectations for these children and ensuring their access to the general education curriculum in the regular classroom, to the maximum extent possible.

b. Providing appropriate exceptional student education, related services, and aids and supports in the least restrictive environment appropriate for these children.

c. Having a trained, interested, and consistent educational decisionmaker for the child when the parent is determined to be legally unavailable or when the foster parent is unwilling, has no significant relationship with the child, or is not trained in the exceptional student education process.

3. It is, therefore, the intent of the Legislature that all children with disabilities known to the department, consistent with the Individuals with Disabilities Education Act, have available to them a free, appropriate public education that emphasizes exceptional student education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living and that the rights of children with disabilities are protected.

(b) 1. Each district school superintendent or dependency court must appoint a surrogate parent for a child known to the department who has or is suspected of having a disability, as defined in s. 1003.01(3), when:

a. After reasonable efforts, no parent can be located; or

b. A court of competent jurisdiction over a child under this chapter has determined that no person has the authority under the Individuals with Disabilities Education Act, including the parent or parents subject to the dependency action, or that no person has the authority, willingness, or ability to serve as the educational decisionmaker for the child without judicial action.

2. A surrogate parent appointed by the district school superintendent or the court must be at least 18 years old and have no personal or professional interest that conflicts with the interests of the student to be represented. Neither the district school superintendent nor the court may appoint an employee of the Department of Education, the local school district, a community-based care provider, the Department of Children and Family Services, or any other public or private agency involved in the education or care of the child as appointment of those persons is prohibited by federal law. This prohibition includes group home staff and therapeutic foster parents. However, a person who acts in a parental role to a child, such as a foster parent or relative caregiver, is not prohibited from serving as a surrogate parent if he or she is employed by such agency, willing to serve, and knowledgeable about the child and the exceptional student education process. The surrogate parent may be a court-appointed guardian ad litem or a relative or nonrelative adult who is involved in the child's life regardless of whether that person has physical custody of the child. Each person appointed as a surrogate parent must have the knowledge and skills acquired by successfully completing training using materials developed and approved by the Department of Education to ensure adequate representation of the child.

3. If a guardian ad litem has been appointed for a child, the district school superintendent must first consider the child's guardian ad litem when appointing a surrogate parent. The district school superintendent must accept the appointment of the court if he or she has not previously appointed a surrogate parent. Similarly, the court must accept a surrogate parent duly appointed by a district school superintendent.

4. A surrogate parent appointed by the district school superintendent or the court must be accepted by any subsequent school or school district without regard to where the child is receiving residential care so that a single surrogate parent can follow the education of the child during his or her entire time in state custody. Nothing in this paragraph or in rule shall limit or prohibit the continuance of a surrogate parent appointment when the responsibility for the student's educational placement moves among and between public and private agencies.

5. For a child known to the department, the responsibility to appoint a surrogate parent resides with both the district school superintendent and the court with jurisdiction over the child. If the court elects to appoint a surrogate parent, notice shall be provided as soon as practicable to the child's school. At any time the court determines that it is in the best interests of a child to remove a surrogate parent, the court may appoint a new surrogate parent for educational decisionmaking purposes for that child.

6. The surrogate parent shall continue in the appointed role until one of the following occurs:

a. The child is determined to no longer be eligible or in need of special programs, except when termination of special programs is being contested.

b. The child achieves permanency through adoption or legal guardianship and is no longer in the custody of the department.

c. The parent who was previously unknown becomes known, whose whereabouts were unknown is located, or who was unavailable is determined by the court to be available.

d. The appointed surrogate no longer wishes to represent the child or is unable to represent the child.

e. The superintendent of the school district in which the child is attending school, the Department of Education contract designee, or the court that appointed the surrogate determines that the appointed surrogate parent no longer adequately represents the child.

f. The child moves to a geographic location that is not reasonably accessible to the appointed surrogate.

7. The appointment and termination of appointment of a surrogate under this paragraph shall be entered as an order of the court with a copy of the order provided to the child's school as soon as practicable.

8. The person appointed as a surrogate parent under this paragraph must:

a. Be acquainted with the child and become knowledgeable about his or her disability and educational needs.

b. Represent the child in all matters relating to identification, evaluation, and educational placement and the provision of a free and appropriate education to the child.

c. Represent the interests and safeguard the rights of the child in educational decisions that affect the child.

9. The responsibilities of the person appointed as a surrogate parent shall not extend to the care, maintenance, custody, residential placement, or any other area not specifically related to the education of the child, unless the same person is appointed by the court for such other purposes.

10. A person appointed as a surrogate parent shall enjoy all of the procedural safeguards afforded a parent with respect to the identification, evaluation, and educational placement of a student with a disability or a student who is suspected of having a disability.

11. A person appointed as a surrogate parent shall not be held liable for actions taken in good faith on behalf of the student in protecting the special education rights of the child.

(4)(5) TRAINING.--The department shall incorporate an education component into all training programs of the department regarding children known to the department. Such training shall be coordinated with the Department of Education and the local school districts. The department shall offer opportunities for education personnel to participate in such training. Such coordination shall include, but not be limited to, notice of training sessions, opportunities to purchase training materials, proposals to avoid duplication of services by offering joint training, and incorporation of materials available from the Department of

Education and local school districts into the department training when appropriate. The department training components shall include:

(a) Training for surrogate parents to include how an ability to learn of a child known to the department is affected by abuse, abandonment, neglect, and removal from the home.

(b) Training for parents in cases in which reunification is the goal, or for preadoptive parents when adoption is the goal, so that such parents learn how to access the services the child known to the department needs and the importance of their involvement in the education of the child known to the department.

(c) Training for caseworkers and foster parents to include information on the right of the child known to the department to an education, the role of an education in the development and adjustment of a child known to the department, the proper ways to access education and related services for the child known to the department, and the importance and strategies for parental involvement in education for the success of the child known to the department.

(d) Training of caseworkers regarding the services and information available through the Department of Education and local school districts, including, but not limited to, the current Sunshine State Standards, the Surrogate Parent Training Manual, and other resources accessible through the Department of Education or local school districts to facilitate educational access for a child known to the department.

History.-- s. 3, ch. 2004-356; s. 1, ch. 2009-35.

39.01 Definitions.--When used in this chapter, unless the context otherwise requires:

(1) "Abandoned" or "abandonment" means a situation in which the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the caregiver, while being able, makes no provision for the child's support and has failed to establish or maintain a substantial and positive relationship with the child. For purposes of this subsection, "establish or maintain a substantial and positive relationship" includes, but is not limited to, frequent and regular contact with the child through frequent and regular visitation or frequent and regular communication to or with the child, and the exercise of parental rights and responsibilities. Marginal efforts and incidental or token visits or communications are not sufficient to establish or maintain a substantial and positive relationship with a child. The term does not include a surrendered newborn infant as described in s. 383.50, a "child in need of services" as defined in chapter 984, or a "family in need of services" as defined in chapter 984. The incarceration of a parent, legal custodian, or caregiver responsible for a child's welfare may support a finding of abandonment.

(2) "Abuse" means any willful act or threatened act that results in any physical, mental, or sexual injury or harm that causes or is likely to cause the child's physical, mental, or emotional health to be significantly impaired. Abuse of a child includes acts or omissions. Corporal discipline of a child by a parent or legal custodian for disciplinary purposes does not in itself constitute abuse when it does not result in harm to the child.

(3) "Addictions receiving facility" means a substance abuse service provider as defined in chapter 397.

(4) "Adjudicatory hearing" means a hearing for the court to determine whether or not the facts support the allegations stated in the petition in dependency cases or in termination of parental rights cases.

(5) "Adult" means any natural person other than a child.

