

The 2022 Florida Statutes (including 2022 Special Session A and 2023 Special Session B)

[Title VII](#)
EVIDENCE

[Chapter 90](#)
EVIDENCE CODE

[View Entire Chapter](#)

90.503 Psychotherapist-patient privilege.—

(1) For purposes of this section:

(a) A “psychotherapist” is:

1. A person authorized to practice medicine in any state or nation, or reasonably believed by the patient so to be, who is engaged in the diagnosis or treatment of a mental or emotional condition, including alcoholism and other drug addiction;

2. A person licensed or certified as a psychologist under the laws of any state or nation, who is engaged primarily in the diagnosis or treatment of a mental or emotional condition, including alcoholism and other drug addiction;

3. A person licensed or certified as a clinical social worker, marriage and family therapist, or mental health counselor under the laws of this state, who is engaged primarily in the diagnosis or treatment of a mental or emotional condition, including alcoholism and other drug addiction;

4. Treatment personnel of facilities licensed by the state pursuant to chapter 394, chapter 395, or chapter 397, of facilities designated by the Department of Children and Families pursuant to chapter 394 as treatment facilities, or of facilities defined as community mental health centers pursuant to s. 394.907(1), who are engaged primarily in the diagnosis or treatment of a mental or emotional condition, including alcoholism and other drug addiction; or

5. An advanced practice registered nurse licensed under s. 464.012, whose primary scope of practice is the diagnosis or treatment of mental or emotional conditions, including chemical abuse, and limited only to actions performed in accordance with part I of chapter 464.

(b) A “patient” is a person who consults, or is interviewed by, a psychotherapist for purposes of diagnosis or treatment of a mental or emotional condition, including alcoholism and other drug addiction.

(c) A communication between psychotherapist and patient is “confidential” if it is not intended to be disclosed to third persons other than:

1. Those persons present to further the interest of the patient in the consultation, examination, or interview.

2. Those persons necessary for the transmission of the communication.

3. Those persons who are participating in the diagnosis and treatment under the direction of the psychotherapist.

(2) A patient has a privilege to refuse to disclose, and to prevent any other person from disclosing, confidential communications or records made for the purpose of diagnosis or treatment of the patient’s mental or emotional condition, including alcoholism and other drug addiction, between the patient and the psychotherapist, or persons who are participating in the diagnosis or treatment under the direction of the psychotherapist. This privilege includes any diagnosis made, and advice given, by the psychotherapist in the course of that relationship.

(3) The privilege may be claimed by:

(a) The patient or the patient’s attorney on the patient’s behalf.

(b) A guardian or conservator of the patient.

(c) The personal representative of a deceased patient.

(d) The psychotherapist, but only on behalf of the patient. The authority of a psychotherapist to claim the privilege is presumed in the absence of evidence to the contrary.

(4) There is no privilege under this section:

(a) For communications relevant to an issue in proceedings to compel hospitalization of a patient for mental illness, if the psychotherapist in the course of diagnosis or treatment has reasonable cause to believe the patient is in need of hospitalization.

(b) For communications made in the course of a court-ordered examination of the mental or emotional condition of the patient.

(c) For communications relevant to an issue of the mental or emotional condition of the patient in any proceeding in which the patient relies upon the condition as an element of his or her claim or defense or, after the patient's death, in any proceeding in which any party relies upon the condition as an element of the party's claim or defense.

History.—s. 1, ch. 76-237; s. 1, ch. 77-77; s. 22, ch. 78-361; s. 1, ch. 78-379; s. 40, ch. 90-347; s. 1, ch. 92-57; s. 19, ch. 93-39; s. 475, ch. 95-147; s. 28, ch. 99-2; s. 5, ch. 99-8; s. 1, ch. 2006-204; s. 30, ch. 2014-19; s. 7, ch. 2018-106.

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

STATE OF FLORIDA,

Petitioner,

v.

BRIAN JOHN WILSON,

Respondent.

No. 2D22-1802

March 10, 2023

Petition for Writ of Certiorari to the Circuit Court for Pinellas County;
Philip J. Federico, Judge.

Ashley Moody, Attorney General, Tallahassee, and Jonathan S. Tannen,
Assistant Attorney General, Tampa, for Petitioner.

