

313.6 CHILD CUSTODY

- I. **PURPOSE**: To establish procedures for the handling of child custody disputes, child custody orders, child dependency orders, and criminal laws surrounding violations of child custody.
- II. **POLICY**: The Tampa Police Department will respond, investigate and enforce child custody to the extent allowed by law for the safety and wellbeing of the child and the parties involved.
- III. **DISCUSSION**: The primary objective of the Tampa Police Department in potential parental abduction cases is the welfare of the child and return of the child to the custodial party. Police officers are frequently called upon to investigate cases involving disputed custody of a child which often will not allow direct hands-on police involvement unless statutory requirements for court orders authorize removal by an officer or criminal laws are being violated. Often an officer's response will have the parties attempt to resolve a civil child custody dispute by themselves or advise them to seek remedies in civil court. There are multiple ways a police officer can be confronted with questions around child custody. For example, a child custody dispute between two parents, a child protective investigation with DCF, or a report of a runaway or missing child. This policy is intended to address child custody as it relates to:
 - A. Child Custody Disputes - Without Court Orders;
 - B. Child Custody Disputes - With Court Orders;
 - C. Child Custody Disputes - Out-of-State Orders, International Orders, or Tribal Disputes;
 - D. Child Dependency Orders - Taking of a Child Alleged to be Dependent Into Custody; and
 - E. Criminal Laws Involving Child Custody – Interference with Child Custody.

Child custody cases may not rise to criminal violations and are often mired in civil disputes and court hearings. The potential for civil liability being imposed on the officer and the agency for wrongly removing the child can be great. It is very important that the officer remember that the welfare and security of the child must be in the forefront of all decisions. As a general rule, if the child is in danger, an exigency exists, or there is probable cause for a criminal offense, the officer should take action. Where the dispute solely involves a time-sharing dispute based on a child custody order under Chapter 61, the order should be enforced in civil court unless a child is in danger, a warrant to take the child into

custody has been issued, an exigency exists, or there is probable cause for a criminal offense.

Chapter 39, Florida Statutes, covers proceedings relating to children to include reporting child abuse, protective investigations, taking children into protective custody, petitions for dependency, judicial review, termination of parental rights, guardians ad litem, and domestic violence. The purpose of Chapter 39 is to provide the care, safety and protection of children and to prevent the occurrence of child abuse, neglect, and abandonment. All state, county, and local agencies shall cooperate, assist, and provide information to Department of Children and Families (DCF). The Tampa Police Department has established Memorandum of Understanding for a “Multi-Disciplinary Team” approach for families and children in need in order to coordinate services and support for children of Hillsborough County through the coordinated flow of information across multiple child-serving agencies. For child custody dispute scenarios and additional legal guidance, see Legal Bulletin 2025-10 discussing child custody disputes.

IV. PROCEDURE - GENERAL:

- A. The investigating officer will immediately attempt to make a determination that the child involved in the custody dispute is safe and which person has legal custody of the child.
- B. If the issue of legal custody is not questionable, the child will be left in the physical custody of the person having legal custody.
- C. If the issue of legal custody is questionable, the child will be left in the physical custody of the person claiming legal custody who had physical custody of the child prior to police involvement, if a reasonable probability exists that the child could belong with that person and the safety and welfare of the child are assured.
- D. If legal custody has been determined and a person not having legal custody has fled with the child contrary to Florida State Statute, pick-up orders will be placed on both the suspect and the child, and the case will be referred to Special Victims Unit (SVU) for latent investigation using HSXCRM handle.
- E. If in the determination of the investigating officer there is some indication that the child taken contrary to Florida State Statute might be in danger then his supervisor will be notified, and the SVU Sergeant will be contacted.
- F. All cases in which legal custody cannot be determined or any pick-up orders were placed will be referred to SVU.