(6) "Adoption" means the act of creating the legal relationship between parent and child where it did not exist, thereby declaring the child to be legally the child of the adoptive parents and their heir at law, and entitled to all the rights and privileges and subject to all the obligations of a child born to the adoptive parents in lawful wedlock.

(7) "Alleged juvenile sexual offender" means:

(a) A child 12 years of age or younger who is alleged to have committed a violation of chapter 794, chapter 796, chapter 800, s. 827.071, or s. 847.0133; or

(b) A child who is alleged to have committed any violation of law or delinquent act involving juvenile sexual abuse. "Juvenile sexual abuse" means any sexual behavior which occurs without consent, without equality, or as a result of coercion. For purposes of this paragraph, the following definitions apply:

1. "Coercion" means the exploitation of authority or the use of bribes, threats of force, or intimidation to gain cooperation or compliance.

2. "Equality" means two participants operating with the same level of power in a relationship, neither being controlled nor coerced by the other.

3. "Consent" means an agreement, including all of the following:

a. Understanding what is proposed based on age, maturity, developmental level, functioning, and experience.

b. Knowledge of societal standards for what is being proposed.

c. Awareness of potential consequences and alternatives.

d. Assumption that agreement or disagreement will be accepted equally.

e. Voluntary decision.

f. Mental competence.

Juvenile sexual offender behavior ranges from noncontact sexual behavior such as making obscene phone calls, exhibitionism, voyeurism, and the showing or taking of lewd photographs to varying degrees of direct sexual contact, such as frottage, fondling, digital penetration, rape, fellatio, sodomy, and various other sexually aggressive acts.

(8) "Arbitration" means a process whereby a neutral third person or panel, called an arbitrator or an arbitration panel, considers the facts and arguments presented by the parties and renders a decision which may be binding or nonbinding.

(9) "Authorized agent" or "designee" of the department means an employee, volunteer, or other person or agency determined by the state to be eligible for state-funded risk management coverage, which is assigned or designated by the department to perform duties or exercise powers under this chapter.

(10) "Caregiver" means the parent, legal custodian, permanent guardian, adult household member, or other person responsible for a child's welfare as defined in subsection ~~(47)~~(46).

(11) "Case plan" means a document, as described in s. 39.6011, prepared by the department with input from all parties. The case plan follows the child from the provision of voluntary services through any dependency, foster care, or termination of parental rights proceeding or related activity or process.

(12) "Child" or "youth" means any unmarried person under the age of 18 years who has not been emancipated by order of the court.

(13) "Child protection team" means a team of professionals established by the Department of Health to receive referrals from the protective investigators and protective supervision staff of the department and to provide specialized and supportive services to the program in processing child abuse, abandonment, or neglect cases. A child protection team shall provide consultation to other programs of the department and other persons regarding child abuse, abandonment, or neglect cases.

(14) "Child who has exhibited inappropriate sexual behavior" means a child who is 12 years of age or younger and who has been found by the department or the court to have committed an inappropriate sexual act.

(15) "Child who is found to be dependent" means a child who, pursuant to this chapter, is found by the court:

(a) To have been abandoned, abused, or neglected by the child's parent or parents or legal custodians;

(b) To have been surrendered to the department, the former Department of Health and Rehabilitative Services, or a licensed child-placing agency for purpose of adoption;

(c) To have been voluntarily placed with a licensed child-caring agency, a licensed child-placing agency, an adult relative, the department, or the former Department of Health and Rehabilitative Services, after which placement, under the requirements of this chapter, a case plan has expired and the parent or parents or legal custodians have failed to substantially comply with the requirements of the plan;

(d) To have been voluntarily placed with a licensed child-placing agency for the purposes of subsequent adoption, and a parent or parents have signed a consent pursuant to the Florida Rules of Juvenile Procedure;

(e) To have no parent or legal custodians capable of providing supervision and care; or

(f) To be at substantial risk of imminent abuse, abandonment, or neglect by the parent or parents or legal custodians.

(16) "Child support" means a court-ordered obligation, enforced under chapter 61 and ss. 409.2551-409.2597, for monetary support for the care, maintenance, training, and education of a child.

(17) "Circuit" means any of the 20 judicial circuits as set forth in s. 26.021.

(18) "Comprehensive assessment" or "assessment" means the gathering of information for the evaluation of a child's and caregiver's physical, psychiatric, psychological or mental health, educational, vocational, and social condition and family environment as they relate to the child's and caregiver's need for rehabilitative and treatment services, including substance abuse treatment services, mental health services, developmental services, literacy services, medical services, family services, and other specialized services, as appropriate.

(19) "Concurrent planning" means establishing a permanency goal in a case plan that uses reasonable efforts to reunify the child with the parent, while at the same time establishing another goal that must be one of the following options:

(a) Adoption when a petition for termination of parental rights has been filed or will be filed;

(b) Permanent guardianship of a dependent child under s. 39.6221;

(c) Permanent placement with a fit and willing relative under s. 39.6231; or

(d) Placement in another planned permanent living arrangement under s. 39.6241.

(20) "Court," unless otherwise expressly stated, means the circuit court assigned to exercise jurisdiction under this chapter.

(21) "Department" means the Department of Children and Family Services.

(22) "Diligent efforts by a parent" means a course of conduct which results in a reduction in risk to the child in the child's home that would allow the child to be safely placed permanently back in the home as set forth in the case plan.

(23) "Diligent efforts of social service agency" means reasonable efforts to provide social services or reunification services made by any social service agency that is a party to a case plan.

(24) "Diligent search" means the efforts of a social service agency to locate a parent or prospective parent whose identity or location is unknown, initiated as soon as the social service agency is made aware of the existence of such parent, with the search progress reported at each court hearing until the parent is either identified and located or the court excuses further search.

(25) "Disposition hearing" means a hearing in which the court determines the most appropriate protections, services, and placement for the child in dependency cases.

(26) "District" means any one of the 15 service districts of the department established pursuant to s. 20.19.

(27) "District administrator" means the chief operating officer of each service district of the department as defined in s. 20.19(5) and, where appropriate, includes any district administrator whose service district falls within the boundaries of a judicial circuit.

(28) "Expedited termination of parental rights" means proceedings wherein a case plan with the goal of reunification is not being offered.

(29) "False report" means 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.

(30) "Family" means a collective body of persons, consisting of a child and a parent, legal custodian, or adult relative, in which:

- (a) The persons reside in the same house or living unit; or
- (b) The parent, legal custodian, or adult relative has a legal responsibility by blood, marriage, or court order to support or care for the child.

(31) "Foster care" means care provided a child in a foster family or boarding home, group home, agency boarding home, child care institution, or any combination thereof.

(32) "Harm" to a child's health or welfare can occur when any person:

(a) Inflicts or allows to be inflicted upon the child physical, mental, or emotional injury. In determining whether harm has occurred, the following factors must be considered in evaluating any physical, mental, or emotional injury to a child: the age of the child; any prior history of injuries to the child; the location of the injury on the body of the child; the multiplicity of the injury; and the type of trauma inflicted. Such injury includes, but is not limited to:

1. Willful acts that produce the following specific injuries:
 - a. Sprains, dislocations, or cartilage damage.
 - b. Bone or skull fractures.
 - c. Brain or spinal cord damage.
 - d. Intracranial hemorrhage or injury to other internal organs.

- e. Asphyxiation, suffocation, or drowning.
- f. Injury resulting from the use of a deadly weapon.
- g. Burns or scalding.
- h. Cuts, lacerations, punctures, or bites.
- i. Permanent or temporary disfigurement.
- j. Permanent or temporary loss or impairment of a body part or function.