Howard L. Dimmig, II, Public Defender, and John Nohlgren, Assistant
Public Defender, Bartow, for Respondent.

SLEET, Judge.

The State seeks certiorari review of the trial court's Order Granting Subpoena Duces Tecum entered in favor of Brian John Wilson in the criminal proceeding pending below wherein Wilson is charged with sexual battery upon a mentally defective person. The trial court's order

requires production to the court for in camera inspection of the victim's mental health records held by third-party entities. We grant the petition.

"Certiorari review of a discovery order is appropriate when the order 'departs from the essential requirements of law, causing material injury to a petitioner throughout the remainder of the proceedings below and effectively leaving no adequate remedy on appeal.' " *C.L. v. Judd*, 993 So. 2d 991, 994 (Fla. 2d DCA 2007) (quoting *Allstate Ins. Co. v. Langston*, 655 So. 2d 91, 94 (Fla. 1995)). "The irremediable harm prong of the certiorari standard is met when an order erroneously directs the disclosure of medical records." *Ricketts v. Ricketts*, 310 So. 3d 993, 996 (Fla. 2d DCA 2020). Further, "[a]bsent evidence of an applicable statutory exception or waiver, a trial court departs from the essential requirements of law when it enters an order compelling disclosure of communications or records in violation of the psychotherapist-patient privilege." *Id.* (quoting *S.P. ex rel. R.P. v. Vecchio*, 162 So. 3d 75, 80 (Fla. 4th DCA 2014)). "In determining whether privileged records are subject to disclosure, the inquiry is whether there is an applicable statutory exception or there has been a voluntary or involuntary waiver." *Whittington v. Whittington*, 331 So. 3d 278, 280 (Fla. 1st DCA 2021).

Here, the parties do not dispute that the victim's records are protected by the psychotherapist-patient privilege set forth in section 90.503(2), Florida Statutes (2022). That statute provides that "[a] patient has a privilege to refuse to disclose, and to prevent any other person from disclosing, confidential communications or records made for the purpose of diagnosis or treatment of the patient's mental or emotional condition . . . between the patient and the psychotherapist." *Id.* "A communication between psychotherapist and patient is 'confidential' if it is not intended to be disclosed to third persons." § 90.503(1)(c). Wilson argued below,

and the trial court agreed, that the exception found in section 90.503(4)(c) applies and renders the victim's records discoverable.

Section 90.503(4)(c) states that the psychotherapist-patient privilege does not apply to "communications relevant to an issue of the mental or emotional condition of the patient in any proceeding in which the patient relies upon the condition as an element of his or her claim or defense." *Id.* (emphasis added). Wilson maintains that because the State has alleged that the victim was a person with mental defect in order to enhance the charge against him, the victim's mental condition has been relied upon as an element of the charge and the subsection (4)(c) exception bars application of the privilege. We disagree.

The plain language of the statute states that in order for the subsection (4)(c) exception to apply and remove the privilege, the patient must rely on his or her own mental condition "as an element of his or her claim or defense." § 90.503(4)(c) (emphasis added). This clearly does not contemplate a criminal prosecution brought by the State and does not authorize the State to waive the privilege on behalf of the individual who holds it. *See State v. Famiglietti*, 817 So. 2d 901, 904 (Fla. 3d DCA 2002) ("The Evidence Code itself describes the scope of the privilege which has been created. If the communication fits within the privilege, then the patient may refuse, and may insist that others refuse, to disclose the communication. There is no language in the Code which expressly or impliedly allows anyone to override a valid claim of psychiatrist-patient privilege." (citations omitted)); *J.B. v. State*, 250 So. 3d 829, 833 (Fla. 3d DCA 2018) (granting petition for writ of certiorari and quashing order compelling disclosure of a minor son's mental health records in his mother's death penalty trial as a departure from the essential requirements of law and stating that the "request for disclosure of [his]

confidential and privileged psychotherapist-patient records is exactly the type of fishing expedition that this [c]ourt, the United States Supreme Court, and our sister courts have strongly cautioned against").

Accordingly, we conclude that the trial court departed from the essential requirements of law by requiring disclosure of these records.

