

3. When an investigator suspects that a false report has been made, the investigator must advise the reporter of the potential administrative fines, civil and/or criminal penalties which may result if a false report has occurred.
4. When an investigator suspects that a false report has been made, the investigator must advise the falsely alleged perpetrator of that person's rights to pursue civil and or criminal penalties against the false reporter. The investigator must provide the brochure CF/PI 175-32 to the alleged perpetrator and others involved in the report. The case file chronology must document the name of the person to whom the brochure was given and the date it was given.
5. In determining whether a report has been filed maliciously, the department shall consider the following where applicable. It shall not be necessary for all factors to be considered or present in each case in order to determine that a report constitutes a false report.
 - a. Have the facts alleged in the report been determined to be untrue?
 - b. Has the reporter admitted that the report is untrue or that it is a false report?
 - c. Have criminal charges been filed for false reporting?
 - d. Has the reporter made contradictory statements?
 - e. Have prior reports by this reporter been determined to be false or to have no indicators of abuse, neglect or abandonment?
 - f. Have statements been made during the investigation, which indicate retaliation?
 - g. Is there a history of family disputes?
 - h. Are custody issues being decided concurrently with the report?
 - i. Is the reported information patently false relative to what is observable?
 - j. Is information provided by an individual who witnessed the reporting of false information or to whom the reporter admitted to false reporting?
 - k. Is there likelihood of personal or financial gain for the reporter?
 - l. Did the responsible caregiver have access to the alleged victim at the time the alleged maltreatment occurred?
 - m. Is there any other relevant information from neighbors, relatives, professionals or other persons?
6. Protective investigation staff shall, in consultation with the child welfare attorney, evaluate and document the reasons to believe that a false report has been made. The alleged perpetrator of a false report must be notified of the right to pursue administrative and criminal remedies.
7. If a child is alleged or strongly suspected to be a false reporter, the district shall first consider a referral for counseling or other therapeutic services in lieu of any consideration for imposing an administrative fine or other penalty.

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

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

1. In determining the amount of the administrative fine, the department shall consider the following where applicable:
 - a. Gravity of the violation, including the severity of real or probable physical or emotional harm resulting from the false report and its investigation by the department.
 - b. Actions taken by the false reporter to retract the report or actions by the false reporter to encourage the investigation on the basis of false information.
 - c. The number of prior occurrences of false reporting by this reporter.
 - d. Nature of the false allegation (alleged maltreatment), including:
 - a. Number of victims alleged to be abused, neglected or abandoned.
 - b. Whether the report required an immediate response.
 - c. The extent to which normal family or institutional routines were disrupted.
 - d. The necessity of any physical, medical or mental health examinations or evaluations and the invasiveness of the procedures required.
 - e. The actual expense of the investigation to the subjects of the report and to the department.
 - f. The number of interviews required to fully investigate the report.
 - g. The risk of harm to which department staff was subjected and any resultant real harm.
 - e. The fine shall not exceed **\$10,000** for each determination of false reporting.

Notice of Proposed Agency Action

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

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

Administrative Hearing to Impose an Administrative Fine for False Reporting

1. To the extent possible, the identity of the subjects of the report shall be kept confidential. The hearing shall be closed. Upon publication, the recommended and final orders shall identify the subjects of the report only by initials. The identity of the alleged false reporter shall be protected only until such time as there is a judicial or administrative finding of false reporting by such individual.
2. At hearing the department must prove by a preponderance of the evidence the falseness of the report and the identity of the reporter.
3. If not called as witnesses or otherwise informed of the hearing, the subjects of the report must be notified of the outcome of the hearing.
4. All fines collected pursuant to s. 39.206, F.S., shall be deposited into the local clearing fund account and journal transferred to the Deputy Secretary, Administrative Trust Fund.

Referral to Law Enforcement

1. Subsections 39.205(5) and (6), F.S., provide as follows:
 - a. If the department or its authorized agent has determined after its investigation that a report is false, the department shall, with the consent of the alleged perpetrator, refer the report to the local law enforcement agency having jurisdiction for an investigation to determine whether sufficient evidence exists to refer the case for prosecution for filing a false report as defined in s. 39.01. During the pendency of the investigation, the department must notify the local law enforcement agency of, and the local law enforcement agency must respond to all subsequent reports concerning children in that same family in accordance with s. 39.301. If the law enforcement agency believes that there are indicators of abuse, abandonment, or neglect, it must immediately notify the department, which must assure the safety of the children. If the law enforcement agency finds sufficient evidence for prosecution for filing a false report, it must refer the case to the appropriate state attorney for prosecution.
 - b. A person who knowingly and willfully makes a false report of child abuse, abandonment, or neglect, or who advises another to make a false report, is guilty of a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083. Anyone making a report who is acting in good faith is immune from any liability under this subsection.
 - c. Each district must work with local law enforcement to establish procedures within local agreements that deal with the false reporting provisions. These shall include procedures for notifying the department if law enforcement identifies abuse, neglect or abandonment, in order to assure the safety of the children.

- d. Each district must ensure that all available data collection resources are being utilized in order to collect false reporting data that will be needed for statutorily required reports.
- e. At the close of each investigation, the protective investigator shall document suspected false reporting in the investigative level of the FAHIS report.
- f. The districts must ensure the collection, compilation and storage of the following data:
 - a. Number of reports referred to law enforcement.
 - b. Number of reports reviewed for pursuit of an administrative fine.
 - c. Number of fines actually imposed along with the amount of the fine.
 - d. Number of civil cases where the department is called as a party.

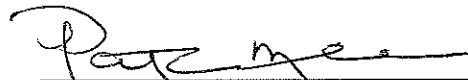
Civil Damages

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

“A person who knowingly and willfully makes a false report of abuse, abandonment, or neglect of a child, or a person who counsels another to make a false report may be civilly liable for damages suffered, including reasonable attorney fees and costs, as a result of the filing of the false report. If the name of the person who filed the false report or counseled another to do so has not been disclosed under subsection (9), the department as custodian of the records may be named as a party in the suit until the dependency court determines in a written order upon an in camera inspection of the records and report that there is a reasonable basis for believing that the report was false and that the identity of the reporter may be disclosed for the purpose of proceeding with a lawsuit for civil damages resulting from the filing of the false report. The falsely alleged perpetrator may submit witness affidavits to assist the court in making this initial determination.”

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

BY DIRECTION OF THE CHIEF EXECUTIVE OFFICER:



DR. PATRICIA NELLIUS-GUTHRIE
Chief Executive Officer
CBC of Brevard, Inc.

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