



**State of Florida
Department of Children and Families**

Charlie Crist
Governor

Robert A. Butterworth
Secretary

DATE: February 29, 2008

TO: Regional Directors
Sheriffs conducting Child Protective Investigations

THROUGH: George Sheldon, Assistant Secretary for Operations
David Fairbanks, Assistant Secretary for Programs

FROM: *Patricia Badland*
Patricia Badland, Director of Office of Family Safety

SUBJECT: Keeping Children Safe Act – Draft Operating Procedure

Purpose: The Department is developing an operating procedure to implement the protection of children guaranteed by section 39.0139, Florida Statutes.

Action Required: Please review the draft operating procedure in attachment 1. Please email your recommendations and/or considerations by March 14, 2008, to Julie Mayo at julie_mayo@dcf.state.fl.us.

Background: In 2007 the legislature passed chapter 2007-109, Laws of Florida. This law created section 39.0139, Florida Statutes, also known as, the "Keeping Children Safe Act." This act establishes a rebuttable presumption of detriment to a child when a parent or caregiver has been the subject of a hotline report alleging sexual abuse of any child, as defined in s. 39.01, F.S., has been found guilty of specific criminal offenses, or has been determined by a court to be a sexual predator. The act prohibits the person from having contact or visitation with a child until after a court hearing and court order allowing such contact. It also provides the court's responsibilities in conducting such hearings.

Contact Information: If you have any questions, please contact Patricia Badland, Director, Office of Family Safety, at (850) 488-8762.

Attachment

1317 Winewood Boulevard, Tallahassee, Florida 32399-0700

Mission: Protect the Vulnerable, Promote Strong and Economically Self-Sufficient Families, and Advance Personal and Family Recovery and Resiliency

Family Safety
Draft Operating Procedure regarding Implementation of § 39.0139, Florida Statutes to
Department Investigative Staff and Children's Legal Services

1. **Purpose:** This operating procedure is to detail steps in implementing the protection of children as guaranteed by § 39.0139, Florida Statutes
2. **Scope:** This operating procedure is applicable to all open dependency cases and all investigations pursuant to chapter 39.
3. **Application of § 39.0139 when there is no open Dependency Court Case:**
 - A. If, during an investigation of child abuse regarding a child who is not currently involved in an open dependency court case, a Department Investigator finds that a parent or caregiver of a child has been the subject of an abuse report alleging sexual abuse as to a child or has been subject to a criminal investigation and/or conviction regarding sexual abuse to a child, then the Department Investigator is to utilize their findings to immediately determine if the parent or caregiver of the child presents a risk to the child warranting referrals for services, judicial supervision, or sheltering of the child.
 - B. The existence of an allegation of sexual abuse by a parent or caregiver, or a criminal charge or conviction of the parent or caregiver related to the sexual abuse of a child, does not replace the requirement that the investigator conduct an independent and thorough investigation to determine whether or not a child is at risk of harm by the parent or caregiver of the child.
 - C. Should the parent's criminal charge or conviction or previous abuse report related to sexual abuse against a child warrant intervention, the investigator, in conjunction with Children's Legal Services and/or their supervisor, shall take immediate steps to protect the child in a manner with as little intrusion as possible.
 - D. Should the Department, in protecting a minor child, be forced to seek judicial supervision of or, through a shelter hearing, custody of a minor child, then the Department shall, at the arraignment hearing, when seeking judicial supervision, or the shelter hearing, when removing the child, immediately inform the court of the open abuse report or criminal conviction as described by § 39.0139 and shall proceed as to section 4 herein.

4. **Application of § 39.0139 when there is an open Dependency Court Case:**

- A. If, during an open dependency case, the Department becomes aware of the fact that a parent meets the criteria as detailed in § 39.0139(3)(a), the Department is not to permit any visitation between said parent and their child until the matter is brought before the appropriate court to specifically address the concerns raised by § 39.0139, Florida Statutes.
- B. The Department, when it determines that visitation cannot occur pursuant to the statutory requirements of § 39.0139, is to immediately file an “emergency motion seeking to determine visitation pursuant to § 39.0139, Florida Statutes” with the Court and seek a hearing on its motion at the earliest possible moment providing appropriate notice as possible under the circumstances to all parties and participants, including law enforcement if applicable of interest to the case.
- 1). The requirement of filing a motion shall be deemed unnecessary if the Department becomes aware of the fact that a parent meets the criteria as detailed in § 39.0139(3)(a) prior to a shelter hearing and, through its shelter petition, the Department is able to address visitation pursuant to the requirements of § 39.0139 at the shelter hearing.
 - 2). The requirement of filing a motion shall be deemed unnecessary if the Department and court become aware of the fact that a parent meets the criteria as detailed in § 39.0139(3)(a) in an open court proceeding and there is sufficient evidence and facts before the Department and Court to make an appropriate finding in court.
- C. The Department, in filings its motion, shall be prepared to present probable cause evidence at the hearing on its Motion establishing, in addition to the requirements contained § 39.0139, that a risk of harm exists between the Parent and the child whose visitation has been ceased.
- D. Should the Department not be able to establish probable cause that risks of harm exists in allowing visitation between a parent and child at its hearing on its Motion, the Department shall inform the court of its inability to do so and the reasons why it cannot meet its burden.

5. Appeal

- A. Should the Department believe that a Court's order pursuant to any hearing concerning § 39.0139 be insufficient to guarantee the safety of the child, then the Department, through its Children's Legal Services, shall immediately conduct a staffing involving at a minimum the circuit managing attorney for Children's Legal Services, to determine if appellate action is necessary to protect the child.