

# 2009 Legislative Changes to Chapter 39, F.S.

- SB 1128      Education for Children in Shelter or Foster Care
- HB 381      Grandparents and Relatives
- SB 126      Records Concerning Children
- HB 1409      ICPC, Interstate Compact on the Placement of Children  
(Upon Passing by 35 States)

## Legal I: Legal Basis for Child Protection

### Children's Records F.S. 39.00145 and 39.202

#### Children's records must contain at a minimum:

- child's case plan
- full name and street address of all shelters, foster parents, group homes, treatment centers or locations where child has been placed **F.S. 39.00145(1)**
- Case record must be made available and, upon request, provided at no cost to the child, child's attorney, caregiver, and GAL
- Provided to child in a manner and setting that are appropriate for the age and maturity of the child

#### Access to Records:

- Court may authorize release of the record to others to ensure appropriate services or for the safety of the child F.S. 39.00145
- Agencies which may share with each other confidential records under Chapter 119: **F.S. 39.00145(4)**; all state and local agencies and programs that provide services to children or that are responsible for a child's safety, including...
- Department of Juvenile Justice
- Department of Health
- Agency for Health Care Administration
- Agency for Persons with Disabilities
- Department of Education
- School Districts
- Department of Revenue
- Guardian ad Litem
- Any provider contracting with such agencies

#### Records that may **not** be shared:

- records of information made **confidential by federal law F.S. 39.00145(4)(a)**
- Information concerning clients and records of certified **domestic violence centers**, which are confidential under s. 39.08 and privileged under s.90.5036. **F.S. 39.00145(4)(b)**

#### Access to reports and records of child abuse (excluding reporter information) must be granted to: **F.S. 39.202(2)r**

- foster parents with approved home study (if being considered for placement)
- designee of a licensed residential group home
- approved relative or non-relative with whom the child is placed

- pre-adoptive parents with favorable preliminary adoptive home study and adoption entity acting on their behalf
- adoptive parents
- an adoption entity acting on behalf of pre-adoptive or adoptive parents

Preservation of Records and Access by the Child, F. S. 39.202 (7)(a):

- Reports and records of all cases under Chapter 39 pertaining to a child and family must be **preserved** until the **child** who is the subject of the record is **30 years of age**
- Within **90 days** after the child leaves Department custody, Department must give **notice** to the person having legal custody of the child or to the young adult who was in the Department's custody **how the records may be obtained**

## **Maltreatments**

- Hotline: A component of quality assurance program must analyze unaccepted reports to the hotline by identified relatives as part of the review of screened out calls. **F.S. 39.201(7)**

## **Removal and Placement**

### **F.S. 39.301, 39.402, 39.502, 39.506, 39.701, 39.0016, 39.00145**

#### **Notification to Relatives 39.301, 39.402, 39.502**

- Children's Legal Services must notify relative of all hearings either in writing or orally and must inform relative that he or she has the right to: **F.S. 39.502(19)**
- attend all subsequent hearings
- submit written reports to the court
- speak to the court regarding the child
- After commencement of the investigation, a relative may submit a request in writing to the CPI or Case Manager to receive notification of all proceedings and hearings **F.S. 39.301 (15)(b)**
- Request must include relative's name, address, phone number, and relationship to the child **F.S. 39.301(15)(b)**
- CPI or Case Manager must forward the request for notification to Children's Legal Services who will notify relative of all hearings **39.502(19)**
- Court may release attorney from this obligation if relative's involvement is impeding the dependency process or detrimental to the child's well-being **F.S. 39.402(19)**
- Failure to provide notice must not result in any previous action of the court being set aside, reversed, modified, or changed unless court makes a finding that a change is in the child's best interest **F.S. 39.301 (15)(b)**
- Court must provide notice of next hearing to relatives providing out-of-home care to the child **F.S. 39.402(8)(b)(6), 39.506(9)**
- At shelter, court must notify the parents, legal custodian, and relatives providing out-of-home care of the importance of the active participation of the relative. **F. .S. 39.402 (8)(b)6.**
- Court must notify relatives providing out-of-home care following a shelter petition being granted that relative has the right to: **F.S. 39.402(8)(b)8.**
  - attend all subsequent hearings

- submit reports to the court
- speak to the court regarding the child

### **39.402, 1011.62**

- If “exceptional student” (one with a disability) is placed in a private residential care facility by an agency, within **10 business days** the **agency must provide written notification** of the placement to the **school** district where the student is currently counted for funding purposes under F.S. 1011.62.
- Child must be enrolled in school and receive a free and appropriate public education while notice and procedures regarding payment are pending