- G. The Department of Children and Families Services (DCF) will be notified by telephone or other DCF approved notification methods of all disputed custody cases.
- H. Officers involved in any custody dispute will fully document the incident and, if possible, obtain copies of applicable court orders. Alternatively, court orders or other documents shall be identified by title in the report. However, a copy of the order **must** be obtained where any police action is taken based upon a court order such as orders to take into protective custody under F.S. §39.401 and Rule of Juvenile Procedure 8.300, or warrants to take physical custody of a child under FS §61.534. Court Orders directed to law enforcement should be reviewed closely to determine who the child is to be delivered to and the limitations for obtaining the child by entry into a residence. See Legal Bulletin 25-10 discussing child custody disputes for an example of a court order for protective child custody. If unclear, you should contact a legal advisor.
- I. Officers investigating reports of missing children will handle the case as outlined in SOP 333 – Missing Persons and SOP 313 – Juvenile Procedures until such time as a determination is made that the child is the subject of a custody dispute.
- J. When abduction of a child is alleged, the officer should attempt to interview the alleged abductor parent to determine if he or she has physical custody of the child and obtain the statement of the alleged abductor in order to help determine the safety of the child and whether it is a civil child custody dispute or a criminal investigation. The procedure for Missing Persons will be followed for child abduction investigations related to interference with child custody due to a court order or warrant.
- K. Determine if the child is safe and investigate for evidence of child abuse. Initiate an Offense/Incident Report titled “Child Abuse” if allegations of child abuse are made. See SOP 313.7 Child Abuse Investigations.
- L. If there is no allegation or evidence that the child has been or will be harmed, disposition the call with the following information:
 - 1. Names and dates of birth of both involved parents.
 - 2. Names and dates of birth of all children involved.
 - 3. Document which parent retained custody and a brief explanation of the reasoning.
 - 4. Intended destination of the parent retaining custody.

- M. Determine whether a missing child report should be initiated if the child and/or abductor is not present.
- N. Often officers will need to advise the parents of the need to obtain a proper court order specifying the custodial parent when the dispute is over lack of a parenting plan, time sharing orders, or parenting plan dispute.
- O. If the parents of a child(ren) are legally married, or if not married but the father has established legal paternity as outlined below, or a court order regarding child custody exists, each party has legal rights to the child. If one parent is attempting to leave with the child, but not flee the jurisdiction, the responding officer should attempt to maintain the status quo. That is, whoever has the child upon the officer's arrival should keep the child. When investigating such a case, the officer should ascertain the destination of the parent who is leaving with the child so as to ensure that there is no intended concealment of the child from the other parent that would violate F.S. §787.03. It is important to note this statute does not apply to a parent who is escaping from or protecting himself or herself from any act of domestic violence, believes that he or she is about to become a victim of an act of domestic violence, or believes that his or her action was necessary to preserve the child from danger to his or her welfare and thereby seeks shelter from such acts or possible acts.
- P. Whenever the whereabouts of a child involved with DCF become unknown, DCF or the community-care provider shall make reasonable efforts to locate the child and if determined to be missing must file a report of the missing child. F.S. §39.0141, 937.021
- Q. DCF child protection database allows the entry of the names of parents or caregivers who are currently the subject of child protective investigation (CPI) for alleged child abuse, abandonment, or neglect, or is a parent or caregiver of a child who is allowed to return home under judicial supervision. An officer who interacts with a parent or caregiver who is in the child protection database and the interaction results in the officer having concern about a child's health, safety or well-being, the officer shall report the details to the Central Abuse Hotline immediately. F.S. §39.0142
- R. The Central Abuse Hotline is capable of receiving all reports of known or suspected child abuse, abandonment, or neglect and reports that a child is in need of supervision and care and has no responsible adult immediately known and available. F.S. §39.101. A person is required to report child abuse, abandonment or neglect to the Central Abuse Hotline. Officers are required to report and provide his or her name to the hotline counselors. Officers are required to report and provide his or her name to the hotline counselors except when the incident is under investigation

by the law enforcement agency after being referred to the agency by the Central abuse Hotline. Reports to the hotline can be in writing, calling, or through electronic reporting. F.S. §39.201