Wilson maintains, however, that the State cannot establish irreparable harm because the trial court indicated at the hearing below that it would review the records in camera to determine what was to be discoverable. But case law is clear that the disclosure of information that is protected by the psychotherapist-patient privilege where none of the statutory exceptions apply—even if only for in camera inspection by the court—amounts to a departure from the essential requirements of law resulting in irreparable harm that cannot be remedied on appeal. This is primarily so because disclosure only after in camera review is not one of the three exceptions to the psychotherapist-patient privilege listed in section 90.503(4).

If there are going to be other exceptions to general mental health records—such as the use of an in camera inspection—then the legislature should first define them, much as it did with respect to Baker Act records, so that persons seeking the aid of a psychotherapist will know what the rules are going in.

State v. Roberson, 884 So. 2d 976, 980 (Fla. 5th DCA 2004) (emphasis added) (granting "petition for certiorari and quash[ing] the order of the trial court granting discovery into all of the mental health records of" the victim in a criminal case). Additionally, "making the promise of confidentiality contingent upon a trial judge's later evaluation of the relative importance of the patient's interest in privacy and the evidentiary need for disclosure would eviscerate the effectiveness of the privilege." *Id.* at 979-80 (quoting *Jaffee v. Redmond*, 518 U.S. 1, 17-18 (1996)).

Finally, the alleged victim in the criminal case pending below "is not a party to any proceedings in which a final appealable judgment shall be entered. Disclosure of any kind, including an in camera inspection, would let the proverbial cat out of the bag [And such] harm can[not] be properly remedied on appeal." *See J.B.*, 250 So. 3d at 834 (emphasis omitted) (citation omitted). "Florida courts have consistently and repeatedly held that, absent evidence of a statutory exception or waiver . . . such disclosure results in irreparable harm." *Id.* Accordingly, we must grant the State's petition for certiorari and quash the trial court's order granting Wilson's motion for subpoena duces tecum.

Petition granted; order quashed.

CASANUEVA and SMITH, JJ., Concur.

Opinion subject to revision prior to official publication.

The 2022 Florida Statutes (including 2022 Special Session A and 2023 Special Session B)

Title XLVII
CRIMINAL PROCEDURE AND
CORRECTIONS

Chapter 934
SECURITY OF COMMUNICATIONS;
SURVEILLANCE

[View Entire
Chapter](#)

934.03 **Interception and disclosure of wire, oral, or electronic communications prohibited.—**

(1) Except as otherwise specifically provided in this chapter, any person who:

(a) Intentionally intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept any wire, oral, or electronic communication;

(b) Intentionally uses, endeavors to use, or procures any other person to use or endeavor to use any electronic, mechanical, or other device to intercept any oral communication when:

1. Such device is affixed to, or otherwise transmits a signal through, a wire, cable, or other like connection used in wire communication; or

2. Such device transmits communications by radio or interferes with the transmission of such communication;

(c) Intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection;

(d) Intentionally uses, or endeavors to use, the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this subsection; or

(e) Intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, oral, or electronic communication intercepted by means authorized by subparagraph (2)(a)2., paragraph (2)(b), paragraph (2)(c), s. [934.07](#), or s. [934.09](#) when that person knows or has reason to know that the information was obtained through the interception of such a communication in connection with a criminal investigation, has obtained or received the information in connection with a criminal investigation, and intends to improperly obstruct, impede, or interfere with a duly authorized criminal investigation;

shall be punished as provided in subsection (4).

(2)(a)1. It is lawful under this section and ss. [934.04-934.09](#) for an operator of a switchboard, or an officer, employee, or agent of a provider of wire or electronic communication service whose facilities are used in the transmission of a wire or electronic communication, to intercept, disclose, or use that communication in the normal course of his or her employment while engaged in any activity which is a necessary incident to the rendition of his or her service or to the protection of the rights or property of the provider of that service, except that a provider of wire communication service to the public shall not utilize service observing or random monitoring except for mechanical or service quality control checks.

2. Notwithstanding any other law, a provider of wire, oral, or electronic communication service, or an officer, employee, or agent thereof, or landlord, custodian, or other person, may provide information, facilities, or technical assistance to a person authorized by law to intercept wire, oral, or electronic communications if such provider, or an officer, employee, or agent thereof, or landlord, custodian, or other person, has been provided with:

a. A court order directing such assistance signed by the authorizing judge; or

b. A certification in writing by a person specified in s. 934.09(7) that no warrant or court order is required by law, that all statutory requirements have been met, and that the specified assistance is required, setting forth the period of time during which the provision of the information, facilities, or technical assistance is authorized and specifying the information, facilities, or technical assistance required.

