

## **Language on Tabs:**

General Provisions

Reporting Child Abuse

Protective Investigations

Family Builders Program

Taking Children Into Custody & Shelter Hearings

Petition, Arraignment, Adjudication, & Disposition

Disposition; Postdisposition change of Custody

Case Plans

Permanency

Judicial Reviews

Termination of Parental Rights

Guardian ad Litem & Guardian Advocates

Domestic Violence

Independent Living

Rules of Juvenile Procedure

# **Chapter 39, Florida Statutes**

**with excerpts from the Florida Rules of Juvenile Procedure  
and Section 409.1451, Independent Living Transition Services**

**July 1, 2008**

**A collaborative effort by:  
Statewide Guardian ad Litem Office  
Department of Children and Families  
Office of the State Courts Administrator**

## Brief Overview of Changes from the 2008 Legislative Session

<b>HB 35</b> <b>SB 226</b>	<p>This bill creates a definition of “social worker” in s. 39.01. It also creates s. 491.016 to provide requirements and exemptions for holding oneself out to the public as a social worker.</p>
<b>HB 625</b> <b>SB 2192</b>	<p>This bill amends s. 409.1451 and provides family foster homes, residential child-caring agencies and other authorized caregivers must develop plans for age-appropriate activities for children in their care. The bill also creates s. 743.046, allowing removal of the disability of non-age so foster care youth can get utility services upon their 18th birthdays.</p>
<b>HB 663</b> <b>SB 1084</b>	<p>Section 39.812 is revised in this bill which primarily amends Chapter 63. New s. 63.085(2) requires disclosure of information to preadoptive parents concerning the background of the child they seek to adopt and the child's family's social and medical history.</p>
<b>HB 7077</b> <b>SB 1048</b>	<ul style="list-style-type: none"> <li>• Revises definitions of abandonment and harm; creates definition of "child who has exhibited inappropriate sexual behavior".</li> <li>• Clarifies criminal history check requirements in s. 39.0138.</li> <li>• Creates new 39.401(5) with requirements for/restrictions on the use of non-relative placements.</li> <li>• Revises s. 39.502 requiring that foster parents or preadoptive parents should be provided notice of proceedings relating to children in their care or those they are seeking to adopt.</li> <li>• Expands s. 39.504 to allow injunctions against abuse or domestic violence. New language is added to specify the relief that can be awarded and that law enforcement officers may use arrest powers to enforce the injunction.</li> <li>• Amends s. 39.507 to clarify a child is dependent after an order of adjudication is entered based on the conduct of either parent. The new language ensures courts determine whether each parent abused, abandoned or neglected the child but specifies a child is only adjudicated once; mandates the court supplement the adjudicatory order, disposition order and case plan as necessary.</li> <li>• Specifies in s. 39.521(3)(c), if no parent is willing or available to assume care and custody of a dependent child, and the court will not place the child with a relative, the court shall consider placing the child with the adoptive parent of the child's sibling next.</li> <li>• Revises s. 39.701 to require service of notice of a judicial review hearing (regardless of whether the person was present at the previous hearing) and adds children over the age of 13 and the attorney for the child to the list of individuals to be served.</li> <li>• Amends s. 39.806 to allow for termination of parental rights for failure to comply with the case plan for a period of 9 months (previously 12). Three new grounds for expedited TPR are established in s. 39.806(1)(j), (k), and (l).</li> </ul>
<b>HB 7007</b>	<p>This bill changes the term "abandoned newborn infant" to "surrendered newborn infant," eliminates the requirements for notice to and diligent search for the parent, and creates a presumption that a parent who surrenders an infant in accordance with s. 383.50 has consented to termination of parental rights. The bill also provides that when an infant is born in a hospital, the mother may surrender the infant and the hospital shall complete the birth certificate without naming the mother.</p>



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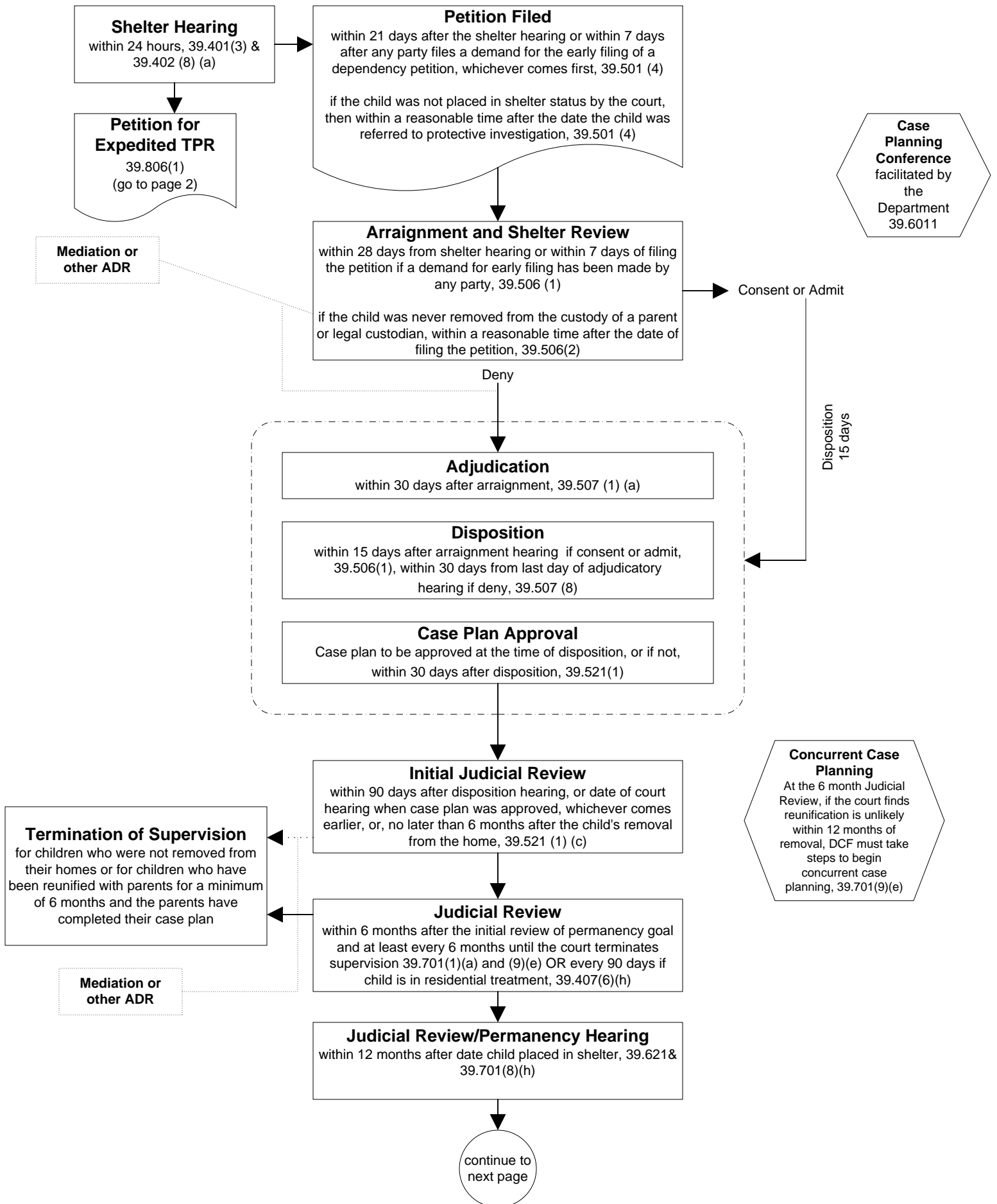
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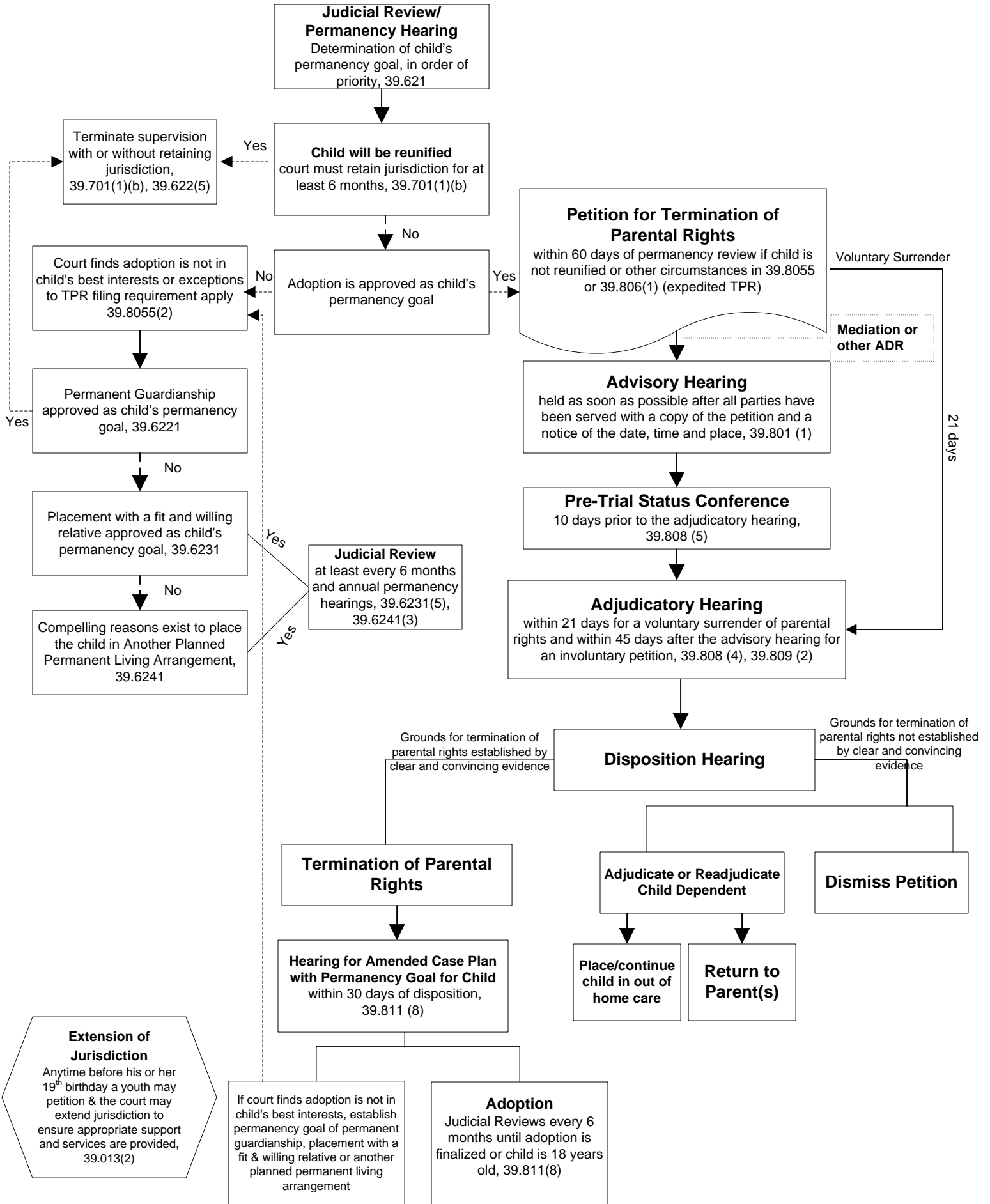


# Dependency Case Management Flowchart



# Dependency Case Management Flowchart

(continued)



**PART I  
GENERAL PROVISIONS**

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<u>39.0141</u>	<u>Missing children; report required.</u>

**39.001 Purposes and intent; personnel standards and screening.--**

(1) **PURPOSES OF CHAPTER.--**The purposes of this chapter are:

(a) To provide for the care, safety, and protection of children in an environment that fosters healthy social, emotional, intellectual, and physical development; to ensure secure and safe custody; to promote the health and well-being of all children under the state's care; and to prevent the occurrence of child abuse, neglect, and abandonment.

(b) To recognize that most families desire to be competent caregivers and providers for their children and that children achieve their greatest potential when families are able to support and nurture the growth and development of their children. Therefore, the Legislature finds that policies and procedures that provide for prevention and intervention through the department's child protection system should be based on the following principles:

1. The health and safety of the children served shall be of paramount concern.
2. The prevention and intervention should engage families in constructive, supportive, and nonadversarial relationships.
3. The prevention and intervention should intrude as little as possible into the life of the family, be focused on clearly defined objectives, and take the most parsimonious path to remedy a family's problems.
4. The prevention and intervention should be based upon outcome evaluation results that demonstrate success in protecting children and supporting families.

(c) To provide a child protection system that reflects a partnership between the department, other agencies, and local communities.

(d) To provide a child protection system that is sensitive to the social and cultural diversity of the state.

(e) To provide procedures which allow the department to respond to reports of child abuse, abandonment, or neglect in the most efficient and effective manner that ensures the health and safety of children and the integrity of families.

(f) To preserve and strengthen the child's family ties whenever possible, removing the child from parental custody only when his or her welfare cannot be adequately safeguarded without such removal.

(g) To ensure that the parent or legal custodian from whose custody the child has been taken assists the department to the fullest extent possible in locating relatives suitable to serve as caregivers for the child.

(h) To ensure that permanent placement with the biological or adoptive family is achieved as soon as possible for every child in foster care and that no child remains in foster care longer than 1 year.

(i) To secure for the child, when removal of the child from his or her own family is necessary, custody, care, and discipline as nearly as possible equivalent to that which should have been given by the parents; and to ensure, in all cases in which a child must be removed from parental custody, that the child is placed in an approved relative home, licensed foster home, adoptive home, or independent living program that provides the most stable and potentially permanent living arrangement for the child, as determined by the court. All placements shall be in a safe environment where drugs and alcohol are not abused.

(j) To ensure that, when reunification or adoption is not possible, the child will be prepared for alternative permanency goals or placements, to include, but not be limited to, long-term foster care, independent living, custody to a relative on a permanent basis with or without legal guardianship, or custody to a foster parent or legal custodian on a permanent basis with or without legal guardianship.

(k) To make every possible effort, when two or more children who are in the care or under the supervision of the department are siblings, to place the siblings in the same home; and in the event of permanent placement of the siblings, to place them in the same adoptive home or, if the siblings are separated, to keep them in contact with each other.

(l) To provide judicial and other procedures to assure due process through which children, parents, and guardians and other interested parties are assured fair hearings by a respectful and respected court or other tribunal and the recognition, protection, and enforcement of their constitutional and other legal rights, while ensuring that public safety interests and the authority and dignity of the courts are adequately protected.

(m) To ensure that children under the jurisdiction of the courts are provided equal treatment with respect to goals, objectives, services, and case plans, without regard to the location of their placement. It is the further intent of the Legislature that, when children are removed from their homes, disruption to their education be minimized to the extent possible.

(n) To create and maintain an integrated prevention framework that enables local communities, state agencies, and organizations to collaborate to implement efficient and properly applied evidence-based child abuse prevention practices.

(2) DEPARTMENT CONTRACTS.--The department may contract with the Federal Government, other state departments and agencies, county and municipal governments and agencies, public and private agencies, and private individuals and corporations in carrying out the purposes of, and the responsibilities established in, this chapter.

(a) When the department contracts with a provider for any program for children, all personnel, including owners, operators, employees, and volunteers, in the facility must be of good moral character. A volunteer who assists on an intermittent basis for less than 40 hours per month need not be screened if the volunteer is under direct and constant supervision by persons who meet the screening requirements.

(b) The department shall require employment screening, and rescreening no less frequently than once every 5 years, pursuant to chapter 435, using the level 2 standards set forth in that chapter for personnel in programs for children or youths.

(c) The department may grant exemptions from disqualification from working with children as provided in s. 435.07.

(d) The department shall require all job applicants, current employees, volunteers, and contract personnel who currently perform or are seeking to perform child protective investigations to be drug tested pursuant to the procedures and requirements of s. 112.0455, the Drug-Free Workplace Act. The department is authorized to adopt rules, policies, and procedures necessary to implement this paragraph.

(e) The department shall develop and implement a written and performance-based testing and evaluation program to ensure measurable competencies of all employees assigned to manage or supervise cases of child abuse, abandonment, and neglect.

(3) GENERAL PROTECTIONS FOR CHILDREN.--It is a purpose of the Legislature that the children of this state be provided with the following protections:

(a) Protection from abuse, abandonment, neglect, and exploitation.

(b) A permanent and stable home.

(c) A safe and nurturing environment which will preserve a sense of personal dignity and integrity.

(d) Adequate nutrition, shelter, and clothing.

(e) Effective treatment to address physical, social, and emotional needs, regardless of geographical location.

(f) Equal opportunity and access to quality and effective education, which will meet the individual needs of each child, and to recreation and other community resources to develop individual abilities.

(g) Access to preventive services.

(h) An independent, trained advocate, when intervention is necessary and a skilled guardian or caregiver in a safe environment when alternative placement is necessary.

(4) SUBSTANCE ABUSE SERVICES.--

(a) The Legislature recognizes that early referral and comprehensive treatment can help combat substance abuse in families and that treatment is cost effective.

(b) The Legislature establishes the following goals for the state related to substance abuse treatment services in the dependency process:

1. To ensure the safety of children.

2. To prevent and remediate the consequences of substance abuse on families involved in protective supervision or foster care and reduce substance abuse, including alcohol abuse, for families who are at risk of being involved in protective supervision or foster care.

3. To expedite permanency for children and reunify healthy, intact families, when appropriate.

4. To support families in recovery.

(c) The Legislature finds that children in the care of the state's dependency system need appropriate health care services, that the impact of substance abuse on health indicates the need for health care services to include substance abuse services to children and parents where appropriate, and that it is in the state's best interest that such children be provided the services they need to enable them to become and remain independent of state care. In order to provide these services, the state's dependency system must have the ability to identify and provide appropriate intervention and treatment for children with personal or family-related substance abuse problems.

(d) It is the intent of the Legislature to encourage the use of the drug court program model established by s. 397.334 and authorize courts to assess children and persons who have custody or are requesting custody of children where good cause is shown to identify and address substance abuse problems as the court deems appropriate at every stage of the dependency process. Participation in treatment, including a treatment-based drug court program, may be required by the court following adjudication. Participation in assessment and treatment prior to adjudication shall be voluntary, except as provided in s. 39.407(16).

(e) It is therefore the purpose of the Legislature to provide authority for the state to contract with community substance abuse treatment providers for the development and operation of specialized support

and overlay services for the dependency system, which will be fully implemented and used as resources permit.

(f) Participation in the treatment-based drug court program does not divest any public or private agency of its responsibility for a child or adult, but is intended to enable these agencies to better meet their needs through shared responsibility and resources.

(5) PARENTAL, CUSTODIAL, AND GUARDIAN RESPONSIBILITIES.--Parents, custodians, and guardians are deemed by the state to be responsible for providing their children with sufficient support, guidance, and supervision. The state further recognizes that the ability of parents, custodians, and guardians to fulfill those responsibilities can be greatly impaired by economic, social, behavioral, emotional, and related problems. It is therefore the policy of the Legislature that it is the state's responsibility to ensure that factors impeding the ability of caregivers to fulfill their responsibilities are identified through the dependency process and that appropriate recommendations and services to address those problems are considered in any judicial or nonjudicial proceeding.

(6) LEGISLATIVE INTENT FOR THE PREVENTION OF ABUSE, ABANDONMENT, AND NEGLECT OF CHILDREN.--The incidence of known child abuse, abandonment, and neglect has increased rapidly over the past 5 years. The impact that abuse, abandonment, or neglect has on the victimized child, siblings, family structure, and inevitably on all citizens of the state has caused the Legislature to determine that the prevention of child abuse, abandonment, and neglect shall be a priority of this state. To further this end, it is the intent of the Legislature that an Office of Adoption and Child Protection be established.

(7) OFFICE OF ADOPTION AND CHILD PROTECTION.--

(a) For purposes of establishing a comprehensive statewide approach for the promotion of adoption, support of adoptive families, and prevention of child abuse, abandonment, and neglect, the Office of Adoption and Child Protection is created within the Executive Office of the Governor. The Governor shall appoint a Chief Child Advocate for the office.

(b) The Chief Child Advocate shall:

1. Assist in developing rules pertaining to the promotion of adoption, support of adoptive families, and implementation of child abuse prevention efforts.
2. Act as the Governor's liaison with state agencies, other state governments, and the public and private sectors on matters that relate to the promotion of adoption, support of adoptive families, and child abuse prevention.
3. Work to secure funding and other support for the state's promotion of adoption, support of adoptive families, and child abuse prevention efforts, including, but not limited to, establishing cooperative relationships among state and private agencies.
4. Develop a strategic program and funding initiative that links the separate jurisdictional activities of state agencies with respect to promotion of adoption, support of adoptive families, and child abuse prevention. The office may designate lead and contributing agencies to develop such initiatives.
5. Advise the Governor and the Legislature on statistics related to the promotion of adoption, support of adoptive families, and child abuse prevention trends in this state, the status of current adoption programs and services, current child abuse prevention programs and services, the funding of adoption, support of adoptive families, and child abuse prevention programs and services, and the status of the office with regard to the development and implementation of the state strategy for the promotion of adoption, support of adoptive families, and child abuse prevention.
6. Develop public awareness campaigns to be implemented throughout the state for the promotion of adoption, support of adoptive families, and child abuse prevention.

(c) The office is authorized and directed to:



1. Oversee the preparation and implementation of the state plan established under subsection (8) and revise and update the state plan as necessary.
2. Provide for or make available continuing professional education and training in the prevention of child abuse and neglect.
3. Work to secure funding in the form of appropriations, gifts, and grants from the state, the Federal Government, and other public and private sources in order to ensure that sufficient funds are available for the promotion of adoption, support of adoptive families, and child abuse prevention efforts.
4. Make recommendations pertaining to agreements or contracts for the establishment and development of:
  - a. Programs and services for the promotion of adoption, support of adoptive families, and prevention of child abuse and neglect.
  - b. Training programs for the prevention of child abuse and neglect.
  - c. Multidisciplinary and discipline-specific training programs for professionals with responsibilities affecting children, young adults, and families.
  - d. Efforts to promote adoption.
  - e. Postadoptive services to support adoptive families.
5. Monitor, evaluate, and review the development and quality of local and statewide services and programs for the promotion of adoption, support of adoptive families, and prevention of child abuse and neglect and shall publish and distribute an annual report of its findings on or before January 1 of each year to the Governor, the Speaker of the House of Representatives, the President of the Senate, the head secretary of each state agency affected by the report, and the appropriate substantive committees of the Legislature. The report shall include:
  - a. A summary of the activities of the office.
  - b. A summary of the adoption data collected and reported to the federal Adoption and Foster Care Analysis and Reporting System (AFCARS) and the federal Administration for Children and Families.
  - c. A summary of the child abuse prevention data collected and reported to the National Child Abuse and Neglect Data System (NCANDS) and the federal Administration for Children and Families.
  - d. A summary detailing the timeliness of the adoption process for children adopted from within the child welfare system.
  - e. Recommendations, by state agency, for the further development and improvement of services and programs for the promotion of adoption, support of adoptive families, and prevention of child abuse and neglect.
  - f. Budget requests, adoption promotion and support needs, and child abuse prevention program needs by state agency.
6. Work with the direct-support organization established under s. 39.011 to receive financial assistance.

**(8) PLAN FOR COMPREHENSIVE APPROACH.--**

(a) The office shall develop a state plan for the promotion of adoption, support of adoptive families, and prevention of abuse, abandonment, and neglect of children and shall submit the state plan to the Speaker of the House of Representatives, the President of the Senate, and the Governor no later than December 31, 2008. The Department of Children and Family Services, the Department of Corrections, the Department of Education, the Department of Health, the Department of Juvenile Justice, the Department of Law Enforcement, the Agency for Persons with Disabilities, and the Agency for Workforce Innovation shall participate and fully cooperate in the development of the state plan at both the state and local levels. Furthermore, appropriate local agencies and organizations shall be provided an opportunity to participate in the development of the state plan at the local level. Appropriate local groups and organizations shall include, but not be limited to, community mental health centers; guardian ad litem programs for children under the circuit court; the school boards of the local school districts; the Florida local advocacy councils;

community-based care lead agencies; private or public organizations or programs with recognized expertise in working with child abuse prevention programs for children and families; private or public organizations or programs with recognized expertise in working with children who are sexually abused, physically abused, emotionally abused, abandoned, or neglected and with expertise in working with the families of such children; private or public programs or organizations with expertise in maternal and infant health care; multidisciplinary child protection teams; child day care centers; law enforcement agencies, and the circuit courts, when guardian ad litem programs are not available in the local area. The state plan to be provided to the Legislature and the Governor shall include, as a minimum, the information required of the various groups in paragraph (b).

(b) The development of the state plan shall be accomplished in the following manner:

1. The office shall establish a Child Abuse Prevention and Permanency Advisory Council composed of an adoptive parent who has adopted a child from within the child welfare system and representatives from each state agency and appropriate local agencies and organizations specified in paragraph (a). The advisory council shall serve as the research arm of the office and shall be responsible for:

a. Assisting in developing a plan of action for better coordination and integration of the goals, activities, and funding pertaining to the promotion and support of adoption and the prevention of child abuse, abandonment, and neglect conducted by the office in order to maximize staff and resources at the state level. The plan of action shall be included in the state plan.

b. Assisting in providing a basic format to be utilized by the districts in the preparation of local plans of action in order to provide for uniformity in the district plans and to provide for greater ease in compiling information for the state plan.

c. Providing the districts with technical assistance in the development of local plans of action, if requested.

d. Assisting in examining the local plans to determine if all the requirements of the local plans have been met and, if they have not, informing the districts of the deficiencies and requesting the additional information needed.

e. Assisting in preparing the state plan for submission to the Legislature and the Governor. Such preparation shall include the incorporation into the state plan of information obtained from the local plans, the cooperative plans with the members of the advisory council, and the plan of action for coordination and integration of state departmental activities. The state plan shall include a section reflecting general conditions and needs, an analysis of variations based on population or geographic areas, identified problems, and recommendations for change. In essence, the state plan shall provide an analysis and summary of each element of the local plans to provide a statewide perspective. The state plan shall also include each separate local plan of action.

f. Conducting a feasibility study on the establishment of a Children's Cabinet.

g. Working with the specified state agency in fulfilling the requirements of subparagraphs 2., 3., 4., and 5.

2. The office, the department, the Department of Education, and the Department of Health shall work together in developing ways to inform and instruct parents of school children and appropriate district school personnel in all school districts in the detection of child abuse, abandonment, and neglect and in the proper action that should be taken in a suspected case of child abuse, abandonment, or neglect, and in caring for a child's needs after a report is made. The plan for accomplishing this end shall be included in the state plan.

3. The office, the department, the Department of Law Enforcement, and the Department of Health shall work together in developing ways to inform and instruct appropriate local law enforcement personnel in the detection of child abuse, abandonment, and neglect and in the proper action that should be taken in a suspected case of child abuse, abandonment, or neglect.

4. Within existing appropriations, the office shall work with other appropriate public and private agencies to emphasize efforts to educate the general public about the problem of and ways to detect child

abuse, abandonment, and neglect and in the proper action that should be taken in a suspected case of child abuse, abandonment, or neglect. The plan for accomplishing this end shall be included in the state plan.

5. The office, the department, the Department of Education, and the Department of Health shall work together on the enhancement or adaptation of curriculum materials to assist instructional personnel in providing instruction through a multidisciplinary approach on the identification, intervention, and prevention of child abuse, abandonment, and neglect. The curriculum materials shall be geared toward a sequential program of instruction at the four progressional levels, K-3, 4-6, 7-9, and 10-12. Strategies for encouraging all school districts to utilize the curriculum are to be included in the state plan for the prevention of child abuse, abandonment, and neglect.

6. Each district of the department shall develop a plan for its specific geographical area. The plan developed at the district level shall be submitted to the advisory council for utilization in preparing the state plan. The district local plan of action shall be prepared with the involvement and assistance of the local agencies and organizations listed in this paragraph, as well as representatives from those departmental district offices participating in the promotion of adoption, support of adoptive families, and treatment and prevention of child abuse, abandonment, and neglect. In order to accomplish this, the office shall establish a task force on the promotion of adoption, support of adoptive families, and prevention of child abuse, abandonment, and neglect. The office shall appoint the members of the task force in accordance with the membership requirements of this section. The office shall ensure that individuals from both urban and rural areas and an adoptive parent who has adopted a child from within the child welfare system are represented on the task force. The task force shall develop a written statement clearly identifying its operating procedures, purpose, overall responsibilities, and method of meeting responsibilities. The district plan of action to be prepared by the task force shall include, but shall not be limited to:

- a. Documentation of the magnitude of the problems of child abuse, including sexual abuse, physical abuse, and emotional abuse, and child abandonment and neglect in its geographical area.
- b. A description of programs currently serving abused, abandoned, and neglected children and their families and a description of programs for the prevention of child abuse, abandonment, and neglect, including information on the impact, cost-effectiveness, and sources of funding of such programs.
- c. Information concerning the number of children within the child welfare system available for adoption who need child-specific adoption promotion efforts.
- d. A description of programs currently promoting and supporting adoptive families, including information on the impact, cost-effectiveness, and sources of funding of such programs.
- e. A description of a comprehensive approach for providing postadoption services. The continuum of services shall include, but not be limited to, sufficient and accessible parent and teen support groups; case management, information, and referral services; and educational advocacy.
- f. A continuum of programs and services necessary for a comprehensive approach to promotion of adoption and the prevention of all types of child abuse, abandonment, and neglect as well as a brief description of such programs and services.
- g. A description, documentation, and priority ranking of local needs related to the promotion of adoption, support of adoptive families, and prevention of child abuse, abandonment, and neglect based upon the continuum of programs and services.
- h. A plan for steps to be taken in meeting identified needs, including the coordination and integration of services to avoid unnecessary duplication and cost, and for alternative funding strategies for meeting needs through the reallocation of existing resources, utilization of volunteers, contracting with local universities for services, and local government or private agency funding.
- i. A description of barriers to the accomplishment of a comprehensive approach to the promotion of adoption, support of adoptive families, and prevention of child abuse, abandonment, and neglect.
- j. Recommendations for changes that can be accomplished only at the state program level or by legislative action.

