

By Senator Bennett

21-1769-03

See HB

1                                   A bill to be entitled  
2           An act relating to child abuse and abuse of  
3           vulnerable adults; amending s. 39.201, F.S.;  
4           revising provisions with respect to mandatory  
5           reports of child abuse; amending s. 39.204,  
6           F.S.; abrogating the right of privileged  
7           communication between any member of the clergy  
8           and a person seeking spiritual counsel and  
9           advice with respect to cases involving child  
10          abuse, abandonment, or neglect; amending s.  
11          90.505, F.S.; proscribing the privilege of  
12          communications to clergy by certain  
13          individuals; amending s. 95.11, F.S.; revising  
14          provisions with respect to the statute of  
15          limitations in certain actions; providing a  
16          time period for suits with respect to  
17          intentional torts based on abuse of a  
18          vulnerable adult, for intentional torts based  
19          upon abuse of a child, and for intentional  
20          torts based upon childhood sexual abuse;  
21          amending s. 794.011, F.S.; providing that a  
22          person commits sexual battery which is a first  
23          degree felony when the offender is a person who  
24          has responsibility for the welfare, guidance,  
25          direction, supervision, education, or spiritual  
26          well-being of a child under certain  
27          circumstances; creating s. 800.05, F.S.;  
28          providing for a duty to report lewd and  
29          lascivious offenses; providing penalties for  
30          failure to report; providing an effective date.  
31

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

2

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

6 39.201 Mandatory reports of child abuse, abandonment,  
7 or neglect; mandatory reports of death; central abuse  
8 hotline.--

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

10 ~~(a) Physician, osteopathic physician, medical~~  
11 ~~examiner, chiropractic physician, nurse, or hospital personnel~~  
12 ~~engaged in the admission, examination, care, or treatment of~~  
13 ~~persons;~~

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

16 ~~(c) Practitioner who relies solely on spiritual means~~  
17 ~~for healing;~~

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

20 ~~(e) Social worker, day care center worker, or other~~  
21 ~~professional child care, foster care, residential, or~~  
22 ~~institutional worker;~~

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

24 ~~(g) Judge,~~

25

26 who knows, or has reasonable cause to suspect, that a child is  
27 abused, abandoned, or neglected by a parent, legal custodian,  
28 caregiver, or other person responsible for the child's welfare  
29 shall report such knowledge or suspicion to the department in  
30 the manner prescribed in subsection (2).

31 (2)

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

4 1. Physician, osteopathic physician, medical examiner,  
5 chiropractic physician, nurse, or hospital personnel engaged  
6 in the admission, examination, care, or treatment of persons;

7 2. Health or mental health professional other than  
8 those listed in subparagraph 1.;

9 3. Practitioner who relies solely on spiritual means  
10 for healing;

11 4. School teacher or other school official or  
12 personnel;

13 5. Social worker, day care center worker, or other  
14 professional child care, foster care, residential, or  
15 institutional worker;

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

20 7. Law enforcement officer; or

21 8. Judge.

22  
23 The names of reporters shall be entered into the record of the  
24 report, but shall be held confidential as provided in s.  
25 39.202.

26 Section 2. Section 39.204, Florida Statutes, is  
27 amended to read:

28 39.204 Abrogation of privileged communications in  
29 cases involving child abuse, abandonment, or neglect.--The  
30 privileged quality of communication between husband and wife,  
31 ~~and~~ between any professional person and his or her patient or

1 client, between any member of the clergy, as defined in s.  
2 90.505, and a person seeking spiritual counsel and advice, and  
3 any other privileged communication except that between  
4 attorney and client ~~or the privilege provided in s. 90.505,~~ as  
5 such communication relates both to the competency of the  
6 witness and to the exclusion of confidential communications,  
7 shall not apply to any communication involving the perpetrator  
8 or alleged perpetrator in any situation involving known or  
9 suspected child abuse, abandonment, or neglect and shall not  
10 constitute grounds for failure to report as required by s.  
11 39.201 regardless of the source of the information requiring  
12 the report, failure to cooperate with law enforcement or the  
13 department in its activities pursuant to this chapter, or  
14 failure to give evidence in any judicial proceeding relating  
15 to child abuse, abandonment, or neglect.

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

18 90.505 Privilege with respect to communications to  
19 clergy.--

20 (4) There is no privilege under this section for any  
21 communication involving the perpetrator or alleged perpetrator  
22 in any situation involving known or suspected child abuse,  
23 abandonment, or neglect, as defined in s. 39.01, s. 794.011,  
24 s. 800.04, s. 827.03, or s. 984.03.

25 Section 4. Paragraph (o) of subsection (3) and  
26 subsection (7) of section 95.11, Florida Statutes, are  
27 amended, and subsections (9) and (10) are added to that  
28 section, to read:

29 95.11 Limitations other than for the recovery of real  
30 property.--Actions other than for recovery of real property  
31 shall be commenced as follows:

1 (3) WITHIN FOUR YEARS.--

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

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

9 (a) An action founded on alleged abuse, as defined in  
10 ~~s. 39.01, s. 415.102, or s. 984.03~~, or incest, as defined in  
11 s. 826.04, of a vulnerable adult may be commenced at any time  
12 within 7 years after the age of majority, or within 4 years  
13 after the injured person leaves the dependency of the abuser,  
14 or within 4 years from the time of discovery by the injured  
15 party or by a person who is in a position of trust and  
16 confidence, as defined in s. 415.102, of both the injury and  
17 the causal relationship between the injury and the abuse,  
18 whichever occurs later. In any event, the action must be begun  
19 within 7 years after the act, event, or occurrence giving rise  
20 to the action.