3. A provider of wire, oral, or electronic communication service, or an officer, employee, or agent thereof, or landlord, custodian, or other person may not disclose the existence of any interception or the device used to accomplish the interception with respect to which the person has been furnished an order under this section and ss. 934.04-934.09, except as may otherwise be required by legal process and then only after prior notice to the Governor, the Attorney General, the statewide prosecutor, or a state attorney, as may be appropriate. Any such disclosure renders such person liable for the civil damages provided under s. 934.10, and such person may be prosecuted under s. 934.43. An action may not be brought against any provider of wire, oral, or electronic communication service, or an officer, employee, or agent thereof, or landlord, custodian, or other person for providing information, facilities, or assistance in accordance with the terms of a court order under this section and ss. 934.04-934.09.

(b) It is lawful under this section and ss. 934.04-934.09 for an officer, employee, or agent of the Federal Communications Commission, in the normal course of his or her employment and in discharge of the monitoring responsibilities exercised by the commission in the enforcement of 47 U.S.C. chapter 5, to intercept a wire, oral, or electronic communication transmitted by radio or to disclose or use the information thereby obtained.

(c) It is lawful under this section and ss. 934.04-934.09 for an investigative or law enforcement officer or a person acting under the direction of an investigative or law enforcement officer to intercept a wire, oral, or electronic communication when such person is a party to the communication or one of the parties to the communication has given prior consent to such interception and the purpose of such interception is to obtain evidence of a criminal act.

(d) It is lawful under this section and ss. 934.04-934.09 for a person to intercept a wire, oral, or electronic communication when all of the parties to the communication have given prior consent to such interception.

(e) It is unlawful to intercept any wire, oral, or electronic communication for the purpose of committing any criminal act.

(f) It is lawful under this section and ss. 934.04-934.09 for an employee of a telephone company to intercept a wire communication for the sole purpose of tracing the origin of such communication when the interception is requested by the recipient of the communication and the recipient alleges that the communication is obscene, harassing, or threatening in nature. The individual conducting the interception shall notify local police authorities within 48 hours after the time of the interception.

(g) It is lawful under this section and ss. 934.04-934.09 for an employee of:

1. An ambulance service licensed pursuant to s. 401.25, a fire station employing firefighters as defined by s. 633.102, a public utility, a law enforcement agency as defined by s. 934.02(10), or any other entity with published emergency telephone numbers;

2. An agency operating an emergency telephone number "911" system established pursuant to s. 365.171; or

3. The central abuse hotline operated under s. 39.101

to intercept and record incoming wire communications; however, such employee may intercept and record incoming wire communications on designated "911" telephone numbers and published nonemergency telephone numbers staffed by trained dispatchers at public safety answering points only. It is also lawful for such employee to intercept and record outgoing wire communications to the numbers from which such incoming wire communications were placed when necessary to obtain information required to provide the emergency services being requested. For the purpose of this paragraph, the term "public utility" has the same meaning as provided in s. 366.02 and includes a person, partnership, association, or corporation now or hereafter owning or operating equipment or facilities in the state for conveying or transmitting messages or communications by telephone or telegraph to the public for compensation.

(h) It shall not be unlawful under this section and ss. 934.04-934.09 for any person:

1. To intercept or access an electronic communication made through an electronic communication system that is configured so that such electronic communication is readily accessible to the general public.

2. To intercept any radio communication which is transmitted:

a. By any station for the use of the general public, or that relates to ships, aircraft, vehicles, or persons in distress;

b. By any governmental, law enforcement, civil defense, private land mobile, or public safety communications system, including any police or fire communications system, readily accessible to the general public;

c. By a station operating on an authorized frequency within the bands allocated to the amateur, citizens band, or general mobile radio services; or

d. By any marine or aeronautical communications system.

3. To engage in any conduct which:

a. Is prohibited by s. 633 of the Communications Act of 1934; or

b. Is excepted from the application of s. 705(a) of the Communications Act of 1934 by s. 705(b) of that act.