As used in this subparagraph, the term "willful" refers to the intent to perform an action, not to the intent to achieve a result or to cause an injury.

2. Purposely giving a child poison, alcohol, drugs, or other substances that substantially affect the child's behavior, motor coordination, or judgment or that result in sickness or internal injury. For the purposes of this subparagraph, the term "drugs" means prescription drugs not prescribed for the child or not administered as prescribed, and controlled substances as outlined in Schedule I or Schedule II of s. 893.03.

3. Leaving a child without adult supervision or arrangement appropriate for the child's age or mental or physical condition, so that the child is unable to care for the child's own needs or another's basic needs or is unable to exercise good judgment in responding to any kind of physical or emotional crisis.

4. Inappropriate or excessively harsh disciplinary action that is likely to result in physical injury, mental injury as defined in this section, or emotional injury. The significance of any injury must be evaluated in light of the following factors: the age of the child; any prior history of injuries to the child; the location of the injury on the body of the child; the multiplicity of the injury; and the type of trauma inflicted. Corporal discipline may be considered excessive or abusive when it results in any of the following or other similar injuries:

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

(b) Commits, or allows to be committed, sexual battery, as defined in chapter 794, or lewd or lascivious acts, as defined in chapter 800, against the child.

(c) Allows, encourages, or forces the sexual exploitation of a child, which includes allowing, encouraging, or forcing a child to:

- 1. Solicit for or engage in prostitution; or
- 2. Engage in a sexual performance, as defined by chapter 827.

(d) Exploits a child, or allows a child to be exploited, as provided in s. 450.151.

(e) Abandons the child. Within the context of the definition of "harm," the term "abandoned the child" or "abandonment of the child" means a situation in which the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the caregiver, while being able, makes no provision for the child's support and has failed to establish or maintain a substantial and positive relationship with the child. For purposes of this paragraph, "establish or maintain a substantial and positive relationship" includes, but is not limited to, frequent and regular contact with the child through frequent and regular visitation or frequent and regular communication to or with the child, and the exercise of parental rights and responsibilities. Marginal efforts and incidental or token visits or communications are not sufficient to establish or maintain a substantial and positive relationship with a child. The term "abandoned" does not include a surrendered newborn infant as described in s. 383.50.

(f) Neglects the child. Within the context of the definition of "harm," the term "neglects the child" means that the parent or other person responsible for the child's welfare fails to supply the child with adequate food, clothing, shelter, or health care, although financially able to do so or although offered financial or other means to do so. However, a parent or legal custodian who, by reason of the legitimate practice of religious beliefs, does not provide specified medical treatment for a child may not be considered abusive or neglectful for that reason alone, but such an exception does not:

1. Eliminate the requirement that such a case be reported to the department;
2. Prevent the department from investigating such a case; or
3. Preclude a court from ordering, when the health of the child requires it, the provision of medical services by a physician, as defined in this section, or treatment by a duly accredited practitioner who relies solely on spiritual means for healing in accordance with the tenets and practices of a well-recognized church or religious organization.

(g) Exposes a child to a controlled substance or alcohol. Exposure to a controlled substance or alcohol is established by:

1. A test, administered at birth, which indicated that the child's blood, urine, or meconium contained any amount of alcohol or a controlled substance or metabolites of such substances, the presence of which was not the result of medical treatment administered to the mother or the newborn infant; or
2. Evidence of extensive, abusive and chronic use of a controlled substance or alcohol by a parent when the child is demonstrably adversely affected by such usage.

As used in this paragraph, the term "controlled substance" means prescription drugs not prescribed for the parent or not administered as prescribed and controlled substances as outlined in Schedule I or Schedule II of s. 893.03.

(h) Uses mechanical devices, unreasonable restraints, or extended periods of isolation to control a child.

(i) Engages in violent behavior that demonstrates a wanton disregard for the presence of a child and could reasonably result in serious injury to the child.

(j) Negligently fails to protect a child in his or her care from inflicted physical, mental, or sexual injury caused by the acts of another.

(k) Has allowed a child's sibling to die as a result of abuse, abandonment, or neglect.

(l) Makes the child unavailable for the purpose of impeding or avoiding a protective investigation unless the court determines that the parent, legal custodian, or caregiver was fleeing from a situation involving domestic violence.

(33) "Institutional child abuse or neglect" means situations of known or suspected child abuse or neglect in which the person allegedly perpetrating the child abuse or neglect is an employee of a private school, public or private day care center, residential home, institution, facility, or agency or any other person at such institution responsible for the child's care.

(34) "Judge" means the circuit judge exercising jurisdiction pursuant to this chapter.

(35) "Legal custody" means a legal status created by a court which vests in a custodian of the person or guardian, whether an agency or an individual, the right to have physical custody of the child and the right and duty to protect, nurture, guide, and discipline the child and to provide him or her with food, shelter, education, and ordinary medical, dental, psychiatric, and psychological care.

(36) "Licensed child-caring agency" means a person, society, association, or agency licensed by the department to care for, receive, and board children.

- (37) "Licensed child-placing agency" means a person, society, association, or institution licensed by the department to care for, receive, or board children and to place children in a licensed child-caring institution or a foster or adoptive home.
- (38) "Licensed health care professional" means a physician licensed under chapter 458, an osteopathic physician licensed under chapter 459, a nurse licensed under part I of chapter 464, a physician assistant licensed under chapter 458 or chapter 459, or a dentist licensed under chapter 466.
- (39) "Likely to injure oneself" means that, as evidenced by violent or other actively self-destructive behavior, it is more likely than not that within a 24-hour period the child will attempt to commit suicide or inflict serious bodily harm on himself or herself.
- (40) "Likely to injure others" means that it is more likely than not that within a 24-hour period the child will inflict serious and unjustified bodily harm on another person.
- (41) "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. 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.
- (42) "Mental injury" means an injury to the intellectual or psychological capacity of a child as evidenced by a discernible and substantial impairment in the ability to function within the normal range of performance and behavior.
- (43) "Necessary medical treatment" means care which is necessary within a reasonable degree of medical certainty to prevent the deterioration of a child's condition or to alleviate immediate pain of a child.
- (44) "Neglect" occurs when a child is deprived of, or is allowed to be deprived of, necessary food, clothing, shelter, or medical treatment or a child is permitted to live in an environment when such deprivation or environment causes the child's physical, mental, or emotional health to be significantly impaired or to be in danger of being significantly impaired. The foregoing circumstances shall not be considered neglect if caused primarily by financial inability unless actual services for relief have been offered to and rejected by such person. A parent or legal custodian legitimately practicing religious beliefs in accordance with a recognized church or religious organization who thereby does not provide specific medical treatment for a child may not, for that reason alone, be considered a negligent parent or legal custodian; however, such an exception does not preclude a court from ordering the following services to be provided, when the health of the child so requires:
- (a) Medical services from a licensed physician, dentist, optometrist, podiatric physician, or other qualified health care provider; or
 - (b) Treatment by a duly accredited practitioner who relies solely on spiritual means for healing in accordance with the tenets and practices of a well-recognized church or religious organization.
- Neglect of a child includes acts or omissions.
- (45) "Next of kin" means an adult relative of a child who is the child's brother, sister, grandparent, aunt, uncle, or first cousin.
- (46) "Office" means the Office of Adoption and Child Protection within the Executive Office of the Governor.

(47) "Other person responsible for a child's welfare" includes the child's legal guardian or foster parent; an employee of any school, public or private child day care center, residential home, institution, facility, or agency; a law enforcement officer employed in any facility, service, or program for children that is operated or contracted by the Department of Juvenile Justice; or any other person legally responsible for the child's welfare in a residential setting; and also includes an adult sitter or relative entrusted with a child's care. For the purpose of departmental investigative jurisdiction, this definition does not include the following persons when they are acting in an official capacity: law enforcement officers, except as otherwise provided in this subsection; employees of municipal or county detention facilities or employees of the Department of Corrections.