V. PROCEDURE – SPECIFIC

A. CHILD CUSTODY DISPUTES - WITHOUT COURT ORDERS:

1. When investigating a child custody dispute and the parents were legally married when the child was born but no custody order or parenting plan is in place, each party has equal rights to the child. This is a civil matter and no action should be taken by the officer to remove the child from one parent and return the child to the other, unless the child is in danger and statutory requirements are met to take law enforcement action (see protective custody, paragraph D) or effect an arrest (see criminal laws, paragraph E).
2. Under F.S. §744.301, the mother and father are the natural guardians of their own children and of their adoptive children, during minority unless the parents' parental rights have been terminated pursuant to Ch. 39 child protection system. If there is pending child protection proceeding, the parents may act as legal guardians until a court terminates parental rights. If one parent dies, the surviving parent remains the sole natural guardian even if the surviving parent remarries.
3. When investigating a child custody dispute and the child was born out of wedlock with no custody order in place, F.S. §744.301 will govern. The mother and a father *who has established paternity* are both the natural guardians of the child and are entitled to shared parental responsibility. Under F.S. §742.011, any woman who is pregnant or has a child, any man who has reason to believe that he is the father of the child, or any child may bring proceedings for determination of paternity, rights, and responsibilities.
 - a. In the absence of a court order, a father can establish paternity in one of the following ways under F.S. §742.10(1) and case law:
 - 1) An adjudicatory hearing brought under the statutes governing inheritance;
 - 2) Dependency under workers' compensation or similar compensation programs;

- 3) An affidavit acknowledging paternity or a stipulation of paternity executed by both parties and filed with the clerk of court;
- 4) Paternity is adjudicated by the Department of Revenue;
- 5) An affidavit, notarized voluntary acknowledgement of paternity, or a voluntary acknowledgement of paternity which must be witnessed by two individuals and signed under penalty of perjury executed by both parties (not required to be filed with the clerk of court); or
- 6) Birth Certificate: Florida case law has held that a birth certificate can be proof of voluntary acknowledgement of paternity under paragraph 5) since a voluntary acknowledgement of paternity is required in order to have a father's name legally added to a birth certificate (Per F.S. 382.013(2)(c)). As such, a presumption of legal paternity is established if the father's name is on a birth certificate, making the father a natural guardian of the child, unless rescinded or revoked by either party, and conferring equal status to both the mother and father of a child, including custodian rights. However, the court held use of a birth certificate to establish paternity applies to children born after July 1, 2023.
 - a) While the father's name may be on a birth certificate and establish legal paternity, if there is a court order regarding custody, the court order controls for purposes of determining which parent is entitled to custody.
 - b) A mother or father has the right to rescind a voluntary acknowledgement of paternity within 60 days after the acknowledgement was signed. As such, both parties should be asked if either has filed to rescind the acknowledgement, and if so, to produce documentation to substantiate.

- c) After 60 days of execution of a voluntary acknowledgement and issuance of a birth certificate, a party may file a challenge in court on the basis of fraud, duress, or material mistake of fact. While the legal responsibilities of each parent are not suspended during the challenge, if a court enters a finding of good cause, it may impact a father's legal paternity rights. As such, both parties should be asked if either has filed a legal challenge based on fraud, duress, or material mistake of fact, and if such, whether a court has entered an order finding good cause, and to produce documentation to substantiate.
 - d) Prior July 1, 2023, a birth certificate alone was insufficient to establish legal paternity. Florida paternity laws are not retroactive with respect to criminal interference with child custody investigations, therefore the laws applicable at the time of an alleged offense control. If a child was born out of wedlock prior to July 1, 2023, a birth certificate alone is not sufficient to establish legal paternity for allegations of criminal interference with child custody that occurred prior to that time.
 - e) Thus, a father presenting a birth certificate with his name on it for a child born after July 1, 2023, has established paternity and the officer will treat him as a natural guardian along with the mother, unless a court order says otherwise.
- b. If a father has established paternity, and there is no timesharing/custody schedule in place, the child(ren) shall remain with the parent who is in physical custody of the child(ren) at the time law enforcement was called, unless the child(ren) is in danger.
- c. Per F.S. 744.301, if a father has **not** established paternity by one of the lawful methods above pursuant to F.S. 742.011 or 742.10(1), the mother is the natural guardian of the child(ren) and has sole legal and physical custody rights of the child(ren), and

the child(ren) should remain with or be returned to the mother if there is a dispute, unless the child(ren) is in danger.

4. When investigating a child custody dispute and the parents had a child out of wedlock and then later became legally married and there is no custody order in place, each party has equal rights to the child/children as if the parties were legally married when the child/children were born, as long as father has held himself out to be the reputable father (i.e. emotional and financial support, name on birth certificate, etc.). This would be a civil matter and officers should not take any action to remove the child from one parent and return the child to the other parent. Law enforcement intervention would only be permitted if there was a danger to the child and the statutory requirements were met to take law enforcement action or effect an arrest.