**(9) FUNDING AND SUBSEQUENT PLANS.--**

(a) All budget requests submitted by the office, the department, the Department of Health, the Department of Education, the Department of Juvenile Justice, the Department of Corrections, the Agency for Persons with Disabilities, the Agency for Workforce Innovation, or any other agency to the Legislature for funding of efforts for the promotion of adoption, support of adoptive families, and prevention of child abuse, abandonment, and neglect shall be based on the state plan developed pursuant to this section.

(b) The office and the other agencies and organizations listed in paragraph (8)(a) shall readdress the state plan and make necessary revisions every 5 years, at a minimum. Such revisions shall be submitted to the Speaker of the House of Representatives and the President of the Senate no later than June 30 of each year divisible by 5. At least biennially, the office shall review the state plan and make any necessary revisions based on changing needs and program evaluation results. An annual progress report shall be submitted to update the state plan in the years between the 5-year intervals. In order to avoid duplication of effort, these required plans may be made a part of or merged with other plans required by either the state or Federal Government, so long as the portions of the other state or Federal Government plan that constitute the state plan for the promotion of adoption, support of adoptive families, and prevention of child abuse, abandonment, and neglect are clearly identified as such and are provided to the Speaker of the House of Representatives and the President of the Senate as required above.

**(10) LIBERAL CONSTRUCTION.--**It is the intent of the Legislature that this chapter be liberally interpreted and construed in conformity with its declared purposes.

**(11) RULEMAKING.--**The Executive Office of the Governor shall adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this section.

**(12) EVALUATION.--**By February 1, 2009, the Legislature shall evaluate the office and determine whether it should continue to be housed in the Executive Office of the Governor or transferred to a state agency.

**History.--**s. 1, ch. 26880, 1951; s. 1, ch. 73-231; s. 1, ch. 78-414; s. 1, ch. 82-62; s. 62, ch. 85-81; s. 1, ch. 85-206; s. 10, ch. 85-248; s. 19, ch. 86-220; s. 1, ch. 90-53; ss. 1, 2, ch. 90-208; s. 2, ch. 90-306; s. 2, ch. 91-33; s. 68, ch. 91-45; s. 13, ch. 91-57; s. 5, ch. 93-156; s. 23, ch. 93-200; s. 19, ch. 93-230; s. 14, ch. 94-134; s. 14, ch. 94-135; ss. 9, 10, ch. 94-209; s. 1332, ch. 95-147; s. 7, ch. 95-152; s. 8, ch. 95-158; ss. 15, 30, ch. 95-228; s. 116, ch. 95-418; s. 1, ch. 96-268; ss. 128, 156, ch. 97-101; s. 69, ch. 97-103; s. 3, ch. 97-237; s. 119, ch. 97-238; s. 8, ch. 98-137; s. 18, ch. 98-403; s. 1, ch. 99-193; s. 13, ch. 2000-139; s. 5, ch. 2000-151; s. 5, ch. 2000-263; s. 2, ch. 2006-97; s. 1, ch. 2006-194; s. 2, ch. 2006-227; s. 1, ch. 2007-124; s. 3, ch. 2008-6.

**Note.--**Former s. 39.20; subsections (3)-(5) former s. 39.002, s. 409.70, subsections (6)-(8) former s. 415.501.

**39.0011 Direct-support organization.--**

(1) The Office of Adoption and Child Protection may establish a direct-support organization to assist the state in carrying out its purposes and responsibilities regarding the promotion of adoption, support of adoptive families, and prevention of child abuse, abandonment, and neglect by raising money; submitting requests for and receiving grants from the Federal Government, the state or its political subdivisions, private foundations, and individuals; and making expenditures to or for the benefit of the office. The sole purpose for the direct-support organization is to support the office. Such a direct-support organization is an organization that is:

(a) Incorporated under chapter 617 and approved by the Department of State as a Florida corporation not for profit;

(b) Organized and operated to make expenditures to or for the benefit of the office; and

(c) Approved by the office to be operating for the benefit of and in a manner consistent with the goals of the office and in the best interest of the state.

(2) The number of members on the board of directors of the direct-support organization shall be determined by the Chief Child Advocate. Membership on the board of directors of the direct-support organization shall include, but not be limited to, a guardian ad litem; a member of a local advocacy council; a representative

from a community-based care lead agency; a representative from a private or public organization or program with recognized expertise in working with child abuse prevention programs for children and families; a representative of a private or public organization or program with recognized expertise in working with children who are sexually abused, physically abused, emotionally abused, abandoned, or neglected and with expertise in working with the families of such children; an individual working at a state adoption agency; and the parent of a child adopted from within the child welfare system.

(3) The direct-support organization shall operate under written contract with the office.

(4) All moneys received by the direct-support organization shall be deposited into an account of the direct-support organization and shall be used by the organization in a manner consistent with the goals of the office.

**History.**--s. 2, ch. 2007-124.

**39.0014 Responsibilities of public agencies.**--All state, county, and local agencies shall cooperate, assist, and provide information to the Office of Adoption and Child Protection and the department as will enable them to fulfill their responsibilities under this chapter.

**History.**--s. 2, ch. 99-193; s. 2, ch. 2006-194; s. 3, ch. 2007-124.

**39.0015 Child abuse prevention training in the district school system.**--

(1) **SHORT TITLE.**--This section may be cited as the "Child Abuse Prevention Training Act of 1985."

(2) **LEGISLATIVE INTENT.**--It is the intent of the Legislature that primary prevention training for all children in kindergarten through grade 12 be encouraged in the district school system through the training of school teachers, guidance counselors, parents, and children.

(3) **DEFINITIONS.**--As used in this section:

(a) "Department" means the Department of Education.

(b) "Child abuse" means abandonment, abuse, harm, mental injury, neglect, physical injury, or sexual abuse of a child as those terms are defined in s. 39.01 ~~those acts as defined in ss. 39.01(1), (2), (31), (41), (43), (55), and (66), 827.04, and 984.03~~ 984.03(1), (2), and (37).

(c) "Primary prevention and training program" means a training and educational program for children, parents, and teachers which is directed toward preventing the occurrence of child abuse, including sexual abuse, physical abuse, child abandonment, child neglect, and drug and alcohol abuse, and toward reducing the vulnerability of children through training of children and through including coordination with, and training for, parents and school personnel.

(d) "Prevention training center" means a center as described in subsection (5).

(4) **PRIMARY PREVENTION AND TRAINING PROGRAM.**--A primary prevention and training program shall include all of the following, as appropriate for the persons being trained:

(a) Information provided in a clear and nonthreatening manner, describing the problem of child abuse, sexual abuse, physical abuse, abandonment, neglect, and alcohol and drug abuse, and the possible solutions.

(b) Information and training designed to counteract common stereotypes about victims and offenders.

(c) Crisis counseling techniques.

(d) Available community resources and ways to access those resources.

- (e) Physical and behavioral indicators of abuse.
- (f) Rights and responsibilities regarding reporting.
- (g) School district procedures to facilitate reporting.
- (h) Caring for a child's needs after a report is made.
- (i) How to disclose incidents of abuse.
- (j) Child safety training and age-appropriate self-defense techniques.
- (k) The right of every child to live free of abuse.
- (l) The relationship of child abuse to handicaps in young children.
- (m) Parenting, including communication skills.
- (n) Normal and abnormal child development.
- (o) Information on recognizing and alleviating family stress caused by the demands required in caring for a high-risk or handicapped child.
- (p) Supports needed by school-age parents in caring for a young child.

(5) PREVENTION TRAINING CENTERS; FUNCTIONS; SELECTION PROCESS; MONITORING AND EVALUATION.--

- (a) Each training center shall perform the following functions:
  - 1. Act as a clearinghouse to provide information on prevention curricula which meet the requirements of this section and the requirements of s. 39.001.
  - 2. Assist the local school district in selecting a prevention program model which meets the needs of the local community.
  - 3. At the request of the local school district, design and administer training sessions to develop or expand local primary prevention and training programs.
  - 4. Provide assistance to local school districts, including, but not limited to, all of the following: administration, management, program development, multicultural staffing, and community education, in order to better meet the requirements of this section and of s. 39.001.
  - 5. At the request of the department or the local school district, provide ongoing program development and training to achieve all of the following:
    - a. Meet the special needs of children, including, but not limited to, the needs of disabled and high-risk children.
    - b. Conduct an outreach program to inform the surrounding communities of the existence of primary prevention and training programs and of funds to conduct such programs.
  - 6. Serve as a resource to the Department of Children and Family Services and its districts.
- (b) The department, in consultation with the Department of Children and Family Services, shall select and award grants by January 1, 1986, for the establishment of three private, nonprofit prevention training centers: one located in and serving South Florida, one located in and serving Central Florida, and one located in and serving North Florida. The department, in consultation with the Department of Children and Family Services, shall select an agency or agencies to establish three training centers which can fulfill the requirements of this section and meet the following requirements:
  - 1. Have demonstrated experience in child abuse prevention training.
  - 2. Have shown capacity for training primary prevention and training programs as provided for in subsections (3) and (4).
  - 3. Have provided training and organizing technical assistance to the greatest number of private prevention and training programs.
  - 4. Have employed the greatest number of trainers with experience in private child abuse prevention and training programs.
  - 5. Have employed trainers which represent the cultural diversity of the area.
  - 6. Have established broad community support.

(c) The department shall monitor and evaluate primary prevention and training programs utilized in the local school districts and shall monitor and evaluate the impact of the prevention training centers on the implementation of primary prevention programs and their ability to meet the required responsibilities of a center as described in this section.

(6) The department shall administer this section and in so doing is authorized to adopt rules and standards necessary to implement the specific provisions of this section.

**History.**--ss. 1, 2, 3, 4, 5, 6, ch. 85-248; s. 49, ch. 86-220; s. 129, ch. 97-101; s. 67, ch. 97-190; s. 42, ch. 98-280; s. 19, ch. 98-403; s. 3, ch. 99-193; s. 3, ch. 2000-135; s. 14, ch. 2000-139; s. 11, ch. 2001-60; s. 884, ch. 2002-387; s. 28, ch. 2006-86; s. 3, ch. 2006-194. As of June 18, 2008, pending signature by the Governor.  
**Note.**--Former s. 415.5015.

### **39.0016 Education of abused, neglected, and abandoned children.--**

(1) As used in this section, the term:

(a) "Children known to the department" means children who are found to be dependent or children in shelter care.

(b) "Department" means the Department of Children and Family Services or a community-based care lead agency acting on behalf of the Department of Children and Family Services, as appropriate.

(2) The provisions of this section establish goals and not rights. This section does not require the delivery of any particular service or level of service in excess of existing appropriations. A person may not maintain a cause of action against the state or any of its subdivisions, agencies, contractors, subcontractors, or agents based upon this section becoming law or failure by the Legislature to provide adequate funding for the achievement of these goals. This section does not require the expenditure of funds to meet the goals established in this section except funds specifically appropriated for such purpose.

(3) The department shall enter into an agreement with the Department of Education regarding the education and related care of children known to the department. Such agreement shall be designed to provide educational access to children known to the department for the purpose of facilitating the delivery of services or programs to children known to the department. The agreement shall avoid duplication of services or programs and shall provide for combining resources to maximize the availability or delivery of services or programs.

(4) The department shall enter into agreements with district school boards or other local educational entities regarding education and related services for children known to the department who are of school age and children known to the department who are younger than school age but who would otherwise qualify for services from the district school board. Such agreements shall include, but are not limited to:

(a) A requirement that the department shall:

1. Enroll children known to the department in school. The agreement shall provide for continuing the enrollment of a child known to the department at the same school, if possible, with the goal of avoiding disruption of education.

2. Notify the school and school district in which a child known to the department is enrolled of the name and phone number of the child known to the department caregiver and caseworker for child safety purposes.

3. Establish a protocol for the department to share information about a child known to the department with the school district, consistent with the Family Educational Rights and Privacy Act, since the sharing of information will assist each agency in obtaining education and related services for the benefit of the child.

4. Notify the school district of the department's case planning for a child known to the department, both at the time of plan development and plan review. Within the plan development or review process, the

school district may provide information regarding the child known to the department if the school district deems it desirable and appropriate.

(b) A requirement that the district school board shall:

1. Provide the department with a general listing of the services and information available from the district school board, including, but not limited to, the current Sunshine State Standards, the Surrogate Parent Training Manual, and other resources accessible through the Department of Education or local school districts to facilitate educational access for a child known to the department.

2. Identify all educational and other services provided by the school and school district which the school district believes are reasonably necessary to meet the educational needs of a child known to the department.

3. Determine whether transportation is available for a child known to the department when such transportation will avoid a change in school assignment due to a change in residential placement. Recognizing that continued enrollment in the same school throughout the time the child known to the department is in out-of-home care is preferable unless enrollment in the same school would be unsafe or otherwise impractical, the department, the district school board, and the Department of Education shall assess the availability of federal, charitable, or grant funding for such transportation.

4. Provide individualized student intervention or an individual educational plan when a determination has been made through legally appropriate criteria that intervention services are required. The intervention or individual educational plan must include strategies to enable the child known to the department to maximize the attainment of educational goals.

(c) A requirement that the department and the district school board shall cooperate in accessing the services and supports needed for a child known to the department who has or is suspected of having a disability to receive an appropriate education consistent with the Individuals with Disabilities Education Act and state implementing laws, rules, and assurances. Coordination of services for a child known to the department who has or is suspected of having a disability may include:

1. Referral for screening.

2. Sharing of evaluations between the school district and the department where appropriate.

3. Provision of education and related services appropriate for the needs and abilities of the child known to the department.

4. Coordination of services and plans between the school and the residential setting to avoid duplication or conflicting service plans.

5. Appointment of a surrogate parent, consistent with the Individuals with Disabilities Education Act, for educational purposes for a child known to the department who qualifies as soon as the child is determined to be dependent and without a parent to act for the child. The surrogate parent shall be appointed by the school district without regard to where the child known to the department is placed so that one surrogate parent can follow the education of the child known to the department during his or her entire time in state custody.

6. For each child known to the department 14 years of age and older, transition planning by the department and all providers, including the department's independent living program staff, to meet the requirements of the local school district for educational purposes.

(5) The department shall incorporate an education component into all training programs of the department regarding children known to the department. Such training shall be coordinated with the Department of Education and the local school districts. The department shall offer opportunities for education personnel to participate in such training. Such coordination shall include, but not be limited to, notice of training sessions, opportunities to purchase training materials, proposals to avoid duplication of services by offering joint training, and incorporation of materials available from the Department of Education and local school districts into the department training when appropriate. The department training components shall include:



(a) Training for surrogate parents to include how an ability to learn of a child known to the department is affected by abuse, abandonment, neglect, and removal from the home.

(b) Training for parents in cases in which reunification is the goal, or for preadoptive parents when adoption is the goal, so that such parents learn how to access the services the child known to the department needs and the importance of their involvement in the education of the child known to the department.

(c) Training for caseworkers and foster parents to include information on the right of the child known to the department to an education, the role of an education in the development and adjustment of a child known to the department, the proper ways to access education and related services for the child known to the department, and the importance and strategies for parental involvement in education for the success of the child known to the department.

(d) Training of caseworkers regarding the services and information available through the Department of Education and local school districts, including, but not limited to, the current Sunshine State Standards, the Surrogate Parent Training Manual, and other resources accessible through the Department of Education or local school districts to facilitate educational access for a child known to the department.

**History.**-- s. 3, ch. 2004-356.

**39.01 Definitions.**--When used in this chapter, unless the context otherwise requires:

(1) "Abandoned" or "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 ~~responsible for the child's welfare~~, while being able, makes no provision for the child's support and has failed to establish or maintain a substantial and positive relationship with the child. For purposes of this subsection, "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. ~~and makes no effort to communicate with the child, which situation is sufficient to evince a willful rejection of parental obligations. If the efforts of the parent or legal custodian, or caregiver primarily responsible for the child's welfare, to support and communicate with the child are, in the opinion of the court, only marginal efforts that do not evince a settled purpose to assume all parental duties, the court may declare the child to be abandoned.~~ The term "abandoned" does not include a surrendered ~~an abandoned~~ 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. The incarceration of a parent, legal custodian, or caregiver responsible for a child's welfare may support a finding of abandonment.

(2) "Abuse" means any willful act or threatened act that results in any physical, mental, or sexual 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.

(3) "Addictions receiving facility" means a substance abuse service provider as defined in chapter 397.

(4) "Adjudicatory hearing" means a hearing for the court to determine whether or not the facts support the allegations stated in the petition in dependency cases or in termination of parental rights cases.

(5) "Adult" means any natural person other than a child.

(6) "Adoption" means the act of creating the legal relationship between parent and child where it did not exist, thereby declaring the child to be legally the child of the adoptive parents and their heir at law, and entitled to all the rights and privileges and subject to all the obligations of a child born to the adoptive parents in lawful wedlock.

(7) "Alleged juvenile sexual offender" means:

(a) A child 12 years of age or younger who is alleged to have committed a violation of chapter 794, chapter 796, chapter 800, s. 827.071, or s. 847.0133; or

(b) A child who is alleged to have committed any violation of law or delinquent act involving juvenile sexual abuse. "Juvenile sexual abuse" means any sexual behavior which occurs without consent, without equality, or as a result of coercion. For purposes of this paragraph, the following definitions apply:

1. "Coercion" means the exploitation of authority or the use of bribes, threats of force, or intimidation to gain cooperation or compliance.

2. "Equality" means two participants operating with the same level of power in a relationship, neither being controlled nor coerced by the other.

3. "Consent" means an agreement, including all of the following:

a. Understanding what is proposed based on age, maturity, developmental level, functioning, and experience.

b. Knowledge of societal standards for what is being proposed.

c. Awareness of potential consequences and alternatives.

d. Assumption that agreement or disagreement will be accepted equally.

e. Voluntary decision.

f. Mental competence.

Juvenile sexual offender behavior ranges from noncontact sexual behavior such as making obscene phone calls, exhibitionism, voyeurism, and the showing or taking of lewd photographs to varying degrees of direct sexual contact, such as frottage, fondling, digital penetration, rape, fellatio, sodomy, and various other sexually aggressive acts.

(8) "Arbitration" means a process whereby a neutral third person or panel, called an arbitrator or an arbitration panel, considers the facts and arguments presented by the parties and renders a decision which may be binding or nonbinding.

(9) "Authorized agent" or "designee" of the department means an employee, volunteer, or other person or agency determined by the state to be eligible for state-funded risk management coverage, which is assigned or designated by the department to perform duties or exercise powers under this chapter.

(10) "Caregiver" means the parent, legal custodian, permanent guardian, adult household member, or other person responsible for a child's welfare as defined in subsection (46).

(11) "Case plan" means a document, as described in s. 39.6011, prepared by the department with input from all parties. The case plan follows the child from the provision of voluntary services through any dependency, foster care, or termination of parental rights proceeding or related activity or process.

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

(13) "Child protection team" means a team of professionals established by the Department of Health to receive referrals from the protective investigators and protective supervision staff of the department and to provide specialized and supportive services to the program in processing child abuse, abandonment, or

neglect cases. A child protection team shall provide consultation to other programs of the department and other persons regarding child abuse, abandonment, or neglect cases.

(14) “Child who has exhibited inappropriate sexual behavior” means a child who is 12 years of age or younger and who has been found by the department or the court to have committed an inappropriate sexual act.

(15)~~(14)~~ "Child who is found to be dependent" means a child who, pursuant to this chapter, is found by the court:

(a) To have been abandoned, abused, or neglected by the child's parent or parents or legal custodians;

(b) To have been surrendered to the department, the former Department of Health and Rehabilitative Services, or a licensed child-placing agency for purpose of adoption;

(c) To have been voluntarily placed with a licensed child-caring agency, a licensed child-placing agency, an adult relative, the department, or the former Department of Health and Rehabilitative Services, after which placement, under the requirements of this chapter, a case plan has expired and the parent or parents or legal custodians have failed to substantially comply with the requirements of the plan;

(d) To have been voluntarily placed with a licensed child-placing agency for the purposes of subsequent adoption, and a parent or parents have signed a consent pursuant to the Florida Rules of Juvenile Procedure;

(e) To have no parent or legal custodians capable of providing supervision and care; or

(f) To be at substantial risk of imminent abuse, abandonment, or neglect by the parent or parents or legal custodians.

(16)~~(15)~~ "Child support" means a court-ordered obligation, enforced under chapter 61 and ss. 409.2551-409.2597, for monetary support for the care, maintenance, training, and education of a child.

(17)~~(16)~~ "Circuit" means any of the 20 judicial circuits as set forth in s. 26.021.

(18)~~(17)~~ "Comprehensive assessment" or "assessment" means the gathering of information for the evaluation of a child's and caregiver's physical, psychiatric, psychological or mental health, educational, vocational, and social condition and family environment as they relate to the child's and caregiver's need for rehabilitative and treatment services, including substance abuse treatment services, mental health services, developmental services, literacy services, medical services, family services, and other specialized services, as appropriate.

(19)~~(18)~~ “Concurrent planning” means establishing a permanency goal in a case plan that uses reasonable efforts to reunify the child with the parent, while at the same time establishing another goal that must be one of the following options:

(a) Adoption when a petition for termination of parental rights has been filed or will be filed;

(b) Permanent guardianship of a dependent child under s. 39.6221;

(c) Permanent placement with a fit and willing relative under s. 39.6231; or

(d) Placement in another planned permanent living arrangement under s. 39.6241.

(20)~~(19)~~ "Court," unless otherwise expressly stated, means the circuit court assigned to exercise jurisdiction under this chapter.

(21)~~(20)~~ "Department" means the Department of Children and Family Services.

~~(22)~~(21) "Diligent efforts by a parent" means a course of conduct which results in a reduction in risk to the child in the child's home that would allow the child to be safely placed permanently back in the home as set forth in the case plan.

~~(23)~~(22) "Diligent efforts of social service agency" means reasonable efforts to provide social services or reunification services made by any social service agency that is a party to a case plan.

~~(24)~~(23) "Diligent search" means the efforts of a social service agency to locate a parent or prospective parent whose identity or location is unknown, initiated as soon as the social service agency is made aware of the existence of such parent, with the search progress reported at each court hearing until the parent is either identified and located or the court excuses further search.

~~(25)~~(24) "Disposition hearing" means a hearing in which the court determines the most appropriate protections, services, and placement for the child in dependency cases.

~~(26)~~(25) "District" means any one of the 15 service districts of the department established pursuant to s. 20.19.

~~(27)~~(26) "District administrator" means the chief operating officer of each service district of the department as defined in s. 20.19(5) and, where appropriate, includes any district administrator whose service district falls within the boundaries of a judicial circuit.

~~(28)~~(27) "Expedited termination of parental rights" means proceedings wherein a case plan with the goal of reunification is not being offered.

~~(29)~~(28) "False report" means a report of abuse, neglect, or abandonment of a child to the central abuse hotline, which report is maliciously made for the purpose of:

- (a) Harassing, embarrassing, or harming another person;
- (b) Personal financial gain for the reporting person;
- (c) Acquiring custody of a child; or
- (d) Personal benefit for the reporting person in any other private dispute involving a child.

The term "false report" does not include a report of abuse, neglect, or abandonment of a child made in good faith to the central abuse hotline.

~~(30)~~(29) "Family" means a collective body of persons, consisting of a child and a parent, legal custodian, or adult relative, in which:

- (a) The persons reside in the same house or living unit; or
- (b) The parent, legal custodian, or adult relative has a legal responsibility by blood, marriage, or court order to support or care for the child.

~~(31)~~(30) "Foster care" means care provided a child in a foster family or boarding home, group home, agency boarding home, child care institution, or any combination thereof.

~~(32)~~(31) "Harm" to a child's health or welfare can occur when any person:

(a) Inflicts or allows to be inflicted upon the child physical, mental, or emotional injury. In determining whether harm has occurred, the following factors must be considered in evaluating any physical, mental, or emotional injury to a child: the age of the child; any prior history of injuries to the child; the location of the injury on the body of the child; the multiplicity of the injury; and the type of trauma inflicted. Such injury includes, but is not limited to:

1. Willful acts that produce the following specific injuries:
  - a. Sprains, dislocations, or cartilage damage.
  - b. Bone or skull fractures.
  - c. Brain or spinal cord damage.
  - d. Intracranial hemorrhage or injury to other internal organs.
  - e. Asphyxiation, suffocation, or drowning.
  - f. Injury resulting from the use of a deadly weapon.
  - g. Burns or scalding.
  - h. Cuts, lacerations, punctures, or bites.
  - i. Permanent or temporary disfigurement.
  - j. Permanent or temporary loss or impairment of a body part or function.

As used in this subparagraph, the term "willful" refers to the intent to perform an action, not to the intent to achieve a result or to cause an injury.

2. Purposely giving a child poison, alcohol, drugs, or other substances that substantially affect the child's behavior, motor coordination, or judgment or that result in sickness or internal injury. For the purposes of this subparagraph, the term "drugs" means prescription drugs not prescribed for the child or not administered as prescribed, and controlled substances as outlined in Schedule I or Schedule II of s. 893.03.

3. Leaving a child without adult supervision or arrangement appropriate for the child's age or mental or physical condition, so that the child is unable to care for the child's own needs or another's basic needs or is unable to exercise good judgment in responding to any kind of physical or emotional crisis.

4. Inappropriate or excessively harsh disciplinary action that is likely to result in physical injury, mental injury as defined in this section, or emotional injury. The significance of any injury must be evaluated in light of the following factors: the age of the child; any prior history of injuries to the child; the location of the injury on the body of the child; the multiplicity of the injury; and the type of trauma inflicted. Corporal discipline may be considered excessive or abusive when it results in any of the following or other similar injuries:

- a. Sprains, dislocations, or cartilage damage.
- b. Bone or skull fractures.
- c. Brain or spinal cord damage.
- d. Intracranial hemorrhage or injury to other internal organs.
- e. Asphyxiation, suffocation, or drowning.
- f. Injury resulting from the use of a deadly weapon.
- g. Burns or scalding.
- h. Cuts, lacerations, punctures, or bites.
- i. Permanent or temporary disfigurement.
- j. Permanent or temporary loss or impairment of a body part or function.
- k. Significant bruises or welts.

(b) Commits, or allows to be committed, sexual battery, as defined in chapter 794, or lewd or lascivious acts, as defined in chapter 800, against the child.

(c) Allows, encourages, or forces the sexual exploitation of a child, which includes allowing, encouraging, or forcing a child to:

1. Solicit for or engage in prostitution; or
2. Engage in a sexual performance, as defined by chapter 827.

(d) Exploits a child, or allows a child to be exploited, as provided in s. 450.151.

(e) Abandons the child. Within the context of the definition of "harm," the term "abandoned the child" or "abandonment of the child" means a situation in which the parent or legal custodian of a child or, in the absence of a parent of legal custodian, the caregiver, while being able, makes no provision for the child's support and has failed to establish or maintain a substantial and positive relationship with the child. For purposes of this paragraph, "establish or maintain a substantial and positive relationship" includes, but

in 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 ~~"abandons the child" means that the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the person responsible for the child's welfare, while being able, makes no provision for the child's support and makes no effort to communicate with the child, which situation is sufficient to evince a willful rejection of parental obligation. If the efforts of the parent or legal custodian or person primarily responsible for the child's welfare to support and communicate with the child are only marginal efforts that do not evince a settled purpose to assume all parental duties, the child may be determined to have been abandoned. The term "abandoned" does not include a surrendered~~ an abandoned newborn infant as described in s. 383.50.

(f) Neglects the child. Within the context of the definition of "harm," the term "neglects the child" means that the parent or other person responsible for the child's welfare fails to supply the child with adequate food, clothing, shelter, or health care, although financially able to do so or although offered financial or other means to do so. However, a parent or legal custodian who, by reason of the legitimate practice of religious beliefs, does not provide specified medical treatment for a child may not be considered abusive or neglectful for that reason alone, but such an exception does not:

1. Eliminate the requirement that such a case be reported to the department;
2. Prevent the department from investigating such a case; or
3. Preclude a court from ordering, when the health of the child requires it, the provision of medical services by a physician, as defined in this section, or 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.

(g) Exposes a child to a controlled substance or alcohol. Exposure to a controlled substance or alcohol is established by:

1. A test, administered at birth, which indicated that the child's blood, urine, or meconium contained any amount of alcohol or a controlled substance or metabolites of such substances, the presence of which was not the result of medical treatment administered to the mother or the newborn infant ~~Use by the mother of a controlled substance or alcohol during pregnancy when the child, at birth, is demonstrably adversely affected by such usage; or~~

2. Evidence of extensive, abusive and Continued ~~chronic and severe~~ use of a controlled substance or alcohol by a parent when the child is demonstrably adversely affected by such usage.

As used in this paragraph, the term "controlled substance" means prescription drugs not prescribed for the parent or not administered as prescribed and controlled substances as outlined in Schedule I or Schedule II of s. 893.03.