(48) "Out-of-home" means a placement outside of the home of the parents or a parent.

(49) "Parent" means a woman who gives birth to a child and a man whose consent to the adoption of the child would be required under s. 63.062(1). If a child has been legally adopted, the term "parent" means the adoptive mother or father of the child. The term does not include an individual whose parental relationship to the child has been legally terminated, or an alleged or prospective parent, unless the parental status falls within the terms of s. 39.503(1) or s. 63.062(1). For purposes of this chapter only, when the phrase "parent or legal custodian" is used, it refers to rights or responsibilities of the parent and, only if there is no living parent with intact parental rights, to the rights or responsibilities of the legal custodian who has assumed the role of the parent.

(50) "Participant," for purposes of a shelter proceeding, dependency proceeding, or termination of parental rights proceeding, means any person who is not a party but who should receive notice of hearings involving the child, including the actual custodian of the child, the foster parents or the legal custodian of the child, identified prospective parents, and any other person whose participation may be in the best interest of the child. A community-based agency under contract with the department to provide protective services may be designated as a participant at the discretion of the court. Participants may be granted leave by the court to be heard without the necessity of filing a motion to intervene.

(51) "Party" means the parent or parents of the child, the petitioner, the department, the guardian ad litem or the representative of the guardian ad litem program when the program has been appointed, and the child. The presence of the child may be excused by order of the court when presence would not be in the child's best interest. Notice to the child may be excused by order of the court when the age, capacity, or other condition of the child is such that the notice would be meaningless or detrimental to the child.

(52) "Permanency goal" means the living arrangement identified for the child to return to or identified as the permanent living arrangement of the child. Permanency goals applicable under this chapter, listed in order of preference, are:

- (a) Reunification;
- (b) Adoption when a petition for termination of parental rights has been or will be filed;
- (c) Permanent guardianship of a dependent child under s. 39.6221;
- (d) Permanent placement with a fit and willing relative under s. 39.6231; or
- (e) Placement in another planned permanent living arrangement under s. 39.6241.

The permanency goal is also the case plan goal. If concurrent case planning is being used, reunification may be pursued at the same time that another permanency goal is pursued.

(53) "Permanency plan" means the plan that establishes the placement intended to serve as the child's permanent home.

(54) "Permanent guardian" means the relative or other adult in a permanent guardianship of a dependent child under s. 39.6221.

(55) "Permanent guardianship of a dependent child" means a legal relationship that a court creates under s. 39.6221 between a child and a relative or other adult approved by the court which is intended to be permanent and self-sustaining through the transfer of parental rights with respect to the child relating to protection, education, care and control of the person, custody of the person, and decisionmaking on behalf of the child.

(56) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily part.

(57) "Physician" means any licensed physician, dentist, podiatric physician, or optometrist and includes any intern or resident.

(58) "Preliminary screening" means the gathering of preliminary information to be used in determining a child's need for further evaluation or assessment or for referral for other substance abuse services through means such as psychosocial interviews; urine and breathalyzer screenings; and reviews of available educational, delinquency, and dependency records of the child.

(59) "Preventive services" means social services and other supportive and rehabilitative services provided to the parent or legal custodian of the child and to the child for the purpose of averting the removal of the child from the home or disruption of a family which will or could result in the placement of a child in foster care. Social services and other supportive and rehabilitative services shall promote the child's need for physical, mental, and emotional health and a safe, stable, living environment, shall promote family autonomy, and shall strengthen family life, whenever possible.

(60) "Prospective parent" means a person who claims to be, or has been identified as, a person who may be a mother or a father of a child.

(61) "Protective investigation" means the acceptance of a report alleging child abuse, abandonment, or neglect, as defined in this chapter, by the central abuse hotline or the acceptance of a report of other dependency by the department; the investigation of each report; the determination of whether action by the court is warranted; the determination of the disposition of each report without court or public agency action when appropriate; and the referral of a child to another public or private agency when appropriate.

(62) "Protective investigator" means an authorized agent of the department who receives and investigates reports of child abuse, abandonment, or neglect; who, as a result of the investigation, may recommend that a dependency petition be filed for the child; and who performs other duties necessary to carry out the required actions of the protective investigation function.

(63) "Protective supervision" means a legal status in dependency cases which permits the child to remain safely in his or her own home or other nonlicensed placement under the supervision of an agent of the department and which must be reviewed by the court during the period of supervision.

(64) "Relative" means a grandparent, great-grandparent, sibling, first cousin, aunt, uncle, great-aunt, great-uncle, niece, or nephew, whether related by the whole or half blood, by affinity, or by adoption. The term does not include a stepparent.

(65) "Reunification services" means social services and other supportive and rehabilitative services provided to the parent of the child, to the child, and, where appropriate, to the relative placement, nonrelative placement, or foster parents of the child, for the purpose of enabling a child who has been placed in out-of-home care to safely return to his or her parent at the earliest possible time. The health and safety of the child shall be the paramount goal of social services and other supportive and rehabilitative services. The services shall promote the child's need for physical, mental, and emotional health and a safe, stable, living environment, shall promote family autonomy, and shall strengthen family life, whenever possible.

(66) "Secretary" means the Secretary of Children and Family Services.

(67) "Sexual abuse of a child" means one or more of the following acts:

(a) Any penetration, however slight, of the vagina or anal opening of one person by the penis of another person, whether or not there is the emission of semen.

(b) Any sexual contact between the genitals or anal opening of one person and the mouth or tongue of another person.

(c) Any intrusion by one person into the genitals or anal opening of another person, including the use of any object for this purpose, except that this does not include any act intended for a valid medical purpose.

(d) The intentional touching of the genitals or intimate parts, including the breasts, genital area, groin, inner thighs, and buttocks, or the clothing covering them, of either the child or the perpetrator, except that this does not include:

1. Any act which may reasonably be construed to be a normal caregiver responsibility, any interaction with, or affection for a child; or

2. Any act intended for a valid medical purpose.

(e) The intentional masturbation of the perpetrator's genitals in the presence of a child.

(f) The intentional exposure of the perpetrator's genitals in the presence of a child, or any other sexual act intentionally perpetrated in the presence of a child, if such exposure or sexual act is for the purpose of sexual arousal or gratification, aggression, degradation, or other similar purpose.

(g) The sexual exploitation of a child, which includes allowing, encouraging, or forcing a child to:

1. Solicit for or engage in prostitution; or

2. Engage in a sexual performance, as defined by chapter 827.

(68) "Shelter" means a placement with a relative or a nonrelative, or in a licensed home or facility, for the temporary care of a child who is alleged to be or who has been found to be dependent, pending court disposition before or after adjudication.

(69) "Shelter hearing" means a hearing in which the court determines whether probable cause exists to keep a child in shelter status pending further investigation of the case.

(70) "Social service agency" means the department, a licensed child-caring agency, or a licensed child-placing agency.

(71) "Social worker" means any person who has a bachelor's, masters, or doctoral degree in social work.

(72) "Substance abuse" means using, without medical reason, any psychoactive or mood-altering drug, including alcohol, in such a manner as to induce impairment resulting in dysfunctional social behavior.

(73) "Substantial compliance" means that the circumstances which caused the creation of the case plan have been significantly remedied to the extent that the well-being and safety of the child will not be endangered upon the child's remaining with or being returned to the child's parent.

(74) "Taken into custody" means the status of a child immediately when temporary physical control over the child is attained by a person authorized by law, pending the child's release or placement.