B. CHILD CUSTODY DISPUTES - FLORIDA COURT ORDER:

1. If the marriage between parents is dissolved, the natural guardianship shall belong to the parent to whom the sole parental responsibility has been granted by court order, or if the parents are given joint custody (shared parental responsibility), then both shall continue as natural guardians.
2. If the marriage is dissolved and neither the mother nor the father is awarded custody of the child by the courts, their right to act as a natural guardian of the child does not exist.
3. Custody Orders or parenting plans under F.S. Chapter 61 are generally not enforceable by a law enforcement officer. When being called regarding a child custody dispute, a law enforcement officer needs to determine whether there is concern for child abuse, abandonment, or neglect, and if so, notify DCF and ensure the Child Abuse Hotline is notified when applicable. Often enforcement of child custody orders involve time sharing disputes which cannot be resolved by the officer. Parents may have agreed to alter the time-sharing arrangements without seeking a modification of the order. One party may become upset after agreeing to modifications without a court order and call the police who then discover the parties had agreed to modification, but one party no longer is happy with the modifications agreed upon. Other calls may involve late drop-offs and a parent who wants police involvement. In such situations the officer will try to have the parties resolve the dispute and advise them to go back to court to enforce the time-sharing arrangements or violations of the order. Occasionally, in a child custody dispute the judge may issue a warrant under this section. If a warrant is issued, a law

enforcement officer may execute it as directed in the warrant. While minor child custody order disputes are not likely criminal, officers must ensure the matter is not one that rises to the level of criminal interference with child custody as discussed below.

4. *Child Custody determination* means a court decision and court orders and instructions providing for the legal custody, physical custody, residential care, or visitation with respect to a child, including permanent, temporary, initial, and modification orders. F.S. §61.503(3).
5. *Modification order* means a child custody determination which modifies or replaces a previous determination, whether made by a court which rendered the first determination, or by another court. F.S. §61.503(11).
4. *Person acting as a parent* means a person, other than the parent, who has physical custody of the child and who: has physical custody of the child or has had physical custody for a period of 6 consecutive months including any temporary absence, within 1 year immediately before the commencement of a child custody proceeding; and has been awarded a child-custody determination by a court or claims a right to child-custody determination under the laws of the State of Florida. Claims of custody often come from grandparents, relatives, or friends who were “given” the child for extended periods of time and have been serving as caretaker and provider in the parents’ absence. Sometimes they have a notarized paper from the parent giving power of attorney for the child. Officers are called in when the parent returns to claim the child from person acting as a parent. In the absence of specific court papers, the determination of where the child should be placed is a very gray area that is often a judgement call for the responding officer based on the fitness of the parent that has reappeared to reclaim the child and the fitness of the person acting as a parent. Preference should be given to the biological parent, unless the officer can show that they are clearly unfit. If the person acting as a parent is desiring to seek legal temporary custody then they would be advised to get legal advice and file for custody. **Certain relatives may obtain temporary formal custody under Florida Statutes Chapter 751.** F.S. §61.503(13).
5. *Physical custody* means the physical care and supervision of a child. F.S. §61.503(14).
6. *Warrant to take physical custody of child.* F.S. §61.534 (5) states: A warrant to take physical custody of a child is enforceable

throughout this state. If the court finds on the basis of the testimony of the petitioner or other witness that a less intrusive remedy is not effective, it may authorize law enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances of the case, the court may authorize law enforcement officers to make a forcible entry at any hour.

7. For any circumstances where a court order does exist, initiate an Offense/Incident Report titled “Interference with Custody” to document the details of the complaint, statements made, and outcome of the incident.
8. Court-Ordered Parenting Plan, F.S. §61.45; Violation of Visitation Agreement in Custody Orders:
 - a. A court may enter a parenting plan, including a time-sharing schedule, and may provide travel restrictions, custody limitations, visitation limitations, or contact limitations.
 - b. A violation of a court-ordered parenting plan may subject the party committing the violation to civil or criminal penalties. §61.45(10).
 - c. Court-ordered parenting plan or time-sharing schedule violations do not apply to a parent who is determined by the court to be a victim of an act of domestic violence. A parent who has obtained an injunction for a petition against domestic violence shall demonstrate to the court that the parent is a victim of domestic violence or is about to become the victim of domestic violence and shall exempt the parent from the court-order parenting plan or time-sharing schedule requirements. §61.45(7).
 - d. Failure to pay child support will not allow the parent who failed to receive support to fail to honor the time-sharing schedule in effect. §61.13(4).
 - e. When a parent fails to honor a time-sharing schedule in a parenting plan, the court may award extra time-sharing to compensate the other parent and may impose other sanctions. A violation of time-sharing can be punished by contempt of court. §61.13(4).