4. To intercept any wire or electronic communication the transmission of which is causing harmful interference to any lawfully operating station of consumer electronic equipment to the extent necessary to identify the source of such interference.

5. To intercept, if such person is another user of the same frequency, any radio communication that is not scrambled or encrypted made through a system that utilizes frequencies monitored by individuals engaged in the provision or the use of such system.

6. To intercept a satellite transmission that is not scrambled or encrypted and that is transmitted:

a. To a broadcasting station for purposes of retransmission to the general public; or

b. As an audio subcarrier intended for redistribution to facilities open to the public, but not including data transmissions or telephone calls, when such interception is not for the purposes of direct or indirect commercial advantage or private financial gain.

7. To intercept and privately view a private satellite video communication that is not scrambled or encrypted or to intercept a radio communication that is transmitted on frequencies allocated under subpart D of part 74 of the rules of the Federal Communications Commission that is not scrambled or encrypted, if such interception is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain.

(i) It shall not be unlawful under this section and ss. 934.04-934.09:

1. To use a pen register or a trap and trace device as authorized under ss. 934.31-934.34 or under federal law; or

2. For a provider of electronic communication service to record the fact that a wire or electronic communication was initiated or completed in order to protect such provider, another provider furnishing service toward the completion of the wire or electronic communication, or a user of that service, from fraudulent, unlawful, or abusive use of such service.

(j) It is not unlawful under this section and ss. 934.04-934.09 for a person acting under color of law to intercept the wire or electronic communications of a computer trespasser which are transmitted to, through, or from a protected computer if:

1. The owner or operator of the protected computer authorizes the interception of the communications of the computer trespasser;

2. The person acting under color of law is lawfully engaged in an investigation;

3. The person acting under color of law has reasonable grounds to believe that the contents of the communications of the computer trespasser will be relevant to the investigation; and

4. The interception does not acquire communications other than those transmitted to, through, or from the computer trespasser.

(k) It is lawful under this section and ss. 934.04-934.09 for a child under 18 years of age to intercept and record an oral communication if the child is a party to the communication and has reasonable grounds to believe that recording the communication will capture a statement by another party to the communication that the other party

intends to commit, is committing, or has committed an unlawful sexual act or an unlawful act of physical force or violence against the child.

(l) It is lawful under this section and ss. 934.04-934.09 for a person who is protected under an active temporary or final injunction for repeat violence, sexual violence, or dating violence under s. 784.046; stalking under s. 784.0485; domestic violence under s. 741.30; or any other court-imposed prohibition of conduct toward the person to intercept and record a wire, oral, or electronic communication received in violation of such injunction or court order. A recording authorized under this paragraph may be provided to a law enforcement agency, an attorney, or a court for the purpose of evidencing a violation of an injunction or court order if the subject of the injunction or court order prohibiting contact has been served the injunction or is on notice that the conduct is prohibited. A recording authorized under this paragraph may not be otherwise disseminated or shared.

(3)(a) Except as provided in paragraph (b), a person or entity providing an electronic communication service to the public shall not intentionally divulge the contents of any communication while in transmission on that service to any person or entity other than an addressee or intended recipient of such communication or an agent of such addressee or intended recipient.

(b) A person or entity providing electronic communication service to the public may divulge the contents of any such communication:

1. As otherwise authorized in paragraph (2)(a) or s. 934.08;
2. With the lawful consent of the originator or any addressee or intended recipient of such communication;
3. To a person employed or authorized, or whose facilities are used, to forward such communication to its destination; or
4. Which were inadvertently obtained by the service provider and which appear to pertain to the commission of a crime, if such divulgence is made to a law enforcement agency.

(4)(a) Except as provided in paragraph (b), whoever violates subsection (1) is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 934.41.

