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A bill to be entitled

An act relating to child abuse and abuse of vulnerable adults; amending s. 39.201, F.S.; revising language with respect to mandatory reports of child abuse; amending s. 39.204, F.S.; abrogating the right of privileged communication between any member of the clergy and a person seeking spiritual counsel and advice with respect to cases involving child abuse, abandonment, or neglect; amending s. 90.505, F.S.; proscribing the privilege of communications to clergy by certain individuals; amending s. 95.11, F.S.; revising language with respect to the statute of limitations in certain actions; providing a time period for suits with respect to intentional torts based on abuse of a vulnerable adult, for intentional torts based upon abuse of a child, and for intentional torts based upon childhood sexual abuse; amending s. 794.011, F.S.; providing that a person commits sexual battery which is a first degree felony when the offender is a person who has responsibility for the welfare, guidance, direction, supervision, education, or spiritual well-being of a child under certain circumstances; creating s. 800.05, F.S.; providing for a duty to report lewd and lascivious offenses; providing penalties for failure to report; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) and paragraph (c) of subsection (2) of section 39.201, Florida Statutes, are amended to read:



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30 39.201 Mandatory reports of child abuse, abandonment, or  
 31 neglect; mandatory reports of death; central abuse hotline.--

32 (1) Any person, ~~including, but not limited to, any:~~

33 ~~(a) Physician, osteopathic physician, medical examiner,~~  
 34 ~~chiropractic physician, nurse, or hospital personnel engaged in~~  
 35 ~~the admission, examination, care, or treatment of persons;~~

36 ~~(b) Health or mental health professional other than one~~  
 37 ~~listed in paragraph (a);~~

38 ~~(c) Practitioner who relies solely on spiritual means for~~  
 39 ~~healing;~~

40 ~~(d) School teacher or other school official or personnel;~~

41 ~~(e) Social worker, day care center worker, or other~~  
 42 ~~professional child care, foster care, residential, or~~  
 43 ~~institutional worker;~~

44 ~~(f) Law enforcement officer; or~~

45 ~~(g) Judge,~~

46  
 47 who knows, or has reasonable cause to suspect, that a child is  
 48 abused, abandoned, or neglected by a parent, legal custodian,  
 49 caregiver, or other person responsible for the child's welfare  
 50 shall report such knowledge or suspicion to the department in  
 51 the manner prescribed in subsection (2).

52 (2)

53 (c) Reporters in the following occupation categories  
 54 ~~designated in subsection (1)~~ are required to provide their names  
 55 to the hotline staff:

56 1. Physician, osteopathic physician, medical examiner,  
 57 chiropractic physician, nurse, or hospital personnel engaged in  
 58 the admission, examination, care, or treatment of persons;

59 2. Health or mental health professional other than those



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60 listed in subparagraph 1.;

61 3. Practitioner who relies solely on spiritual means for  
62 healing;

63 4. School teacher or other school official or personnel;

64 5. Social worker, day care center worker, or other  
65 professional child care, foster care, residential, or  
66 institutional worker;

67 6. Priest, rabbi, practitioner of Christian Science, or  
68 minister of any religious organization or denomination usually  
69 referred to as a church, or an individual reasonably believed so  
70 to be by the person consulting him or her;

71 7. Law enforcement officer; or

72 8. Judge.

73

74 The names of reporters shall be entered into the record of the  
75 report, but shall be held confidential as provided in s. 39.202.

76 Section 2. Section 39.204, Florida Statutes, is amended to  
77 read:

78 39.204 Abrogation of privileged communications in cases  
79 involving child abuse, abandonment, or neglect.--The privileged  
80 quality of communication between husband and wife, ~~and~~ between  
81 any professional person and his or her patient or client,  
82 between any member of the clergy, as defined in s. 90.505, and a  
83 person seeking spiritual counsel and advice, and any other  
84 privileged communication except that between attorney and client  
85 ~~or the privilege provided in s. 90.505,~~ as such communication  
86 relates both to the competency of the witness and to the  
87 exclusion of confidential communications, shall not apply to any  
88 communication involving the perpetrator or alleged perpetrator  
89 in any situation involving known or suspected child abuse,



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90 abandonment, or neglect and shall not constitute grounds for  
 91 failure to report as required by s. 39.201 regardless of the  
 92 source of the information requiring the report, failure to  
 93 cooperate with law enforcement or the department in its  
 94 activities pursuant to this chapter, or failure to give evidence  
 95 in any judicial proceeding relating to child abuse, abandonment,  
 96 or neglect.