- f. Violation of a time-sharing schedule in a parenting plan may become criminal when the offending parent “knowingly or recklessly takes,” per §787.03(1), the child away from the other parent contrary to the court order. If the offending parent is just late in returning the child from visitation and there is no attempt to conceal or deprive the other parent of custody, the officer will refer the aggrieved party back to the court that issued the custody decree for the issuing judge to decide contempt. **Except where the safety of the child is immediately in question, officers should endeavor to stay out of custody disputes involving the interpretation of court orders.**
- g. If a parent fails to abide by the parenting plan visitation schedule (e.g., not returning the child, not releasing the child), but has made no attempt to abscond with the child, officers should make contact with the parent and explain the potential ramifications of not abiding with the court order (contempt of court, sanctions by the court, and possible interference with child custody) and work towards the parent voluntarily releasing the child. If the parent refuses to release the child, the officer should attempt to determine if the parent may abscond in order to take appropriate actions to determine if it rises to the level of interference with child custody, determine whether there is any concern for abuse rising to the level needing immediate action, complete a report, and contact SVU.

C. CHILD CUSTODY DISPUTES - OUT-OF-STATE ORDERS, INTERNATIONAL ORDERS, OR TRIBAL DISPUTES:

- 1. OUT-OF-STATE CUSTODY ORDERS: In custody dispute cases where there is an out-of-state custody order, SVU will assist with the investigation and enforcement of out-of-state custody orders. Officers are encouraged to contact SVU for assistance when handling such matters.
 - a. An officer or SVU Detective will:
 - i. Obtain a *certified* copy of the custody order from the custodial party.
 - ii. Confirm that the order has been “domesticated.” (This requires the custodial party to file a petition to a Florida Circuit Court for Recognition, Domestication, and Enforcement of a Foreign Order.) A

Hillsborough County Clerk of the Court stamp on the order does not meet the requirement for domestication. A Florida Circuit Court judge must sign the order. Although domestication of the order can only take place during normal business hours of the court (0800 to 1700 hours, Monday through Friday), once verified the order will be enforced as soon as possible following the verification. The order will be re-verified during each new business day to prevent any over-sight in case a new order or revision was issued.

- iii. Contact the Clerk of the Court in the originating jurisdiction to confirm the legal standing of the order and determine if the order has been modified.
 - iv. Contact the Hillsborough County Clerk of the Court and determine if any conflicting custody orders are on file.
 - v. Once the custody order is domesticated, it is enforced in the same manner as a Florida custody order.
- b. An officer may not physically enforce a court order issued by another state unless the court order has been domesticated as described above, an Order to Pick Up Minor Child(ren) is issued by a court in Hillsborough County, and the State Attorney's Office has been consulted.
- c. If a parent from out of state arrives in Tampa and presents a valid domesticated custody order to an officer and requests the officer assist with having a child turned over to them, the officer will contact SVU for assistance when available. The officer will attempt to determine whether the local parent with the child is aware that the out-of-state parent is in town and whether there is a concern the parent with the child may abscond. If the parent is not likely to abscond, the matter may be referred to SVU. If the parent with the child is a threat to abscond, the officer or SVU Detective will make immediate contact with the parent to ascertain whether the parent is aware of the out-of-state order and whether there are any local orders disputing or modifying the out-of-state order. If the child is listed as missing in NCIC, the officer will contact the originating agency and take the appropriate steps at the originating agency's request. When the local parent with

the child has a local court order issued after the out-of-state order or the order leaves the officer unable to determine custody, the child may be left with the local parent and SVU will be notified. Attempts to have the parents resolve the issue should be made. Officers should copy all orders and attach to a report which is routed to SVU.

2. **INTERNATIONAL CUSTODY DISPUTES:** The Hague Convention governs international custody disputes where there is abduction of a child from one country to another, and both countries have signed the treaty. The State Department is responsible for confirming authentication of the order with the country of origin. Once authenticity is confirmed, the order should be handled as if it were an out-of-state custody order.
3. **INDIAN TRIBAL CUSTODY DISPUTES:** The Indian Child Welfare Act of 1978 gives an Indian tribe exclusive jurisdiction over any child custody proceeding involving an Indian child who lives on the reservation. If an Indian child is a ward of a tribal court, the Indian tribe will retain exclusive jurisdiction.