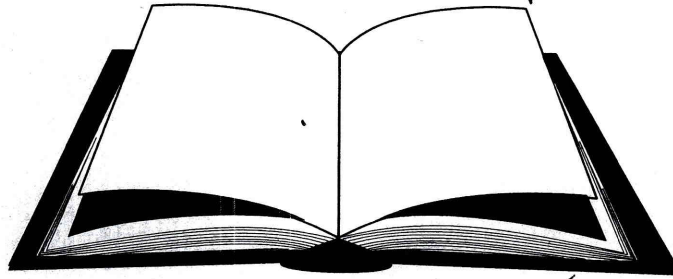
(b) If the offense is a first offense under paragraph (a) and is not for any tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain, and the wire or electronic communication with respect to which the offense under paragraph (a) was committed is a radio communication that is not scrambled, encrypted, or transmitted using modulation techniques the essential parameters of which have been withheld from the public with the intention of preserving the privacy of such communication, then:

1. If the communication is not the radio portion of a cellular telephone communication, a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit, a public land mobile radio service communication, or a paging service communication, and the conduct is not that described in subparagraph (2)(h)7., the person committing the offense is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

2. If the communication is the radio portion of a cellular telephone communication, a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit, a public land mobile radio service communication, or a paging service communication, the person committing the offense is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 3, ch. 69-17; s. 1163, ch. 71-136; ss. 2, 3, ch. 74-249; s. 249, ch. 77-104; s. 1, ch. 78-376; s. 187, ch. 79-164; s. 2, ch. 80-27; s. 1, ch. 87-301; s. 2, ch. 88-184; s. 2, ch. 89-269; s. 1582, ch. 97-102; s. 18, ch. 99-168; ss. 7, 9, ch. 2000-369; s. 2, ch. 2002-72; s. 30, ch. 2010-117; s. 154, ch. 2013-183; s. 1, ch. 2015-82; s. 31, ch. 2021-170; s. 1, ch. 2021-207.

Public Records



A Guide For Law Enforcement Agencies



The Office of
Attorney General Ashley Moody

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created prior to, as well as after, the agency's receipt of the victim's written request for exempt status.⁸⁴

This exemption allows a victim of the enumerated crimes to file a written request and have his or her home or employment telephone number, home or employment address, or personal assets, exempted from the police report of the crime, provided that the request includes official verification, such as a copy of the incident or offense report for one of the listed crimes, that an applicable crime has occurred.⁸⁵ The s. 119.071(2)(j)1., F.S., exemption is limited to the victim's address, telephone number, or personal assets; it does not apply to the victim's identity.⁸⁶

There is no expressly stated exception to the provisions of s. 119.071(2)(j)1., F.S., for copies of the police report that are sent to domestic violence centers pursuant to s. 741.29, F.S., if the victim has made a written request for exempt status of the personal information specified in s. 119.071(2)(j)1., F.S..⁸⁷

b. Amount of stolen property

Pursuant to s. 119.071(2)(i), F.S., criminal intelligence or investigative information that reveals the personal assets of a

84 See AGO 96-82. See also s. 741.30(3)(b), F.S. (petitioner seeking an injunction for protection against domestic violence may furnish the petitioner's address to the court in a separate confidential filing for safety reasons); s. 787.03(6)(c) (current address and telephone number of the person taking the minor or incompetent person when fleeing from domestic violence and the current address and telephone number of the minor or incompetent person which are contained in the report made to a sheriff or state attorney under s. 787.03[6][b], F.S. are confidential and exempt from disclosure); and ss. 741.30(8) and 784.046(8), F.S.

85 *Id.*

86 *City of Gainesville v. Gainesville Sun Publishing Company*, No. 96-3425-CA (Fla. 8th Cir. Ct. October 28, 1996).

87 AGO 02-50. Section 741.29(2), F.S. provides that a copy of the initial report of an incident of domestic violence, excluding victim/witness statements or other materials that are part of the active criminal investigation as defined in Ch. 119, F.S., must be sent to the nearest locally certified domestic violence center within 24 hours of the law enforcement agency's receipt of the report.

crime victim, which were not involved in the crime, is exempt from disclosure. However, this exemption does not apply to information relating to the amount of property stolen during the commission of a crime.⁸⁸

c. Child abuse and sexual offense victims

Section 119.071(2)(h)1., F.S., provides confidentiality for information which would reveal the identity of victims of child abuse as defined in Ch. 827, F.S., or that reveals the identity of a person under the age of 18 who is a victim the crime of human trafficking as proscribed in s. 787.06(3)(a), F.S. Information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense proscribed in s. 787.06(3)(b), (d), (f), or (g), or Chs. 794, 796, 800, 827 or 847, F.S., is also confidential.⁸⁹

The statute specifies the circumstances when a law enforcement agency is authorized to disclose the confidential information. For example, s. 119.071(2)(h)2.c., F.S., states that disclosure is authorized "to another governmental agency in the furtherance of its official duties and responsibilities."