(h) Uses mechanical devices, unreasonable restraints, or extended periods of isolation to control a child.

(i) Engages in violent behavior that demonstrates a wanton disregard for the presence of a child and could reasonably result in serious injury to the child.

(j) Negligently fails to protect a child in his or her care from inflicted physical, mental, or sexual injury caused by the acts of another.

(k) Has allowed a child's sibling to die as a result of abuse, abandonment, or neglect.

(l) Makes the child unavailable for the purpose of impeding or avoiding a protective investigation unless the court determines that the parent, legal custodian, or caregiver was fleeing from a situation involving domestic violence.

~~(33)~~(32) "Institutional child abuse or neglect" means situations of known or suspected child abuse or neglect in which the person allegedly perpetrating the child abuse or neglect is an employee of a private school,

public or private day care center, residential home, institution, facility, or agency or any other person at such institution responsible for the child's care.

~~(34)~~(33) "Judge" means the circuit judge exercising jurisdiction pursuant to this chapter.

~~(35)~~(34) "Legal custody" means a legal status created by a court which vests in a custodian of the person or guardian, whether an agency or an individual, the right to have physical custody of the child and the right and duty to protect, nurture, guide, and discipline the child and to provide him or her with food, shelter, education, and ordinary medical, dental, psychiatric, and psychological care.

~~(36)~~(35) "Licensed child-caring agency" means a person, society, association, or agency licensed by the department to care for, receive, and board children.

~~(37)~~(36) "Licensed child-placing agency" means a person, society, association, or institution licensed by the department to care for, receive, or board children and to place children in a licensed child-caring institution or a foster or adoptive home.

~~(38)~~(37) "Licensed health care professional" means a physician licensed under chapter 458, an osteopathic physician licensed under chapter 459, a nurse licensed under part I of chapter 464, a physician assistant licensed under chapter 458 or chapter 459, or a dentist licensed under chapter 466.

~~(39)~~(38) "Likely to injure oneself" means that, as evidenced by violent or other actively self-destructive behavior, it is more likely than not that within a 24-hour period the child will attempt to commit suicide or inflict serious bodily harm on himself or herself.

~~(40)~~(39) "Likely to injure others" means that it is more likely than not that within a 24-hour period the child will inflict serious and unjustified bodily harm on another person.

~~(41)~~(40) "Mediation" means a process whereby a neutral third person called a mediator acts to encourage and facilitate the resolution of a dispute between two or more parties. It is an informal and nonadversarial process with the objective of helping the disputing parties reach a mutually acceptable and voluntary agreement. The role of the mediator includes, but is not limited to, assisting the parties in identifying issues, fostering joint problem solving, and exploring settlement alternatives.

~~(42)~~(41) "Mental injury" means an injury to the intellectual or psychological capacity of a child as evidenced by a discernible and substantial impairment in the ability to function within the normal range of performance and behavior.

~~(43)~~(42) "Necessary medical treatment" means care which is necessary within a reasonable degree of medical certainty to prevent the deterioration of a child's condition or to alleviate immediate pain of a child.

~~(44)~~(43) "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. 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.

Neglect of a child includes acts or omissions.

~~(45)~~(44) "Next of kin" means an adult relative of a child who is the child's brother, sister, grandparent, aunt, uncle, or first cousin.

~~(46)~~(45) "Office" means the Office of Adoption and Child Protection within the Executive Office of the Governor.

~~(47)~~(46) "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. For the purpose of departmental investigative jurisdiction, this definition does not include the following persons when they are acting in an official capacity: law enforcement officers, except as otherwise provided in this subsection; employees of municipal or county detention facilities or employees of the Department of Corrections.

~~(48)~~(47) "Out-of-home" means a placement outside of the home of the parents or a parent.

~~(49)~~(48) "Parent" means a woman who gives birth to a child and a man whose consent to the adoption of the child would be required under s. 63.062(1). If a child has been legally adopted, the term "parent" means the adoptive mother or father of the child. The term does not include an individual whose parental relationship to the child has been legally terminated, or an alleged or prospective parent, unless the parental status falls within the terms of s. 39.503(1) or s. 63.062(1). For purposes of this chapter only, when the phrase "parent or legal custodian" is used, it refers to rights or responsibilities of the parent and, only if there is no living parent with intact parental rights, to the rights or responsibilities of the legal custodian who has assumed the role of the parent.

~~(50)~~(49) "Participant," for purposes of a shelter proceeding, dependency proceeding, or termination of parental rights proceeding, means any person who is not a party but who should receive notice of hearings involving the child, including the actual custodian of the child, the foster parents or the legal custodian of the child, identified prospective parents, and any other person whose participation may be in the best interest of the child. A community-based agency under contract with the department to provide protective services may be designated as a participant at the discretion of the court. Participants may be granted leave by the court to be heard without the necessity of filing a motion to intervene.

~~(51)~~(50) "Party" means the parent or parents of the child, the petitioner, the department, the guardian ad litem or the representative of the guardian ad litem program when the program has been appointed, and the child. The presence of the child may be excused by order of the court when presence would not be in the child's best interest. Notice to the child may be excused by order of the court when the age, capacity, or other condition of the child is such that the notice would be meaningless or detrimental to the child.



~~(52)~~(51) "Permanency goal" means the living arrangement identified for the child to return to or identified as the permanent living arrangement of the child. Permanency goals applicable under this chapter, listed in order of preference, are:

- (a) Reunification;
- (b) Adoption when a petition for termination of parental rights has been or will be filed;
- (c) Permanent guardianship of a dependent child under s. 39.6221;
- (d) Permanent placement with a fit and willing relative under s. 39.6231; or
- (e) Placement in another planned permanent living arrangement under s. 39.6241.

The permanency goal is also the case plan goal. If concurrent case planning is being used, reunification may be pursued at the same time that another permanency goal is pursued.

~~(53)~~(52) "Permanency plan" means the plan that establishes the placement intended to serve as the child's permanent home.

~~(54)~~(53) "Permanent guardian" means the relative or other adult in a permanent guardianship of a dependent child under s. 39.6221.

~~(55)~~(54) "Permanent guardianship of a dependent child" means a legal relationship that a court creates under s. 39.6221 between a child and a relative or other adult approved by the court which is intended to be permanent and self-sustaining through the transfer of parental rights with respect to the child relating to protection, education, care and control of the person, custody of the person, and decisionmaking on behalf of the child.

~~(56)~~(55) "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily part.

~~(57)~~(56) "Physician" means any licensed physician, dentist, podiatric physician, or optometrist and includes any intern or resident.

~~(58)~~(57) "Preliminary screening" means the gathering of preliminary information to be used in determining a child's need for further evaluation or assessment or for referral for other substance abuse services through means such as psychosocial interviews; urine and breathalyzer screenings; and reviews of available educational, delinquency, and dependency records of the child.

~~(59)~~(58) "Preventive services" means social services and other supportive and rehabilitative services provided to the parent or legal custodian of the child and to the child for the purpose of averting the removal of the child from the home or disruption of a family which will or could result in the placement of a child in foster care. Social services and other supportive and rehabilitative services shall promote the child's need for physical, mental, and emotional health and a safe, stable, living environment, shall promote family autonomy, and shall strengthen family life, whenever possible.

~~(60)~~(59) "Prospective parent" means a person who claims to be, or has been identified as, a person who may be a mother or a father of a child.

~~(61)~~(60) "Protective investigation" means the acceptance of a report alleging child abuse, abandonment, or neglect, as defined in this chapter, by the central abuse hotline or the acceptance of a report of other dependency by the department; the investigation of each report; the determination of whether action by the

court is warranted; the determination of the disposition of each report without court or public agency action when appropriate; and the referral of a child to another public or private agency when appropriate.

~~(62)~~(61) "Protective investigator" means an authorized agent of the department who receives and investigates reports of child abuse, abandonment, or neglect; who, as a result of the investigation, may recommend that a dependency petition be filed for the child; and who performs other duties necessary to carry out the required actions of the protective investigation function.

~~(63)~~(62) "Protective supervision" means a legal status in dependency cases which permits the child to remain safely in his or her own home or other nonlicensed placement under the supervision of an agent of the department and which must be reviewed by the court during the period of supervision.

~~(64)~~(63) "Relative" means a grandparent, great-grandparent, sibling, first cousin, aunt, uncle, great-aunt, great-uncle, niece, or nephew, whether related by the whole or half blood, by affinity, or by adoption. The term does not include a stepparent.

~~(65)~~(64) "Reunification services" means social services and other supportive and rehabilitative services provided to the parent of the child, to the child, and, where appropriate, to the relative placement, nonrelative placement, or foster parents of the child, for the purpose of enabling a child who has been placed in out-of-home care to safely return to his or her parent at the earliest possible time. The health and safety of the child shall be the paramount goal of social services and other supportive and rehabilitative services. The services shall promote the child's need for physical, mental, and emotional health and a safe, stable, living environment, shall promote family autonomy, and shall strengthen family life, whenever possible.

~~(66)~~(65) "Secretary" means the Secretary of Children and Family Services.

~~(67)~~(66) "Sexual abuse of a child" means one or more of the following acts:

(a) Any penetration, however slight, of the vagina or anal opening of one person by the penis of another person, whether or not there is the emission of semen.

(b) Any sexual contact between the genitals or anal opening of one person and the mouth or tongue of another person.

(c) Any intrusion by one person into the genitals or anal opening of another person, including the use of any object for this purpose, except that this does not include any act intended for a valid medical purpose.

(d) The intentional touching of the genitals or intimate parts, including the breasts, genital area, groin, inner thighs, and buttocks, or the clothing covering them, of either the child or the perpetrator, except that this does not include:

1. Any act which may reasonably be construed to be a normal caregiver responsibility, any interaction with, or affection for a child; or

2. Any act intended for a valid medical purpose.

(e) The intentional masturbation of the perpetrator's genitals in the presence of a child.

(f) The intentional exposure of the perpetrator's genitals in the presence of a child, or any other sexual act intentionally perpetrated in the presence of a child, if such exposure or sexual act is for the purpose of sexual arousal or gratification, aggression, degradation, or other similar purpose.

(g) The sexual exploitation of a child, which includes allowing, encouraging, or forcing a child to:

1. Solicit for or engage in prostitution; or

2. Engage in a sexual performance, as defined by chapter 827.

(68)~~(67)~~ "Shelter" means a placement with a relative or a nonrelative, or in a licensed home or facility, for the temporary care of a child who is alleged to be or who has been found to be dependent, pending court disposition before or after adjudication.

(69)~~(68)~~ "Shelter hearing" means a hearing in which the court determines whether probable cause exists to keep a child in shelter status pending further investigation of the case.

(70)~~(71)~~ "Social service agency" means the department, a licensed child-caring agency, or a licensed child-placing agency.

(71) "Social worker" means any person who has a bachelor's, masters, or doctoral degree in social work.

(72)~~(70)~~ "Substance abuse" means using, without medical reason, any psychoactive or mood-altering drug, including alcohol, in such a manner as to induce impairment resulting in dysfunctional social behavior.

(73)~~(71)~~ "Substantial compliance" means that the circumstances which caused the creation of the case plan have been significantly remedied to the extent that the well-being and safety of the child will not be endangered upon the child's remaining with or being returned to the child's parent.

(74)~~(72)~~ "Taken into custody" means the status of a child immediately when temporary physical control over the child is attained by a person authorized by law, pending the child's release or placement.

(75)~~(73)~~ "Temporary legal custody" means the relationship that a court creates between a child and an adult relative of the child, legal custodian, agency, or other person approved by the court until a more permanent arrangement is ordered. Temporary legal custody confers upon the custodian the right to have temporary physical custody of the child and the right and duty to protect, nurture, guide, and discipline the child and to provide the child with food, shelter, and education, and ordinary medical, dental, psychiatric, and psychological care, unless these rights and duties are otherwise enlarged or limited by the court order establishing the temporary legal custody relationship.

(76)~~(74)~~ "Victim" means any child who has sustained or is threatened with physical, mental, or emotional injury identified in a report involving child abuse, neglect, or abandonment, or child-on-child sexual abuse.

**History.**--s. 1, ch. 26880, 1951; ss. 1, 2, ch. 67-585; s. 3, ch. 69-353; s. 4, ch. 69-365; ss. 19, 35, ch. 69-106; s. 1, ch. 71-117; s. 1, ch. 71-130; s. 10, ch. 71-355; ss. 4, 5, ch. 72-179; ss. 19, 30, ch. 72-404; ss. 2, 23, ch. 73-231; s. 1, ch. 74-368; ss. 15, 27, 28, ch. 75-48; s. 4, ch. 77-147; s. 2, ch. 78-414; s. 9, ch. 79-164; s. 2, ch. 79-203; s. 1, ch. 80-290; ss. 1, 17, ch. 81-218; ss. 4, 15, ch. 84-311; s. 4, ch. 85-80; s. 2, ch. 85-206; ss. 73, 78, ch. 86-220; s. 1, ch. 87-133; s. 1, ch. 87-289; s. 12, ch. 87-397; s. 1, ch. 88-319; s. 10, ch. 88-337; s. 2, ch. 90-53; s. 3, ch. 90-208; s. 3, ch. 90-306; s. 2, ch. 90-309; s. 69, ch. 91-45; s. 1, ch. 91-183; s. 1, ch. 92-158; s. 1, ch. 92-170; ss. 1, 4(1st), 14, ch. 92-287; s. 13, ch. 93-39; s. 6, ch. 93-230; s. 1, ch. 94-164; s. 11, ch. 94-209; s. 50, ch. 94-232; s. 1333, ch. 95-147; s. 8, ch. 95-152; s. 1, ch. 95-212; s. 4, ch. 95-228; s. 1, ch. 95-266; ss. 3, 43, ch. 95-267; s. 3, ch. 96-369; s. 2, ch. 96-398; s. 20, ch. 96-402; s. 23, ch. 97-96; s. 158, ch. 97-101; s. 44, ch. 97-190; s. 4, ch. 97-234; s. 111, ch. 97-238; s. 1, ch. 97-276; s. 1, ch. 98-49; s. 176, ch. 98-166; s. 7, ch. 98-280; s. 20, ch. 98-403; s. 15, ch. 99-2; s. 3, ch. 99-168; s. 2, ch. 99-186; s. 4, ch. 99-193; s. 15, ch. 2000-139; s. 2, ch. 2000-188; s. 82, ch. 2000-318; s. 9, ch. 2000-320; s. 14, ch. 2002-1; s. 2, ch. 2006-62; s. 1, ch. 2006-86; s. 4, ch. 2006-194; s. 4, ch. 2007-124; s. 1, ch. 2008-90; s. 1, ch. 2008-154. As of June 18, 2008, pending signature by the Governor.

### **39.011 Immunity from liability.--**

(1) In no case shall employees or agents of the department or a social service agency acting in good faith be liable for damages as a result of failing to provide services agreed to under the case plan unless the failure to provide such services occurs as a result of bad faith or malicious purpose or occurs in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

(2) The inability or failure of the department or of a social service agency or the employees or agents of the social service agency to provide the services agreed to under the case plan shall not render the state or the

social service agency liable for damages unless such failure to provide services occurs in a manner exhibiting wanton or willful disregard of human rights, safety, or property.

(3) A member or agent of a citizen review panel acting in good faith is not liable for damages as a result of any review or recommendation with regard to a dependency matter unless such member or agent exhibits wanton and willful disregard of human rights or safety, or property.

**History.**--s. 9, ch. 87-289; s. 13, ch. 90-306; s. 7, ch. 97-95; s. 21, ch. 98-403; s. 5, ch. 99-193.

**Note.**--Former s. 39.455.

**39.012 Rules for implementation.**--The department shall adopt rules for the efficient and effective management of all programs, services, facilities, and functions necessary for implementing this chapter. Such rules may not conflict with the Florida Rules of Juvenile Procedure. All rules and policies must conform to accepted standards of care and treatment.

**History.**--s. 2, ch. 87-289; s. 4, ch. 90-208; s. 12, ch. 94-209; s. 1, ch. 97-101; s. 120, ch. 97-238; s. 22, ch. 98-403.

**39.0121 Specific rulemaking authority.**--Pursuant to the requirements of s. 120.536, the department is specifically authorized to adopt, amend, and repeal administrative rules which implement or interpret law or policy, or describe the procedure and practice requirements necessary to implement this chapter, including, but not limited to, the following:

(1) Background screening of department employees and applicants; criminal records checks of prospective foster and adoptive parents; and drug testing of protective investigators.

(2) Reporting of child abuse, neglect, and abandonment; reporting of child-on-child sexual abuse; false reporting; child protective investigations; taking a child into protective custody; and shelter procedures.

(3) Confidentiality and retention of department records; access to records; and record requests.

(4) Department and client trust funds.

(5) Requesting of services from child protection teams.

(6) Consent to and provision of medical care and treatment for children in the care of the department.

(7) Federal funding requirements and procedures; foster care and adoption subsidies; subsidized independent living; and subsidized child care.

(8) Agreements with law enforcement and other state agencies; access to the National Crime Information Center (NCIC); and access to the parent locator service.

(9) Licensing, registration, and certification of child day care providers, shelter and foster homes, and residential child-caring and child-placing agencies.

(10) The Family Builders Program, the Intensive Crisis Counseling Program, and any other early intervention programs and kinship care assistance programs.

(11) Department contracts, pilot programs, and demonstration projects.

(12) Legal and casework procedures, including, but not limited to, mediation, diligent search, stipulations, consents, surrenders, and default, with respect to dependency, termination of parental rights, adoption, guardianship, and kinship care proceedings.

(13) Legal and casework management of cases involving in-home supervision and out-of-home care, including judicial reviews, administrative reviews, case plans, and any other documentation or procedures required by federal or state law.

(14) Injunctions and other protective orders, domestic-violence-related cases, and certification of domestic violence centers.

(15) Provision for making available to all physical custodians and family services counselors the information required by s. 39.6012(2) and for ensuring that this information follows the child until permanency has been achieved.

(16) Provisions for reporting, locating, recovering, and stabilizing children whose whereabouts become unknown while they are involved with the department and for preventing recurrences of such incidents. At a minimum, the rules must:

(a) Provide comprehensive, explicit, and consistent guidelines to be followed by the department's employees and contracted providers when the whereabouts of a child involved with the department is unknown.

(b) Include criteria to determine when a child is missing for purposes of making a report to a law enforcement agency, and require that in all cases in which a law enforcement agency has accepted a case for criminal investigation pursuant to s. 39.301(2) (c) and the child's whereabouts are unknown, the child shall be considered missing and a report made.

(c) Include steps to be taken by employees and contracted providers to ensure and provide evidence that parents and guardian have been advised of the requirements of s. 787.04(3) and that violations are reported.

History.--s. 23, ch. 98-403; s. 6, ch. 99-193; s. 2, ch. 2006-86. As of June 18, 2008, pending signature by the Governor.

### **39.013 Procedures and jurisdiction; right to counsel.--**

(1) All procedures, including petitions, pleadings, subpoenas, summonses, and hearings, in this chapter shall be conducted according to the Florida Rules of Juvenile Procedure unless otherwise provided by law. Parents must be informed by the court of their right to counsel in dependency proceedings at each stage of the dependency proceedings. Parents who are unable to afford counsel must be appointed counsel.

(2) The circuit court has exclusive original jurisdiction of all proceedings under this chapter, of a child voluntarily placed with a licensed child-caring agency, a licensed child-placing agency, or the department, and of the adoption of children whose parental rights have been terminated under this chapter. Jurisdiction attaches when the initial shelter petition, dependency petition, or termination of parental rights petition is filed or when a child is taken into the custody of the department. The circuit court may assume jurisdiction over any such proceeding regardless of whether the child was in the physical custody of both parents, was in the sole legal or physical custody of only one parent, caregiver, or some other person, or was in the physical or legal custody of no person when the event or condition occurred that brought the child to the attention of the court. When the court obtains jurisdiction of any child who has been found to be dependent, the court shall retain jurisdiction, unless relinquished by its order, until the child reaches 18 years of age. However, if a youth petitions the court at any time before his or her 19<sup>th</sup> birthday requesting the court's continued jurisdiction, the juvenile court may retain jurisdiction under this chapter for a period not to exceed 1 year

following the youth's 18<sup>th</sup> birthday for the purpose of determining whether appropriate aftercare support, Road-to-Independence Program, transitional support, mental health, and developmental disability services, to the extent otherwise authorized by law, have been provided to the formerly dependent child who was in the legal custody of the department immediately before his or her 18<sup>th</sup> birthday. If a petition for special immigrant juvenile status and an application for adjustment of status have been filed on behalf of a foster child and the petition and application have not been granted by the time the child reaches 18 years of age, the court may retain jurisdiction over the dependency case solely for the purpose of allowing the continued consideration of the petition and application by federal authorities. Review hearings for the child shall be set solely for the purpose of determining the status of the petition and application. The court's jurisdiction terminates upon the final decision of the federal authorities. Retention of jurisdiction in this instance does not affect the services available to a young adult under s. 409.1451. The court may not retain jurisdiction of the case after the immigrant child's 22<sup>nd</sup> birthday.

(3) When a child is under the jurisdiction of the circuit court pursuant to this chapter, the circuit court assigned to handle dependency matters may exercise the general and equitable jurisdiction over guardianship proceedings under chapter 744 and proceedings for temporary custody of minor children by extended family under chapter 751.

(4) Orders entered pursuant to this chapter which affect the placement of, access to, parental time with, adoption of, or parental rights and responsibilities for a minor child shall take precedence over other orders entered in civil actions or proceedings. However, if the court has terminated jurisdiction, the order may be subsequently modified by a court of competent jurisdiction in any other civil action or proceeding affecting placement of, access to, parental time with, adoption of, or parental rights and responsibilities for the same minor child.

(5) The court shall expedite the resolution of the placement issue in cases involving a child who has been removed from the parent and placed in an out-of-home placement.

(6) The court shall expedite the judicial handling of all cases when the child has been removed from the parent and placed in an out-of-home placement.

(7) Children removed from their homes shall be provided equal treatment with respect to goals, objectives, services, and case plans, without regard to the location of their placement.

(8) For any child who remains in the custody of the department, the court shall, within the month which constitutes the beginning of the 6-month period before the child's 18th birthday, hold a hearing to review the progress of the child while in the custody of the department.

(9)(a) At each stage of the proceedings under this chapter, the court shall advise the parents of the right to counsel. The court shall appoint counsel for indigent parents. The court shall ascertain whether the right to counsel is understood. When right to counsel is waived, the court shall determine whether the waiver is knowing and intelligent. The court shall enter its findings in writing with respect to the appointment or waiver of counsel for indigent parents or the waiver of counsel by nonindigent parents.

(b) Once counsel has entered an appearance or been appointed by the court to represent the parent of the child, the attorney shall continue to represent the parent throughout the proceedings. If the attorney-client relationship is discontinued, the court shall advise the parent of the right to have new counsel retained or appointed for the remainder of the proceedings.

(c)1. A waiver of counsel may not be accepted if it appears that the parent is unable to make an intelligent and understanding choice because of mental condition, age, education, experience, the nature or complexity of the case, or other factors.

2. A waiver of counsel made in court must be of record.

3. If a waiver of counsel is accepted at any hearing or proceeding, the offer of assistance of counsel must be renewed by the court at each subsequent stage of the proceedings at which the parent appears without counsel.

(d) This subsection does not apply to any parent who has voluntarily executed a written surrender of the child and consents to the entry of a court order terminating parental rights.

(10) Court-appointed counsel representing indigent parents at shelter hearings shall be paid from state funds appropriated by general law.

(11) The court shall encourage the Statewide Guardian Ad Litem Office to provide greater representation to those children who are within 1 year of transferring out of foster care.

**History.**--s. 20, ch. 78-414; s. 5, ch. 84-311; s. 4, ch. 87-289; s. 4, ch. 90-306; s. 2, ch. 92-158; s. 3, ch. 94-164; s. 5, ch. 95-228; s. 8, ch. 98-280; s. 24, ch. 98-403; s. 7, ch. 99-193; s. 16, ch. 2000-139; s. 1, ch. 2002-216; s. 1, ch. 2005-179; s. 3, 2005-239; s. 3, ch. 2006-86; s. 2, ch. 2006-194.

**Note.**--Former s. 39.40.

**39.0131 Permanent mailing address designation.**--Upon the first appearance before the court, each party shall provide to the court a permanent mailing address. The court shall advise each party that this address will be used by the court and the petitioner for notice purposes unless and until the party notifies the court and the petitioner in writing of a new mailing address.

**History.**--s. 11, ch. 94-164; s. 25, ch. 98-403.

**Note.**--Former s. 39.4057.

**39.0132 Oaths, records, and confidential information.**--

(1) The judge, clerks or deputy clerks, or authorized agents of the department shall each have the power to administer oaths and affirmations.

(2) The court shall make and keep records of all cases brought before it pursuant to this chapter and shall preserve the records pertaining to a dependent child until 7 years after the last entry was made, or until the child is 18 years of age, whichever date is first reached, and may then destroy them, except that records of cases where orders were entered permanently depriving a parent of the custody of a juvenile shall be preserved permanently. The court shall make official records, consisting of all petitions and orders filed in a case arising pursuant to this chapter and any other pleadings, certificates, proofs of publication, summonses, warrants, and other writs which may be filed therein.

(3) The clerk shall keep all court records required by this chapter separate from other records of the circuit court. All court records required by this chapter shall not be open to inspection by the public. All records shall be inspected only upon order of the court by persons deemed by the court to have a proper interest therein, except that, subject to the provisions of s. 63.162, a child and the parents of the child and their attorneys, guardian ad litem, law enforcement agencies, and the department and its designees shall always have the right to inspect and copy any official record pertaining to the child. The Justice Administrative Commission may inspect court dockets required by this chapter as necessary to audit compensation of court-appointed attorneys. If the docket is insufficient for purposes of the audit, the commission may petition the court for additional documentation as necessary and appropriate. The court may permit authorized representatives of recognized organizations compiling statistics for proper purposes to inspect and make

abstracts from official records, under whatever conditions upon their use and disposition the court may deem proper, and may punish by contempt proceedings any violation of those conditions.

(4)(a)1. All information obtained pursuant to this part in the discharge of official duty by any judge, employee of the court, authorized agent of the department, correctional probation officer, or law enforcement agent is confidential and exempt from s. 119.07(1) and may not be disclosed to anyone other than the authorized personnel of the court, the department and its designees, correctional probation officers, law enforcement agents, guardian ad litem, and others entitled under this chapter to receive that information, except upon order of the court.

2. Any information related to the best interests of a child, as determined by a guardian ad litem, which is held by a guardian ad litem, including but not limited to medical, mental health, substance abuse, child care, education, law enforcement, court, social services, and financial records; and any other information maintained by a guardian ad litem which is identified as confidential information under this chapter; is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Such confidential and exempt information may not be disclosed to anyone other than the authorized personnel of the court, the department and its designees, correctional probation officers, law enforcement agents, guardians ad litem, and others entitled under this chapter to receive that information, except upon order of the court. This subparagraph is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15, and shall stand repealed on October 2, 2010, unless reviewed and saved from repeal through reenactment by the Legislature.

(b) The department shall disclose to the school superintendent the presence of any child in the care and custody or under the jurisdiction or supervision of the department who has a known history of criminal sexual behavior with other juveniles; is an alleged juvenile sex offender, as defined in s. 39.01; or has pled guilty or nolo contendere to, or has been found to have committed, a violation of chapter 794, chapter 796, chapter 800, s. 827.071, or s. 847.0133, regardless of adjudication. Any employee of a district school board who knowingly and willfully discloses such information to an unauthorized person commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(5) All orders of the court entered pursuant to this chapter shall be in writing and signed by the judge, except that the clerk or deputy clerk may sign a summons or notice to appear.

(6) No court record of proceedings under this chapter shall be admissible in evidence in any other civil or criminal proceeding, except that:

(a) Records of proceedings under this chapter forming a part of the record on appeal shall be used in the appellate court in the manner hereinafter provided.

(b) Records necessary therefor shall be admissible in evidence in any case in which a person is being tried upon a charge of having committed perjury.

(c) Records of proceedings under this chapter may be used to prove disqualification pursuant to s. 435.06 and for proof regarding such disqualification in a chapter 120 proceeding.

(d) A final order entered pursuant to an adjudicatory hearing is admissible in evidence in any subsequent civil proceeding relating to placement of, access to, parental time with, adoption of, or parental rights and responsibilities for the same child or a sibling of that child.

(e) Evidence admitted in any proceeding under this chapter may be admissible in evidence when offered by any party in a subsequent civil proceeding relating to placement of, access to, parental time with, adoption of, or parental rights and responsibilities for the same child or a sibling of that child if:

1. Notice is given to the opposing party or opposing party's counsel of the intent to offer the evidence and a copy of such evidence is delivered to the opposing party or the opposing party's counsel; and
2. The evidence is otherwise admissible in the subsequent civil proceeding.



(7) Final orders, records, and evidence in any proceeding under this chapter which are subsequently admitted in evidence pursuant to subsection (6) remain subject to subsections (3) and (4).

**History.**--s. 20, ch. 78-414; s. 15, ch. 79-164; s. 3, ch. 87-238; s. 40, ch. 89-526; s. 7, ch. 90-208; s. 13, ch. 90-360; s. 16, ch. 91-57; s. 18, ch. 93-39; s. 32, ch. 95-228; s. 119, ch. 95-418; s. 3, ch. 96-268; s. 16, ch. 96-406; s. 1, ch. 98-158; s. 26, ch. 98-403; s. 16, ch. 99-2; s. 8, ch. 99-193; s. 10, ch. 99-284; s. 17, ch. 2000-139; s. 2, ch. 2005-213; s. 24, ch. 2005-236; s. 4, ch. 2005-239.