(75) "Temporary legal custody" means the relationship that a court creates between a child and an adult relative of the child, legal custodian, agency, or other person approved by the court until a more permanent arrangement is ordered. Temporary legal custody confers upon the custodian the right to have temporary physical custody of the child and the right and duty to protect, nurture, guide, and discipline the child and to provide the child with food, shelter, and education, and ordinary medical, dental, psychiatric, and psychological care, unless these rights and duties are otherwise enlarged or limited by the court order establishing the temporary legal custody relationship.

(76) "Victim" means any child who has sustained or is threatened with physical, mental, or emotional injury identified in a report involving child abuse, neglect, or abandonment, or child-on-child sexual abuse.

History.--s. 1, ch. 26880, 1951; ss. 1, 2, ch. 67-585; s. 3, ch. 69-353; s. 4, ch. 69-365; ss. 19, 35, ch. 69-106; s. 1, ch. 71-117; s. 10, ch. 71-355; ss. 4, 5, ch. 72-179; ss. 19, 30, ch. 72-404; ss. 2, 23, ch. 73-231; s. 1, ch. 74-368; ss. 15, 27, 28, ch. 75-48; s. 4, ch. 77-147; s. 2, ch. 78-414; s. 9, ch. 79-164; s. 2, ch. 79-203; s. 1, ch. 80-290; ss. 1, 17, ch. 81-218; ss. 4, 15, ch. 84-311; s. 4, ch. 85-80; s. 2, ch. 85-206; ss. 73, 78, ch. 86-220; s. 1, ch. 87-133; s. 1, ch. 87-289; s. 12, ch. 87-397; s. 1, ch. 88-319; s. 10, ch. 88-337; s. 2, ch. 90-53; s. 3, ch. 90-208; s. 3, ch. 90-306; s. 2, ch. 90-309; s. 69, ch. 91-45; s. 1, ch. 91-183; s. 1, ch. 92-158; s. 1, ch. 92-170; ss. 1, 4(1st), 14, ch. 92-287; s. 13, ch. 93-39; s. 6, ch. 93-230; s. 1, ch. 94-164; s. 11, ch. 94-209; s. 50, ch. 94-232; s. 1333, ch. 95-147; s. 8, ch. 95-152; s. 1, ch. 95-212; s. 4, ch. 95-228; s. 1, ch. 95-266; ss. 3, 43, ch. 95-267; s. 3, ch. 96-369; s. 2, ch. 96-398; s. 20, ch. 96-402; s. 23, ch. 97-96; s. 158, ch. 97-101; s. 44, ch. 97-190; s. 4, ch. 97-234; s. 111, ch. 97-238; s. 1, ch. 97-276; s. 1, ch. 98-49; s. 176, ch. 98-166; s. 7, ch. 98-280; s. 20, ch. 98-403; s. 15, ch. 99-2; s. 3, ch. 99-168; s. 2, ch. 99-186; s. 4, ch. 99-193; s. 15, ch. 2000-139; s. 2, ch. 2000-188; s. 82, ch. 2000-318; s. 9, ch. 2000-320; s. 14, ch. 2002-1; s. 2, ch. 2006-62; s. 1, ch. 2006-86; s. 4, ch. 2006-194; s. 4, ch. 2007-124; s. 1, ch. 2008-90; s. 1, ch. 2008-154; s. 1, ch. 2008-245; s. 1, ch. 2009-21.

39.011 Immunity from liability.--

(1) In no case shall employees or agents of the department or a social service agency acting in good faith be liable for damages as a result of failing to provide services agreed to under the case plan unless the failure to provide such services occurs as a result of bad faith or malicious purpose or occurs in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

(2) The inability or failure of the department or of a social service agency or the employees or agents of the social service agency to provide the services agreed to under the case plan shall not render the state or the social service agency liable for damages unless such failure to provide services occurs in a manner exhibiting wanton or willful disregard of human rights, safety, or property.

(3) A member or agent of a citizen review panel acting in good faith is not liable for damages as a result of any review or recommendation with regard to a dependency matter unless such member or agent exhibits wanton and willful disregard of human rights or safety, or property.

History.--s. 9, ch. 87-289; s. 13, ch. 90-306; s. 7, ch. 97-95; s. 21, ch. 98-403; s. 5, ch. 99-193.

Note.--Former s. 39.455.

39.012 Rules for implementation.--The department shall adopt rules for the efficient and effective management of all programs, services, facilities, and functions necessary for implementing this chapter. Such rules may not conflict with the Florida Rules of Juvenile Procedure. All rules and policies must conform to accepted standards of care and treatment.

History.--s. 2, ch. 87-289; s. 4, ch. 90-208; s. 12, ch. 94-209; s. 1, ch. 97-101; s. 120, ch. 97-238; s. 22, ch. 98-403.

39.0121 Specific rulemaking authority.--Pursuant to the requirements of s. 120.536, the department is specifically authorized to adopt, amend, and repeal administrative rules which implement or interpret law or policy, or describe the procedure and practice requirements necessary to implement this chapter, including, but not limited to, the following:

- (1) Background screening of department employees and applicants; criminal records checks of prospective foster and adoptive parents; and drug testing of protective investigators.
- (2) Reporting of child abuse, neglect, and abandonment; reporting of child-on-child sexual abuse; false reporting; child protective investigations; taking a child into protective custody; and shelter procedures.
- (3) Confidentiality and retention of department records; access to records; and record requests.
- (4) Department and client trust funds.
- (5) Requesting of services from child protection teams.
- (6) Consent to and provision of medical care and treatment for children in the care of the department.
- (7) Federal funding requirements and procedures; foster care and adoption subsidies; subsidized independent living; and subsidized child care.
- (8) Agreements with law enforcement and other state agencies; access to the National Crime Information Center (NCIC); and access to the parent locator service.
- (9) Licensing, registration, and certification of child day care providers, shelter and foster homes, and residential child-caring and child-placing agencies.
- (10) The Family Builders Program, the Intensive Crisis Counseling Program, and any other early intervention programs and kinship care assistance programs.
- (11) Department contracts, pilot programs, and demonstration projects.
- (12) Legal and casework procedures, including, but not limited to, mediation, diligent search, stipulations, consents, surrenders, and default, with respect to dependency, termination of parental rights, adoption, guardianship, and kinship care proceedings.
- (13) Legal and casework management of cases involving in-home supervision and out-of-home care, including judicial reviews, administrative reviews, case plans, and any other documentation or procedures required by federal or state law.
- (14) Injunctions and other protective orders, domestic-violence-related cases, and certification of domestic violence centers.
- (15) Provision for making available to all physical custodians and family services counselors the information required by s. 39.6012(2) and for ensuring that this information follows the child until permanency has been achieved.
- (16) Provisions for reporting, locating, recovering, and stabilizing children whose whereabouts become unknown while they are involved with the department and for preventing recurrences of such incidents. At a minimum, the rules must:
 - (a) Provide comprehensive, explicit, and consistent guidelines to be followed by the department's employees and contracted providers when the whereabouts of a child involved with the department is unknown.

(b) Include criteria to determine when a child is missing for purposes of making a report to a law enforcement agency, and require that in all cases in which a law enforcement agency has accepted a case for criminal investigation pursuant to s. 39.301(2) (c) and the child's whereabouts are unknown, the child shall be considered missing and a report made.

(c) Include steps to be taken by employees and contracted providers to ensure and provide evidence that parents and guardian have been advised of the requirements of s. 787.04(3) and that violations are reported.

History.--s. 23, ch. 98-403; s. 6, ch. 99-193; s. 2, ch. 2006-86; s. 2, ch. 2008-245.