Moreover, the identity of a victim who died from suspected abuse is not confidential.⁹⁰

Section 119.071(2)(j)2., F.S., provides that information in a videotaped statement of a minor who is alleged to be or who is a victim of a sexual offense prohibited in the cited laws which reveals the minor's identity, including, but not limited to, the

88 AGO 82-30. Note, however, that s. 119.071(2)(j)1., F.S., provides that victims of certain crimes may file a written request to exempt information revealing their "personal assets."

89 Section 119.071(2)(h)1.F.S. Thus, information revealing the identity of victims of child abuse or sexual battery must be deleted from the copy of the report of domestic violence which is sent to the nearest domestic violence center pursuant to s. 741.29(2), F.S. AGO 92-14. *And see Palm Beach County Police Benevolent Association v. Neumann*, 796 So. 2d 1278 (Fla. 4th DCA 2001).

90 AGO 90-103.

minor's face; the minor's home, school, church, or employment telephone number; the minor's home, school, church, or employment address; the name of the minor's school, church, or place of employment; or the personal assets of the minor; and which identifies the minor as a victim, held by a law enforcement agency, is confidential. Access shall be provided, however, to authorized governmental agencies when necessary to the furtherance of the agency's duties.⁹¹

In addition, the photograph, videotape or image of any part of the body of a victim of a sexual offense prohibited under ss. 787.06(3)(b),(d),(f), or (g), or 810.145, F.S.; or Chs. 794, 796, 800, 827, or 847, F.S., is confidential and exempt, regardless of whether the photograph, videotape or image identifies the victim.⁹²

A public employee or officer who has access to the photograph, name, or address of a person alleged to be a victim of an offense described in Ch. 794 (sexual battery); Ch. 800 (lewdness, indecent exposure); s. 827.03 (child abuse); s. 827.04 (contributing to delinquency or dependency of a child); or s. 827.071 (sexual performance by a child) may not willfully and knowingly disclose it to a person not assisting in the investigation or prosecution of the alleged offense or to any person other than the defendant, the defendant's attorney, a person specified in a court order entered by the court having jurisdiction over the alleged offense, to organizations authorized to receive such information made exempt by s. 119.071(2)(h), F.S., or to a rape crisis center or sexual assault counselor, as defined in s. 90.5035(1)(b), F.S., who will be offering services to the victim.⁹³

91 Section 119.071(2)(j)2., F.S.

92 Section 119.071(2)(h)1.c, F.S.

93 Section 794.024(1), F.S. A violation of this section constitutes a second degree misdemeanor. Section 794.024(2), F.S. Cf. *State v. Globe Communications Corporation*, 648 So. 2d 110, 111 (Fla. 1994) (statute mandating criminal sanctions for printing, publishing or broadcasting "in any instrument of mass communication" information identifying a victim of a sexual offense, ruled unconstitutional). And see s. 794.026(1), F.S.

d. Department of Children and Families abuse records

There are statutory exemptions set forth in Ch. 415, F.S., which relate to records of abuse of vulnerable adults. Similar provisions relating to child abuse records are found in Ch. 39, F.S. The Attorney General's Office has concluded that the confidentiality provisions in these laws, i.e., ss. 415.107 and 39.202, F.S., apply to records of the Department of Children and Families (Department) and do not encompass a law enforcement agency's arrest report of persons charged with criminal child abuse, after the agency has deleted all information which would reveal the identity of the victim.⁹⁴

Confidential abuse information received by law enforcement agencies from the Department retains its confidential status in the hands of the receiving agency.⁹⁵ However, s. 39.202(4), F.S., authorizes the Department and the investigating law enforcement agency to release certain identifying information to the public in order to help locate or protect a missing child under investigation or supervision of the Department or its contracted service providers.

e. Commercial solicitation of victims

Section 119.105, F.S., provides that police reports are public records except as otherwise made exempt or confidential and that every person is allowed to examine nonexempt or non-confidential police reports. However, a person who comes into possession of exempt or confidential information in police reports may not use that information for commercial solicitation of the victims or relatives of the victims and may not knowingly disclose such information to a third party for the purpose of such solicitation during the period of time that information remains exempt or confidential.⁹⁶ The statute "does not prohibit the publication of such information to the general public by any

94 See AGO 93-54. *Accord* Inf. Op. to O'Brien, January 18, 1994. Cf. *Times Publishing Company v. A.J.*, 626 So. 2d 1314 (Fla. 1993).