**Note.**--Former s. 39.411.

**39.0133 Court and witness fees.**--In all proceedings under this chapter, no court fees shall be charged against, and no witness fees shall be allowed to, any party to a petition or any parent or legal custodian or child named in a summons. Other witnesses shall be paid the witness fees fixed by law.

**History.**--s. 20, ch. 78-414; s. 27, ch. 98-403.

**Note.**--Former s. 39.414.

**<sup>1</sup>39.0134 Appointed counsel; compensation.**-- If counsel is entitled to receive compensation for representation pursuant to a court appointment in a dependency proceeding or a termination of parental rights proceeding pursuant to this chapter, such compensation shall be paid in accordance with s. 27.5304. The state may acquire and enforce a lien upon court-ordered payment of attorney's fees and costs in accordance with s. 984.08.

**History.**--s. 12, ch. 84-311; s. 9, ch. 87-289; s. 28, ch. 98-403; s. 9, ch. 99-193; s. 57, ch. 2003-402; s. 36, ch. 2004-265.

**<sup>1</sup>Note.**-- Section 1, ch. 92-37, provides that "[n]otwithstanding the provisions of chapter 39, Florida Statutes, to the contrary, the attorneys whose compensation was provided in the November 1989 Supplemental Appropriations Act and is continued in subsequent general appropriations acts shall provide legal representation in cases arising under sections 39.40-39.474, Florida Statutes." Provisions within chapter 39 were transferred to other locations by ch. 97-238, ch. 98-403, and ch. 2000-139. Some of the material within the cited range can be found at parts VI, VIII, and XI of ch. 39, as redesignated by ch. 98-403 and ch. 2000-139, and ch. 984, as redesignated by ch. 97-238.

**Note.**--Former ss. 39.415, 39.474.

**39.0135 Operations and Maintenance Trust Fund.**--The department shall deposit all child support payments made to the department pursuant to this chapter into the Operations and Maintenance Trust Fund. The purpose of this funding is to care for children who are committed to the temporary legal custody of the department.

**History.**--s. 87, ch. 86-220; s. 10, ch. 90-306; s. 16, ch. 96-418; s. 167, ch. 97-101; s. 29, ch. 98-403.

**Note.**--Former s. 39.418.

**39.0136 Time limitations; continuances.**--

(1) The Legislature finds that time is of the essence for establishing permanency for a child in the dependency system. Time limitations are a right of the child which may not be waived, extended, or continued at the request of any party except as provided in this section.

(2) The time limitations in this chapter do not include:

(a) Periods of delay resulting from a continuance granted at the request of the child's counsel or the child's guardian ad litem or, if the child is of sufficient capacity to express reasonable consent, at the request or with the consent of the child. The court must consider the best interests of the child when determining periods of delay under this section.

(b) Periods of delay resulting from a continuance granted at the request of any party if the continuance is granted:

1. Because of an unavailability of evidence that is material to the case if the requesting party has exercised due diligence to obtain evidence and there are substantial grounds to believe that the evidence will be available within 30 days. However, if the requesting party is not prepared to proceed within 30 days, any other party may move for issuance of an order to show cause or the court on its own motion may impose appropriate sanctions, which may include dismissal of the petition.

2. To allow the requesting party additional time to prepare the case and additional time is justified because of an exceptional circumstance.

(c) Reasonable periods of delay necessary to accomplish notice of the hearing to the child's parent or legal custodian; however, the petitioner shall continue regular efforts to provide notice to the parents during the periods of delay.

(3) Notwithstanding subsection (2), in order to expedite permanency for a child, the total time allowed for continuances or extensions of time may not exceed 60 days within any 12-month period for proceedings conducted under this chapter. A continuance or extension of time may be granted only for extraordinary circumstances in which it is necessary to preserve the constitutional rights of a party or if substantial evidence exists to demonstrate that without granting a continuance or extension of time the child's best interests will be harmed.

(4) Notwithstanding subsection (2), a continuance or an extension of time is limited to the number of days absolutely necessary to complete a necessary task in order to preserve the rights of a party or the best interests of a child.

**History.**--s. 4, ch. 2006-86.

### **39.0137 Federal law; rulemaking authority.--**

(1) This chapter does not supersede the requirements of the Indian Child Welfare Act, 25 U.S.C. ss. 1901, et seq., or the Multi-Ethnic Placement Act of 1994, Pub. L. No.103-382, as amended, or the implementing regulations.

(2) The department shall adopt rules no later than July 1, 2007, to ensure that the provisions of these federal laws are enforced in this state. The department is encouraged to enter into agreements with recognized American Indian tribes in order to facilitate the implementation of the Indian Child Welfare Act.

**History.**--s. 5, ch. 2006-86.

### **39.0138 Criminal history records check; limit on placement of a child.--**

(1) The department shall conduct a criminal history records check on for all persons being considered by the department ~~for approval~~ for placement of a child subject to a placement decision under this chapter, including all nonrelative placement decisions, all members of the household of the person being considered, and frequent visitors to the household. For purposes of this section, a criminal history records check may include, but is not limited to, submission of fingerprints to the Department of Law Enforcement for processing and forwarding to the Federal Bureau of Investigation for state and national criminal history information, and local criminal records checks through local law enforcement agencies. A criminal history records check must also include a search of the department's automated abuse information system. The department shall establish by rule standards for evaluating any information contained in the automated system relating to a person who must be screened for purposes of making a placement decision.

(2) The department may not place a child with a person other than a parent if the criminal history records check reveals that the person has been convicted of any felony that falls within any of the following categories:

- (a) Child abuse, abandonment, or neglect;
- (b) Domestic violence;
- (c) Child pornography or other felony in which a child was a victim of the offense; or
- (d) Homicide, sexual battery, or other felony involving violence, other than felony assault or felony

battery when an adult was the victim of the assault or battery.

(3) The department may not place a child with a person other than a parent if the criminal history records check reveals that the person has, within the previous 5 years, been convicted of a felony that falls within any of the following categories:

- (a) Assault;
- (b) Battery; or
- (c) A drug-related offense.

(4) The department may place a child in a home that otherwise meets placement requirements if a name check of state and local criminal history records systems does not disqualify the applicant and if the department submits fingerprints to the Department of Law Enforcement for forwarding to the Federal Bureau of Investigation and is awaiting the results of the state and national criminal history records check.

(5) Persons with whom placement of a child is being considered or approved must disclose to the department any prior or pending local, state, or national criminal proceedings in which they are or have been involved.

(6) The department may examine the results of any criminal history records check of any person, including a parent, with whom placement of a child is being considered under this section. The complete criminal history records check must be considered when determining whether placement with the person will jeopardize the safety of the child being placed.

(7)(a) The court may review a decision of the department to grant or deny the placement of a child based upon information from the criminal history records check. The review may be upon the motion of any party, the request of any person who has been denied a placement by the department, or on the court's own motion. The court shall prepare written findings to support its decision in this matter.

(b) A person who is seeking placement of a child but is denied the placement because of the results of a criminal history records check has the burden of setting forth sufficient evidence of rehabilitation to show that the person will not present a danger to the child if the placement of the child is allowed. Evidence of rehabilitation may include, but is not limited to, the circumstances surrounding the incident providing the basis for denying the application, the time period that has elapsed since the incident, the nature of the harm caused to the victim, whether the victim was a child, the history of the person since the incident, whether the person has complied with any requirement to pay restitution, and any other evidence or circumstances indicating that the person will not present a danger to the child if the placement of the child is allowed.

**History.**--s. 6, ch. 2006-86. As of June 18, 2008, pending signature by the Governor.

### **39.0139 Visitation or other contact; restrictions.--**

(1) **SHORT TITLE.**--This section may be cited as the "Keeping Children Safe Act."

(2) **LEGISLATIVE FINDINGS AND INTENT.**--

(a) The Legislature finds that:

1. For some children who are abused, abandoned, or neglected by a parent or other caregiver, abuse may include sexual abuse.

2. These same children are at risk of suffering from further harm during visitation or other contact.

3. Visitation or other contact with the child may be used to influence the child's testimony.

(b) It is the intent of the Legislature to protect children and reduce the risk of further harm to

children who have been sexually abused or exploited by a parent or other caregiver by placing additional requirements on judicial determinations related to visitation and other contact.

**(3) PRESUMPTION OF DETRIMENT.--**

(a) A rebuttable presumption of detriment to a child is created when a parent or caregiver:

1. Has been the subject of a report to the child abuse hotline alleging sexual abuse of any child as defined in s. 39.01;
2. Has been found guilty of, regardless of adjudication, or has entered a plea of guilty or nolo contendere to, charges under the following statutes or substantially similar statutes of other jurisdictions:
  - a. Section 787.04, relating to removing minors from the state or concealing minors contrary to court order;
  - b. Section 794.011, relating to sexual battery;
  - c. Section 798.02, relating to lewd and lascivious behavior;
  - d. Chapter 800, relating to lewdness and indecent exposure;
  - e. Section 826.04, relating to incest; or
  - f. Chapter 827, relating to the abuse of children; or
3. Has been determined by a court to be a sexual predator as defined in s. 775.21 or has received a substantially similar designation under laws of another jurisdiction.

(b) For purposes of this subsection, “substantially similar” has the same meaning as in s. 39.806(1)(d)2.

**(4) HEARINGS.--** A person who meets any of the criteria set forth in paragraph (3)(a) may visit or have other contact with a child only after a hearing and an order by the court that allows the visitation or other contact. At such a hearing:

(a) The court must appoint an attorney ad litem or a guardian ad litem for the child if one has not already been appointed. Any attorney ad litem or guardian ad litem appointed shall have special training in the dynamics of child sexual abuse.

(b) The court may receive and rely upon any relevant and material evidence submitted, including written and oral reports, to the extent of its probative value in its effort to determine the action to be taken with regard to the child, even if these reports and evidence may not be competent in an adjudicatory hearing.

(c) If the court finds the person proves by clear and convincing evidence that the safety, well-being, and physical, mental, and emotional health of the child is not endangered by such visitation or other contact, the presumption in subsection (3) is rebutted and the court may allow visitation or other contact. The court shall enter a written order specifying any conditions it finds necessary to protect the child.

(d) If the court finds the person did not rebut the presumption established in subsection (3), the court shall enter a written order prohibiting or restricting visitation or other contact with the child.

**(5) CONDITIONS.--** Any visitation or other contact ordered under paragraph (4) (d) shall be:

(a) Supervised by a person who has previously received special training in the dynamics of child sexual abuse; or

(b) Conducted in a supervised visitation program, provided that the program has an agreement with the court and a current affidavit of compliance on file with the chief judge of the circuit in which the program is located affirming that the program has agreed to comply with the minimum standards contained in the administrative order issued by the Chief Justice of the Supreme Court on November 17, 1999, and provided the program has a written agreement with the court and with the department as described in s. 753.05 containing policies and guidelines specifically related to referrals involving child sexual abuse.

**(6) ADDITIONAL CONSIDERATIONS.--**

(a) If a party or participant, based on communication with the child or other firsthand knowledge,

informs the court that a person is attempting to influence the testimony of the child, the court shall immediately suspend visitation or other contact. The court shall then hold a hearing and determine whether it is in the best interests of the child to prohibit or restrict visitation or other contact.

(b) If a child is in therapy as a result of any of the allegations or convictions contained in paragraph (3)(a) and the child's therapist reports that the visitation or other contact is impeding the child's therapeutic progress, the court shall convene a hearing within 7 business days to review the terms, conditions, or appropriateness of continued visitation or other contact.

**History.**--s. 1, ch. 2007-109.

**39.0141 Missing children; report required.**--Whenever the whereabouts of a child involved with the department becomes unknown, the department, the community-based care provider, or the sheriff's office providing investigative services for the department shall make reasonable efforts, as defined by rule, to locate the child. If, pursuant to criteria established by rule, the child is determined to be missing, the department, the community-based care provider, or the sheriff's office shall file a report that the child is missing in accordance with s. 937.021.

**History.**--As of June 18, 2008, pending signature by the Governor.

**PART II  
REPORTING CHILD ABUSE**

- 39.201 Mandatory reports of child abuse, abandonment, or neglect; mandatory reports of death; central abuse hotline.
- 39.202 Confidentiality of reports and records in cases of child abuse or neglect.
- 39.2021 Release of confidential information.
- 39.203 Immunity from liability in cases of child abuse, abandonment, or neglect.
- 39.204 Abrogation of privileged communications in cases involving child abuse, abandonment, or neglect.
- 39.205 Penalties relating to reporting of child abuse, abandonment, or neglect.
- 39.206 Administrative fines for false report of abuse, abandonment, or neglect of a child; civil damages.

**39.201 Mandatory reports of child abuse, abandonment, or neglect; mandatory reports of death; central abuse hotline.--**

(1)(a) Any person who knows, or has reasonable cause to suspect, that a child is abused, abandoned, or neglected by a parent, legal custodian, caregiver, or other person responsible for the child's welfare, as defined in this chapter, or that a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care shall report such knowledge or suspicion to the department in the manner prescribed in subsection (2).

(b) Reporters in the following occupation categories are required to provide their names to the hotline staff:

1. Physician, osteopathic physician, medical examiner, chiropractic physician, nurse, or hospital personnel engaged in the admission, examination, care, or treatment of persons;
2. Health or mental health professional other than one listed in subparagraph 1.;
3. Practitioner who relies solely on spiritual means for healing;
4. School teacher or other school official or personnel;
5. Social worker, day care center worker, or other professional child care, foster care, residential, or institutional worker;
6. Law enforcement officer; or
7. Judge.

The names of reporters shall be entered into the record of the report, but shall be held confidential and exempt as provided in s. 39.202.

(c) A professional who is hired by or enters into a contract with the department for the purpose of treating or counseling any person, as a result of a report of child abuse, abandonment, or neglect, is not required to again report to the central abuse hotline the abuse, abandonment, or neglect that was the subject of the referral for treatment.

(d) An officer or employee of the judicial branch is not required to again provide notice of reasonable cause to suspect child abuse, abandonment, or neglect when that child is currently being investigated by the department, there is an existing dependency case, or the matter has previously been reported to the department, provided there is reasonable cause to believe the information is already known to the department. This paragraph applies only when the information has been provided to the officer or employee in the course of carrying out his or her official duties.

(e) Nothing in this chapter or in the contracting with community-based care providers for foster care and related services as specified in s. 409.1671 shall be construed to remove or reduce the duty and

responsibility of any person, including any employee of the community-based care provider, to report a suspected or actual case of child abuse, abandonment, or neglect or the sexual abuse of a child to the department's central abuse hotline.

(2)(a) Each report of known or suspected child abuse, abandonment, or neglect by a parent, legal custodian, caregiver, or other person responsible for the child's welfare as defined in this chapter, except those solely under s. 827.04(3), and each report that a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care shall be made immediately to the department's central abuse hotline. Such reports may be made on the single statewide toll-free telephone number or via fax or web-based report. Personnel at the department's central abuse hotline shall determine if the report received meets the statutory definition of child abuse, abandonment, or neglect. Any report meeting one of these definitions shall be accepted for the protective investigation pursuant to part III of this chapter.

(b) If the report is of an instance of known or suspected child abuse by someone other than a parent, legal custodian, caregiver, or other person responsible for the child's welfare as defined in this chapter, the report or call shall be immediately electronically transferred to the appropriate county sheriff's office by the central abuse hotline.

(c) If the report is of an instance of known or suspected child abuse, abandonment, or neglect that occurred out of state and the alleged perpetrator and the child alleged to be a victim live out of state, the central abuse hotline shall not accept the report or call for investigation, but shall transfer the information on the report to the appropriate state.

(d) If the report is of an instance of known or suspected child abuse involving impregnation of a child under 16 years of age by a person 21 years of age or older solely under s. 827.04(3), the report shall be made immediately to the appropriate county sheriff's office or other appropriate law enforcement agency. If the report is of an instance of known or suspected child abuse solely under s. 827.04(3), the reporting provisions of this subsection do not apply to health care professionals or other persons who provide medical or counseling services to pregnant children when such reporting would interfere with the provision of medical services.

(e) Reports involving known or suspected institutional child abuse or neglect shall be made and received in the same manner as all other reports made pursuant to this section.

(f) Reports involving a known or suspected juvenile sexual offender or a child who has exhibited inappropriate sexual behavior shall be made and received by the department.

1. The department shall determine the age of the alleged ~~juvenile sexual~~ offender, if known.

2. ~~If~~ When the alleged ~~juvenile sexual~~ offender is 12 years of age or younger, the central abuse hotline shall immediately electronically transfer the report or call to the county sheriff's appropriate law enforcement agency office. The department shall conduct an assessment and assist the family in receiving appropriate services pursuant to s. 39.307, and send a written report of the allegation to the appropriate county sheriff's office within 48 hours after the initial report is made to the central abuse hotline.

3. ~~If~~ When the alleged ~~juvenile sexual~~ offender is 13 years of age or older, the central abuse hotline department shall immediately electronically transfer the report or call to the appropriate county sheriff's office ~~by the central abuse hotline~~, and send a written report to the appropriate county sheriff's office within 48 hours after the initial report to the central abuse hotline.

(g) Reports involving surrendered ~~abandoned~~ newborn infants as described in s. 383.50 shall be made and received by the department.

1. If the report is of a surrendered ~~an abandoned~~ newborn infant as described in s. 383.50 and there is no indication of abuse, neglect, or abandonment other than that necessarily entailed in the infant having been left at a hospital, emergency medical services station, or fire station, the department shall provide to the caller the name of a licensed child-placing agency on a rotating basis from a list of licensed child-

placing agencies eligible and required to accept physical custody of and to place newborn infants left at a hospital, emergency medical services station, or fire station. The report shall not be considered a report of abuse, neglect, or abandonment solely because the infant has been left at a hospital, emergency medical services station, or fire station pursuant to s. 383.50.

2. If the call, fax, or web-based report includes ~~caller reports~~ indications of abuse or neglect beyond that necessarily entailed in the infant having been left at a hospital, emergency medical services station, or fire station, the report shall be considered as a report of abuse, neglect, or abandonment and shall be subject to the requirements of s. 39.395 and all other relevant provisions of this chapter, notwithstanding any provisions of chapter 383.

(h) Hotline counselors shall receive periodic training in encouraging reporters to provide their names when reporting abuse, abandonment, or neglect. Callers shall be advised of the confidentiality provisions of s. 39.202. The department shall secure and install electronic equipment that automatically provides to the hotline the number from which the call or fax is placed or the Internet protocol (IP) address from which the report is received. This number shall be entered into the report of abuse, abandonment, or neglect and become a part of the record of the report, but shall enjoy the same confidentiality as provided to the identity of the reporter ~~caller~~ pursuant to s. 39.202.

(i) The department shall voice-record all incoming or outgoing calls that are received or placed by the central abuse hotline which relate to suspected or known child abuse, neglect, or abandonment. The department shall maintain an electronic copy of each fax and web-based report. The recording or electronic copy of each fax or web-based report shall become a part of the record of the report but, notwithstanding s. 39.202, shall be released in full only to law enforcement agencies and state attorneys for the purpose of investigating and prosecuting criminal charges pursuant to s. 39.205, or to employees of the department for the purpose of investigating and seeking administrative penalties pursuant to s. 39.206. Nothing in this paragraph shall prohibit the use of the recordings, the electronic copies of faxes, and web-based reports by hotline staff for quality assurance and training.

(3) Any person required to report or investigate cases of suspected child abuse, abandonment, or neglect who has reasonable cause to suspect that a child died as a result of child abuse, abandonment, or neglect shall report his or her suspicion to the appropriate medical examiner. The medical examiner shall accept the report for investigation and shall report his or her findings, in writing, to the local law enforcement agency, the appropriate state attorney, and the department. Autopsy reports maintained by the medical examiner are not subject to the confidentiality requirements provided for in s. 39.202.

(4) The department shall establish and maintain a central abuse hotline to receive all reports made pursuant to this section in writing, via fax, via web-based reporting, or through a single statewide toll-free telephone number, which any person may use to report known or suspected child abuse, abandonment, or neglect at any hour of the day or night, any day of the week. The central abuse hotline shall be operated in such a manner as to enable the department to:

(a) Immediately identify and locate prior reports or cases of child abuse, abandonment, or neglect through utilization of the department's automated tracking system.

(b) Monitor and evaluate the effectiveness of the department's program for reporting and investigating suspected abuse, abandonment, or neglect of children through the development and analysis of statistical and other information.

(c) Track critical steps in the investigative process to ensure compliance with all requirements for any report of abuse, abandonment, or neglect.

(d) Maintain and produce aggregate statistical reports monitoring patterns of child abuse, child abandonment, and child neglect. The department shall collect and analyze child-on-child sexual abuse reports and include the information in aggregate statistical reports.



(e) Serve as a resource for the evaluation, management, and planning of preventive and remedial services for children who have been subject to abuse, abandonment, or neglect.

(f) Initiate and enter into agreements with other states for the purpose of gathering and sharing information contained in reports on child maltreatment to further enhance programs for the protection of children.

(5) The department shall be capable of receiving and investigating, 24 hours a day, 7 days a week, 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 parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care. If it appears that the immediate safety or well-being of a child is endangered, that the family may flee or the child will be unavailable for purposes of conducting a child protective investigation, or that the facts otherwise so warrant, the department shall commence an investigation immediately, regardless of the time of day or night. In all other child abuse, abandonment, or neglect cases, a child protective investigation shall be commenced within 24 hours after receipt of the report. In an institutional investigation, the alleged perpetrator may be represented by an attorney, at his or her own expense, or accompanied by another person, if the person or the attorney executes an affidavit of understanding with the department and agrees to comply with the confidentiality provisions of s. 39.202. The absence of an attorney or other person does not prevent the department from proceeding with other aspects of the investigation, including interviews with other persons. In institutional child abuse cases when the institution is not operating and the child cannot otherwise be located, the investigation shall commence immediately upon the resumption of operation. If requested by a state attorney or local law enforcement agency, the department shall furnish all investigative reports to that agency.

(6) Information in the central abuse hotline may not be used for employment screening, except as provided in s. 39.202(2)(a) and (h). Information in the central abuse hotline and the department's automated abuse information system may be used by the department, its authorized agents or contract providers, the Department of Health, or county agencies as part of the licensure or registration process pursuant to ss. 402.301-402.319 and ss. 409.175-409.176.

(7) On an ongoing basis, the department's quality assurance program shall review calls, fax reports, and web-based reports to the hotline involving three or more unaccepted reports on a single child, where jurisdiction applies, in order to detect such things as harassment and situations that warrant an investigation because of the frequency or variety of the source of the reports. The Program Director for Family Safety may refer a case for investigation when it is determined, as a result of this review, that an investigation may be warranted.

**History.**--ss. 1, 2, 3, 4, 5, 6, ch. 63-24; s. 941, ch. 71-136; ss. 1, 1A, ch. 71-97; s. 32, ch. 73-334; s. 65, ch. 74-383; s. 1, ch. 75-101; s. 1, ch. 75-185; s. 4, ch. 76-237; s. 1, ch. 77-77; s. 3, ch. 77-429; ss. 1, 2, ch. 78-322; s. 3, ch. 78-326; s. 22, ch. 78-361; s. 1, ch. 78-379; s. 181, ch. 79-164; s. 1, ch. 79-203; s. 7, ch. 84-226; s. 37, ch. 85-54; s. 68, ch. 86-163; s. 34, ch. 87-238; s. 21, ch. 88-337; s. 33, ch. 89-294; s. 6, ch. 90-50; s. 51, ch. 90-306; s. 7, ch. 91-57; s. 17, ch. 91-71; s. 6, ch. 93-25; s. 59, ch. 94-164; ss. 22, 44, ch. 95-228; s. 9, ch. 95-266; s. 51, ch. 95-267; s. 133, ch. 95-418; s. 1, ch. 96-215; s. 14, ch. 96-268; s. 14, ch. 96-402; s. 271, ch. 96-406; s. 1041, ch. 97-103; s. 43, ch. 97-264; s. 257, ch. 98-166; s. 31, ch. 98-403; s. 4, ch. 99-168; s. 10, ch. 99-193; s. 41, ch. 2000-139; s. 3, ch. 2000-188; s. 1, ch. 2000-217; s. 1, ch. 2001-53; s. 1, ch. 2003-127; s. 7, ch. 2006-86; s. 2, ch. 2008-90. As of June 18, 2008, pending signature by the Governor.

**Note.**--Former ss. 828.041, 827.07(3), (4), (9), (13); s. 415.504.

### **39.202 Confidentiality of reports and records in cases of child abuse or neglect.--**

(1) In order to protect the rights of the child and the child's parents or other persons responsible for the child's welfare, all records held by the department concerning reports of child abandonment, abuse, or neglect, including reports made to the central abuse hotline and all records generated as a result of such reports, shall be confidential and exempt from the provisions of s. 119.07(1) and shall not be disclosed except as specifically authorized by this chapter. Such exemption from s. 119.07(1) applies to information in the possession of those entities granted access as set forth in this section.

(2) Except as provided in subsection (4), access to such records, excluding the name of the reporter which shall be released only as provided in subsection (5), shall be granted only to the following persons, officials, and agencies:

(a) Employees, authorized agents, or contract providers of the department, the Department of Health, the Agency for Persons with Disabilities, or county agencies responsible for carrying out:

1. Child or adult protective investigations;
2. Ongoing child or adult protective services;
3. Early intervention and prevention services;
4. Healthy Start services;
5. Licensure or approval of adoptive homes, foster homes, child care facilities, facilities licensed under chapter 393, or family day care homes or informal child care providers who receive subsidized child care funding, or other homes used to provide for the care and welfare of children; or
6. Services for victims of domestic violence when provided by certified domestic violence centers working at the department's request as case consultants or with shared clients.

Also, employees or agents of the Department of Juvenile Justice responsible for the provision of services to children, pursuant to chapters 984 and 985.

(b) Criminal justice agencies of appropriate jurisdiction.

(c) The state attorney of the judicial circuit in which the child resides or in which the alleged abuse or neglect occurred.

(d) The parent or legal custodian of any child who is alleged to have been abused, abandoned, or neglected, and the child, and their attorneys, including any attorney representing a child in civil or criminal proceedings. This access shall be made available no later than 30 days after the department receives the initial report of abuse, neglect, or abandonment. However, any information otherwise made confidential or exempt by law shall not be released pursuant to this paragraph.

(e) Any person alleged in the report as having caused the abuse, abandonment, or neglect of a child. This access shall be made available no later than 30 days after the department receives the initial report of abuse, abandonment, or neglect and, when the alleged perpetrator is not a parent, shall be limited to information involving the protective investigation only and shall not include any information relating to subsequent dependency proceedings. However, any information otherwise made confidential or exempt by law shall not be released pursuant to this paragraph.

(f) A court upon its finding that access to such records may be necessary for the determination of an issue before the court; however, such access shall be limited to inspection in camera, unless the court determines that public disclosure of the information contained therein is necessary for the resolution of an issue then pending before it.

(g) A grand jury, by subpoena, upon its determination that access to such records is necessary in the conduct of its official business.

(h) Any appropriate official of the department or the Agency for Persons with Disabilities who is responsible for:

1. Administration or supervision of the department's program for the prevention, investigation, or treatment of child abuse, abandonment, or neglect, or abuse, neglect, or exploitation of a vulnerable adult, when carrying out his or her official function;
2. Taking appropriate administrative action concerning an employee of the department or the agency who is alleged to have perpetrated child abuse, abandonment, or neglect, or abuse, neglect, or exploitation of a vulnerable adult; or
3. Employing and continuing employment of personnel of the department or the agency.

(i) Any person authorized by the department who is engaged in the use of such records or information for bona fide research, statistical, or audit purposes. Such individual or entity shall enter into a

privacy and security agreement with the department and shall comply with all laws and rules governing the use of such records and information for research and statistical purposes. Information identifying the subjects of such records or information shall be treated as confidential by the researcher and shall not be released in any form.

(j) The Division of Administrative Hearings for purposes of any administrative challenge.

(k) Any appropriate official of a Florida advocacy council investigating a report of known or suspected child abuse, abandonment, or neglect; the Auditor General or the Office of Program Policy Analysis and Government Accountability for the purpose of conducting audits or examinations pursuant to law; or the guardian ad litem for the child.

(l) Employees or agents of an agency of another state that has comparable jurisdiction to the jurisdiction described in paragraph (a).

(m) The Public Employees Relations Commission for the sole purpose of obtaining evidence for appeals filed pursuant to s. 447.207. Records may be released only after deletion of all information which specifically identifies persons other than the employee.

(n) Employees or agents of the Department of Revenue responsible for child support enforcement activities.

(o) Any person in the event of the death of a child determined to be a result of abuse, abandonment, or neglect. Information identifying the person reporting abuse, abandonment, or neglect shall not be released. Any information otherwise made confidential or exempt by law shall not be released pursuant to this paragraph.

(p) The principal of a public school, private school, or charter school where the child is a student. Information contained in the records which the principal determines are necessary for a school employee to effectively provide a student with educational services may be released to that employee.

(q) Staff of a children's advocacy center that is established and operated under s. 39.3035.

(3) The department may release to professional persons such information as is necessary for the diagnosis and treatment of the child or the person perpetrating the abuse or neglect.

