

Objective 5: Examine barriers to reporting neonatal withdrawal syndrome by medical practitioners while balancing a mother's privacy interests.

Q: How can women be allowed to ask for help without fear of losing children or being arrested? (There may be a need for simultaneous treatment)

A: By statute, a child will not be removed from a parent if there are reasonable efforts that can be made to make the child safe. For a drug endangered newborn, if the mother voluntarily places the child with the father or an appropriate relative or non-relative until she is well enough to safely care for the child and DCF is confident that she will not retrieve the child when we close our investigation, then DCF would not have to interfere with her custodial rights. Similarly, if the mother seeks help for her drug addiction and makes appropriate arrangements for care of the child while she is in treatment, DCF would not have to remove the child. If she makes this request at or shortly after the time of birth, there would be no need for law enforcement involvement, in my opinion.

F.S. 39.402 (2), the applicable statute on "reasonable efforts" states:

A child taken into custody may be placed or continued in a shelter only if one or more of the criteria in subsection (1) applies and the court has made a specific finding of fact regarding the necessity for removal of the child from the home and has made a determination that the provision of appropriate and available services will not eliminate the need for placement.

Q: Who can view or receive a copy of a hotline report and the results of the investigation?

A: Hotline reports are confidential. As set out in F.S. 39.202, in part:

all records held by the department concerning reports of child abandonment, abuse, or neglect, including reports made to the central abuse hotline and all records generated as a result of such reports, shall be confidential and exempt from the provisions of s. 119.07(1) and shall not be disclosed except as specifically authorized by this chapter.

Persons who may be given access to an individual report are as follows (F.S. 39.202):

(a) Employees, authorized agents, or contract providers of the department, the Department of Health, the Agency for Persons with Disabilities, or county agencies responsible for carrying out:

1. Child or adult protective investigations;
2. Ongoing child or adult protective services;
3. Early intervention and prevention services;
4. Healthy Start services;
5. Licensure or approval of adoptive homes, foster homes, child care facilities, facilities licensed under chapter 393, or family day care homes or informal child care providers who receive school readiness funding, or other homes used to provide for the care and welfare of children; or 6. Services for victims of domestic violence when provided by certified domestic violence centers working at the department's request as case consultants or with shared clients.

Also, employees or agents of the Department of Juvenile Justice responsible for the provision of services to children, pursuant to chapters 984 and 985 may be granted access to the report.

(b) Criminal justice agencies of appropriate jurisdiction.

(c) The state attorney of the judicial circuit in which the child resides or in which the alleged abuse or neglect occurred.

(d) The parent or legal custodian of any child who is alleged to have been abused, abandoned, or neglected, and the child, and their attorneys, including any attorney representing a child in civil or criminal

proceedings. This access shall be made available no later than 30 days after the department receives the initial report of abuse, neglect, or abandonment. However, any information otherwise made confidential or exempt by law shall not be released pursuant to this paragraph.

(e) Any person alleged in the report as having caused the abuse, abandonment, or neglect of a child. This access shall be made available no later than 30 days after the department receives the initial report of abuse, abandonment, or neglect and, when the alleged perpetrator is not a parent, shall be limited to information involving the protective investigation only and shall not include any information relating to

subsequent dependency proceedings. However, any information otherwise made confidential or exempt by law shall not be released pursuant to this paragraph.

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

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

(h) Any appropriate official of the department or the Agency for Persons with Disabilities who is responsible for:

1. Administration or supervision of the department's program for the prevention, investigation, or treatment of child abuse, abandonment, or neglect, or abuse, neglect, or exploitation of a vulnerable adult, when

carrying out his or her official function;

2. Taking appropriate administrative action concerning an employee of the department or the agency who is alleged to have perpetrated child abuse, abandonment, or neglect, or abuse, neglect, or exploitation of a vulnerable adult; or

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

(i) Any person authorized by the department who is engaged in the use of such records or information for bona fide research, statistical, or audit purposes. Such individual or entity shall enter into a privacy and security agreement with the department and shall comply with all laws and rules governing the use of such records and information for research and statistical purposes. Information identifying the subjects of such records or information shall be treated as confidential by the researcher and shall not be released in any form.

(j) The Division of Administrative Hearings for purposes of any administrative challenge.

(k) Any appropriate official of a Florida advocacy council investigating a report of known or suspected child abuse, abandonment, or neglect; the Auditor General or the Office of Program Policy Analysis and Government Accountability for the purpose of conducting audits or

examinations pursuant to law; or the guardian ad litem for the child.

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

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

(n) Employees or agents of the Department of Revenue responsible for child support enforcement activities.

