

16.13 FAILURE TO REPORT CHILD [ABUSE] [ABANDONMENT] [OR] [NEGLECT]
§ 39.205(1), Fla. Stat.

To prove the crime of Failure to Report Child [Abuse] [Abandonment] [or] [Neglect], the State must prove the following two elements beyond a reasonable doubt:

- 1. (Defendant) knew or suspected child [abuse] [abandonment] [or] [neglect] occurred.**
- 2. (Defendant) knowingly and willfully [failed to report such information to the central abuse hotline of the Department of Children and Families] [or] [prevented another person from reporting such information to the central abuse hotline of the Department of Children and Families].**

Definitions. Give as applicable. Some words or phrases within these definitions are defined in § 39.01, Fla. Stat. or elsewhere and should be given if requested.

§ 39.01(2), Fla. Stat.

“Child abuse” means any willful act or threatened act that results in any physical, mental, or sexual abuse, injury, or harm that causes or is likely to cause the child’s physical, mental, or emotional health to be significantly impaired. Abuse of a child includes acts or omissions.

[Corporal discipline of a child by a parent or legal custodian for disciplinary purposes does not in itself constitute abuse when it does not result in harm to the child.]

[Abuse of a child includes the birth of a new child into a family during the course of an open dependency case when the parent or caregiver has been determined to lack the protective capacity to safely care for the children in the home and has not substantially complied with the case plan towards successful reunification or met the conditions for return of the children into the home.]

§ 39.01(1), Fla. Stat.

“Child abandonment” means a situation in which the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the caregiver, while being able, has made no significant contribution to the child’s care and maintenance or has failed to establish or maintain a substantial and positive relationship with the child, or both.

“Establish or maintain a substantial and positive relationship” includes, but is not limited to, frequent and regular contact with the child through frequent and regular visitation or frequent and regular communication to or with the child, and the exercise of parental rights and responsibilities. Marginal efforts and incidental or token visits or communications are not sufficient to establish or maintain a substantial and positive relationship with a child.

[“Caregiver” means the parent, legal custodian, permanent guardian, adult household member, or other person responsible for a child’s welfare.

“Other person responsible for a child’s welfare” includes the child’s legal guardian or foster parent; an employee of any school, public or private child day care center, residential home, institution, facility, or agency; a law enforcement officer employed in any facility, service, or program for children that is operated or contracted by the Department of Juvenile Justice; or any other person legally responsible for the child’s welfare in a residential setting; and also includes an

adult sitter or relative entrusted with a child's care.]

[A man's acknowledgment of paternity of the child does not limit the period of time considered in determining whether the child was abandoned.]

[The absence of a parent, legal custodian, or caregiver responsible for a child's welfare, who is a servicemember, by reason of deployment or anticipated deployment as defined in 50 U.S.C. s. 3938(e), may not be considered or used as a factor in determining abandonment.]

[The incarceration, repeated incarceration, or extended incarceration of a parent, legal custodian, or caregiver responsible for a child's welfare may support a finding of abandonment.]

[The term does not include a surrendered newborn infant as described in s. 383.50, a "child in need of services" as defined in chapter 984, or a "family in need of services" as defined in chapter 984.]

§39.01(50), Fla. Stat.

"Child neglect" occurs when a child is deprived of, or is allowed to be deprived of, necessary food, clothing, shelter, or medical treatment or a child is permitted to live in an environment when such deprivation or environment causes the child's physical, mental, or emotional health to be significantly impaired or to be in danger of being significantly impaired. The foregoing circumstances shall not be considered neglect if caused primarily by financial inability unless actual services for relief have been offered to and rejected by such person. Neglect of a child includes acts or omissions.

[A parent or legal custodian legitimately practicing religious beliefs in accordance with a recognized church or religious organization who thereby does not provide specific medical treatment for a child may not, for that reason alone, be considered a negligent parent or legal custodian; however, such an exception does not preclude a court from ordering the following services to be provided, when the health of the child so requires:

- a. Medical services from a licensed physician, dentist, optometrist, podiatric physician, or other qualified health care provider; or
- b. Treatment by a duly accredited practitioner who relies solely on spiritual means for healing in accordance with the tenets and practices of a well-recognized church or religious organization.]

§ 39.01(11), Fla. Stat.

"Child" means any unmarried person under the age of 18 years who has not been emancipated by order of the court.

"Willfully" means intentionally and purposely.

Lesser Included Offenses

No lesser included offenses have been identified.

Comments

§ 39.201(1), Fla. Stat., contains the requirements for mandatory reporting of known or suspected child abuse, abandonment, or neglect. Exceptions to mandatory reporting are in § 39.201(2), Fla. Stat.

This instruction was adopted on December 15, 2021.