(4) Notwithstanding any other provision of law, when a child under investigation or supervision of the department or its contracted service providers is determined to be missing, the following shall apply:

(a) The department may release the following information to the public when it believes the release of the information is likely to assist efforts in locating the child or to promote the safety or well-being of the child:

1. The name of the child and the child's date of birth;
2. A physical description of the child, including at a minimum the height, weight, hair color, eye color, gender, and any identifying physical characteristics of the child; and
3. A photograph of the child.

(b) With the concurrence of the law enforcement agency primarily responsible for investigating the incident, the department may release any additional information it believes likely to assist efforts in locating the child or to promote the safety or well-being of the child.

(c) The law enforcement agency primarily responsible for investigating the incident may release any information received from the department regarding the investigation, if it believes the release of the information is likely to assist efforts in locating the child or to promote the safety or well-being of the child.

The good-faith publication or release of this information by the department, a law enforcement agency, or any recipient of the information as specifically authorized by this subsection shall not subject the person, agency or entity releasing the information to any civil or criminal penalty. This subsection does not authorize the release of the name of the reporter, which may be released only as provided in subsection (5).

(5) The name of any person reporting child abuse, abandonment, or neglect may not be released to any person other than employees of the department responsible for child protective services, the central abuse hotline, law enforcement, the child protection team, or the appropriate state attorney, without the written consent of the person reporting. This does not prohibit the subpoenaing of a person reporting child abuse, abandonment, or neglect when deemed necessary by the court, the state attorney, or the department, provided the fact that such person made the report is not disclosed. Any person who reports a case of child abuse or neglect may, at the time he or she makes the report, request that the department notify him or her that a child protective investigation occurred as a result of the report. Any person specifically listed in s. 39.201(1) who makes a report in his or her official capacity may also request a written summary of the outcome of the investigation. The department shall mail such a notice to the reporter within 10 days after completing the child protective investigation.

(6) All records and reports of the child protection team of the Department of Health are confidential and exempt from the provisions of ss. 119.07(1) and 456.057, and shall not be disclosed, except, upon request, to the state attorney, law enforcement, the department, and necessary professionals, in furtherance of the treatment or additional evaluative needs of the child, by order of the court, or to health plan payors, limited to that information used for insurance reimbursement purposes.

(7) The department shall make and keep reports and records of all cases under this chapter relating to child abuse, abandonment, and neglect and shall preserve the records pertaining to a child and family until 7 years after the last entry was made or until the child is 18 years of age, whichever date is first reached, and may then destroy the records. Department records required by this chapter relating to child abuse, abandonment, and neglect may be inspected only upon order of the court or as provided for in this section.

(8) A person who knowingly or willfully makes public or discloses to any unauthorized person any confidential information contained in the central abuse hotline is subject to the penalty provisions of s. 39.205. This notice shall be prominently displayed on the first sheet of any documents released pursuant to this section.

**History.**--ss. 1, 2, 3, 4, 5, 6, ch. 63-24; s. 941, ch. 71-136; ss. 1, 1A, ch. 71-97; s. 32, ch. 73-334; s. 65, ch. 74-383; s. 1, ch. 75-101; s. 1, ch. 75-185; s. 4, ch. 76-237; s. 1, ch. 77-77; s. 3, ch. 77-429; ss. 1, 2, ch. 78-322; s. 3, ch. 78-326; s. 22, ch. 78-361; s. 1, ch. 78-379; s. 181, ch. 79-164; s. 1, ch. 79-203; s. 488, ch. 81-259; s. 11, ch. 84-226; s. 39, ch. 85-54; s. 14, ch. 85-224; s. 36, ch. 87-238; s. 2, ch. 88-80; s. 8, ch. 88-219; s. 26, ch. 88-337; s. 5, ch. 89-170; s. 5, ch. 89-278; s. 36, ch. 89-294; s. 2, ch. 89-535; s. 8, ch. 90-50; s. 7, ch. 90-208; s. 54, ch. 90-306; s. 9, ch. 91-57; s. 20, ch. 91-71; ss. 43, 48, ch. 92-58; s. 32, ch. 93-39; s. 16, ch. 93-214; s. 58, ch. 94-218; ss. 25, 46, ch. 95-228; s. 28, ch. 95-267; s. 15, ch. 96-402; s. 275, ch. 96-406; s. 1044, ch. 97-103; s. 15, ch. 97-276; s. 3, ch. 97-299; s. 15, ch. 98-137; s. 32, ch. 98-166; s. 3, ch. 98-255; s. 45, ch. 98-280; s. 32, ch. 98-403; s. 5, ch. 99-168; s. 11, ch. 99-193; s. 1, ch. 99-369; s. 18, ch. 2000-139; s. 2, ch. 2000-217; s. 6, ch. 2000-263; s. 51, ch. 2000-349; s. 12, ch. 2001-60; s. 27, ch. 2001-266; s. 2, ch. 2003-146; s. 1, ch. 2005-173; s. 6, ch. 2006-194; s. 3, ch. 2006-227.

**Note.**--Former ss. 828.041, 827.07(15); s. 415.51.

**Note.**--s. 1, 2005-213, effective October 1, 2005, also created a new subsection (2)(g): "The executive director or equivalent, and his or her designee, of a children's advocacy center that is established and operated under s. 39.3035."

### **39.2021 Release of confidential information.--**

(1) Any person or organization, including the Department of Children and Family Services, may petition the court for an order making public the records of the Department of Children and Family Services which pertain to investigations of alleged abuse, abandonment, or neglect of a child. The court shall determine whether good cause exists for public access to the records sought or a portion thereof. In making this determination, the court shall balance the best interests of the child who is the focus of the investigation and the interest of that child's siblings, together with the privacy rights of other persons identified in the reports, against the public interest. The public interest in access to such records is reflected in s. 119.01(1), and includes the need for citizens to know of and adequately evaluate the actions of the Department of Children and Family Services and the court system in providing children of this state with the protections enumerated

in s. 39.001. However, this subsection does not contravene s. 39.202, which protects the name of any person reporting the abuse, abandonment, or neglect of a child.

(2) In cases involving serious bodily injury to a child, the Department of Children and Family Services may petition the court for an order for the immediate public release of records of the department which pertain to the protective investigation. The petition must be personally served upon the child, the child's parent or guardian, and any person named as an alleged perpetrator in the report of abuse, abandonment, or neglect. The court must determine whether good cause exists for the public release of the records sought no later than 24 hours, excluding Saturdays, Sundays, and legal holidays, after the date the department filed the petition with the court. If the court does not grant or deny the petition within the 24-hour time period, the department may release to the public summary information including:

(a) A confirmation that an investigation has been conducted concerning the alleged victim.

(b) The dates and brief description of procedural activities undertaken during the department's investigation.

(c) The date of each judicial proceeding, a summary of each participant's recommendations made at the judicial proceeding, and the ruling of the court.

The summary information shall not include the name of, or other identifying information with respect to, any person identified in any investigation. In making a determination to release confidential information, the court shall balance the best interests of the child who is the focus of the investigation and the interests of that child's siblings, together with the privacy rights of other persons identified in the reports against the public interest for access to public records. However, this subsection does not contravene s. 39.202, which protects the name of any person reporting abuse, abandonment, or neglect of a child.

(3) When the court determines that good cause for public access exists, the court shall direct that the department redact the name of, and other identifying information with respect to, any person identified in any protective investigation report until such time as the court finds that there is probable cause to believe that the person identified committed an act of alleged abuse, abandonment, or neglect.

*History.-- s. 1, ch. 2004-335.*

### **39.203 Immunity from liability in cases of child abuse, abandonment, or neglect.--**

(1)(a) Any person, official, or institution participating in good faith in any act authorized or required by this chapter, or reporting in good faith any instance of child abuse, abandonment, or neglect to the department or any law enforcement agency, shall be immune from any civil or criminal liability which might otherwise result by reason of such action.

(b) Except as provided in this chapter, nothing contained in this section shall be deemed to grant immunity, civil or criminal, to any person suspected of having abused, abandoned, or neglected a child, or committed any illegal act upon or against a child.

(2)(a) No resident or employee of a facility serving children may be subjected to reprisal or discharge because of his or her actions in reporting abuse, abandonment, or neglect pursuant to the requirements of this section.

(b) Any person making a report under this section shall have a civil cause of action for appropriate compensatory and punitive damages against any person who causes detrimental changes in the employment status of such reporting party by reason of his or her making such report. Any detrimental change made in the residency or employment status of such person, including, but not limited to, discharge, termination,

demotion, transfer, or reduction in pay or benefits or work privileges, or negative evaluations within a prescribed period of time shall establish a rebuttable presumption that such action was retaliatory.

**History.**--ss. 1, 2, 3, 4, 5, 6, ch. 63-24; s. 941, ch. 71-136; ss. 1, 1A, ch. 71-97; s. 32, ch. 73-334; s. 65, ch. 74-383; s. 1, ch. 75-101; s. 1, ch. 75-185; s. 4, ch. 76-237; s. 1, ch. 77-77; s. 3, ch. 77-429; ss. 1, 2, ch. 78-322; s. 3, ch. 78-326; s. 22, ch. 78-361; s. 1, ch. 78-379; s. 181, ch. 79-164; s. 1, ch. 79-203; s. 27, ch. 88-337; s. 55, ch. 90-306; s. 63, ch. 94-164; s. 73, ch. 97-103; s. 33, ch. 98-403; s. 12, ch. 99-193.

**Note.**--Former ss. 828.041, 827.07(7); s. 415.511.

**39.204 Abrogation of privileged communications in cases involving child abuse, abandonment, or neglect.**--The privileged quality of communication between husband and wife and between any professional person and his or her patient or client, and any other privileged communication except that between attorney and client or the privilege provided in s. 90.505, as such communication relates both to the competency of the witness and to the exclusion of confidential communications, shall not apply to any communication involving the perpetrator or alleged perpetrator in any situation involving known or suspected child abuse, abandonment, or neglect and shall not constitute grounds for failure to report as required by s. 39.201 regardless of the source of the information requiring the report, failure to cooperate with law enforcement or the department in its activities pursuant to this chapter, or failure to give evidence in any judicial proceeding relating to child abuse, abandonment, or neglect.

**History.**--ss. 1, 2, 3, 4, 5, 6, ch. 63-24; s. 941, ch. 71-136; ss. 1, 1A, ch. 71-97; s. 32, ch. 73-334; s. 65, ch. 74-383; s. 1, ch. 75-101; s. 1, ch. 75-185; s. 4, ch. 76-237; s. 1, ch. 77-77; s. 3, ch. 77-429; ss. 1, 2, ch. 78-322; s. 3, ch. 78-326; s. 22, ch. 78-361; s. 1, ch. 78-379; s. 181, ch. 79-164; s. 1, ch. 79-203; s. 2, ch. 85-28; s. 64, ch. 94-164; s. 74, ch. 97-103; s. 34, ch. 98-403; s. 3, ch. 2002-174.

**Note.**--Former ss. 828.041, 827.07(8); s. 415.512.

**39.205 Penalties relating to reporting of child abuse, abandonment, or neglect.**--

(1) A person who is required to report known or suspected child abuse, abandonment, or neglect and who knowingly and willfully fails to do so, or who knowingly and willfully prevents another person from doing so, is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. A judge subject to discipline pursuant to s. 12, Art. V of the Florida Constitution shall not be subject to criminal prosecution when the information was received in the course of official duties.

(2) Unless the court finds that the person is a victim of domestic violence or that other mitigating circumstances exist, a person who is 18 years of age or older and lives in the same house or living unit as a child who is known or suspected to be a victim of child abuse, neglect of a child, or aggravated child abuse, and knowingly and willfully fails to report the child abuse commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) A person who knowingly and willfully 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 provided in this chapter, is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(4) The department shall establish procedures for determining whether a false report of child abuse, abandonment, or neglect has been made and for submitting all identifying information relating to such a report to the appropriate law enforcement agency and shall report annually to the Legislature the number of reports referred.

(5) If the department or its authorized agent has determined after its investigation that a report is false, the department shall, with the consent of the alleged perpetrator, refer the report to the local law enforcement agency having jurisdiction for an investigation to determine whether sufficient evidence exists to refer the case for prosecution for filing a false report as defined in s. 39.01 ~~s. 39.01(28)~~. During the pendency of the

investigation by the local law enforcement agency, the department must notify the local law enforcement agency of, and the local law enforcement agency must respond to, all subsequent reports concerning children in that same family in accordance with s. 39.301. If the law enforcement agency believes that there are indicators of abuse, abandonment, or neglect, it must immediately notify the department, which must ~~ensure~~ assure the safety of the children. If the law enforcement agency finds sufficient evidence for prosecution for filing a false report, it must refer the case to the appropriate state attorney for prosecution.

(6) A person who knowingly and willfully makes a false report of child abuse, abandonment, or neglect, or who advises another to make a false report, is guilty of a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083. Anyone making a report who is acting in good faith is immune from any liability under this subsection.

**History.**--ss. 1, 2, 3, 4, 5, 6, ch. 63-24; s. 941, ch. 71-136; ss. 1, 1A, ch. 71-97; s. 32, ch. 73-334; s. 65, ch. 74-383; s. 1, ch. 75-101; s. 1, ch. 75-185; s. 4, ch. 76-237; s. 1, ch. 77-77; s. 3, ch. 77-429; ss. 1, 2, ch. 78-322; s. 3, ch. 78-326; s. 22, ch. 78-361; s. 1, ch. 78-379; s. 181, ch. 79-164; s. 1, ch. 79-203; s. 28, ch. 88-337; s. 56, ch. 90-306; s. 10, ch. 91-57; s. 21, ch. 91-71; s. 251, ch. 91-224; s. 10, ch. 93-25; s. 276, ch. 96-406; s. 4, ch. 98-111; s. 35, ch. 98-403; s. 6, ch. 99-168; s. 3, ch. 2000-217; s. 4, ch. 2002-70; s. 29, ch. 2006-86. As of June 18, 2008, pending signature by the Governor.

**Note.**--Former ss. 828.041, 827.07(18); s. 415.513.

### **39.206 Administrative fines for false report of abuse, abandonment, or neglect of a child; civil damages.--**

(1) In addition to any other penalty authorized by this section, chapter 120, or other law, the department may impose a fine, not to exceed \$10,000 for each violation, upon a person who knowingly and willfully makes a false report of abuse, abandonment, or neglect of a child, or a person who counsels another to make a false report.

(2) If the department alleges that a person has filed a false report with the central abuse hotline, the department must file a Notice of Intent which alleges the name, age, and address of the individual, the facts constituting the allegation that the individual made a false report, and the administrative fine the department proposes to impose on the person. Each time that a false report is made constitutes a separate violation.

(3) The Notice of Intent to impose the administrative fine must be served upon the person alleged to have filed the false report and the person's legal counsel, if any. Such Notice of Intent must be given by certified mail, return receipt requested.

(4) Any person alleged to have filed the false report is entitled to an administrative hearing, pursuant to chapter 120, before the imposition of the fine becomes final. The person must request an administrative hearing within 60 days after receipt of the Notice of Intent by filing a request with the department. Failure to request an administrative hearing within 60 days after receipt of the Notice of Intent constitutes a waiver of the right to a hearing, making the administrative fine final.

(5) At the administrative hearing, the department must prove by a preponderance of the evidence that the person filed a false report with the central abuse hotline. The administrative hearing officer shall advise any person against whom a fine may be imposed of that person's right to be represented by counsel at the administrative hearing.

(6) In determining the amount of fine to be imposed, if any, the following factors shall be considered:

(a) The gravity of the violation, including the probability that serious physical or emotional harm to any person will result or has resulted, the severity of the actual or potential harm, and the nature of the false allegation.

(b) Actions taken by the false reporter to retract the false report as an element of mitigation, or, in contrast, to encourage an investigation on the basis of false information.

(c) Any previous false reports filed by the same individual.

(7) A decision by the department, following the administrative hearing, to impose an administrative fine for filing a false report constitutes final agency action within the meaning of chapter 120. Notice of the imposition of the administrative fine must be served upon the person and the person's legal counsel, by certified mail, return receipt requested, and must state that the person may seek judicial review of the administrative fine pursuant to s. 120.68.

(8) All amounts collected under this section shall be deposited into an appropriate trust fund of the department.

(9) A person who is determined to have filed a false report of abuse, abandonment, or neglect is not entitled to confidentiality. Subsequent to the conclusion of all administrative or other judicial proceedings concerning the filing of a false report, the name of the false reporter and the nature of the false report shall be made public, pursuant to s. 119.01(1). Such information shall be admissible in any civil or criminal proceeding.

(10) A person who knowingly and willfully makes a false report of abuse, abandonment, or neglect of a child, or a person who counsels another to make a false report may be civilly liable for damages suffered, including reasonable attorney fees and costs, as a result of the filing of the false report. If the name of the person who filed the false report or counseled another to do so has not been disclosed under subsection (9), the department as custodian of the records may be named as a party in the suit until the dependency court determines in a written order upon an in camera inspection of the records and report that there is a reasonable basis for believing that the report was false and that the identity of the reporter may be disclosed for the purpose of proceeding with a lawsuit for civil damages resulting from the filing of the false report. The alleged perpetrator may submit witness affidavits to assist the court in making this initial determination.

(11) Any person making a report who is acting in good faith is immune from any liability under this section and shall continue to be entitled to have the confidentiality of their identity maintained.

**History.**--s. 65, ch. 94-164; s. 5, ch. 98-111; s. 36, ch. 98-403; s. 13, ch. 99-193.

**Note.**--Former s. 415.5131.



**PART III  
PROTECTIVE INVESTIGATIONS**

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**39.301 Initiation of protective investigations.--**

(1) Upon receiving ~~a an oral or written~~ report of known or suspected child abuse, abandonment, or neglect, or that a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care, the central abuse hotline shall determine if the report requires an immediate onsite protective investigation. For reports requiring an immediate onsite protective investigation, the central abuse hotline shall immediately notify the department's designated ~~children and families~~ district staff responsible for protective investigations to ensure that an onsite investigation is promptly initiated. For reports not requiring an immediate onsite protective investigation, the central abuse hotline shall notify the department's designated ~~children and families~~ district staff responsible for protective investigations in sufficient time to allow for an investigation. At the time of notification ~~of district staff with respect to the report~~, the central abuse hotline shall also provide information to district staff on any previous report concerning a subject of the present report or any pertinent information relative to the present report or any noted earlier reports.

(2)(a) The department shall immediately forward allegations of criminal conduct to the municipal or county law enforcement agency of the municipality or county in which the alleged conduct has occurred.

(b) As used in this subsection, the term "criminal conduct" means:

1. A child is known or suspected to be the victim of child abuse, as defined in s. 827.03, or of neglect of a child, as defined in s. 827.03.
2. A child is known or suspected to have died as a result of abuse or neglect.
3. A child is known or suspected to be the victim of aggravated child abuse, as defined in s. 827.03.
4. A child is known or suspected to be the victim of sexual battery, as defined in s. 827.071, or of sexual abuse, as defined in s. 39.01.
5. A child is known or suspected to be the victim of institutional child abuse or neglect, as defined in s. 39.01, and as provided for in s. 39.302(1).
6. A child is known or suspected to be a victim of human trafficking, as provided in s. 787.06.

(c) Upon receiving a written report of an allegation of criminal conduct from the department, the law enforcement agency shall review the information in the written report to determine whether a criminal investigation is warranted. If the law enforcement agency accepts the case for criminal investigation, it shall

coordinate its investigative activities with the department, whenever feasible. If the law enforcement agency does not accept the case for criminal investigation, the agency shall notify the department in writing.

(d) The local law enforcement agreement required in s. 39.306 shall describe the specific local protocols for implementing this section.

(3) The department shall maintain a master file for each child whose report is accepted by the central abuse hotline for investigation. Such file must contain information concerning all reports received concerning that child. The file must be made available to any department staff, agent of the department, or contract provider given responsibility for conducting a protective investigation.

(4) To the extent practical, all protective investigations involving a child shall be conducted or the work supervised by a single individual in order for there to be broad knowledge and understanding of the child's history. When a new investigator is assigned to investigate a second and subsequent report involving a child, a multidisciplinary staffing shall be conducted which includes new and prior investigators, their supervisors, and appropriate private providers in order to ensure that, to the extent possible, there is coordination among all parties. The department shall establish an internal operating procedure that ensures that all required investigatory activities, including a review of the child's complete investigative and protective services history, are completed by the investigator, reviewed by the supervisor in a timely manner, and signed and dated by both the investigator and the supervisor.

(5)(a) Upon commencing an investigation under this part, the child protective investigator shall inform any subject of the investigation of the following:

1. The names of the investigators and identifying credentials from the department.
2. The purpose of the investigation.
3. The right to obtain his or her own attorney and ways that the information provided by the subject may be used.
4. The possible outcomes and services of the department's response shall be explained to the parent or legal custodian.
5. The right of the parent or legal custodian to be involved to the fullest extent possible in determining the nature of the allegation and the nature of any identified problem.
6. The duty of the parent or legal custodian to report any change in the residence or location of the child to the investigator and that the duty to report continues until the investigation is closed.

(b) The department's training program shall ensure that protective investigators know how to fully inform parents or legal custodians of their rights and options, including opportunities for audio or video recording of investigators' interviews with parents or legal custodians or children.

(6) An assessment of risk and the perceived needs for the child and family shall be conducted in a manner that is sensitive to the social, economic, and cultural environment of the family. This assessment must include a face-to-face interview with the child, other siblings, parents, and other adults in the household and an onsite assessment of the child's residence.

(7) Protective investigations shall be performed by the department or its agent.

(8) The person responsible for the investigation shall make a preliminary determination as to whether the report is complete, consulting with the attorney for the department when necessary. In any case in which the person responsible for the investigation finds that the report is incomplete, he or she shall return it without delay to the person or agency originating the report or having knowledge of the facts, or to the appropriate law enforcement agency having investigative jurisdiction, and request additional information in order to

complete the report; however, the confidentiality of any report filed in accordance with this chapter shall not be violated.

(a) If it is determined that the report is complete, but the interests of the child and the public will be best served by providing the child care or other treatment voluntarily accepted by the child and the parents or legal custodians, the protective investigator may refer the parent or legal custodian and child for such care or other treatment.

(b) If it is determined that the child is in need of the protection and supervision of the court, the department shall file a petition for dependency. A petition for dependency shall be filed in all cases classified by the department as high-risk. Factors that the department may consider in determining whether a case is high-risk include, but are not limited to, the young age of the parents or legal custodians, the use of illegal drugs, the arrest of the parents or legal custodians on charges of manufacturing, processing, disposing of, or storing, either temporarily or permanently, any substances in violation of chapter 893, or domestic violence.

(c) If a petition for dependency is not being filed by the department, the person or agency originating the report shall be advised of the right to file a petition pursuant to this part.

(9)(a) For each report received that meets one or more of the following criteria, the department or the sheriff providing child protective investigative services under s. 39.3065, shall perform an onsite child protective investigation:

1. A report for which there is obvious compelling evidence that no maltreatment occurred and there are no prior reports containing some indicators or verified findings of abuse or neglect with respect to any subject of the report or other individuals in the home. A prior report in which an adult in the home was a victim of abuse or neglect before becoming an adult does not exclude a report otherwise meeting the criteria of this subparagraph from the onsite child protective investigation provided for in this subparagraph. The process for an onsite child protective investigation stipulated in this subsection may not be conducted if an allegation meeting the criteria of this subparagraph involves physical abuse, sexual abuse, domestic violence, substance abuse or substance exposure, medical neglect, a child younger than 3 years of age, or a child who is disabled or lacks communication skills.

2. A report concerning an incident of abuse which is alleged to have occurred 2 or more years prior to the date of the report and there are no other indicators of risk to any child in the home.

(b) The onsite child protective investigation to be performed shall include a face-to-face interview with the child; other siblings; parents, legal custodians, or caregivers; and other adults in the household and an onsite assessment of the child's residence in order to:

1. Determine the composition of the family or household, including the name, address, date of birth, social security number, sex, and race of each child named in the report; any siblings or other children in the same household or in the care of the same adults; the parents, legal custodians, or caregivers; and any other adults in the same household.

2. Determine whether there is indication that any child in the family or household has been abused, abandoned, or neglected; the nature and extent of present or prior injuries, abuse, or neglect, and any evidence thereof; and a determination as to the person or persons apparently responsible for the abuse, abandonment, or neglect, including the name, address, date of birth, social security number, sex, and race of each such person.

3. Determine the immediate and long-term risk to each child by conducting state and federal records checks, including, when feasible, the records of the Department of Corrections, on the parents, legal custodians, or caregivers, and any other persons in the same household. This information shall be used solely for purposes supporting the detection, apprehension, prosecution, pretrial release, posttrial release, or rehabilitation of criminal offenders or persons accused of the crimes of child abuse, abandonment, or neglect and shall not be further disseminated or used for any other purpose. The department's child protection investigators are hereby designated a criminal justice agency for the purpose of accessing

criminal justice information to be used for enforcing this state's laws concerning the crimes of child abuse, abandonment, and neglect.

4. Determine the immediate and long-term risk to each child through utilization of standardized risk assessment instruments.

5. Based on the information obtained from available sources, complete the risk assessment instrument within 48 hours after the initial contact and, if needed, develop a case plan.

6. Determine the protective, treatment, and ameliorative services necessary to safeguard and ensure the child's safety and well-being and development, and cause the delivery of those services through the early intervention of the department or its agent. The training provided to staff members who conduct child protective investigations must include instruction on how and when to use the injunction process under s. 39.504 or s. 741.30 to remove a perpetrator of domestic violence from the home as an intervention to protect the child.

(c) The determination that a report requires an investigation as provided in this subsection and does not require an enhanced onsite child protective investigation pursuant to subsection (10) must be approved in writing by the supervisor with documentation specifying why additional investigative activities are not necessary.

(d) A report that meets the criteria specified in this subsection is not precluded from further investigative activities. At any time it is determined that additional investigative activities are necessary for the safety of the child, such activities shall be conducted.

(10)(a) For each report that meets one or more of the following criteria, the department shall perform an enhanced onsite child protective investigation:

1. Any allegation that involves physical abuse, sexual abuse, domestic violence, substance abuse or substance exposure, medical neglect, a child younger than 3 years of age, or a child who is disabled or lacks communication skills.

2. Any report that involves an individual who has been the subject of a prior report containing some indicators or verified findings of abuse, neglect, or abandonment.

3. Any report that does not contain compelling evidence that the maltreatment did not occur.

4. Any report that does not meet the criteria for an onsite child protective investigation as set forth in subsection (9).

(b) The enhanced onsite child protective investigation shall include, but is not limited to:

1. A face-to-face interview with the child, other siblings, parents or legal custodians or caregivers, and other adults in the household;

2. Collateral contacts;

3. Contact with the reporter as required by rule;

4. An onsite assessment of the child's residence in accordance with subsection (9)(b); and

5. An updated assessment.

Detailed documentation is required for the investigative activities.

(11) The department shall incorporate into its quality assurance program the monitoring of the determination of reports that receive an onsite child protective investigation and those that receive an enhanced onsite child protective investigation.

(12) If the department or its agent is denied reasonable access to a child by the parents, legal custodians, or caregivers and the department deems that the best interests of the child so require, it shall seek an appropriate court order or other legal authority prior to examining and interviewing the child.

(13) Onsite visits and face-to-face interviews with the child or family shall be unannounced unless it is determined by the department or its agent or contract provider that such unannounced visit would threaten the safety of the child.

(14)(a) If the department or its agent determines that a child requires immediate or long-term protection through:

1. Medical or other health care; or

2. Homemaker care, day care, protective supervision, or other services to stabilize the home environment, including intensive family preservation services through the Family Builders Program or the Intensive Crisis Counseling Program, or both, such services shall first be offered for voluntary acceptance unless there are high-risk factors that may impact the ability of the parents or legal custodians to exercise judgment. Such factors may include the parents' or legal custodians' young age or history of substance abuse or domestic violence.

(b) The parents or legal custodians shall be informed of the right to refuse services, as well as the responsibility of the department to protect the child regardless of the acceptance or refusal of services. If the services are refused and the department deems that the child's need for protection so requires, the department shall take the child into protective custody or petition the court as provided in this chapter.

(c) The department, in consultation with the judiciary, shall adopt by rule criteria that are factors requiring that the department take the child into custody, petition the court as provided in this chapter, or, if the child is not taken into custody or a petition is not filed with the court, conduct an administrative review. If after an administrative review the department determines not to take the child into custody or petition the court, the department shall document the reason for its decision in writing and include it in the investigative file. For all cases that were accepted by the local law enforcement agency for criminal investigation pursuant to subsection (2), the department must include in the file written documentation that the administrative review included input from law enforcement. In addition, for all cases that must be referred to child protection teams pursuant to s. 39.303(2) and (3), the file must include written documentation that the administrative review included the results of the team's evaluation. Factors that must be included in the development of the rule include noncompliance with the case plan developed by the department, or its agent, and the family under this chapter and prior abuse reports with findings that involve the child or caregiver.

(15) When a child is taken into custody pursuant to this section, the authorized agent of the department shall request that the child's parent, caregiver, or legal custodian disclose the names, relationships, and addresses of all parents and prospective parents and all next of kin, so far as are known.

(16) The department shall complete its protective investigation within 60 days after receiving the initial report, unless: the local office of the department shall complete its investigation. ~~No later than 60 days after receiving the initial report, unless: the local office of the department shall complete its investigation.~~

(a) There is also an active, concurrent criminal investigation that is continuing beyond the 60-day period and the closure of the protective investigation may compromise successful criminal prosecution of the child abuse or neglect case, in which case the closure date shall coincide with the closure date of the criminal investigation and any resulting legal action.