D. CHILD DEPENDENCY ORDERS - TAKING A DEPENDENT CHILD INTO CUSTODY:

1. Under F.S. §39.401, a law enforcement or an authorized agent of DCF is authorized to take a child alleged to be dependent into custody when there is probable cause to support a finding that:
 - a. That the child has been abused, neglected, or abandoned, or is suffering from or is in imminent danger of illness or injury as a result of abuse, neglect, or abandonment;
 - b. That the parent or legal custodian of the child has materially violated a condition of placement imposed by the court; or
 - c. That the child has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care.
2. In addition, §39.401 allows a law enforcement officer to take a child alleged to be dependent into custody when a court order has been issued after the filing of a petition for shelter or dependency.

3. Taking custody of a child without an order from a Circuit Court Judge, except when arresting for a delinquent act, is to be affected only in those instances where the circumstances meet the criteria above such that the circumstances are of an emergency nature and immediate action is necessary for the child's welfare. DCF must be notified when an officer takes a child into protective custody or if an officer suspects protective custody may be justified upon further investigation by DCF.
4. F.S. §39.401 gives DCF and law enforcement officers the authority to take a child into custody if the officer has probable cause to support a finding that the child has been abused, neglected, or is in imminent danger of illness or injury as a result of abuse, neglect, or abandonment. A court order is not needed.
5. Anytime an officer determines there are indicators of abuse, abandonment, or neglect, the officer must immediately notify DCF Child Protection Investigations Division (CPID) which must assure the safety of the children.
6. Officers should ask to see the DCF Child Protection Investigator's (CPI) identification and assist with the removal when responding to the scene at the request of DCF or upon arrival at the scene after being called by an officer.
7. When a child is not in immediate danger (taking into consideration the age of the child, physical and mental condition, and the source of danger) and the parents or other responsible adults are present, the child need not be taken into custody.
8. When the circumstances require a dependent child be taken into custody by the investigating officer and transported to the appropriate receiving facility as directed by the personnel of the DCF, the following apply:
 - a. The juvenile's parents must be notified at the earliest time.
 - b. The officer shall remain with the child until relieved by a DCF CPI.
 - c. Inquiries on the child's whereabouts should be handled by advising the child is in official custody and that further information is available through DCF.

9. If arrest and prosecution are under consideration for those persons responsible for the existing condition of the child, care shall be taken in obtaining the evidence to support the charge.
10. Probable cause for taking a child into child custody does not authorize the entry of a dwelling in violation of the 4th Amendment but may be authorized when there is a felony arrest warrant, consent, exigency or a court order. Officers should document and gather evidence, physical or photographic, when taking a child into protective custody.
11. The following listed dependency cases require immediate custody and require notification to the Special Victims Unit (SVU). The completed police report shall be directed to the SVU for review and follow-up. Take custody for abuse, neglect or imminent danger of illness or injury as a result of abuse, neglect or abandonment and notify SVU and DCF when there is probable cause to support a finding that a dependent child:
 - a. Has been abandoned by his or her parents or custodian.
 - b. For any reason is destitute or homeless.
 - c. Has no proper parental support, maintenance, care, or guardianship.
 - d. Because of neglect by parents or guardian, is deprived of education as required by law, or of medical, psychiatric, psychological, or other care necessary for well-being.
 - e. Is living in conditions or in an environment that may injure or endanger his or her welfare.
 - f. Is living in a home unfit because of neglect, cruelty, depravity, or other adverse condition of a parent or other person in whose care the child may be.
 - g. Is surrendered to the DCF or a licensed child-placing agency for the purpose of adoption.
12. The investigating officer shall contact the DCF Abuse Registry at their 24-hour number 1-800-96-ABUSE and advise DCF that an immediate response is required. DCF will evaluate the request of law enforcement based on the abuse criteria and affect a response.