95 Section 39.202(1), and (2)(b), F.S. See Inf. Op. to Russell, October 24, 2001.

96 Section 119.105, F.S.

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2019 Legislature

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An act relating to child welfare; amending s. 39.01, F.S.; revising the definition of the term "institutional child abuse or neglect"; amending s. 39.201, F.S.; requiring the central abuse hotline to accept certain reports or calls for investigation for children who do not live in this state; requiring the Department of Children and Families to initiate an investigation when a report is received from an emergency room physician; amending s. 39.303, F.S.; expanding the types of reports that the department must refer to Child Protection Teams; amending s. 39.4015, F.S.; deleting the definition of the term "fictive kin"; amending s. 39.402, F.S.; requiring certain judicial orders to specify that the Department of Children and Families has placement and care responsibility for certain children; amending s. 39.407, F.S.; authorizing psychiatric nurses to prescribe psychotropic medications to certain children; revising the time period within which a court must review a child's residential treatment plan; amending s. 39.5086, F.S.; removing a definition; amending s. 39.6225, F.S.; providing a definition; providing for the termination of guardianship assistance benefits under certain

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76 | 39.201, Florida Statutes, is amended, and paragraph (1) is added
 77 | to that subsection, to read:

78 | 39.201 Mandatory reports of child abuse, abandonment, or
 79 | neglect; mandatory reports of death; central abuse hotline.—

80 | (2)

81 | (d) If the report is of an instance of known or suspected
 82 | child abuse, abandonment, or neglect which ~~that~~ occurred out of
 83 | state and the alleged perpetrator and the child alleged to be a
 84 | victim live out of state, the central abuse hotline may ~~shall~~
 85 | not accept the report or call for investigation unless the child
 86 | is currently being evaluated in a medical facility in this
 87 | state.

88 | 1. If the child is currently being evaluated in a medical
 89 | facility in this state, the central abuse hotline shall accept
 90 | the report or call for investigation and shall transfer the
 91 | information on the report or call to the appropriate state or
 92 | country.

93 | 2. If the child is not currently being evaluated in a
 94 | medical facility in this state, the central abuse hotline, ~~but~~
 95 | shall transfer the information on the report to or call to the
 96 | appropriate state or country.

97 | (1) The department shall initiate an investigation when it
 98 | receives a report from an emergency room physician.

99 | Section 3. Paragraph (i) is added to subsection (4) of
 100 | section 39.303, Florida Statutes, to read:

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101 39.303 Child Protection Teams and sexual abuse treatment
 102 programs; services; eligible cases.-

103 (4) The child abuse, abandonment, and neglect reports that
 104 must be referred by the department to Child Protection Teams of
 105 the Department of Health for an assessment and other appropriate
 106 available support services as set forth in subsection (3) must
 107 include cases involving:

108 (i) A child who does not live in this state who is
 109 currently being evaluated in a medical facility in this state.

110 Section 4. Paragraph (d) of subsection (2) of section
 111 39.4015, Florida Statutes, is amended to read:

112 39.4015 Family finding.-

113 (2) DEFINITIONS.-As used in this section, the term:

114 ~~(d) "Fictive kin" means an individual who is unrelated to~~
 115 ~~the child by either birth or marriage, but has such a close~~
 116 ~~emotional relationship with the child that he or she may be~~
 117 ~~considered part of the family.~~

118 Section 5. Paragraph (h) of subsection (8) of section
 119 39.402, Florida Statutes, is amended to read:

120 39.402 Placement in a shelter.-

121 (8)

122 (h) The order for placement of a child in shelter care
 123 must identify the parties present at the hearing and must
 124 contain written findings:

125 1. That placement in shelter care is necessary based on