97 Section 3. Subsection (4) is added to section 90.505,  
 98 Florida Statutes, to read:

99 90.505 Privilege with respect to communications to  
 100 clergy.--

101 (4) There is no privilege under this section for any  
 102 communication involving the perpetrator or alleged perpetrator  
 103 in any situation involving known or suspected child abuse,  
 104 abandonment, or neglect, as defined in s. 39.01, s. 794.011, s.  
 105 800.04, s. 827.03, or s. 984.03.

106 Section 4. Paragraph (o) of subsection (3) and subsection  
 107 (7) of section 95.11, Florida Statutes, are amended, and  
 108 subsections (9) and (10) are added to said section, to read:

109 95.11 Limitations other than for the recovery of real  
 110 property.--Actions other than for recovery of real property  
 111 shall be commenced as follows:

112 (3) WITHIN FOUR YEARS.--

113 (o) An action for assault, battery, false arrest,  
 114 malicious prosecution, malicious interference, false  
 115 imprisonment, or any other intentional tort, except as provided  
 116 in subsections (4), (5), ~~and~~ (7), (9), and (10).

117 (7) FOR INTENTIONAL TORTS BASED ON ABUSE OF A VULNERABLE  
 118 ADULT.--Notwithstanding any other provision of law to the  
 119 contrary:



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120        (a) An action founded on alleged abuse, as defined in ~~s.~~  
 121 ~~39.01~~, s. 415.102, ~~or s. 984.03~~, or incest, as defined in s.  
 122 826.04, of a vulnerable adult may be commenced ~~at any time~~  
 123 ~~within 7 years after the age of majority~~, ~~or~~ within 4 years  
 124 after the injured person leaves the dependency of the abuser, or  
 125 within 4 years from the time of discovery by the injured party  
 126 or by a person who is in a position of trust and confidence, as  
 127 defined in s. 415.102, of both the injury and the causal  
 128 relationship between the injury and the abuse, whichever occurs  
 129 later. In any event, the action must be begun within 7 years  
 130 after the act, event, or occurrence giving rise to the action.

131        (b) As used in this subsection, the term "vulnerable  
 132 adult" means a person 18 years of age or older whose ability to  
 133 perform the normal activities of daily living or to provide for  
 134 his or her own care or protection is impaired due to a mental,  
 135 emotional, physical, or developmental disability or  
 136 dysfunctioning, brain damage, or the infirmities of aging.

137        (9) FOR INTENTIONAL TORTS BASED ON ABUSE OF A CHILD.--

138        (a) An action founded on alleged abuse of a child, as  
 139 defined in s. 39.01 or s. 984.03, or incest, as defined in s.  
 140 826.04, may be commenced at any time within 7 years after the  
 141 age of majority, or within 4 years after the injured person  
 142 leaves the dependency of the abuser, or within 4 years from the  
 143 time of discovery by the injured party of both the injury and  
 144 the causal relationship between the injury and the abuse,  
 145 whichever occurs later.

146        (b) As used in this subsection, the term "child" means any  
 147 unmarried person under the age of 18 years who has not been  
 148 emancipated by order of the court.

149        (c) As used in this subsection, the term "abuse" does not



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150 include sexual abuse.

151 (10) FOR INTENTIONAL TORTS BASED ON CHILDHOOD SEXUAL  
152 ABUSE.--

153 (a) "Childhood sexual abuse," as used in this subsection,  
154 includes any act committed against the injured party that  
155 occurred when the injured party was under the age of 18 years  
156 and that is defined in s. 39.01, s. 794.011, s. 800.04, s.  
157 827.03, or s. 984.03, or incest, as defined in s. 826.04, or any  
158 prior laws of this state of similar effect at the time the act  
159 was committed. Nothing in this paragraph limits the  
160 availability of causes of action permitted under this paragraph,  
161 including causes of action against persons or entities other  
162 than the alleged perpetrator of the abuse.