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

(p) An employee of the local school district who is designated as a liaison between the school district and the department pursuant to an interagency agreement required under s. 39.0016 and the principal of a public school, private school, or charter school where the child is a student. Information contained in the records which the liaison or the principal determines are necessary for a school employee to effectively provide a student with educational services may be released to that employee.

1(q) Staff of a children's advocacy center that is established and operated under s. 39.3035.

(r) A physician licensed under chapter 458 or chapter 459, a psychologist licensed under chapter 490, or a mental health professional licensed under chapter 491 engaged in the care or treatment of the child.

(s) Persons with whom the department is seeking to place the child or to whom placement has been granted, including foster parents for whom an approved home study has been conducted, the designee of a licensed residential group home described in s. 39.523, an approved relative or non-relative with whom a child is placed pursuant to s. 39.402, pre-adoptive parents for whom a favorable preliminary adoptive home study has been conducted, adoptive parents, or an adoption entity acting on behalf of pre-adoptive or adoptive parents.

(3) The department may release to professional persons such information as is necessary for the diagnosis and treatment of the child or the person perpetrating the abuse or neglect.

Q: Is the identity of the subject of abuse report public information?

A: No, but a court has the authority to release such information.

F. S. 39.2021(2)(c) states:

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

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

Q: Is the name of a reporter confidential?

In making a determination to release confidential information, the court shall balance the best interests of the child who is the focus of the investigation and the interests of that child's siblings, together with the privacy rights of other persons identified in the reports against the public interest for access to public records. However, this subsection does not contravene s. 39.202, which protects the name of any person reporting abuse, abandonment, or neglect of a child. F.S. 39.201(2)(c)

Q: Where are the abuse reports maintained?

A: The allegations received by the hotline, reporter information, and results of the investigation are maintained electronically in the **Florida Safe Families Network (FSFN)** - DCF's child welfare computer system in Tallahassee. This is Florida's federally supported State-wide Automated Child Welfare Information System (SACWIS). A recording of every hotline call is also maintained.

Q: Who can access FSFN?

A: Only those persons given access through the a DCF Security Officer can access FSFN. Various levels of access are available. Many do not include the ability to see abuse reports. Attached is a packet of information regarding DCF Security Policy and FSFN. Having access to FSFN only gives you authorization to see cases that are a part of your job duties; you cannot look at reports or other information not relevant to your work. So, a report regarding a mother who is alleged to have abused a child through drug endangerment should only be viewed by those persons who have a statutorily granted need to see the report.

Q: Is there a penalty for wrongfully disclosing confidential information contained in the central abuse hotline?

A: Yes, it's a second degree misdemeanor. F.S. 39.205(6) says:

6) A person who knowingly and willfully makes public or discloses any confidential information contained in the central abuse hotline or in the records of any child abuse, abandonment, or neglect case, except as provided in this chapter, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Q: Is there a process for punishing an employee or person who has access to FSFN who intentionally accesses a report they have no legitimately purpose to view?

A: Yes. The Inspector General for DCF handles investigations of alleged wrongful FSFN access. Punishment can include suspension, termination, and criminal prosecution. There is an audit trail maintained by FSFN every time you log in and for every record you see and every entry you make while in the system. Most violations are reported by third parties. There is not an automatic notification to the IG or any FSFN supervisor of wrongful access.

Q: How many calls were made last year to DCF's Hotline for allegations of substance abusing mothers and newborns?

Currently, DCF's maltreatment category code value for this is just a general specification of "Substance Misuse", so DCF is not able to report on this population with 100% confidence. DCF has conducted an analysis several months ago where they used a series of assumptions about the data they do have to **estimate** this population. Here's the summary:

During fiscal year 2010-11, there were 16,763 children with verified allegations of Substance Misuse, out of 105,998 allegations of Substance Misuse. This is a verification rate of 15.8 %. When focusing on newborns with Substance Misuse reported to the Hotline by medical professionals where the Mother was among the alleged perpetrators (1,141 / 3,072), the verification rate increases to 37.1 % which is more than twice the verification rate for this maltreatment among the general population.

Fiscal Year 2010_11			
	Mother	Mother	
Reporter Source Descriptions	Allegations 1 day (newborns)	Verified Allegations 1 day (newborns)	% of Substance Misuse for Mothers with Newborns
Hospital Social Worker	1944	729	37.5%
Medical Personnel	59	25	42.4%
Nurse	1046	379	36.2%
Other Health/Mental Health Professional	21	7	33.3%
Physician	2	1	50.0%
Total	3,072	1,141	37.1%