### **Tasks at Removal**

- Inform relative caregivers re: surrogate parent information and how to receive notice of hearings, and access to records

### **Medical and Educational Records Access:**

- If a parent refuses to or is unavailable to consent to access to the child’s **medical records** by the Department, its contract providers, or the GAL, then court may order such access. **F.S. 39.402(11)(b)**
- If a parent refuses to or is unavailable to consent to access to the child’s **educational records** by the Department, its contract providers, or the GAL, then court may order such access. **F.S. 39.402(11)(c)**

### **Education of Children/Surrogate Parents 39.0016, 39.402, 39.701**

- Court Appointed Surrogate Parent: (children who have or are suspected to have a disability) **39.0016(3)(b); 39.402(11)(d); 39.701(8)(d)**
- “Surrogate parent” means an individual appointed to act in the place of a parent in educational decision making and in safeguarding a child’s rights under the Individuals with Disabilities Education Act **F.S. 39.0016(1)(c)**

### **Investigative Response**

#### **39.301, 39.402, 39.502**

- CPI must provide contact information to the reporter within 24 hours: **39.301 (6)**
- CPI must inform reporter that reporter can provide written summary of report to investigator who must include it in master file **39.601(6); 39.201**
- After commencement of the investigation, a relative may submit a request in writing to the CPI or Case Manager to receive notification of all proceedings and hearings **F.S. 39.301 (15)(b)**
- Request must include relative’s name, address, phone number, and relationship to the child **F.S. 39.301(15)(b)**
- CPI or Case Manager must forward the request for notification to Children’s Legal Services who will notify relative of all hearings **39.502(19)**

### **Medical and Educational Records Access:**

- If a parent refuses to or is unavailable to consent to access to the child’s **medical records** by the Department, its contract providers, or the GAL, then court may order such access. **F.S. 39.402(11)(b)**

- If a parent refuses to or is unavailable to consent to access to the child's **educational records** by the Department, its contract providers, or the GAL, then court may order such access. **F.S. 39.402(11)(c)**

## Case Planning

- After commencement of the investigation, a relative may submit a request in writing to the CPI or Case Manager to receive notification of all proceedings and hearings **F.S. 39.301 (15)(b)**
- Request must include relative's name, address, phone number, and relationship to the child **F.S. 39.301(15)(b)**
- CPI or Case Manager must forward the request for notification to Children's Legal Services.
- Case plan must include a task for the Case Manager to forward relative's request to Children's Legal Services. **F.S. 39.6011(4)(b)**

## Ongoing Assessment and Permanency

### Surrogate Parents 39.0016, 39.001:

- Surrogate parent **can** include **foster parent** or **relative caregiver** even if employed by one of these agencies
- Surrogate parent **can** include **guardian ad litem**, **relative** or **non-relative** but **cannot** be **Case Manager**.
- Surrogate parent must be at least 18 years old. **F.S. 39.0016(3)(b)2.**
- Surrogate parent's **responsibility** is to be an educational decision maker for the child unless appointed for an additional purpose - not responsible for care, maintenance, custody, or residential placement of the child **F.S. 39.001 (3)(b)9.**
- Surrogate parents are not liable for actions taken in good faith on behalf of the student in protecting the special education rights of the child. **F.S. 39.001 (3)(b)11.**

### Surrogate parents must:

- be acquainted with the child and become knowledgeable about his or her disability and educational needs
- represent the child in all matters relating to identification, evaluation, and educational placement
- represent the interests and safeguard the rights of the child in educational decisions that affect the child. **F.S. 39.0016(3)(b)8.**
- successfully complete training using materials developed by the Department of Education to ensure adequate representation of the child **F.S. 39.0016(3)(b)3.**

### Placement in a private residential care facility:

- If "exceptional student" (one with a disability) is placed in a private residential care facility by an agency, within **10 business days** the **agency must provide written notification** of the placement to the **school** district where the student is currently counted for funding purposes under F.S. 1011.62.
- Child must be enrolled in school and receive a free and appropriate public education while notice and procedures regarding payment are pending

**Access to records by the child, F. S. 39.202 (7)(a):**

- Within **90 days** after the child leaves Department custody, Department must give **notice** to the person having legal custody of the child or to the young adult who was in the Department's custody **how the records may be obtained**

**Adoption**

**Access to reports and records of child abuse** (excluding reporter information) must be granted to: **F.S. 39.202(2)r**

- foster parents with approved home study (if being considered for placement)
- designee of a licensed residential group home
- approved relative or non-relative with whom the child is placed
- pre-adoptive parents with favorable preliminary adoptive home study and adoption entity acting on their behalf
- adoptive parents
- an adoption entity acting on behalf of pre-adoptive or adoptive parents