39.013 Procedures and jurisdiction; right to counsel.--

(1) All procedures, including petitions, pleadings, subpoenas, summonses, and hearings, in this chapter shall be conducted according to the Florida Rules of Juvenile Procedure unless otherwise provided by law. Parents must be informed by the court of their right to counsel in dependency proceedings at each stage of the dependency proceedings. Parents who are unable to afford counsel must be appointed counsel.

(2) The circuit court has exclusive original jurisdiction of all proceedings under this chapter, of a child voluntarily placed with a licensed child-caring agency, a licensed child-placing agency, or the department, and of the adoption of children whose parental rights have been terminated under this chapter. Jurisdiction attaches when the initial shelter petition, dependency petition, or termination of parental rights petition is filed or when a child is taken into the custody of the department. The circuit court may assume jurisdiction over any such proceeding regardless of whether the child was in the physical custody of both parents, was in the sole legal or physical custody of only one parent, caregiver, or some other person, or was in the physical or legal custody of no person when the event or condition occurred that brought the child to the attention of the court. When the court obtains jurisdiction of any child who has been found to be dependent, the court shall retain jurisdiction, unless relinquished by its order, until the child reaches 18 years of age. However, if a youth petitions the court at any time before his or her 19th birthday requesting the court's continued jurisdiction, the juvenile court may retain jurisdiction under this chapter for a period not to exceed 1 year following the youth's 18th birthday for the purpose of determining whether appropriate aftercare support, Road-to-Independence Program, transitional support, mental health, and developmental disability services, to the extent otherwise authorized by law, have been provided to the formerly dependent child who was in the legal custody of the department immediately before his or her 18th birthday. If a petition for special immigrant juvenile status and an application for adjustment of status have been filed on behalf of a foster child and the petition and application have not been granted by the time the child reaches 18 years of age, the court may retain jurisdiction over the dependency case solely for the purpose of allowing the continued consideration of the petition and application by federal authorities. Review hearings for the child shall be set solely for the purpose of determining the status of the petition and application. The court's jurisdiction terminates upon the final decision of the federal authorities. Retention of jurisdiction in this instance does not affect the services available to a young adult under s. 409.1451. The court may not retain jurisdiction of the case after the immigrant child's 22nd birthday.

(3) When a child is under the jurisdiction of the circuit court pursuant to this chapter, the circuit court assigned to handle dependency matters may exercise the general and equitable jurisdiction over guardianship proceedings under chapter 744 and proceedings for temporary custody of minor children by extended family under chapter 751.

(4) Orders entered pursuant to this chapter which affect the placement of, access to, parental time with, adoption of, or parental rights and responsibilities for a minor child shall take precedence over other orders entered in civil actions or proceedings. However, if the court has terminated jurisdiction, the order may be

subsequently modified by a court of competent jurisdiction in any other civil action or proceeding affecting placement of, access to, parental time with, adoption of, or parental rights and responsibilities for the same minor child.

(5) The court shall expedite the resolution of the placement issue in cases involving a child who has been removed from the parent and placed in an out-of-home placement.

(6) The court shall expedite the judicial handling of all cases when the child has been removed from the parent and placed in an out-of-home placement.

(7) Children removed from their homes shall be provided equal treatment with respect to goals, objectives, services, and case plans, without regard to the location of their placement.

(8) For any child who remains in the custody of the department, the court shall, within the month which constitutes the beginning of the 6-month period before the child's 18th birthday, hold a hearing to review the progress of the child while in the custody of the department.

(9)(a) At each stage of the proceedings under this chapter, the court shall advise the parents of the right to counsel. The court shall appoint counsel for indigent parents. The court shall ascertain whether the right to counsel is understood. When right to counsel is waived, the court shall determine whether the waiver is knowing and intelligent. The court shall enter its findings in writing with respect to the appointment or waiver of counsel for indigent parents or the waiver of counsel by nonindigent parents.

(b) Once counsel has entered an appearance or been appointed by the court to represent the parent of the child, the attorney shall continue to represent the parent throughout the proceedings. If the attorney-client relationship is discontinued, the court shall advise the parent of the right to have new counsel retained or appointed for the remainder of the proceedings.

(c)1. A waiver of counsel may not be accepted if it appears that the parent is unable to make an intelligent and understanding choice because of mental condition, age, education, experience, the nature or complexity of the case, or other factors.

2. A waiver of counsel made in court must be of record.

3. If a waiver of counsel is accepted at any hearing or proceeding, the offer of assistance of counsel must be renewed by the court at each subsequent stage of the proceedings at which the parent appears without counsel.

(d) This subsection does not apply to any parent who has voluntarily executed a written surrender of the child and consents to the entry of a court order terminating parental rights.

(10) Court-appointed counsel representing indigent parents at shelter hearings shall be paid from state funds appropriated by general law.

(11) The court shall encourage the Statewide Guardian Ad Litem Office to provide greater representation to those children who are within 1 year of transferring out of foster care.

History.--s. 20, ch. 78-414; s. 5, ch. 84-311; s. 4, ch. 87-289; s. 4, ch. 90-306; s. 2, ch. 92-158; s. 3, ch. 94-164; s. 5, ch. 95-228; s. 8, ch. 98-280; s. 24, ch. 98-403; s. 7, ch. 99-193; s. 16, ch. 2000-139; s. 1, ch. 2002-216; s. 1, ch. 2005-179; s. 3, 2005-239; s. 3, ch. 2006-86; s. 2, ch. 2006-194.

Note.--Former s. 39.40.

39.0131 Permanent mailing address designation.--Upon the first appearance before the court, each party shall provide to the court a permanent mailing address. The court shall advise each party that this address will be used by the court and the petitioner for notice purposes unless and until the party notifies the court and the petitioner in writing of a new mailing address.

History.--s. 11, ch. 94-164; s. 25, ch. 98-403.

Note.--Former s. 39.4057.

39.0132 Oaths, records, and confidential information.--

(1) The judge, clerks or deputy clerks, or authorized agents of the department shall each have the power to administer oaths and affirmations.

(2) The court shall make and keep records of all cases brought before it pursuant to this chapter and shall preserve the records pertaining to a dependent child 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 them, except that records of cases where orders were entered permanently depriving a parent of the custody of a juvenile shall be preserved permanently. The court shall make official records, consisting of all petitions and orders filed in a case arising pursuant to this chapter and any other pleadings, certificates, proofs of publication, summonses, warrants, and other writs which may be filed therein.

(3) The clerk shall keep all court records required by this chapter separate from other records of the circuit court. All court records required by this chapter shall not be open to inspection by the public. All records shall be inspected only upon order of the court by persons deemed by the court to have a proper interest therein, except that, subject to the provisions of s. 63.162, a child and the parents of the child and their attorneys, guardian ad litem, law enforcement agencies, and the department and its designees shall always have the right to inspect and copy any official record pertaining to the child. The Justice Administrative Commission may inspect court dockets required by this chapter as necessary to audit compensation of court-appointed attorneys. If the docket is insufficient for purposes of the audit, the commission may petition the court for additional documentation as necessary and appropriate. The court may permit authorized representatives of recognized organizations compiling statistics for proper purposes to inspect and make abstracts from official records, under whatever conditions upon their use and disposition the court may deem proper, and may punish by contempt proceedings any violation of those conditions.

(4)(a)1. All information obtained pursuant to this part in the discharge of official duty by any judge, employee of the court, authorized agent of the department, correctional probation officer, or law enforcement agent is confidential and exempt from s. 119.07(1) and may not be disclosed to anyone other than the authorized personnel of the court, the department and its designees, correctional probation officers, law enforcement agents, guardian ad litem, and others entitled under this chapter to receive that information, except upon order of the court.