13. A court may enter an Order to Take Into Custody after the filing of a petition to authorize all law enforcement agencies to take into protective custody a child when DCF alleges sufficient facts that one or more of the following exists:
 - a. A child has been abused, abandoned, or neglected;
 - b. A child is at substantial risk of imminent abuse, abandonment or neglect;
 - c. The parent has materially violated a condition of placement imposed by the court's prior placement order; and/or
 - d. The child is in danger to harm because the child's whereabouts are unknown and DCF is unable to ensure the child's safety.
14. Officers may be called by DCF to assist with the execution of an Order to Take Into Custody of a child which will authorize the taking of the child into custody and providing directions on hold the child in a suitable place until transferred to DCF. These orders authorize law enforcement to demand the child be turned over. In the event the Order authorizes entry into a home, a supervisor will be consulted prior to entry to remove a child. As the court order has considered the seriousness of the alleged situation, it is presumably a valid court order authorizing entry to remove the child. However, demand must be first refused and entry should only be done with the purpose of obtaining the child for the safety and welfare of the child. The situation should be reviewed by a supervisor, and legal when available.
15. From time to time citizens may request an officer to serve a Petition for Dependency or other civil process under Chapter 39. Unlike Court Orders specifically authorizing all law enforcement the authority to serve the Order, petitions are served by a process server, HCSO, DCF, or guardians ad litem.
16. Under F.S. §39.202, reports made to the central abuse hotline and the person making the report of child abuse and identifying information is confidential from public records F.S. §119.07 unless otherwise exempted; however, this information may be shared between agencies participating in the local Memorandum of Understanding regarding child abuse, abandonment, or neglect investigations. Records of child abuse, abandonment, or neglect shall be maintained and disclosed in accordance with §39.202.

17. Refer to SOP 313 III. K. – Juvenile Procedures regarding the disposition of juveniles alleged to be dependent, to include runaways.

E. CRIMINAL LAWS INVOLVING CHILD CUSTODY – INTERFERENCE WITH CHILD CUSTODY:

1. Under F.S. §39.306, Child Protective Investigations Division (CPID) shall enter into agreements with the local sheriff's office and police departments to provide that CPID will coordinate with the local law enforcement agencies in conducting any potential criminal investigations. The local Memorandum of Understanding entered into between the local agencies provides that mandatory reporting calls made to the central abuse hotline as provided under F.S. §39.201 will be forwarded to CPID when it is alleging harm to a child. CPID will forward such allegations of criminal conduct to the law enforcement agency with jurisdiction who shall review the report to determine whether a criminal investigation is warranted. When accepted, TPD will be responsible for the criminal investigation and CPID will coordinate the contact and interviews of a suspect and handle the protective investigations.
2. Removing Minors from the State or Concealing Minors Contrary to Court Order, F.S. §787.04:
 - a. It is unlawful for any person, in violation of a court order, to lead, take, entice or remove a minor beyond the limits of this state, or to conceal the location of a minor, with personal knowledge of the order, and is a felony of the third degree. §787.04(1)
 - b. It is unlawful for any person, with criminal intent, to lead, take, entice, or remove a minor beyond the limits of the state, or to conceal the location of a minor, during the pendency of any action or proceeding affecting custody of the minor, after having received notice as required by law of the pendency of the action or proceeding, without permission of the court in which the action or proceeding is pending, and is a felony of the third degree. §787.04(2).
 - c. It is unlawful for any person to knowingly and willfully lead, take, entice, or remove a minor beyond the limits of the state, or to knowingly and willfully conceal the location of the minor during the pendency of a dependency proceeding affecting such minor or during the pendency of any investigation, action, or proceeding concerning the

alleged abuse or neglect of such minor, after having received actual or constructive notice of the pendency of such investigation, action, or proceeding and without the permission of the state agency or court in which the investigation, action, or proceeding is pending. §787.04(3).

- d. It is unlawful for any person, who has carried beyond the limits of the State of Florida any minor whose custody is involved in any action or proceeding pending in the state, pursuant to the order of the court in which the action or proceeding is pending, or pursuant to the permission of the court, thereafter to fail to produce the child in the court or deliver the child to the person designated by the court. §787.04(4).
- e. It is a defense to this crime that a person who leads, takes, entices, or removes a minor beyond the limits of the state reasonably believes that his or her action was necessary to protect the minor from child abuse (as defined in §827.03) §787.04(5).

3. Interference with Child Custody, F.S. §787.03:

- a. Whoever, without lawful authority, knowingly, or recklessly takes or entices any child seventeen years of age or under or any incompetent person from the custody of his parent, guardian, or other lawful custodian commits the offense of interference with custody and shall be guilty of a felony of the third degree. F.S. §787.03(1).
 - i. This paragraph is used for parents in violation of custody orders within the state; cases of adults harboring known runaways; or an adult boyfriend or girlfriend concealing a child girlfriend or boyfriend from the parents or legal guardian.
 - ii. Award of shared parental responsibility and supervised timesharing does not automatically provide the legal authority of a parent when that parent acts without lawful authority and knowingly or recklessly takes or entices any minor from the custody of the minor's parent, his guardian, a public agency having the lawful charge of the minor, or any other lawful custodian.