(b) In child death cases, the final report of the medical examiner is necessary for the department to close its investigation, and the report has not been received within the 60-day period, in which case the report closure date shall be extended to accommodate to the report.

(c) A child who is necessary to an investigation has been declared missing by the department, a law enforcement agency, or a court, in which case the 60-day period shall be extended until the child has been located or until sufficient information exists to close the investigation despite the unknown location of the child.

(17) Immediately upon learning during the course of an investigation that:

- (a) The immediate safety or well-being of a child is endangered;
- (b) The family is likely to flee;
- (c) A child died as a result of abuse, abandonment, or neglect;
- (d) A child is a victim of aggravated child abuse as defined in s. 827.03; or
- (e) A child is a victim of sexual battery or of sexual abuse,

the department shall orally notify the jurisdictionally responsible state attorney, and county sheriff's office or local police department, and, <sup>1</sup>within 3 working days, transmit a <sup>2</sup>full written report to those agencies. The law enforcement agency shall review the report and determine whether a criminal investigation needs to be conducted and shall assume lead responsibility for all criminal fact-finding activities. A criminal investigation shall be coordinated, whenever possible, with the child protective investigation of the department. Any interested person who has information regarding an offense described in this subsection may forward a statement to the state attorney as to whether prosecution is warranted and appropriate.

(18) In a child protective investigation or a criminal investigation, when the initial interview with the child is conducted at school, the department or the law enforcement agency may allow, notwithstanding the provisions of s. 39.0132(4), a school staff member who is known by the child to be present during the initial interview if:

(a) The department or law enforcement agency believes that the school staff member could enhance the success of the interview by his or her presence; and

(b) The child requests or consents to the presence of the school staff member at the interview.

School staff may be present only when authorized by this subsection. Information received during the interview or from any other source regarding the alleged abuse or neglect of the child shall be confidential and exempt from the provisions of s. 119.07(1), except as otherwise provided by court order. A separate record of the investigation of the abuse, abandonment, or neglect shall not be maintained by the school or school staff member. Violation of this subsection constitutes a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(19) When a law enforcement agency conducts a criminal investigation into allegations of child abuse, neglect, or abandonment, photographs documenting the abuse or neglect will be taken when appropriate.

(20) Within 15 days after the case is reported to him or her pursuant to this chapter, the state attorney shall report his or her findings to the department and shall include in such report a determination of whether or not prosecution is justified and appropriate in view of the circumstances of the specific case.

(21) In order to enhance the skills of individual staff and to improve the district's overall child protection system, the department's training program at the district level must include periodic reviews of cases handled within the district in order to identify weaknesses as well as examples of effective interventions that occurred at each point in the case.

(22) When an investigation is closed and a person is not identified as a caregiver responsible for the abuse, neglect, or abandonment alleged in the report, the fact that the person is named in some capacity in the report may not be used in any way to adversely affect the interests of that person. This prohibition applies to any use of the information in employment screening, licensing, child placement, adoption, or any other decisions by a private adoption agency or a state agency or its contracted providers, except that a previous report may be used to determine whether a child is safe and what the known risk is to the child at any stage of a child-protection proceeding.

(23) If, after having been notified of the requirement to report a change in residence or location of the child to the protective investigator, a parent or legal custodian causes the child to move, or allows the child to be moved, to a different residence or location, or if the child leaves the residence on his or her own accord and the parent or legal custodian does not notify the protective investigator of the move within 2 business days, the child may be considered to be a missing child for the purposes of filing a report with a law enforcement agency under s. 937.021.

**History.**--s. 38, ch. 98-403; s. 7, ch. 99-168; s. 14, ch. 99-193; s. 4, ch. 2000-217; s. 2, ch. 2001-50; s. 2, ch. 2003-127; s. 2, ch. 2005-173; s. 8, ch. 2006-86; s. 1, ch. 2006-306. As of June 18, 2008, pending signature by the Governor.

<sup>1</sup>**Note.**--As amended by s. 14, ch. 99-193. The amendment by s. 7, ch. 99-168, used "within 3 days."

<sup>2</sup>**Note.**--As amended by s. 14, ch. 99-193. The amendment by s. 7, ch. 99-168, did not include the word "full."

### **39.302 Protective investigations of institutional child abuse, abandonment, or neglect.--**

(1) The department shall conduct a child protective investigation of each report of institutional child abuse, abandonment, or neglect. Upon receipt of a report that alleges that an employee or agent of the department, or any other entity or person covered by s. 39.01(33) or (47) ~~s. 39.01(32) or (46)~~, acting in an official capacity, has committed an act of child abuse, abandonment, or neglect, the department shall initiate a child protective investigation within the timeframe established by the central abuse hotline under s. 39.201(5) and orally notify the appropriate state attorney, law enforcement agency, and licensing agency, ~~which--These agencies~~ shall immediately conduct a joint investigation, unless independent investigations are more feasible. When conducting investigations onsite or having face-to-face interviews with the child, ~~such~~ investigation visits shall be unannounced unless it is determined by the department or its agent that ~~the~~ unannounced visits ~~would~~ threaten the safety of the child. ~~If~~ ~~When~~ a facility is exempt from licensing, the department shall inform the owner or operator of the facility of the report. Each agency conducting a joint investigation is entitled to full access to the information gathered by the department in the course of the investigation. A protective investigation must include an onsite visit of the child's place of residence. ~~In all cases,~~ The department shall make a full written report to the state attorney within 3 working days after making the oral report. A criminal investigation shall be coordinated, whenever possible, with the child protective investigation of the department. Any interested person who has information regarding the offenses described in this subsection may forward a statement to the state attorney as to whether prosecution is warranted and appropriate. Within 15 days after the completion of the investigation, the state attorney shall report the findings to the department and shall include in the report a determination of whether or not prosecution is justified and appropriate in view of the circumstances of the specific case.

(2)(a) If in the course of the child protective investigation, the department finds that a subject of a report, by continued contact with children in care, constitutes a threatened harm to the physical health, mental health, or welfare of the children, the department may restrict a subject's access to the children pending the outcome of the investigation. The department or its agent shall employ the least restrictive means necessary to safeguard the physical health, mental health, and welfare of the children in care. This authority shall apply only to child protective investigations in which there is some evidence that child abuse, abandonment, or neglect has occurred. A subject of a report whose access to children in care has been restricted is entitled to petition the circuit court for judicial review. The court shall enter written findings of fact based upon the preponderance of evidence that child abuse, abandonment, or neglect did occur and that the department's restrictive action against a subject of the report was justified in order to safeguard the physical health, mental health, and welfare of the children in care. The restrictive action of the department shall be effective for no more than 90 days without a judicial finding supporting the actions of the department.

(b) Upon completion of the department's child protective investigation, the department may make application to the circuit court for continued restrictive action against any person necessary to safeguard the physical health, mental health, and welfare of the children in care.

(3) Pursuant to the restrictive actions described in subsection (2), in cases of institutional abuse, abandonment, or neglect in which the removal of a subject of a report will result in the closure of the facility, and when requested by the owner of the facility, the department may provide appropriate personnel to assist in maintaining the operation of the facility. The department may provide assistance when it can be demonstrated by the owner that there are no reasonable alternatives to such action. The length of the assistance shall be agreed upon by the owner and the department; however, the assistance shall not be for longer than the course of the restrictive action imposed pursuant to subsection (2). The owner shall reimburse the department for the assistance of personnel provided.

(4) The department shall notify the Florida local advocacy council in the appropriate district of the department as to every report of institutional child abuse, abandonment, or neglect in the district in which a client of the department is alleged or shown to have been abused, abandoned, or neglected, which notification shall be made within 48 hours after the department commences its investigation.

(5) The department shall notify the state attorney and the appropriate law enforcement agency of any other child abuse, abandonment, or neglect case in which a criminal investigation is deemed appropriate by the department.

(6) In cases of institutional child abuse, abandonment, or neglect in which the multiplicity of reports of abuse, abandonment, or neglect or the severity of the allegations indicates the need for specialized investigation by the department in order to afford greater safeguards for the physical health, mental health, and welfare of the children in care, the department shall provide a team of persons specially trained in the areas of child abuse, abandonment, and neglect investigations, diagnosis, and treatment to assist the local office of the department in expediting its investigation and in making recommendations for restrictive actions and to assist in other ways deemed necessary by the department in order to carry out the provisions of this section. The specially trained team shall also provide assistance to any investigation of the allegations by local law enforcement and the Department of Law Enforcement.

(7) When an investigation of institutional abuse, neglect, or abandonment is closed and a person is not identified as a caregiver responsible for the abuse, neglect, or abandonment alleged in the report, the fact that the person is named in some capacity in the report may not be used in any way to adversely affect the interests of that person. This prohibition applies to any use of the information in employment screening, licensing, child placement, adoption, or any other decisions by a private adoption agency or a state agency or its contracted providers. If such a person is a licensee of the department and is named in any capacity in three or more reports within a 5-year period, the department may review those reports and determine whether the information contained in the reports is relevant for purposes of determining whether the person's license should be renewed or revoked. If the information is relevant to the decision to renew or revoke the license, the department may rely on the information contained in the report in making that decision.

**History.**--s. 39, ch. 98-403; s. 8, ch. 99-168; s. 15, ch. 99-193; s. 42, ch. 2000-139; s. 7, ch. 2000-263; s. 3, ch. 2003-127; s. 3, ch. 2005-173; s. 30, ch. 2006-86; s. 7, ch. 2006-194. As of June 18, 2008, pending signature by the Governor.

**39.303 Child protection teams; services; eligible cases.**--The Children's Medical Services Program in the Department of Health shall develop, maintain, and coordinate the services of one or more multidisciplinary child protection teams in each of the service districts of the Department of Children and Family Services. Such teams may be composed of appropriate representatives of school districts and appropriate health, mental health, social service, legal service, and law enforcement agencies. The Legislature finds that optimal coordination of child protection teams and sexual abuse treatment programs requires collaboration



between the Department of Health and the Department of Children and Family Services. The two departments shall maintain an interagency agreement that establishes protocols for oversight and operations of child protection teams and sexual abuse treatment programs. The State Surgeon General ~~Secretary of Health~~ and the Deputy Secretary for Children's Medical Services, in consultation with the Secretary of Children and Family Services, shall maintain the responsibility for the screening, employment, and, if necessary, the termination of child protection team medical directors, at headquarters and in the 15 districts. Child protection team medical directors shall be responsible for oversight of the teams in the districts.

(1) The Department of Health shall utilize and convene the teams to supplement the assessment and protective supervision activities of the family safety and preservation program of the Department of Children and Family Services. Nothing in this section shall be construed to remove or reduce the duty and responsibility of any person to report pursuant to this chapter all suspected or actual cases of child abuse, abandonment, or neglect or sexual abuse of a child. The role of the teams shall be to support activities of the program and to provide services deemed by the teams to be necessary and appropriate to abused, abandoned, and neglected children upon referral. The specialized diagnostic assessment, evaluation, coordination, consultation, and other supportive services that a child protection team shall be capable of providing include, but are not limited to, the following:

- (a) Medical diagnosis and evaluation services, including provision or interpretation of X rays and laboratory tests, and related services, as needed, and documentation of findings relative thereto.
- (b) Telephone consultation services in emergencies and in other situations.
- (c) Medical evaluation related to abuse, abandonment, or neglect, as defined by policy or rule of the Department of Health.
- (d) Such psychological and psychiatric diagnosis and evaluation services for the child or the child's parent or parents, legal custodian or custodians, or other caregivers, or any other individual involved in a child abuse, abandonment, or neglect case, as the team may determine to be needed.
- (e) Expert medical, psychological, and related professional testimony in court cases.
- (f) Case staffings to develop treatment plans for children whose cases have been referred to the team. A child protection team may provide consultation with respect to a child who is alleged or is shown to be abused, abandoned, or neglected, which consultation shall be provided at the request of a representative of the family safety and preservation program or at the request of any other professional involved with a child or the child's parent or parents, legal custodian or custodians, or other caregivers. In every such child protection team case staffing, consultation, or staff activity involving a child, a family safety and preservation program representative shall attend and participate.
- (g) Case service coordination and assistance, including the location of services available from other public and private agencies in the community.
- (h) Such training services for program and other employees of the Department of Children and Family Services, employees of the Department of Health, and other medical professionals as is deemed appropriate to enable them to develop and maintain their professional skills and abilities in handling child abuse, abandonment, and neglect cases.
- (i) Educational and community awareness campaigns on child abuse, abandonment, and neglect in an effort to enable citizens more successfully to prevent, identify, and treat child abuse, abandonment, and neglect in the community.
- (j) Child protection team assessments that include, as appropriate, medical evaluations, medical consultations, family psychosocial interviews, specialized clinical interviews, or forensic interviews. All medical personnel participating on a child protection team must successfully complete the required child protection team training curriculum as set forth in protocols determined by the Deputy Secretary for Children's Medical Services and the Statewide Medical Director for Child Protection.

(2) The child abuse, abandonment, and neglect reports that must be referred by the department to child protection teams of the Department of Health for an assessment and other appropriate available support services as set forth in subsection (1) must include cases involving:

- (a) Injuries to the head, bruises to the neck or head, burns, or fractures in a child of any age.
- (b) Bruises anywhere on a child 5 years of age or under.
- (c) Any report alleging sexual abuse of a child.
- (d) Any sexually transmitted disease in a prepubescent child.
- (e) Reported malnutrition of a child and failure of a child to thrive.
- (f) Reported medical neglect of a child.
- (g) Any family in which one or more children have been pronounced dead on arrival at a hospital or other health care facility, or have been injured and later died, as a result of suspected abuse, abandonment, or neglect, when any sibling or other child remains in the home.
- (h) Symptoms of serious emotional problems in a child when emotional or other abuse, abandonment, or neglect is suspected.

(3) All abuse and neglect cases transmitted for investigation to a district by the hotline must be simultaneously transmitted to the Department of Health child protection team for review. For the purpose of determining whether face-to-face medical evaluation by a child protection team is necessary, all cases transmitted to the child protection team which meet the criteria in subsection (2) must be timely reviewed by:

- (a) A physician licensed under chapter 458 or chapter 459 who holds board certification in pediatrics and is a member of a child protection team;
- (b) A physician licensed under chapter 458 or chapter 459 who holds board certification in a specialty other than pediatrics, who may complete the review only when working under the direction of a physician licensed under chapter 458 or chapter 459 who holds board certification in pediatrics and is a member of a child protection team;
- (c) An advanced registered nurse practitioner licensed under chapter 464 who has a speciality in pediatrics or family medicine and is a member of a child protection team;
- (d) A physician assistant licensed under chapter 458 or chapter 459, who may complete the review only when working under the supervision of a physician licensed under chapter 458 or chapter 459 who holds board certification in pediatrics and is a member of a child protection team; or
- (e) A registered nurse licensed under chapter 464, who may complete the review only when working under the direct supervision of a physician licensed under chapter 458 or chapter 459 who holds certification in pediatrics and is a member of a child protection team.

(4) A face-to-face medical evaluation by a child protection team is not necessary when:

- (a) The child was examined for the alleged abuse or neglect by a physician who is not a member of the child protection team, and a consultation between the child protection team board-certified pediatrician, advanced registered nurse practitioner, physician assistant working under the supervision of a child protection team board-certified pediatrician, or registered nurse working under the direct supervision of a child protection team board-certified pediatrician, and the examining physician concludes that a further medical evaluation is unnecessary;
- (b) The child protective investigator, with supervisory approval, has determined, after conducting a child safety assessment, that there are no indications of injuries as described in paragraphs (2)(a)-(h) as reported; or
- (c) The child protection team board-certified pediatrician, as authorized in subsection (3), determines that a medical evaluation is not required.

Notwithstanding paragraphs (a), (b), and (c), a child protection team pediatrician, as authorized in subsection (3), may determine that a face-to-face medical evaluation is necessary.

(5) In all instances in which a child protection team is providing certain services to abused, abandoned, or neglected children, other offices and units of the Department of Health, and offices and units of the Department of Children and Family Services, shall avoid duplicating the provision of those services.

(6) The Department of Health child protection team quality assurance program and the Department of Children and Family Services' Family Safety Program Office quality assurance program shall collaborate to ensure referrals and responses to child abuse, abandonment, and neglect reports are appropriate. Each quality assurance program shall include a review of records in which there are no findings of abuse, abandonment, or neglect, and the findings of these reviews shall be included in each department's quality assurance reports.

**History.**--s. 9, ch. 84-226; s. 63, ch. 85-81; s. 23, ch. 88-337; s. 53, ch. 90-306; s. 24, ch. 95-228; s. 273, ch. 96-406; s. 1043, ch. 97-103; s. 4, ch. 97-237; s. 13, ch. 98-137; s. 31, ch. 98-166; s. 40, ch. 98-403; s. 9, ch. 99-168; s. 42, ch. 99-397; s. 5, ch. 2000-217; s. 2, ch. 2000-367; s. 9, ch. 2006-86; s. 4, ch. 2008-6.

**Note.**--Former s. 415.5055.

**39.3031 Rules for implementation of ss. 39.303 and 39.305.**--The Department of Health, in consultation with the Department of Children and Family Services, shall adopt rules governing the child protection teams and the sexual abuse treatment program pursuant to ss. 39.303 and 39.305, including definitions, organization, roles and responsibilities, eligibility, services and their availability, qualifications of staff, and a waiver-request process.

**History.**--s. 16, ch. 98-137; s. 17, ch. 99-2.

**39.3032 Memorandum of agreement.**--A memorandum of agreement shall be developed between the Department of Children and Family Services and the Department of Health that specifies how the teams will work with child protective investigation and service staff, that requires joint oversight by the two departments of the activities of the teams, and that specifies how that oversight will be implemented.

**History.**--s. 17, ch. 98-137.

**39.3035 Child advocacy centers; standards; state funding.**--

(1) In order to become eligible for a full membership in the Florida Network of Children's Advocacy Centers, Inc., a child advocacy center in this state shall:

(a) Be a private, nonprofit incorporated agency or a governmental entity.

(b) Be a child protection team, or by written agreement incorporate the participation and services of a child protection team, with established community protocols which meet all of the requirements of the National Network of Children's Advocacy Centers, Inc.

(c) Have a neutral, child-focused facility where joint department and law enforcement interviews take place with children in appropriate cases of suspected child sexual abuse or physical abuse. All multidisciplinary agencies shall have a place to interact with the child as investigative or treatment needs require.

(d) Have a minimum designated staff that is supervised and approved by the local board of directors or governmental entity.

(e) Have a multidisciplinary case review team that meets on a regularly scheduled basis or as the caseload of the community requires. The team shall consist of representatives from the Office of the State Attorney, the department, the child protection team, mental health services, law enforcement, and the child advocacy center staff. Medical personnel and a victim's advocate may be part of the team.

(f) Provide case tracking of child abuse cases seen through the center. A center shall also collect data on the number of child abuse cases seen at the center, by sex, race, age, and other relevant data; the number

of cases referred for prosecution; and the number of cases referred for mental health therapy. Case records shall be subject to the confidentiality provisions of s. 39.202.

(g) Provide referrals for medical exams and mental health therapy. The center shall provide followup on cases referred for mental health therapy.

(h) Provide training for various disciplines in the community that deal with child abuse.

(i) Have an interagency commitment, in writing, covering those aspects of agency participation in a multidisciplinary approach to the handling of child sexual abuse and serious physical abuse cases.

(2) Provide assurance that child advocacy center employees and volunteers at the center are trained and screened in accordance with s. 39.001(2).

(3) A child advocacy center within this state may not receive the funds generated pursuant to s. 938.10, state or federal funds administered by a state agency, or any other funds appropriated by the Legislature unless all of the standards of subsection (1) are met and the screening requirement of subsection (2) is met. The Florida Network of Children's Advocacy Centers, Inc., shall be responsible for tracking and documenting compliance with subsections (1) and (2) for any of the funds it administers to member child advocacy centers.

(a) Funds for the specific purpose of funding children's advocacy centers shall be appropriated to the Department of Children and Family Services from funds collected from the additional court cost imposed in cases of certain crimes against minors under s. 938.10. Funds shall be disbursed to the Florida Network of Children's Advocacy Centers, Inc., as established under this section, for the purpose of providing community-based services that augment, but do not duplicate, services provided by state agencies.

(b) The board of directors of the Florida Network of Children's Advocacy Centers, Inc., shall retain 10 percent of all revenues collected to be used to match local contributions, at a rate not to exceed an equal match, in communities establishing children's advocacy centers. The board of directors may use up to 5 percent of the remaining funds to support the activities of the network office and must develop funding criteria and an allocation methodology that ensures an equitable distribution of remaining funds among network participants. The criteria and methodologies must take into account factors that include, but need not be limited to, the center's accreditation status with respect to the National Children's Alliance, the number of clients served, and the population of the area being served by the children's advocacy center.

(c) At the end of each fiscal year, each children's advocacy center receiving revenue as provided in this section must provide a report to the board of directors of the Florida Network of Children's Advocacy Centers, Inc., which reflects center expenditures, all sources of revenue received, and outputs that have been standardized and agreed upon by network members and the board of directors, such as the number of clients served, client demographic information, and number and types of services provided. The Florida Network of Children's Advocacy Centers, Inc., must compile reports from the centers and provide a report to the President of the Senate and the Speaker of the House of Representatives in August of each year beginning in 2005.

History.--s. 41, ch. 98-403; s. 16, ch. 99-193; s. 37, ch. 2004-265; s. 6, ch. 2006-1; s. 5, ch. 2008-16.

### **~~39.30351 Child Advocacy Trust Fund.--~~**

~~(1)(a)The Child Advocacy Trust Fund is created within the Department of Children and Family Services for the purpose of receiving funds collected from the additional court cost imposed in cases of certain crimes against minors under s. 938.10. Funds shall be appropriated to the Department of Children and Family Services for the specific purpose of funding children's advocacy centers. Funds shall be disbursed to the Florida Network of Children's Advocacy Centers, Inc., as established under s. 39.3035, for the purpose of providing community-based services that augment, but that do not duplicate, services provided by state agencies.~~

~~(b)The board of directors of the Florida Network of Children's Advocacy Centers, Inc., shall retain 10 percent of all revenues collected to be used to match local contributions, at a rate not to exceed an equal match, in communities establishing children's advocacy centers. The board of directors may use up to 5 percent of the remaining funds to support the activities of the network office and must develop funding criteria and an allocation methodology that ensures an equitable distribution of remaining funds among network participants. The criteria and methodologies must take into account factors that include, but need not be limited to, the center's accreditation status with respect to the National Children's Alliance, the number of clients served, and the population of the area being served by the children's advocacy center.~~

~~(2)Pursuant to s. 19(f)(2), Art. III of the State Constitution, the trust fund shall, unless terminated sooner, be terminated on July 1, 2008. Before its scheduled termination, the trust fund shall be reviewed as provided in s. 215.3206(1) and (2).~~

~~History s. 1, ch. 2004-302; s. 6, ch. 2008-16.~~

### **39.304 Photographs, medical examinations, X rays, and medical treatment of abused, abandoned, or neglected child.--**

(1)(a) Any person required to investigate cases of suspected child abuse, abandonment, or neglect may take or cause to be taken photographs of the areas of trauma visible on a child who is the subject of a report. Any child protection team that examines a child who is the subject of a report must take, or cause to be taken, photographs of any areas of trauma visible on the child. Photographs of physical abuse injuries, or duplicates thereof, shall be provided to the department for inclusion in the investigative file and shall become part of that file. Photographs of sexual abuse trauma shall be made part of the child protection team medical record.

(b) If the areas of trauma visible on a child indicate a need for a medical examination, or if the child verbally complains or otherwise exhibits distress as a result of injury through suspected child abuse, abandonment, or neglect, or is alleged to have been sexually abused, the person required to investigate may cause the child to be referred for diagnosis to a licensed physician or an emergency department in a hospital without the consent of the child's parents or legal custodian. Such examination may be performed by any licensed physician or an advanced registered nurse practitioner licensed pursuant to part I of chapter 464. Any licensed physician, or advanced registered nurse practitioner licensed pursuant to part I of chapter 464, who has reasonable cause to suspect that an injury was the result of child abuse, abandonment, or neglect may authorize a radiological examination to be performed on the child without the consent of the child's parent or legal custodian.

(2) Consent for any medical treatment shall be obtained in the following manner.

- (a)1. Consent to medical treatment shall be obtained from a parent or legal custodian of the child; or
2. A court order for such treatment shall be obtained.

(b) If a parent or legal custodian of the child is unavailable and his or her whereabouts cannot be reasonably ascertained, and it is after normal working hours so that a court order cannot reasonably be obtained, an authorized agent of the department shall have the authority to consent to necessary medical treatment for the child. The authority of the department to consent to medical treatment in this circumstance shall be limited to the time reasonably necessary to obtain court authorization.

(c) If a parent or legal custodian of the child is available but refuses to consent to the necessary treatment, a court order shall be required unless the situation meets the definition of an emergency in s. 743.064 or the treatment needed is related to suspected abuse, abandonment, or neglect of the child by a parent or legal custodian. In such case, the department shall have the authority to consent to necessary medical treatment. This authority is limited to the time reasonably necessary to obtain court authorization. In no case shall the department consent to sterilization, abortion, or termination of life support.

(3) Any facility licensed under chapter 395 shall provide to the department, its agent, or a child protection team that contracts with the department any photograph or report on examinations made or X rays taken pursuant to this section, or copies thereof, for the purpose of investigation or assessment of cases of abuse, abandonment, neglect, or exploitation of children.

(4) Any photograph or report on examinations made or X rays taken pursuant to this section, or copies thereof, shall be sent to the department as soon as possible.

(5) The county in which the child is a resident shall bear the initial costs of the examination of the allegedly abused, abandoned, or neglected child; however, the parents or legal custodian of the child shall be required to reimburse the county for the costs of such examination, other than an initial forensic physical examination as provided in s. 960.28, and to reimburse the department for the cost of the photographs taken pursuant to this section. A medical provider may not bill a child victim, directly or indirectly, for the cost of an initial forensic physical examination.

**History.**--ss. 1, 2, 3, 4, 5, 6, ch. 63-24; s. 941, ch. 71-136; ss. 1, 1A, ch. 71-97; s. 32, ch. 73-334; s. 65, ch. 74-383; s. 1, ch. 75-101; s. 1, ch. 75-185; s. 4, ch. 76-237; s. 1, ch. 77-77; s. 3, ch. 77-429; ss. 1, 2, ch. 78-322; s. 3, ch. 78-326; s. 22, ch. 78-361; s. 1, ch. 78-379; s. 181, ch. 79-164; s. 1, ch. 79-203; s. 75, ch. 86-220; s. 24, ch. 88-337; s. 35, ch. 89-294; s. 2, ch. 95-185; s. 133, ch. 97-101; s. 71, ch. 97-103; s. 42, ch. 98-403; s. 10, ch. 99-168; s. 17, ch. 99-193; s. 6, ch. 2000-217; s. 83, ch. 2000-318.

**Note.**--Former ss. 828.041, 827.07(5); s. 415.507.

**39.305 Intervention and treatment in sexual abuse cases; model plan.**--<sup>1</sup>The department shall develop a model plan for community intervention and treatment of intrafamily sexual abuse in conjunction with the Department of Law Enforcement, the Department of Health, the Department of Education, the Attorney General, the state Guardian Ad Litem Program, the Department of Corrections, representatives of the judiciary, and professionals and advocates from the mental health and child welfare community.

**History.**--s. 38, ch. 85-54; s. 135, ch. 97-101; s. 14, ch. 98-137; s. 43, ch. 98-403.

<sup>1</sup>**Note.**--As amended and transferred from s. 415.5095(2) by s. 43, ch. 98-403. For a description of multiple acts in the same session affecting a statutory provision, see the preface to the Florida Statutes, "Statutory Construction." This provision was also amended under the old statutes number by s. 14, ch. 98-137, and that version reads: "The Department of Health shall develop a model plan for community intervention and treatment of intrafamily sexual abuse in conjunction with the Department of Children and Family Services, the Department of Law Enforcement, the Department of Education, the Attorney General, the state Guardian Ad Litem Program, the Department of Corrections, representatives of the judiciary, and professionals and advocates from the mental health and child welfare community."

**Note.**--Former s. 415.5095.

**39.306 Child protective investigations; working agreements with local law enforcement.**--The department shall enter into agreements with the jurisdictionally responsible county sheriffs' offices and local police departments that will assume the lead in conducting any potential criminal investigations arising from allegations of child abuse, abandonment, or neglect. The written agreement must specify how the requirements of this chapter will be met. For the purposes of such agreement, the jurisdictionally responsible law enforcement entity is authorized to share Florida criminal history and local criminal history information that is not otherwise exempt from s. 119.07(1) with the district personnel, authorized agent, or contract provider directly responsible for the child protective investigation and emergency child placement. The agencies entering into such agreement must comply with s. 943.0525. Criminal justice information provided by such law enforcement entity shall be used only for the purposes specified in the agreement and shall be provided at no charge. Notwithstanding any other provision of law, the Department of Law Enforcement shall provide to the department electronic access to Florida criminal justice information which is lawfully available and not exempt from s. 119.07(1), only for the purpose of child protective investigations and emergency child placement. As a condition of access to such information, the department shall be required to execute an appropriate user agreement addressing the access, use, dissemination, and destruction of such information and to comply with all applicable laws and regulations, and rules of the Department of Law Enforcement.

History.--s. 44, ch. 98-403; s. 11, ch. 99-168.