2. Any information related to the best interests of a child, as determined by a guardian ad litem, which is held by a guardian ad litem, including but not limited to medical, mental health, substance abuse, child care, education, law enforcement, court, social services, and financial records; and any other information maintained by a guardian ad litem which is identified as confidential information under this chapter; is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Such confidential and exempt information may not be disclosed to anyone other than the authorized personnel of the court, the department and its designees, correctional probation officers, law enforcement agents, guardians ad litem, and others entitled under this chapter to receive that information, except upon order of the court. This subparagraph is subject to the Open Government Sunset Review Act of 1995 in accordance

with s. 119.15, and shall stand repealed on October 2, 2010, unless reviewed and saved from repeal through reenactment by the Legislature.

(b) The department shall disclose to the school superintendent the presence of any child in the care and custody or under the jurisdiction or supervision of the department who has a known history of criminal sexual behavior with other juveniles; is an alleged juvenile sex offender, as defined in s. 39.01; or has pled guilty or nolo contendere to, or has been found to have committed, a violation of chapter 794, chapter 796, chapter 800, s. 827.071, or s. 847.0133, regardless of adjudication. Any employee of a district school board who knowingly and willfully discloses such information to an unauthorized person commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(5) All orders of the court entered pursuant to this chapter shall be in writing and signed by the judge, except that the clerk or deputy clerk may sign a summons or notice to appear.

(6) No court record of proceedings under this chapter shall be admissible in evidence in any other civil or criminal proceeding, except that:

(a) Records of proceedings under this chapter forming a part of the record on appeal shall be used in the appellate court in the manner hereinafter provided.

(b) Records necessary therefor shall be admissible in evidence in any case in which a person is being tried upon a charge of having committed perjury.

(c) Records of proceedings under this chapter may be used to prove disqualification pursuant to s. 435.06 and for proof regarding such disqualification in a chapter 120 proceeding.

(d) A final order entered pursuant to an adjudicatory hearing is admissible in evidence in any subsequent civil proceeding relating to placement of, access to, parental time with, adoption of, or parental rights and responsibilities for the same child or a sibling of that child.

(e) Evidence admitted in any proceeding under this chapter may be admissible in evidence when offered by any party in a subsequent civil proceeding relating to placement of, access to, parental time with, adoption of, or parental rights and responsibilities for the same child or a sibling of that child if:

1. Notice is given to the opposing party or opposing party's counsel of the intent to offer the evidence and a copy of such evidence is delivered to the opposing party or the opposing party's counsel; and
2. The evidence is otherwise admissible in the subsequent civil proceeding.

(7) Final orders, records, and evidence in any proceeding under this chapter which are subsequently admitted in evidence pursuant to subsection (6) remain subject to subsections (3) and (4).

History.--s. 20, ch. 78-414; s. 15, ch. 79-164; s. 3, ch. 87-238; s. 40, ch. 89-526; s. 7, ch. 90-208; s. 13, ch. 90-360; s. 16, ch. 91-57; s. 18, ch. 93-39; s. 32, ch. 95-228; s. 119, ch. 95-418; s. 3, ch. 96-268; s. 16, ch. 96-406; s. 1, ch. 98-158; s. 26, ch. 98-403; s. 16, ch. 99-2; s. 8, ch. 99-193; s. 10, ch. 99-284; s. 17, ch. 2000-139; s. 2, ch. 2005-213; s. 24, ch. 2005-236; s. 4, ch. 2005-239.

Note.--Former s. 39.411.

39.0133 Court and witness fees.--In all proceedings under this chapter, no court fees shall be charged against, and no witness fees shall be allowed to, any party to a petition or any parent or legal custodian or child named in a summons. Other witnesses shall be paid the witness fees fixed by law.

History.--s. 20, ch. 78-414; s. 27, ch. 98-403.

Note.--Former s. 39.414.

39.0134 Appointed counsel; compensation.-- If counsel is entitled to receive compensation for representation pursuant to a court appointment in a dependency proceeding or a termination of parental rights proceeding pursuant to this chapter, such compensation shall be paid in accordance with s. 27.5304. The state may acquire and enforce a lien upon court-ordered payment of attorney's fees and costs in accordance with s. 984.08.

History.--s. 12, ch. 84-311; s. 9, ch. 87-289; s. 28, ch. 98-403; s. 9, ch. 99-193; s. 57, ch. 2003-402; s. 36, ch. 2004-265.

Note.-- Section 1, ch. 92-37, provides that "[n]otwithstanding the provisions of chapter 39, Florida Statutes, to the contrary, the attorneys whose compensation was provided in the November 1989 Supplemental Appropriations Act and is continued in subsequent general appropriations acts shall provide legal representation in cases arising under sections 39.40-39.474, Florida Statutes." Provisions within chapter 39 were transferred to other locations by ch. 97-238, ch. 98-403, and ch. 2000-139. Some of the material within the cited range can be found at parts VI, VIII, and XI of ch. 39, as redesignated by ch. 98-403 and ch. 2000-139, and ch. 984, as redesignated by ch. 97-238.

Note.--Former ss. 39.415, 39.474.

39.0135 Operations and Maintenance Trust Fund.--The department shall deposit all child support payments made to the department pursuant to this chapter into the Operations and Maintenance Trust Fund. The purpose of this funding is to care for children who are committed to the temporary legal custody of the department.

History.--s. 87, ch. 86-220; s. 10, ch. 90-306; s. 16, ch. 96-418; s. 167, ch. 97-101; s. 29, ch. 98-403.

Note.--Former s. 39.418.

39.0136 Time limitations; continuances.--

(1) The Legislature finds that time is of the essence for establishing permanency for a child in the dependency system. Time limitations are a right of the child which may not be waived, extended, or continued at the request of any party except as provided in this section.

(2) The time limitations in this chapter do not include:

(a) Periods of delay resulting from a continuance granted at the request of the child's counsel or the child's guardian ad litem or, if the child is of sufficient capacity to express reasonable consent, at the request or with the consent of the child. The court must consider the best interests of the child when determining periods of delay under this section.

(b) Periods of delay resulting from a continuance granted at the request of any party if the continuance is granted:

1. Because of an unavailability of evidence that is material to the case if the requesting party has exercised due diligence to obtain evidence and there are substantial grounds to believe that the evidence will be available within 30 days. However, if the requesting party is not prepared to proceed within 30 days, any other party may move for issuance of an order to show cause or the court on its own motion may impose appropriate sanctions, which may include dismissal of the petition.

2. To allow the requesting party additional time to prepare the case and additional time is justified because of an exceptional circumstance.

(c) Reasonable periods of delay necessary to accomplish notice of the hearing to the child's parent or legal custodian; however, the petitioner shall continue regular efforts to provide notice to the parents during the periods of delay.

(3) Notwithstanding subsection (2), in order to expedite permanency for a child, the total time allowed for continuances or extensions of time may not exceed 60 days within any 12-month period for proceedings conducted under this chapter. A continuance or extension of time may be granted only for extraordinary circumstances in which it is necessary to preserve the constitutional rights of a party or if substantial evidence exists to demonstrate that without granting a continuance or extension of time the child's best interests will be harmed.

(4) Notwithstanding subsection (2), a continuance or an extension of time is limited to the number of days absolutely necessary to complete a necessary task in order to preserve the rights of a party or the best interests of a child.

History.--s. 4, ch. 2006-86.

39.0137 Federal law; rulemaking authority.--

(1) This chapter does not supersede the requirements of the Indian Child Welfare Act, 25 U.S.C. ss. 1901, et seq., or the Multi-Ethnic Placement Act of 1994, Pub. L. No.103-382, as amended, or the implementing regulations.