- b. In the absence of a court order determining custody or visitation with any minor or with any incompetent person, any parent of the minor or incompetent person, whether natural or adoptive, stepparent, legal guardian, or relative of the minor or incompetent person who has custody thereof and who takes, detains, conceals, or entices away that minor or incompetent person within or without the state with malicious intent to deprive another person of their right to custody of the minor or incompetent person commits a felony of the third degree. F.S. §787.03(2).
 - i. In the case of the parents' separation, with legal papers, where custody of their children has not been determined by the court or in an unofficial separation of parents – both parents have the same legal rights to the child and the officer should **not** take the child from the parent having present physical custody **unless** the child is endangered.
 - ii. Interference with Child Custody under §787.03(2) would become an issue only if one parent, “takes, detains, conceals, or entices” that child or incompetent person within or without the state, with malicious intent to deprive another person of his right of custody. This should be charged when there are no orders determining custody with parents. Commonly this is used when one parent takes and conceals the child and refuses to tell the other parent and/or law enforcement where the child is staying, thus depriving the other parent of the right to custody.
- c. Interference with Child Custody shall not apply in cases where a spouse who is a victim or reasonably believes he or she is about to become a victim of domestic violence, as defined in §741.30, or believes that his or her actions were necessary to protect the child or incompetent person from danger to his or her welfare seeks shelter from such acts and takes the child or incompetent person with him or her, but only if:
 - i. The sheriff or state attorney is notified within 10 days after taking the child;
 - ii. The taking parent commences a custody case in court; and

iii. The sheriff or state attorney is kept informed of any address or phone number change for the child. §787.03(6)

- d. It is a defense to a charge of unlawful interference with custody that the suspect reasonably believed that his or her action was necessary to preserve the minor or the incompetent person from danger to the minor's or incompetent person's welfare. It is also a defense that the minor or incompetent person was taken away at his or her own instigation without enticement and without the purpose to commit a criminal offense with or against such minor or person, and the suspect establishes that it was reasonable to rely on the instigating acts of the minor or incompetent person. §784.03(4).
- e. Proof that a child has not attained the age of 18 creates a presumption that the suspect knew the child's age or acted in reckless disregard thereof. F.S. §787.03(5).
- f. An officer may obtain a search warrant of a dwelling when there is probable cause to believe that there is evidence of interference with child custody and property (i.e.: the child) in a dwelling to be searched. F.S. §933.18(7).

4. False Imprisonment, F.S. §787.02:

- a. "False imprisonment" means forcibly, by threat, or secretly confining, abducting, imprisoning, or restraining another person without lawful authority and against her or his will.
- b. Confinement of a child under the age of 13 is against her or his will within the meaning of this section if such confinement is without the consent of her or his parent or legal guardian. §787.02(2)
- c. A person who commits the offense of false imprisonment is guilty of a third-degree felony which is enhanced if done to a child under the age of 13 and in the course of committing the false imprisonment a specifying offense is committed. §787.02(3)(a)

5. Failure to Report Child Abuse, Abandonment, or Neglect, F.S. § 39.205

- a. A person who knowingly and willfully fails to report to the central abuse hotline known or suspected child abuse, abandonment, or neglect, or who knowingly and willfully prevents another person from doing so, commits a third-degree felony. §39.205(1)
- b. Unless the person is a victim of domestic violence or other mitigating circumstances exist, a person 18 years of age or older who lives in the same house or living unit as the child who is known or suspected to be a victim of child abuse, neglect of a child, or aggravated child abuse, and who knowingly and willfully fails to report the child abuse commits a third degree felony. §39.205(2)
- c. A person who makes public or discloses any confidential information contained in the central abuse hotline or in the records of any child abuse, abandonment, or neglect case, except as authorized, commits a second-degree misdemeanor. §39.202(6)
- d. A person who makes a knowing and willful false report of child abuse, abandonment, or neglect, or who advises another to do so, is guilty of a third-degree felony. A report made in good faith shall be immune from any liability. §39.202(9)

Supersedes SOP 313.6, dated 8/23.