**39.3065 Sheriffs of certain counties to provide child protective investigative services; procedures; funding.--**

(1) As described in this section, the Department of Children and Family Services shall, by the end of fiscal year 1999-2000, transfer all responsibility for child protective investigations for Pinellas County, Manatee County, Broward County, and Pasco County to the sheriff of that county in which the child abuse, neglect, or abandonment is alleged to have occurred. Each sheriff is responsible for the provision of all child protective investigations in his or her county. Each individual who provides these services must complete the training provided to and required of protective investigators employed by the Department of Children and Family Services.

(2) During fiscal year 1998-1999, the Department of Children and Family Services and each sheriff's office shall enter into a contract for the provision of these services. Funding for the services will be appropriated to the Department of Children and Family Services, and the department shall transfer to the respective sheriffs for the duration of fiscal year 1998-1999, funding for the investigative responsibilities assumed by the sheriffs, including federal funds that the provider is eligible for and agrees to earn and that portion of general revenue funds which is currently associated with the services that are being furnished under contract, and including, but not limited to, funding for all investigative, supervisory, and clerical positions; training; all associated equipment; furnishings; and other fixed capital items. The contract must specify whether the department will continue to perform part or none of the child protective investigations during the initial year. The sheriffs may either conduct the investigations themselves or may, in turn, subcontract with law enforcement officials or with properly trained employees of private agencies to conduct investigations related to neglect cases only. If such a subcontract is awarded, the sheriff must take full responsibility for any safety decision made by the subcontractor and must immediately respond with law enforcement staff to any situation that requires removal of a child due to a condition that poses an immediate threat to the child's life. The contract must specify whether the services are to be performed by departmental employees or by persons determined by the sheriff. During this initial year, the department is responsible for quality assurance, and the department retains the responsibility for the performance of all child protective investigations. The department must identify any barriers to transferring the entire responsibility for child protective services to the sheriffs' offices and must pursue avenues for removing any such barriers by means including, but not limited to, applying for federal waivers. By January 15, 1999, the department shall submit to the President of the Senate, the Speaker of the House of Representatives, and the chairs of the Senate and House committees that oversee departmental activities a report that describes any remaining barriers, including any that pertain to funding and related administrative issues. Unless the Legislature, on the basis of that report or other pertinent information, acts to block a transfer of the entire responsibility for child protective investigations to the sheriffs' offices, the sheriffs of Pasco County, Manatee County, Broward County, and Pinellas County, beginning in fiscal year 1999-2000, shall assume the entire responsibility for such services, as provided in subsection (3).

(3)(a) Beginning in fiscal year 1999-2000, the sheriffs of Pasco County, Manatee County, Broward County, and Pinellas County have the responsibility to provide all child protective investigations in their respective counties. Beginning in fiscal year 2000-2001, the Department of Children and Family Services is authorized to enter into grant agreements with sheriffs of other counties to perform child protective investigations in their respective counties.

(b) The sheriffs shall operate, at a minimum, in accordance with the performance standards and outcome measures established by the Legislature for protective investigations conducted by the Department of Children and Family Services. Each individual who provides these services must complete, at a

minimum, the training provided to and required of protective investigators employed by the Department of Children and Family Services.

(c) Funds for providing child protective investigations must be identified in the annual appropriation made to the Department of Children and Family Services, which shall award grants for the full amount identified to the respective sheriffs' offices. Notwithstanding the provisions of ss. 216.181(16)(b) and 216.351, the Department of Children and Family Services may advance payments to the sheriffs for child protective investigations. Funds for the child protective investigations may not be integrated into the sheriffs' regular budgets. Budgetary data and other data relating to the performance of child protective investigations must be maintained separately from all other records of the sheriffs' offices and reported to the Department of Children and Family Services as specified in the grant agreement.

(d) Program performance evaluation shall be based on criteria mutually agreed upon by the respective sheriffs and the Department of Children and Family Services. The program performance evaluation shall be conducted by a team of peer reviewers from the respective sheriffs' offices that perform child protective investigations and representatives from the department. The Department of Children and Family Services shall submit an annual report regarding quality performance, outcome-measure attainment, and cost efficiency to the President of the Senate, the Speaker of the House of Representatives, and to the Governor no later than January 31 of each year the sheriffs are receiving general appropriations to provide child protective investigations.

**History.**--s. 2, ch. 98-180; ss. 12, 53, ch. 99-228; s. 3, ch. 2000-139; ss. 20, 66, ch. 2000-171; s. 13, ch. 2001-60.

### **39.307 Reports of child-on-child sexual abuse.--**

(1) Upon receiving a report alleging juvenile sexual abuse as defined in s. 39.01(7), the department shall assist the family in receiving appropriate services to address the allegations of the report.

(2) District staff, at a minimum, shall adhere to the following procedures:

(a) The purpose of the response to a report alleging juvenile sexual abuse behavior shall be explained to the caregiver.

1. The purpose of the response shall be explained in a manner consistent with legislative purpose and intent provided in this chapter.

2. The name and office telephone number of the person responding shall be provided to the caregiver of the alleged juvenile sexual offender or child who has exhibited inappropriate sexual behavior and the victim's caregiver.

3. The possible consequences of the department's response, including outcomes and services, shall be explained to the caregiver of the alleged juvenile sexual offender or child who has exhibited inappropriate sexual behavior and the victim's ~~family~~ caregiver.

(b) The caregiver of the alleged juvenile sexual offender or child who has exhibited inappropriate sexual behavior and the victim's caregiver ~~of the victim~~ shall be involved to the fullest extent possible in determining the nature of the allegation and the nature of any problem or risk to other children.

(c) The assessment of risk and the perceived treatment needs of the alleged juvenile sexual offender or child who has exhibited inappropriate sexual behavior, the victim, and respective caregivers shall be conducted by the district staff, the child protection team of the Department of Health, and other providers under contract with the department to provide services to the caregiver of the alleged offender, the victim, and the victim's caregiver.

(d) The assessment shall be conducted in a manner that is sensitive to the social, economic, and cultural environment of the family.

(e) ~~If~~ When necessary, the child protection team of the Department of Health shall conduct a physical examination of the victim, which is sufficient to meet forensic requirements.



(f) Based on the information obtained from the alleged juvenile sexual offender or child who has exhibited inappropriate sexual behavior, ~~his or her the alleged juvenile sexual offender's~~ caregiver, the victim, and the victim's caregiver, an assessment service and treatment needs report must be completed within 7 days and, if needed, a case plan developed within 30 days.

(g) The department shall classify the outcome of ~~its initial assessment of~~ the report as follows:

1. Report closed. Services were not offered ~~to the alleged juvenile sexual offender~~ because the department determined that there was no basis for intervention.
2. Services accepted by alleged offender. Services were offered to the alleged juvenile sexual offender or child who has exhibited inappropriate sexual behavior and accepted by the caregiver.
3. Report closed. Services were offered to the alleged juvenile sexual offender or child who has exhibited inappropriate sexual behavior, but were rejected by the caregiver.
4. Notification to law enforcement. ~~Either~~ The risk to the victim's safety and well-being cannot be reduced by the provision of services or the caregiver family rejected services, and notification of the alleged delinquent act or violation of law to the appropriate law enforcement agency was initiated.
5. Services accepted by victim. Services were offered to the victim ~~of the alleged juvenile sexual offender~~ and accepted by the caregiver.
6. Report closed. Services were offered to the victim ~~of the alleged juvenile sexual offender~~, but were rejected by the caregiver.

(3) ~~If~~ ~~When~~ services have been accepted by the alleged juvenile sexual offender or child who has exhibited inappropriate sexual behavior, the victim, and respective caregivers ~~or family~~, the department shall designate a case manager and develop a specific case plan.

(a) Upon receipt of the plan, the caregiver ~~or family~~ shall indicate its acceptance of the plan in writing.

(b) The case manager shall periodically review the progress toward achieving the objectives of the plan in order to:

1. Make adjustments to the plan or take additional action as provided in this part; or
2. Terminate the case ~~if~~ ~~when~~ indicated by successful or substantial achievement of the objectives of the plan.

(4) Services provided to the alleged juvenile sexual offender or child who has exhibited inappropriate sexual behavior, the victim, and respective caregivers or family must be voluntary and of necessary duration.

~~(5) (4) If~~ ~~In the event~~ the family or caregiver of the alleged juvenile sexual offender or child who has exhibited inappropriate sexual behavior fails to adequately participate or allow for the adequate participation of the child juvenile sexual offender in the services or treatment delineated in the case plan, the case manager may recommend that the department:

- (a) Close the case;
- (b) Refer the case to mediation or arbitration, if available; or
- (c) Notify the appropriate law enforcement agency of failure to comply.

~~(5) Services to the alleged juvenile sexual offender, the victim, and respective caregivers or family under this section shall be voluntary and of necessary duration.~~

(6) At any time, as a result of additional information, findings of facts, or changing conditions, the department may pursue a child protective investigation as provided in this chapter.

(7) The department is authorized to develop rules and other policy directives necessary to implement the provisions of this section.

**History.**--s. 8, ch. 95-266; s. 50, ch. 95-267; s. 13, ch. 97-98; s. 9, ch. 98-137; s. 45, ch. 98-403; s. 4, ch. 2003-127. As of June 18, 2008, pending signature by the Governor.

**Note.**--Former s. 415.50171.

**39.308 Guidelines for onsite child protective investigation.**--The Department of Children and Family Services, in collaboration with the sheriffs' offices, shall develop guidelines for conducting an onsite child protective investigation that specifically does not require the additional activities required by the department and for conducting an enhanced child protective investigation, including determining whether compelling evidence exists that no maltreatment occurred, conducting collateral contacts, contacting the reporter, updating the risk assessment, and providing for differential levels of documentation between an onsite and an enhanced onsite child protective investigation.

**History.**—s. 11, ch. 2003-127.

**PART IV  
FAMILY BUILDERS PROGRAM**

- 39.311 Establishment of Family Builders Program.
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**39.311 Establishment of Family Builders Program.--**

(1) Any Family Builders Program that is established by the department shall provide family preservation services:

- (a) To families whose children are at risk of imminent out-of-home placement because they are dependent;
- (b) To reunite families whose children have been removed and placed in foster care; and
- (c) To maintain adoptive families intact who are at risk of fragmentation.

The Family Builders Program shall provide programs to achieve long-term changes within families that will allow children to remain with their families.

(2) The department may adopt rules to implement the Family Builders Program.

**History.**--s. 3, ch. 90-182; s. 66, ch. 90-306; s. 5, ch. 91-183; s. 66, ch. 94-164; s. 27, ch. 95-267; s. 136, ch. 97-101; s. 47, ch. 98-403; s. 18, ch. 99-193.  
**Note.**--Former s. 415.515.

**39.312 Goals.--**The goals of any Family Builders Program shall be to:

- (1) Ensure the protection of the child's health and safety while working with the family.
- (2) Help parents to improve their relationships with their children and to provide better care, nutrition, hygiene, discipline, protection, instruction, and supervision.
- (3) Help parents to provide a better household environment for their children by improving household maintenance, budgeting, and purchasing.
- (4) Provide part-time child care when parents are unable to do so or need temporary relief.
- (5) Assist and educate parents in household maintenance, budgeting, and purchasing when parents are unable to do so on their own or need temporary relief.
- (6) Assist parents and children to manage and resolve conflicts.
- (7) Assist parents to meet the special physical, mental, or emotional needs of their children and help parents to deal with their own special physical, mental, or emotional needs that interfere with their ability to care for their children and to manage their households.

(8) Help families to discover and gain access to community resources to which the family or children might be entitled and which would assist the family in meeting its needs and the needs of the children, including the needs for food, clothing, housing, utilities, transportation, appropriate educational opportunities, employment, respite care, and recreational and social activities.

(9) Help families by providing cash or in-kind assistance to meet their needs for food, clothing, housing, or transportation when such needs prevent or threaten to prevent parents from caring for their children, and when such needs are not met by other sources in the community in a timely fashion.

(10) Provide such additional reasonable services for the prevention of child abuse, abandonment, and neglect as may be needed in order to strengthen a family at risk.

**History.**--s. 4, ch. 90-182; s. 67, ch. 90-306; s. 6, ch. 91-183; s. 125, ch. 94-209; s. 48, ch. 98-403; s. 19, ch. 99-193.

**Note.**--Former s. 415.516.

**39.313 Contracting of services.**--The department may contract for the delivery of Family Builders Program services by professionally qualified persons or local governments when it determines that it is in the child's best interest. The service provider or program operator must submit to the department monthly activity reports covering any services rendered. These activity reports must include project evaluation in relation to individual families being served, as well as statistical data concerning families referred for services who are not served due to the unavailability of resources. The costs of program evaluation are an allowable cost consideration in any service contract negotiated in accordance with this section.

**History.**--s. 5, ch. 90-182; s. 68, ch. 90-306; s. 49, ch. 98-403; s. 20, ch. 99-193.

**Note.**--Former s. 415.517.

**39.314 Eligibility for Family Builders Program services.**--Family Builders Program services must be made available to a family at risk on a voluntary basis, provided the family meets the eligibility requirements as established by rule and there is space available in the program. All members of the families who accept such services are responsible for cooperating fully with the family preservation plan developed for each family under s. 39.315. Families in which children are at imminent risk of sexual abuse or physical endangerment perpetrated by a member of their immediate household are not eligible to receive family preservation services unless the perpetrator is in, or has agreed to enter, a program for treatment and the safety of the children may be enhanced through participation in the Family Builders Program.

**History.**--s. 6, ch. 90-182; s. 69, ch. 90-306; s. 7, ch. 91-183; s. 50, ch. 98-403.

**Note.**--Former s. 415.518.

**39.315 Delivery of Family Builders Program services.**--Family Builders Program services delivered to eligible families must be provided in accordance with the following requirements:

(1) Each Family Builders Program caseworker, whether employed by the department or a contractor providing family preservation services, may provide intensive services to a maximum of six families.

(2) Each family will receive intensive family preservation services for up to 4 months. Upon termination of family preservation services, the caseworker shall close the case for further action or refer the family for other appropriate services.

(3) Family Builders Program services will normally be provided in the family's own home and community consistent with the needs of family members. Caseworkers shall be available by telephone and on call for visits to families at all times including evenings and weekends during the period of service to each family.

(4) Within the first week of initiating family preservation services, and after thorough consultation with the family receiving such services, the family preservation caseworker shall develop a family preservation plan which shall clearly state the specific goals and priorities, tasks, and approaches to be used to reach these goals, and the estimated timeframes for when these goals will be reached.

**History.**--s. 7, ch. 90-182; s. 70, ch. 90-306; s. 8, ch. 91-183; s. 51, ch. 98-403.

**Note.**--Former s. 415.519.

### **39.316 Qualifications of Family Builders Program workers.--**

(1) A public or private agency staff member who provides direct service to an eligible family must possess a bachelor's degree in a human-service-related field and 2 years' experience providing direct services to children, youth, or their families or possess a master's degree in a human-service-related field with 1 year of experience. A person who supervises caseworkers who provide direct services to eligible families must possess a master's degree in a human-service-related field and have at least 2 years of experience in social work or counseling or must possess a bachelor's degree in a human-service-related field and have at least 3 years' experience in social work or counseling.

(2) A person who provides paraprofessional aide services to families must possess a valid high school diploma or a Graduate Equivalency Diploma and must have a minimum of 2 years' experience in working with families with children. Experience in a volunteer capacity while working with families may be included in the 2 years of required experience.

(3) Caseworkers must successfully complete at least 40 hours of intensive training prior to providing direct services under this program. Paraprofessional aides and supervisors must, within 90 days after hiring, complete a training program prescribed by the department on child abuse, abandonment, and neglect and an overview of the children, youth, and families program components and service delivery system. Program supervisors and caseworkers must thereafter complete at least 40 hours of additional training each year in accordance with standards established by the department.

**History.**--s. 8, ch. 90-182; s. 71, ch. 90-306; s. 9, ch. 91-183; s. 52, ch. 98-403.

**Note.**--Former s. 415.520.

**39.317 Outcome evaluation.**--The outcome evaluation report of the department shall include, but is not limited to, the following information, which the contract providers must maintain and provide:

(1) The number of families receiving services.

(2) The number of children placed in emergency shelters, foster care, group homes, or other facilities outside their homes and families.

(3) The average cost of the services provided to families receiving services.

(4) An overall statement of the progress of the program along with recommendations for improvements.

**History.**--s. 9, ch. 90-182; s. 72, ch. 90-306; s. 10, ch. 91-183; s. 53, ch. 98-403.

**Note.**--Former s. 415.521.

**39.318 Funding.**--The department is authorized to use appropriate state, federal, and private funds within its budget for operating the Family Builders Program. For each child served, the cost of providing home-based services described in this part must not exceed the costs of out-of-home care which otherwise would be incurred.

**History.**--s. 10, ch. 90-182; s. 73, ch. 90-306; s. 11, ch. 91-183; s. 54, ch. 98-403.

**Note.**--Former s. 415.522.

**PART V  
TAKING CHILDREN INTO CUSTODY  
AND SHELTER HEARINGS**

- 39.395 Detaining a child; medical or hospital personnel.  
39.401 Taking a child alleged to be dependent into custody; law enforcement officers and authorized agents of the department.  
39.402 Placement in a shelter.  
39.407 Medical, psychiatric, and psychological examination and treatment of child; physical, mental, or substance abuse examination of person with or requesting child custody.  
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39.4086 Pilot program for attorneys ad litem for dependent children.

**39.395 Detaining a child; medical or hospital personnel.**--Any person in charge of a hospital or similar institution, or any physician or licensed health care professional treating a child may detain that child without the consent of the parents, caregiver, or legal custodian, whether or not additional medical treatment is required, if the circumstances are such, or if the condition of the child is such that returning the child to the care or custody of the parents, caregiver, or legal custodian presents an imminent danger to the child's life or physical or mental health. Any such person detaining a child shall immediately notify the department, whereupon the department shall immediately begin a child protective investigation in accordance with the provisions of this chapter and shall make every reasonable effort to immediately notify the parents or legal custodian that such child has been detained. If the department determines, according to the criteria set forth in this chapter, that the child should be detained longer than 24 hours, it shall petition the court through the attorney representing the Department of Children and Family Services as quickly as possible and not to exceed 24 hours, for an order authorizing such custody in the same manner as if the child were placed in a shelter. The department shall attempt to avoid the placement of a child in an institution whenever possible.

*History.*--s. 56, ch. 98-403; s. 21, ch. 99-193.

**39.401 Taking a child alleged to be dependent into custody; law enforcement officers and authorized agents of the department.**--

(1) A child may only be taken into custody:

(a) Pursuant to the provisions of this part, based upon sworn testimony, either before or after a petition is filed; or

(b) By a law enforcement officer, or an authorized agent of the department, if the officer or authorized agent has probable cause to support a finding:

1. 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;
2. That the parent or legal custodian of the child has materially violated a condition of placement imposed by the court; or
3. That the child has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care.

(2) If the law enforcement officer takes the child into custody, that officer shall:

(a) Release the child to:

1. The parent or legal custodian of the child;
2. A responsible adult approved by the court when limited to temporary emergency situations;

3. A responsible adult relative or the adoptive parent of the child's sibling who shall be given priority consideration over a nonrelative placement when this is in the best interests of the child; or

4. A responsible adult approved by the department; or

(b) Deliver the child to an authorized agent of the department, stating the facts by reason of which the child was taken into custody and sufficient information to establish probable cause that the child is abandoned, abused, or neglected, or otherwise dependent.

For cases involving allegations of abandonment, abuse, or neglect, or other dependency cases, within 3 days after such release or within 3 days after delivering the child to an authorized agent of the department, the law enforcement officer who took the child into custody shall make a full written report to the department.

(3) If the child is taken into custody by, or is delivered to, an authorized agent of the department, the ~~authorized~~ agent shall review the facts supporting the removal with an attorney representing the department. The purpose of ~~the~~ this review is ~~shall be~~ to determine whether there is probable cause ~~exists~~ for the filing of a shelter petition.

~~(a) If the facts are not sufficient to support the filing of a shelter petition, the child shall immediately be returned to the custody of the parent or legal custodian.~~

~~(b) If the facts are sufficient to support the filing of the shelter petition and the child has not been returned to the custody of the parent or legal custodian, the department shall file the petition and schedule a hearing, and the attorney representing the department shall request that a shelter hearing be held within as quickly as possible, not to exceed 24 hours after the removal of the child. While awaiting the shelter hearing, the authorized agent of the department may place the child in licensed shelter care or may release the child to a parent or legal custodian or responsible adult relative or the adoptive parent of the child's sibling who shall be given priority consideration over a licensed placement, or a responsible adult approved by the department if when this is in the best interests of the child. ~~Any~~ Placement of a child which is not in a licensed shelter must be preceded by a criminal history records check as required under s. 39.0138 ~~local and state criminal records check, as well as a search of the department's automated abuse information system, on all members of the household, to assess the child's safety within the home.~~ In addition, the department may authorize placement of a housekeeper/homemaker in the home of a child alleged to be dependent until the parent or legal custodian assumes care of the child.~~

(4) When a child is taken into custody pursuant to this section, the department shall request that the child's parent, caregiver, or legal custodian disclose the names, relationships, and addresses of all parents and prospective parents and all next of kin of the child, so far as are known.

(5) Judicial review and approval is required within 24 hours after placement for all nonrelative placements. A nonrelative placement must be for a specific and predetermined period of time, not to exceed 12 months, and shall be reviewed by the court at least every 6 months. If the nonrelative placement continues for longer than 12 months, the department shall request the court to establish permanent guardianship or require that the nonrelative seek licensure as a foster care provider within 30 days after the court decision. Failure to establish permanent guardianship or obtain licensure does not require the court to change a child's placement unless it is in the best interest of the child to do so.

**History.**--s. 20, ch. 78-414; s. 4, ch. 87-133; s. 11, ch. 88-337; s. 2, ch. 90-204; s. 226, ch. 95-147; s. 6, ch. 95-228; s. 2, ch. 97-276; s. 57, ch. 98-403; s. 22, ch. 99-193. As of June 18, 2008, pending signature by the Governor.

### **39.402 Placement in a shelter.--**

(1) Unless ordered by the court under this chapter, a child taken into custody shall not be placed in a shelter prior to a court hearing unless there is probable cause to believe that:



(a) 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) The parent or legal custodian of the child has materially violated a condition of placement imposed by the court; or

(c) The child has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care.

(2) A child taken into custody may be placed or continued in a shelter only if one or more of the criteria in subsection (1) applies and the court has made a specific finding of fact regarding the necessity for removal of the child from the home and has made a determination that the provision of appropriate and available services will not eliminate the need for placement.

(3) Whenever a child is taken into custody, the department shall immediately notify the parents or legal custodians, shall provide the parents or legal custodians with a statement setting forth a summary of procedures involved in dependency cases, and shall notify them of their right to obtain their own attorney.

(4) If the department determines that placement in a shelter is necessary under subsections (1) and (2), the authorized agent of the department shall authorize placement of the child in a shelter.

(5)(a) The parents or legal custodians of the child shall be given such notice as best ensures their actual knowledge of the date, time, and location of the shelter hearing. If the parents or legal custodians are outside the jurisdiction of the court, are not known, or cannot be located or refuse or evade service, they shall be given such notice as best ensures their actual knowledge of the date, time, and location of the shelter hearing. The person providing or attempting to provide notice to the parents or legal custodians shall, if the parents or legal custodians are not present at the hearing, advise the court either in person or by sworn affidavit, of the attempts made to provide notice and the results of those attempts.

(b) The parents or legal custodians shall be given written notice that:

1. They will be given an opportunity to be heard and to present evidence at the shelter hearing; and
2. They have the right to be represented by counsel, and, if indigent, the parents have the right to be represented by appointed counsel, at the shelter hearing and at each subsequent hearing or proceeding, pursuant to the procedures set forth in s. 39.013. If the parents or legal custodians appear for the shelter hearing without legal counsel, then, at their request, the shelter hearing may be continued up to 72 hours to enable the parents or legal custodians to consult legal counsel. If a continuance is requested by the parents or legal custodians, the child shall be continued in shelter care for the length of the continuance, if granted by the court.

(6)(a) The circuit court, or the county court if previously designated by the chief judge of the circuit court for such purpose, shall hold the shelter hearing.

(b) The shelter petition filed with the court must address each condition required to be determined by the court in paragraphs (8)(a), (b), (d), and (h).

(7) A child may not be removed from the home or continued out of the home pending disposition if, with the provision of appropriate and available early intervention or preventive services, including services provided in the home, the child could safely remain at home. If the child's safety and well-being are in danger, the child shall be removed from danger and continue to be removed until the danger has passed. If the child has been removed from the home and the reasons for his or her removal have been remedied, the child may be returned to the home. If the court finds that the prevention or reunification efforts of the department will allow the child to remain safely at home, the court shall allow the child to remain in the home.

(8)(a) A child may not be held in a shelter longer than 24 hours unless an order so directing is entered by the court after a shelter hearing. In the interval until the shelter hearing is held, the decision to place the child in a shelter or release the child from a shelter lies with the protective investigator.

(b) The parents or legal custodians of the child shall be given such notice as best ensures their actual knowledge of the time and place of the shelter hearing. The failure to provide notice to a party or participant does not invalidate an order placing a child in a shelter if the court finds that the petitioner has made a good faith effort to provide such notice. The court shall require the parents or legal custodians present at the hearing to provide to the court on the record the names, addresses, and relationships of all parents, prospective parents, and next of kin of the child, so far as are known.

(c) At the shelter hearing, the court shall:

1. Appoint a guardian ad litem to represent the best interest of the child, unless the court finds that such representation is unnecessary;
2. Inform the parents or legal custodians of their right to counsel to represent them at the shelter hearing and at each subsequent hearing or proceeding, and the right of the parents to appointed counsel, pursuant to the procedures set forth in s. 39.013; and
3. Give the parents or legal custodians an opportunity to be heard and to present evidence.

(d) At the shelter hearing, in order to continue the child in shelter care:

1. The department must establish probable cause that reasonable grounds for removal exist and that the provision of appropriate and available services will not eliminate the need for placement; or
2. The court must determine that additional time is necessary, which may not exceed 72 hours, in which to obtain and review documents pertaining to the family in order to appropriately determine the risk to the child during which time the child shall remain in the department's custody, if so ordered by the court.

(e) At the shelter hearing, the department shall provide the court copies of any available law enforcement, medical, or other professional reports, and shall also provide copies of abuse hotline reports pursuant to state and federal confidentiality requirements.

(f) At the shelter hearing, the department shall inform the court of:

1. Any identified current or previous case plans negotiated in any district with the parents or caregivers under this chapter and problems associated with compliance;
2. Any adjudication of the parents or caregivers of delinquency;
3. Any past or current injunction for protection from domestic violence; and
4. All of the child's places of residence during the prior 12 months.

(g) At the shelter hearing, each party shall provide to the court a permanent mailing address. The court shall advise each party that this address will be used by the court and the petitioner for notice purposes unless and until the party notifies the court and the petitioner in writing of a new mailing address.

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

1. That placement in shelter care is necessary based on the criteria in subsections (1) and (2).
2. That placement in shelter care is in the best interest of the child.
3. That continuation of the child in the home is contrary to the welfare of the child because the home situation presents a substantial and immediate danger to the child's physical, mental, or emotional health or safety which cannot be mitigated by the provision of preventive services.
4. That based upon the allegations of the petition for placement in shelter care, there is probable cause to believe that the child is dependent or that the court needs additional time, which may not exceed 72 hours, in which to obtain and review documents pertaining to the family in order to appropriately determine the risk to the child.
5. That the department has made reasonable efforts to prevent or eliminate the need for removal of the child from the home. A finding of reasonable effort by the department to prevent or eliminate the need for removal may be made and the department is deemed to have made reasonable efforts to prevent or eliminate the need for removal if:

- a. The first contact of the department with the family occurs during an emergency;
  - b. The appraisal of the home situation by the department indicates that the home situation presents a substantial and immediate danger to the child's physical, mental, or emotional health or safety which cannot be mitigated by the provision of preventive services;
  - c. The child cannot safely remain at home, either because there are no preventive services that can ensure the health and safety of the child or because, even with appropriate and available services being provided, the health and safety of the child cannot be ensured; or
  - d. The parent or legal custodian is alleged to have committed any of the acts listed as grounds for expedited termination of parental rights in s. 39.806(1)(f)-(i).
6. That the court notified the parents or legal custodians of the time, date, and location of the next dependency hearing and of the importance of the active participation of the parents or legal custodians in all proceedings and hearings.
7. That the court notified the parents or legal custodians of their right to counsel to represent them at the shelter hearing and at each subsequent hearing or proceeding, and the right of the parents to appointed counsel, pursuant to the procedures set forth in s. 39.013.

(9) At any shelter hearing, the department shall provide to the court a recommendation for scheduled contact between the child and parents, if appropriate. The court shall determine visitation rights absent a clear and convincing showing that visitation is not in the best interest of the child. Any order for visitation or other contact must conform to the provisions of s. 39.0139. If visitation is ordered but will not commence within 72 hours of the shelter hearing, the department shall provide justification to the court.

(10)(a) The shelter hearing order shall contain a written determination as to whether the department has made a reasonable effort to prevent or eliminate the need for removal or continued removal of the child from the home. This determination must include a description of which specific services, if available, could prevent or eliminate the need for removal or continued removal from the home and the date by which the services are expected to become available.

(b) If services are not available to prevent or eliminate the need for removal or continued removal of the child from the home, the written determination must also contain an explanation describing why the services are not available for the child.