163 (b) An action founded on alleged childhood sexual abuse,  
164 as defined in s. 39.01, s. 794.011, s. 800.04, s. 827.03, or s.  
165 984.03, or incest, as defined in s. 826.04, may be commenced  
166 within 7 years after the age of majority, or within 4 years  
167 after the injured person leaves the dependency of the abuser, or  
168 within 4 years from the date the injured person discovers or  
169 reasonably should have discovered that psychological injury or  
170 other illness was caused by the abuse, whichever period expires  
171 later, for any of the following actions:

172 1. An action against any person for committing an act of  
173 childhood sexual abuse.

174 2. An action for liability against any person or entity  
175 who owed a duty of care to the injured person, wherein a  
176 wrongful, intentional, or negligent act by that person or  
177 entity, or an employee, volunteer, representative, or agent of  
178 the entity, was a legal cause of the childhood sexual abuse that  
179 resulted in the harm to the injured person.



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180       3. An action for liability against any person or entity  
181 wherein an intentional act by that person or an employee,  
182 volunteer, representative, or agent of the entity was a legal  
183 cause of the childhood sexual abuse that resulted in the harm to  
184 the injured person.

185       (c) Notwithstanding any other provision of law, any action  
186 described in subparagraph (b)2. or subparagraph (b)3. that is  
187 permitted to be filed pursuant to paragraph (b) that would  
188 otherwise be barred as of January 1, 2004, solely because the  
189 applicable statute of limitations has or had expired, is  
190 revived, and, in that case, a cause of action may be commenced  
191 within 2 years after January 1, 2004. Nothing in this section  
192 shall be construed to alter the applicable statute of  
193 limitations period of an action that is not time barred as of  
194 January 1, 2004.

195       Section 5. Paragraph (h) is added to subsection (4) of  
196 section 794.011, Florida Statutes, and subsections (9) and (10)  
197 of said section are amended, to read:

198       794.011 Sexual battery.--

199       (4) A person who commits sexual battery upon a person 12  
200 years of age or older without that person's consent, under any  
201 of the following circumstances, commits a felony of the first  
202 degree, punishable as provided in s. 775.082, s. 775.083, s.  
203 775.084, or s. 794.0115:

204       (h) When the offender is a person who has responsibility  
205 for the welfare, guidance, direction, supervision, education, or  
206 spiritual well-being of the child.

207       (9) For prosecution under paragraph (4)(g) or (h),  
208 acquiescence to a person reasonably believed by the victim to be  
209 in a position of authority or control does not constitute



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210 consent, and it is not a defense that the perpetrator was not  
 211 actually in a position of control or authority if the  
 212 circumstances were such as to lead the victim to reasonably  
 213 believe that the person was in such a position.

214 (10) Any person who falsely accuses any person listed in  
 215 paragraph (4)(g) or (h) or other person in a position of control  
 216 or authority as an agent or employee of government of violating  
 217 paragraph (4)(g) or (h) is guilty of a felony of the third  
 218 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 219 775.084.

220 Section 6. Section 800.05, Florida Statutes, is created to  
 221 read:

222 800.05 Duty to report lewd and lascivious offenses;  
 223 penalties.--A person who observes or knows of the commission of  
 224 lewd and lascivious offenses defined in s. 800.04 and who:

225 (1) Has reasonable grounds to believe that he or she has  
 226 observed or has knowledge of the commission of a lewd and  
 227 lascivious offense defined in s. 800.04;

228 (2) Has the present ability to seek assistance for the  
 229 victim or victims by immediately reporting such offense to a law  
 230 enforcement officer;

231 (3) Would not be exposed to any threat of physical  
 232 violence for making such a report; and

233 (4) Fails to make a report

234  
 235 is guilty of a misdemeanor of the first degree, punishable as  
 236 provided in s. 775.082 or s. 775.083.

237 Section 7. This act shall take effect October 1, 2003.