(2) The department shall adopt rules no later than July 1, 2007, to ensure that the provisions of these federal laws are enforced in this state. The department is encouraged to enter into agreements with recognized American Indian tribes in order to facilitate the implementation of the Indian Child Welfare Act.

History.--s. 5, ch. 2006-86.

39.0138 Criminal history records check; limit on placement of a child.--

(1) The department shall conduct a criminal history records check on all persons being considered by the department for placement of a child subject to a placement decision under this chapter, including all nonrelative placement decisions, all members of the household of the person being considered, and frequent visitors to the household. For purposes of this section, a criminal history records check may include, but is not limited to, submission of fingerprints to the Department of Law Enforcement for processing and forwarding to the Federal Bureau of Investigation for state and national criminal history information, and local criminal records checks through local law enforcement agencies. A criminal history records check must also include a search of the department's automated abuse information system. The department shall establish by rule standards for evaluating any information contained in the automated system relating to a person who must be screened for purposes of making a placement decision.

(2) The department may not place a child with a person other than a parent if the criminal history records check reveals that the person has been convicted of any felony that falls within any of the following categories:

- (a) Child abuse, abandonment, or neglect;
- (b) Domestic violence;
- (c) Child pornography or other felony in which a child was a victim of the offense; or
- (d) Homicide, sexual battery, or other felony involving violence, other than felony assault or felony battery when an adult was the victim of the assault or battery.

(3) The department may not place a child with a person other than a parent if the criminal history records check reveals that the person has, within the previous 5 years, been convicted of a felony that falls within any of the following categories:

- (a) Assault;
- (b) Battery; or
- (c) A drug-related offense.

(4) The department may place a child in a home that otherwise meets placement requirements if a name check of state and local criminal history records systems does not disqualify the applicant and if the department submits fingerprints to the Department of Law Enforcement for forwarding to the Federal Bureau of Investigation and is awaiting the results of the state and national criminal history records check.

(5) Persons with whom placement of a child is being considered or approved must disclose to the department any prior or pending local, state, or national criminal proceedings in which they are or have been involved.

(6) The department may examine the results of any criminal history records check of any person, including a parent, with whom placement of a child is being considered under this section. The complete criminal history records check must be considered when determining whether placement with the person will jeopardize the safety of the child being placed.

(7)(a) The court may review a decision of the department to grant or deny the placement of a child based upon information from the criminal history records check. The review may be upon the motion of any party, the request of any person who has been denied a placement by the department, or on the court's own motion. The court shall prepare written findings to support its decision in this matter.

(b) A person who is seeking placement of a child but is denied the placement because of the results of a criminal history records check has the burden of setting forth sufficient evidence of rehabilitation to show that the person will not present a danger to the child if the placement of the child is allowed. Evidence of rehabilitation may include, but is not limited to, the circumstances surrounding the incident providing the basis for denying the application, the time period that has elapsed since the incident, the nature of the harm caused to the victim, whether the victim was a child, the history of the person since the incident, whether the person has complied with any requirement to pay restitution, and any other evidence or circumstances indicating that the person will not present a danger to the child if the placement of the child is allowed.

History.--s. 6, ch. 2006-86; s. 3, ch. 2008-245.

39.0139 Visitation or other contact; restrictions.--

(1) **SHORT TITLE.**--This section may be cited as the "Keeping Children Safe Act."

(2) **LEGISLATIVE FINDINGS AND INTENT.**--

(a) The Legislature finds that:

1. For some children who are abused, abandoned, or neglected by a parent or other caregiver, abuse may include sexual abuse.

2. These same children are at risk of suffering from further harm during visitation or other contact.

3. Visitation or other contact with the child may be used to influence the child's testimony.

(b) It is the intent of the Legislature to protect children and reduce the risk of further harm to children who have been sexually abused or exploited by a parent or other caregiver by placing additional requirements on judicial determinations related to visitation and other contact.

(3) **PRESUMPTION OF DETRIMENT.**--

(a) A rebuttable presumption of detriment to a child is created when a parent or caregiver:

1. Has been the subject of a report to the child abuse hotline alleging sexual abuse of any child as defined in s. 39.01;

2. Has been found guilty of, regardless of adjudication, or has entered a plea of guilty or nolo contendere to, charges under the following statutes or substantially similar statutes of other jurisdictions:

a. Section 787.04, relating to removing minors from the state or concealing minors

contrary to court order;

b. Section 794.011, relating to sexual battery;

c. Section 798.02, relating to lewd and lascivious behavior;

d. Chapter 800, relating to lewdness and indecent exposure;

- e. Section 826.04, relating to incest; or
- f. Chapter 827, relating to the abuse of children; or

3. Has been determined by a court to be a sexual predator as defined in s. 775.21 or has received a substantially similar designation under laws of another jurisdiction.

(b) For purposes of this subsection, “substantially similar” has the same meaning as in s. 39.806(1)(d)2.

(4) HEARINGS.-- A person who meets any of the criteria set forth in paragraph (3)(a) may visit or have other contact with a child only after a hearing and an order by the court that allows the visitation or other contact. At such a hearing:

(a) The court must appoint an attorney ad litem or a guardian ad litem for the child if one has not already been appointed. Any attorney ad litem or guardian ad litem appointed shall have special training in the dynamics of child sexual abuse.

(b) The court may receive and rely upon any relevant and material evidence submitted, including written and oral reports, to the extent of its probative value in its effort to determine the action to be taken with regard to the child, even if these reports and evidence may not be competent in an adjudicatory hearing.

(c) If the court finds the person proves by clear and convincing evidence that the safety, well-being, and physical, mental, and emotional health of the child is not endangered by such visitation or other contact, the presumption in subsection (3) is rebutted and the court may allow visitation or other contact. The court shall enter a written order specifying any conditions it finds necessary to protect the child.

(d) If the court finds the person did not rebut the presumption established in subsection (3), the court shall enter a written order prohibiting or restricting visitation or other contact with the child.

(5) CONDITIONS.-- Any visitation or other contact ordered under paragraph (4) (d) shall be:

(a) Supervised by a person who has previously received special training in the dynamics of child sexual abuse; or

(b) Conducted in a supervised visitation program, provided that the program has an agreement with the court and a current affidavit of compliance on file with the chief judge of the circuit in which the program is located affirming that the program has agreed to comply with the minimum standards contained in the administrative order issued by the Chief Justice of the Supreme Court on November 17, 1999, and provided the program has a written agreement with the court and with the department as described in s. 753.05 containing policies and guidelines specifically related to referrals involving child sexual abuse.

(6) ADDITIONAL CONSIDERATIONS.--

(a) If a party or participant, based on communication with the child or other firsthand knowledge, informs the court that a person is attempting to influence the testimony of the child, the court shall immediately suspend visitation or other contact. The court shall then hold a hearing and determine whether it is in the best interests of the child to prohibit or restrict visitation or other contact.

(b) If a child is in therapy as a result of any of the allegations or convictions contained in paragraph

(3)(a) and the child’s therapist reports that the visitation or other contact is impeding the child’s therapeutic progress, the court shall convene a hearing within 7 business days to review the terms, conditions, or appropriateness of continued visitation or other contact.

History.--s. 1, ch. 2007-109.

39.0141 Missing children; report required.--Whenever the whereabouts of a child involved with the department becomes unknown, the department, the community-based care provider, or the sheriff’s office providing investigative services for the department shall make reasonable efforts, as defined by rule, to locate the child. If, pursuant to criteria established by rule, the child is determined to be missing, the

department, the community-based care provider, or the sheriff's office shall file a report that the child is missing in accordance with s. 937.021.

History.--s. 4, ch. 2008-245.