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

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

28 (a) An action founded on alleged abuse of a child, as  
29 defined in s. 39.01 or s. 984.03, or incest, as defined in s.  
30 826.04, may be commenced at any time within 7 years after the  
31 age of majority, or within 4 years after the injured person

1 leaves the dependency of the abuser, or within 4 years from  
2 the time of discovery by the injured party of both the injury  
3 and the causal relationship between the injury and the abuse,  
4 whichever occurs later.

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

8 (c) As used in this subsection, the term "abuse  
9 does not include sexual abuse.

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

12 (a) "Childhood sexual abuse," as used in this  
13 subsection, includes any act committed against the injured  
14 party that occurred when the injured party was under the age  
15 of 18 years and that is defined in s. 39.01, s. 794.011, s.  
16 800.04, s. 827.03, or s. 984.03, or incest, as defined in s.  
17 826.04, or any prior laws of this state of similar effect at  
18 the time the act was committed. Nothing in this paragraph  
19 limits the availability of causes of action permitted under  
20 this paragraph, including causes of action against persons or  
21 entities other than the alleged perpetrator of the abuse.

22 (b) An action founded on alleged childhood sexual  
23 abuse, as defined in s. 39.01, s. 794.011, s. 800.04, s.  
24 827.03, or s. 984.03, or incest, as defined in s. 826.04, may  
25 be commenced within 7 years after the age of majority, or  
26 within 4 years after the injured person leaves the dependency  
27 of the abuser, or within 4 years from the date the injured  
28 person discovers or reasonably should have discovered that  
29 psychological injury or other illness occurring after the age  
30 of majority was caused by the abuse, whichever period expires  
31 later, for any of the following actions:

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

3           2. An action for liability against any person or  
4 entity who owed a duty of care to the injured person, wherein  
5 a wrongful or negligent act by that person or entity, or an  
6 employee, volunteer, representative, or agent of the entity,  
7 was a legal cause of the childhood sexual abuse that resulted  
8 in the harm to the injured person.

9           3. An action for liability against any person or  
10 entity wherein an intentional act by that person or entity was  
11 a legal cause of the childhood sexual abuse that resulted in  
12 the harm to the injured person.

13           (c) No action described in subparagraph 2. or  
14 subparagraph 3. of paragraph (b) may be commenced on or after  
15 the plaintiff's 25th birthday unless the person or entity knew  
16 or had reason to know, or was otherwise on notice, of any  
17 sexual misconduct with a child by an employee, volunteer,  
18 representative, or agent of the entity, and failed to notify  
19 law enforcement officials by the central abuse hotline as  
20 required by law.

21           (d) Notwithstanding any other provision of law, any  
22 claim for damages described in subparagraph 2. or subparagraph  
23 3. of paragraph (b) that is permitted to be filed pursuant to  
24 paragraph (c) that would otherwise be barred as of January 1,  
25 2004, solely because the applicable statute of limitations has  
26 or had expired, is revived, and, in that case, a cause of  
27 action may be commenced within 2 years after January 1,  
28 2004. Nothing in this section shall be construed to alter the  
29 applicable statute of limitations period of an action that is  
30 not time barred as of January 1, 2004.

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1           (e) Paragraph (c) does not apply to either of the  
2 following:

3           1. Any claim that has been litigated to finality on  
4 the merits in any court of competent jurisdiction prior to  
5 January 1, 2004. Termination of a prior action on the basis of  
6 the statute of limitations does not constitute a claim that  
7 has been litigated to finality on the merits.

8           2. Any written, compromised settlement agreement that  
9 has been entered into between a plaintiff and a defendant in  
10 which the plaintiff was represented by an attorney who was  
11 admitted to practice law in this state at the time of the  
12 settlement and in which the plaintiff signed the agreement.

13           Section 5. Paragraph (h) is added to subsection (4) of  
14 section 794.011, Florida Statutes, and subsections (9) and  
15 (10) of that section are amended, to read:

16           794.011 Sexual battery.--

17           (4) A person who commits sexual battery upon a person  
18 12 years of age or older without that person's consent, under  
19 any of the following circumstances, commits a felony of the  
20 first degree, punishable as provided in s. 775.082, s.  
21 775.083, s. 775.084, or s. 794.0115:

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

25           (9) For prosecution under paragraph (4)(g) or (h),  
26 acquiescence to a person reasonably believed by the victim to  
27 be in a position of authority or control does not constitute  
28 consent, and it is not a defense that the perpetrator was not  
29 actually in a position of control or authority if the  
30 circumstances were such as to lead the victim to reasonably  
31 believe that the person was in such a position.



1           (10) Any person who falsely accuses any person listed  
2 in paragraph (4)(g) or (h) or other person in a position of  
3 control or authority as an agent or employee of government of  
4 violating paragraph (4)(g) or (h) is guilty of a felony of the  
5 third degree, punishable as provided in s. 775.082, s.  
6 775.083, or s. 775.084.

7           Section 6. Section 800.05, Florida Statutes, is  
8 created to read:

9           800.05 Duty to report lewd and lascivious offenses;  
10 penalties.--A person who observes or knows of the commission  
11 of lewd and lascivious offenses defined in s. 800.04 and who:

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

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

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

20           (4) Fails to make a report

21  
22 is guilty of a misdemeanor of the first degree, punishable as  
23 provided in s. 775.082 or s. 775.083.

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