(c) If the department has not made an effort to prevent or eliminate the need for removal, the court shall order the department to provide appropriate and available services to ensure the protection of the child in the home when the services are necessary for the child's health and safety.

(11)(a) If a child is placed in a shelter pursuant to a court order following a shelter hearing, the court shall require in the shelter hearing order that the parents of the child, or the guardian of the child's estate, if possessed of assets which under law may be disbursed for the care, support, and maintenance of the child, to pay, to the department or institution having custody of the child, fees as established by the department. When the order affects the guardianship estate, a certified copy of the order shall be delivered to the judge having jurisdiction of the guardianship estate. The shelter order shall also require the parents to provide to the department and any other state agency or party designated by the court, within 28 days after entry of the shelter order, the financial information necessary to accurately calculate child support pursuant to s. 61.30.

(b) The parent or legal guardian shall provide all known medical information to the department.

(12) In the event the shelter hearing is conducted by a judge other than the juvenile court judge, the juvenile court judge shall hold a shelter review on the status of the child within 2 working days after the shelter hearing.

(13) A child may not be held in a shelter under an order so directing for more than 60 days without an adjudication of dependency. A child may not be held in a shelter for more than 30 days after the entry of an order of adjudication unless an order of disposition has been entered by the court.

(14) The time limitations in this section do not include:

(a) Periods of delay resulting from a continuance granted at the request or with the consent of the child's counsel or the child's guardian ad litem, if one has been appointed by the court, or, if the child is of sufficient capacity to express reasonable consent, at the request or with the consent of the child's attorney or the child's guardian ad litem, if one has been appointed by the court, and the child.

(b) Periods of delay resulting from a continuance granted at the request of any party, if the continuance is granted:

1. Because of an unavailability of evidence material to the case when the requesting party has exercised due diligence to obtain such evidence and there are substantial grounds to believe that such evidence will be available within 30 days. However, if the requesting party is not prepared to proceed within 30 days, any other party, inclusive of the parent or legal custodian may move for issuance of an order to show cause or the court on its own motion may impose appropriate sanctions, which may include dismissal of the petition.

2. To allow the requesting party additional time to prepare the case and additional time is justified because of an exceptional circumstance.

(c) Reasonable periods of delay necessary to accomplish notice of the hearing to the child's parents or legal custodians; however, the petitioner shall continue regular efforts to provide notice to the parents or legal custodians during such periods of delay.

(d) Reasonable periods of delay resulting from a continuance granted at the request of the parent or legal custodian of a subject child.

(e) Notwithstanding the foregoing, continuances and extensions of time are limited to the number of days absolutely necessary to complete a necessary task in order to preserve the rights of a party or the best interests of a child. Time is of the essence for the best interests of dependent children in conducting dependency proceedings in accordance with the time limitations set forth in this chapter. Time limitations are a right of the child which may not be waived, extended, or continued at the request of any party in advance of the particular circumstances or need arising upon which delay of the proceedings may be warranted.

(f) Continuances or extensions of time may not total more than 60 days for all parties within any 12-month period during proceedings under this chapter. A continuance or extension beyond the 60 days may be granted only for extraordinary circumstances necessary to preserve the constitutional rights of a party or when substantial evidence demonstrates that the child's best interests will be affirmatively harmed without the granting of a continuance or extension of time.

(15) The department, at the conclusion of the shelter hearing, shall make available to parents or legal custodians seeking voluntary services, any referral information necessary for participation in such identified services. The parents' or legal custodians' participation in the services shall not be considered an admission or other acknowledgment of the allegations in the shelter petition.

(16) At the conclusion of a shelter hearing, the court shall notify all parties in writing of the next scheduled hearing to review the shelter placement. The hearing shall be held no later than 30 days after placement of the child in shelter status, in conjunction with the arraignment hearing, and at such times as are otherwise provided by law or determined by the court to be necessary.

(17) At the shelter hearing, the court shall inquire of the parent whether the parent has relatives who might be considered as a placement for the child. The parent shall provide to the court and all parties

identification and location information regarding the relatives. The court shall advise the parent that the parent has a continuing duty to inform the department of any relative who should be considered for placement of the child.

(18) The court shall advise the parents that, if the parents fail to substantially comply with the case plan, their parental rights may be terminated and that the child's out-of-home placement may become permanent.

**History.**--s. 20, ch. 78-414; s. 13, ch. 80-290; s. 6, ch. 84-311; s. 5, ch. 85-80; s. 82, ch. 86-220; s. 5, ch. 87-133; s. 5, ch. 87-289; s. 12, ch. 88-337; s. 1, ch. 90-167; s. 7, ch. 90-208; s. 5, ch. 90-306; s. 3, ch. 92-158; s. 3, ch. 92-170; s. 7, ch. 92-287; s. 4, ch. 94-164; s. 58, ch. 94-209; s. 7, ch. 95-228; s. 3, ch. 97-96; s. 3, ch. 97-276; s. 58, ch. 98-403; s. 12, ch. 99-168; s. 23, ch. 99-193; s. 19, ch. 2000-139; s. 6, ch. 2000-151; s. 7, ch. 2000-217; s. 2, ch. 2001-68; s. 2, ch. 2002-216; s. 1, ch. 2005-65; s. 10, ch. 2006-86; s. 2, ch. 2007-109.

**39.407 Medical, psychiatric, and psychological examination and treatment of child; physical, mental, or substance abuse examination of person with or requesting child custody.--**

(1) When any child is removed from the home and maintained in an out-of-home placement, the department is authorized to have a medical screening performed on the child without authorization from the court and without consent from a parent or legal custodian. Such medical screening shall be performed by a licensed health care professional and shall be to examine the child for injury, illness, and communicable diseases and to determine the need for immunization. The department shall by rule establish the invasiveness of the medical procedures authorized to be performed under this subsection. In no case does this subsection authorize the department to consent to medical treatment for such children.

(2) When the department has performed the medical screening authorized by subsection (1), or when it is otherwise determined by a licensed health care professional that a child who is in an out-of-home placement, but who has not been committed to the department, is in need of medical treatment, including the need for immunization, consent for medical treatment shall be obtained in the following manner:

- (a)1. Consent to medical treatment shall be obtained from a parent or legal custodian of the child; or
2. A court order for such treatment shall be obtained.

(b) If a parent or legal custodian of the child is unavailable and his or her whereabouts cannot be reasonably ascertained, and it is after normal working hours so that a court order cannot reasonably be obtained, an authorized agent of the department shall have the authority to consent to necessary medical treatment, including immunization, for the child. The authority of the department to consent to medical treatment in this circumstance shall be limited to the time reasonably necessary to obtain court authorization.

(c) If a parent or legal custodian of the child is available but refuses to consent to the necessary treatment, including immunization, a court order shall be required unless the situation meets the definition of an emergency in s. 743.064 or the treatment needed is related to suspected abuse, abandonment, or neglect of the child by a parent, caregiver, or legal custodian. In such case, the department shall have the authority to consent to necessary medical treatment. This authority is limited to the time reasonably necessary to obtain court authorization.

In no case shall the department consent to sterilization, abortion, or termination of life support.

(3)(a)1. Except as otherwise provided in subparagraph (b)1. or paragraph (e), before the department provides psychotropic medications to a child in its custody, the prescribing physician shall attempt to obtain express and informed consent, as defined in s. 394.455(9) and as described in s. 394.459(3)(a), from the child's parent or legal guardian. The department must take steps necessary to facilitate the inclusion of the parent in the child's consultation with the physician. However, if the parental rights of the parent have been terminated, the parent's location or identity is unknown or cannot reasonably be ascertained, or the parent declines to give express and informed consent, the department may, after consultation with the prescribing physician, seek court authorization to provide the psychotropic medications to the child. Unless parental rights have been terminated and if it is possible to do so, the department shall continue to involve the parent

in the decisionmaking process regarding the provision of psychotropic medications. If, at any time, a parent whose parental rights have not been terminated provides express and informed consent to the provision of a psychotropic medication, the requirements of this section that the department seek court authorization do not apply to that medication until such time as the parent no longer consents.

2. Any time the department seeks a medical evaluation to determine the need to initiate or continue a psychotropic medication for a child, the department must provide to the evaluating physician all pertinent medical information known to the department concerning that child.

(b)1. If a child who is removed from the home under s. 39.401 is receiving prescribed psychotropic medication at the time of removal and parental authorization to continue providing the medication cannot be obtained, the department may take possession of the remaining medication and may continue to provide the medication as prescribed until the shelter hearing, if it is determined that the medication is a current prescription for that child and the medication is in its original container.

2. If the department continues to provide the psychotropic medication to a child when parental authorization cannot be obtained, the department shall notify the parent or legal guardian as soon as possible that the medication is being provided to the child as provided in subparagraph 1. The child's official departmental record must include the reason parental authorization was not initially obtained and an explanation of why the medication is necessary for the child's well-being.

3. If the department is advised by a physician licensed under chapter 458 or chapter 459 that the child should continue the psychotropic medication and parental authorization has not been obtained, the department shall request court authorization at the shelter hearing to continue to provide the psychotropic medication and shall provide to the court any information in its possession in support of the request. Any authorization granted at the shelter hearing may extend only until the arraignment hearing on the petition for adjudication of dependency or 28 days following the date of removal, whichever occurs sooner.

4. Before filing the dependency petition, the department shall ensure that the child is evaluated by a physician licensed under chapter 458 or chapter 459 to determine whether it is appropriate to continue the psychotropic medication. If, as a result of the evaluation, the department seeks court authorization to continue the psychotropic medication, a motion for such continued authorization shall be filed at the same time as the dependency petition, within 21 days after the shelter hearing.

(c) Except as provided in paragraphs (b) and (e), the department must file a motion seeking the court's authorization to initially provide or continue to provide psychotropic medication to a child in its legal custody. The motion must be supported by a written report prepared by the department which describes the efforts made to enable the prescribing physician to obtain express and informed consent for providing the medication to the child and other treatments considered or recommended for the child. In addition, the motion must be supported by the prescribing physician's signed medical report providing:

1. The name of the child, the name and range of the dosage of the psychotropic medication, and that there is a need to prescribe psychotropic medication to the child based upon a diagnosed condition for which such medication is being prescribed.

2. A statement indicating that the physician has reviewed all medical information concerning the child which has been provided.

3. A statement indicating that the psychotropic medication, at its prescribed dosage, is appropriate for treating the child's diagnosed medical condition, as well as the behaviors and symptoms the medication, at its prescribed dosage, is expected to address.

4. An explanation of the nature and purpose of the treatment; the recognized side effects, risks, and contraindications of the medication; drug-interaction precautions; the possible effects of stopping the medication; and how the treatment will be monitored, followed by a statement indicating that this explanation was provided to the child if age appropriate and to the child's caregiver.

5. Documentation addressing whether the psychotropic medication will replace or supplement any other currently prescribed medications or treatments; the length of time the child is expected to be taking the

medication; and any additional medical, mental health, behavioral, counseling, or other services that the prescribing physician recommends.

(d)1. The department must notify all parties of the proposed action taken under paragraph (c) in writing or by whatever other method best ensures that all parties receive notification of the proposed action within 48 hours after the motion is filed. If any party objects to the department's motion, that party shall file the objection within 2 working days after being notified of the department's motion. If any party files an objection to the authorization of the proposed psychotropic medication, the court shall hold a hearing as soon as possible before authorizing the department to initially provide or to continue providing psychotropic medication to a child in the legal custody of the department. At such hearing and notwithstanding s. 90.803, the medical report described in paragraph (c) is admissible in evidence. The prescribing physician need not attend the hearing or testify unless the court specifically orders such attendance or testimony, or a party subpoenas the physician to attend the hearing or provide testimony. If, after considering any testimony received, the court finds that the department's motion and the physician's medical report meet the requirements of the subsection and that it is in the child's best interests, the court may order that the department provide or continue to provide the psychotropic medication to the child without additional testimony or evidence. At any hearing held under this paragraph, the court shall further inquire of the department as to whether additional medical, mental health, behavioral, counseling, or other services are being provided to the child by the department which the prescribing physician considers to be necessary or beneficial in treating the child's medical condition and which the physician recommends or expects to provide to the child in concert with the medication. The court may order additional medical consultation, including consultation with the MedConsult line at the University of Florida, if available, or require the department to obtain a second opinion within a reasonable timeframe as established by the court, not to exceed 21 calendar days, after such order based upon consideration of the best interests of the child. The department must make a referral for an appointment for a second opinion with a physician within 1 working day. The court may not order the discontinuation of prescribed psychotropic medication if such order is contrary to the decision of the prescribing physician unless the court first obtains an opinion from a licensed psychiatrist, if available, or, if not available, a physician licensed under chapter 458 or chapter 459, stating that more likely than not, discontinuing the medication would not cause significant harm to the child. If, however, the prescribing psychiatrist specializes in mental health care for children and adolescents, the court may not order the discontinuation of prescribed psychotropic medication unless the required opinion is also from a psychiatrist who specializes in mental health care for children and adolescents. The court may also order the discontinuation of prescribed psychotropic medication if a child's treating physician, licensed under chapter 458 or chapter 459, states that continuing the prescribed psychotropic medication would cause significant harm to the child due to a diagnosed nonpsychiatric medical condition.

2. The burden of proof at any hearing held under this paragraph shall be by a preponderance of the evidence.

(e)1. If the child's prescribing physician certifies in the signed medical report required in paragraph (c) that delay in providing a prescribed psychotropic medication would more likely than not cause significant harm to the child, the medication may be provided in advance of the issuance of a court order. In such event, the medical report must provide the specific reasons why the child may experience significant harm and the nature and the extent of the potential harm. The department must submit a motion seeking continuation of the medication and the physician's medical report to the court, the child's guardian ad litem, and all other parties within 3 working days after the department commences providing the medication to the child. The department shall seek the order at the next regularly scheduled court hearing required under this chapter, or within 30 days after the date of the prescription, whichever occurs sooner. If any party objects to the department's motion, the court shall hold a hearing within 7 days.

2. Psychotropic medications may be administered in advance of a court order in hospitals, crisis stabilization units, and in statewide inpatient psychiatric programs. Within 3 working days after the medication is begun, the department must seek court authorization as described in paragraph (c).

(f)1. The department shall fully inform the court of the child's medical and behavioral status as part of the social services report prepared for each judicial review hearing held for a child for whom psychotropic medication has been prescribed or provided under this subsection. As a part of the information provided to the court, the department shall furnish copies of all pertinent medical records concerning the child which have been generated since the previous hearing. On its own motion or on good cause shown by any party, including any guardian ad litem, attorney, or attorney ad litem who has been appointed to represent the child or the child's interests, the court may review the status more frequently than required in this subsection.

2. The court may, in the best interests of the child, order the department to obtain a medical opinion addressing whether the continued use of the medication under the circumstances is safe and medically appropriate.

(g) The department shall adopt rules to ensure that children receive timely access to clinically appropriate psychotropic medications. These rules must include, but need not be limited to, the process for determining which adjunctive services are needed, the uniform process for facilitating the prescribing physician's ability to obtain the express and informed consent of the child's parent or guardian, the procedures for obtaining court authorization for the provision of a psychotropic medication, the frequency of medical monitoring and reporting on the status of the child to the court, how the child's parents will be involved in the treatment-planning process if their parental rights have not been terminated, and how caretakers are to be provided information contained in the physician's signed medical report. The rules must also include uniform forms to be used in requesting court authorization for the use of a psychotropic medication and provide for the integration of each child's treatment plan and case plan. The department must begin the formal rulemaking process within 90 days after the effective date of this act.

(4)(a) A judge may order a child in an out-of-home placement to be examined by a licensed health care professional.

(b) The judge may also order such child to be evaluated by a psychiatrist or a psychologist or, if a developmental disability is suspected or alleged, by the developmental disability diagnostic and evaluation team of the department. If it is necessary to place a child in a residential facility for such evaluation, the criteria and procedure established in s. 394.463(2) or chapter 393 shall be used, whichever is applicable.

(c) The judge may also order such child to be evaluated by a district school board educational needs assessment team. The educational needs assessment provided by the district school board educational needs assessment team shall include, but not be limited to, reports of intelligence and achievement tests, screening for learning disabilities and other handicaps, and screening for the need for alternative education as defined in s. 1001.42.

(5) A judge may order a child in an out-of-home placement to be treated by a licensed health care professional based on evidence that the child should receive treatment. The judge may also order such child to receive mental health or developmental disabilities services from a psychiatrist, psychologist, or other appropriate service provider. Except as provided in subsection (6), if it is necessary to place the child in a residential facility for such services, the procedures and criteria established in s. 394.467 shall be used. A child may be provided mental health services in emergency situations, pursuant to the procedures and criteria contained in s. 394.463(1). Nothing in this section confers jurisdiction on the court with regard to determining eligibility or ordering services under chapter 393.

(6) Children who are in the legal custody of the department may be placed by the department, without prior approval of the court, in a residential treatment center licensed under s. 394.875 or a hospital licensed under chapter 395 for residential mental health treatment only pursuant to this section or may be placed by the court in accordance with an order of involuntary examination or involuntary placement entered pursuant to



s. 394.463 or s. 394.467. All children placed in a residential treatment program under this subsection must have a guardian ad litem appointed.

(a) As used in this subsection, the term:

1. "Residential treatment" means placement for observation, diagnosis, or treatment of an emotional disturbance in a residential treatment center licensed under s. 394.875 or a hospital licensed under chapter 395.

2. "Least restrictive alternative" means the treatment and conditions of treatment that, separately and in combination, are no more intrusive or restrictive of freedom than reasonably necessary to achieve a substantial therapeutic benefit or to protect the child or adolescent or others from physical injury.

3. "Suitable for residential treatment" or "suitability" means a determination concerning a child or adolescent with an emotional disturbance as defined in s. 394.492(5) or a serious emotional disturbance as defined in s. 394.492(6) that each of the following criteria is met:

a. The child requires residential treatment.

b. The child is in need of a residential treatment program and is expected to benefit from mental health treatment.

c. An appropriate, less restrictive alternative to residential treatment is unavailable.

(b) Whenever the department believes that a child in its legal custody is emotionally disturbed and may need residential treatment, an examination and suitability assessment must be conducted by a qualified evaluator who is appointed by the Agency for Health Care Administration. This suitability assessment must be completed before the placement of the child in a residential treatment center for emotionally disturbed children and adolescents or a hospital. The qualified evaluator must be a psychiatrist or a psychologist licensed in Florida who has at least 3 years of experience in the diagnosis and treatment of serious emotional disturbances in children and adolescents and who has no actual or perceived conflict of interest with any inpatient facility or residential treatment center or program.

(c) Before a child is admitted under this subsection, the child shall be assessed for suitability for residential treatment by a qualified evaluator who has conducted a personal examination and assessment of the child and has made written findings that:

1. The child appears to have an emotional disturbance serious enough to require residential treatment and is reasonably likely to benefit from the treatment.

2. The child has been provided with a clinically appropriate explanation of the nature and purpose of the treatment.

3. All available modalities of treatment less restrictive than residential treatment have been considered, and a less restrictive alternative that would offer comparable benefits to the child is unavailable. A copy of the written findings of the evaluation and suitability assessment must be provided to the department and to the guardian ad litem, who shall have the opportunity to discuss the findings with the evaluator.

(d) Immediately upon placing a child in a residential treatment program under this section, the department must notify the guardian ad litem and the court having jurisdiction over the child and must provide the guardian ad litem and the court with a copy of the assessment by the qualified evaluator.

(e) Within 10 days after the admission of a child to a residential treatment program, the director of the residential treatment program or the director's designee must ensure that an individualized plan of treatment has been prepared by the program and has been explained to the child, to the department, and to the guardian ad litem, and submitted to the department. The child must be involved in the preparation of the plan to the maximum feasible extent consistent with his or her ability to understand and participate, and the guardian ad litem and the child's foster parents must be involved to the maximum extent consistent with the child's treatment needs. The plan must include a preliminary plan for residential treatment and aftercare upon completion of residential treatment. The plan must include specific behavioral and emotional goals against which the success of the residential treatment may be measured. A copy of the plan must be provided to the child, to the guardian ad litem, and to the department.

(f) Within 30 days after admission, the residential treatment program must review the appropriateness and suitability of the child's placement in the program. The residential treatment program must determine whether the child is receiving benefit towards the treatment goals and whether the child could be treated in a less restrictive treatment program. The residential treatment program shall prepare a written report of its findings and submit the report to the guardian ad litem and to the department. The department must submit the report to the court. The report must include a discharge plan for the child. The residential treatment program must continue to evaluate the child's treatment progress every 30 days thereafter and must include its findings in a written report submitted to the department. The department may not reimburse a facility until the facility has submitted every written report that is due.

(g)1. The department must submit, at the beginning of each month, to the court having jurisdiction over the child, a written report regarding the child's progress towards achieving the goals specified in the individualized plan of treatment.

2. The court must conduct a hearing to review the status of the child's residential treatment plan no later than 3 months after the child's admission to the residential treatment program. An independent review of the child's progress towards achieving the goals and objectives of the treatment plan must be completed by a qualified evaluator and submitted to the court before its 3-month review.

3. For any child in residential treatment at the time a judicial review is held pursuant to s. 39.701, the child's continued placement in residential treatment must be a subject of the judicial review.

4. If at any time the court determines that the child is not suitable for continued residential treatment, the court shall order the department to place the child in the least restrictive setting that is best suited to meet his or her needs.

(h) After the initial 3-month review, the court must conduct a review of the child's residential treatment plan every 90 days.

(i) The department must adopt rules for implementing timeframes for the completion of suitability assessments by qualified evaluators and a procedure that includes timeframes for completing the 3-month independent review by the qualified evaluators of the child's progress towards achieving the goals and objectives of the treatment plan which review must be submitted to the court. The Agency for Health Care Administration must adopt rules for the registration of qualified evaluators, the procedure for selecting the evaluators to conduct the reviews required under this section, and a reasonable, cost-efficient fee schedule for qualified evaluators.

(7) When a child is in an out-of-home placement, a licensed health care professional shall be immediately called if there are indications of physical injury or illness, or the child shall be taken to the nearest available hospital for emergency care.

(8) Except as otherwise provided herein, nothing in this section shall be deemed to eliminate the right of a parent, legal custodian, or the child to consent to examination or treatment for the child.

(9) Except as otherwise provided herein, nothing in this section shall be deemed to alter the provisions of s. 743.064.

(10) A court shall not be precluded from ordering services or treatment to be provided to the child by a duly accredited practitioner who relies solely on spiritual means for healing in accordance with the tenets and practices of a church or religious organization, when required by the child's health and when requested by the child.

(11) Nothing in this section shall be construed to authorize the permanent sterilization of the child unless such sterilization is the result of or incidental to medically necessary treatment to protect or preserve the life of the child.

(12) For the purpose of obtaining an evaluation or examination, or receiving treatment as authorized pursuant to this section, no child alleged to be or found to be dependent shall be placed in a detention home or other program used primarily for the care and custody of children alleged or found to have committed delinquent acts.

(13) The parents or legal custodian of a child in an out-of-home placement remain financially responsible for the cost of medical treatment provided to the child even if either one or both of the parents or if the legal custodian did not consent to the medical treatment. After a hearing, the court may order the parents or legal custodian, if found able to do so, to reimburse the department or other provider of medical services for treatment provided.

(14) Nothing in this section alters the authority of the department to consent to medical treatment for a dependent child when the child has been committed to the department and the department has become the legal custodian of the child.

(15) At any time after the filing of a shelter petition or petition for dependency, when the mental or physical condition, including the blood group, of a parent, caregiver, legal custodian, or other person who has custody or is requesting custody of a child is in controversy, the court may order the person to submit to a physical or mental examination by a qualified professional. The order may be made only upon good cause shown and pursuant to notice and procedures as set forth by the Florida Rules of Juvenile Procedure.

(16) At any time after a shelter petition or petition for dependency is filed, the court may order a person who has custody or is requesting custody of the child to submit to a substance abuse assessment or evaluation. The assessment or evaluation must be administered by a qualified professional, as defined in s. 397.311. The order may be made only upon good cause shown. This subsection does not authorize placement of a child with a person seeking custody, other than the parent or legal custodian, who requires substance abuse treatment.

**History.**--s. 20, ch. 78-414; s. 14, ch. 80-290; s. 2, ch. 84-226; s. 8, ch. 84-311; s. 74, ch. 86-220; s. 2, ch. 87-238; s. 230, ch. 95-147; s. 11, ch. 95-228; s. 59, ch. 98-403; s. 24, ch. 99-193; s. 1, ch. 2000-265; s. 151, ch. 2000-349; s. 3, ch. 2002-219; s. 885, ch. 2002-387; s. 2, ch. 2005-65; s. 3, ch. 2006-97; s. 4, ch. 2006-227.

### **39.4075 Referral of a dependency case to mediation.--**

(1) At any stage in a dependency proceeding, any party may request the court to refer the parties to mediation in accordance with chapter 44 and rules and procedures developed by the Supreme Court.

(2) A court may refer the parties to mediation. When such services are available, the court must determine whether it is in the best interests of the child to refer the parties to mediation.

(3) The department shall advise the parties that they are responsible for contributing to the cost of the dependency mediation.

(4) This section applies only to courts in counties in which dependency mediation programs have been established and does not require the establishment of such programs in any county.

**History.**--s. 7, ch. 94-164; s. 60, ch. 98-403; s. 58, ch. 2003-402.

**Note.**--Former s. 39.4033.

**39.4085 Legislative findings and declaration of intent for goals for dependent children.--**The Legislature finds and declares that the design and delivery of child welfare services should be directed by the principle that the health and safety of children should be of paramount concern and, therefore, establishes the following goals for children in shelter or foster care:

- (1) To receive a copy of this act and have it fully explained to them when they are placed in the custody of the department.
- (2) To enjoy individual dignity, liberty, pursuit of happiness, and the protection of their civil and legal rights as persons in the custody of the state.
- (3) To have their privacy protected, have their personal belongings secure and transported with them, and, unless otherwise ordered by the court, have uncensored communication, including receiving and sending unopened communications and having access to a telephone.
- (4) To have personnel providing services who are sufficiently qualified and experienced to assess the risk children face prior to removal from their homes and to meet the needs of the children once they are in the custody of the department.
- (5) To remain in the custody of their parents or legal custodians unless and until there has been a determination by a qualified person exercising competent professional judgment that removal is necessary to protect their physical, mental, or emotional health or safety.
- (6) To have a full risk, health, educational, medical and psychological screening and, if needed, assessment and testing upon adjudication into foster care; and to have their photograph and fingerprints included in their case management file.
- (7) To be referred to and receive services, including necessary medical, emotional, psychological, psychiatric, and educational evaluations and treatment, as soon as practicable after identification of the need for such services by the screening and assessment process.
- (8) To be placed in a home with no more than one other child, unless they are part of a sibling group.
- (9) To be placed away from other children known to pose a threat of harm to them, either because of their own risk factors or those of the other child.
- (10) To be placed in a home where the shelter or foster caregiver is aware of and understands the child's history, needs, and risk factors.
- (11) To be the subject of a plan developed by the counselor and the shelter or foster caregiver to deal with identified behaviors that may present a risk to the child or others.
- (12) To be involved and incorporated, where appropriate, in the development of the case plan, to have a case plan which will address their specific needs, and to object to any of the provisions of the case plan.
- (13) To receive meaningful case management and planning that will quickly return the child to his or her family or move the child on to other forms of permanency.
- (14) To receive regular communication with a caseworker, at least once a month, which shall include meeting with the child alone and conferring with the shelter or foster caregiver.
- (15) To enjoy regular visitation, at least once a week, with their siblings unless the court orders otherwise.

- (16) To enjoy regular visitation with their parents, at least once a month, unless the court orders otherwise.
- (17) To receive a free and appropriate education; minimal disruption to their education and retention in their home school, if appropriate; referral to the child study team; all special educational services, including, where appropriate, the appointment of a parent surrogate; the sharing of all necessary information between the school board and the department, including information on attendance and educational progress.
- (18) To be able to raise grievances with the department over the care they are receiving from their caregivers, caseworkers, or other service providers.
- (19) To be heard by the court, if appropriate, at all review hearings.
- (20) To have a guardian ad litem appointed to represent, within reason, their best interests and, where appropriate, an attorney ad litem appointed to represent their legal interests; the guardian ad litem and attorney ad litem shall have immediate and unlimited access to the children they represent.
- (21) To have all their records available for review by their guardian ad litem and attorney ad litem if they deem such review necessary.
- (22) To organize as a group for purposes of ensuring that they receive the services and living conditions to which they are entitled and to provide support for one another while in the custody of the department.
- (23) To be afforded prompt access to all available state and federal programs, including, but not limited to: Early Periodic Screening, Diagnosis, and Testing (EPSDT) services, developmental services programs, Medicare and supplemental security income, Children's Medical Services, and programs for severely emotionally disturbed children.
- The provisions of this section establish goals and not rights. Nothing in this section shall be interpreted as requiring the delivery of any particular service or level of service in excess of existing appropriations. No person shall have a cause of action against the state or any of its subdivisions, agencies, contractors, subcontractors, or agents, based upon the adoption of or failure to provide adequate funding for the achievement of these goals by the Legislature. Nothing herein shall require the expenditure of funds to meet the goals established herein except funds specifically appropriated for such purpose.

**History.**--s. 5, ch. 99-206.

### **39.4086 Pilot program for attorneys ad litem for dependent children.--**

(1) **LEGISLATIVE INTENT.**--In furtherance of the goals set forth in s. 39.4085, it is the intent of the Legislature that children who are maintained in out-of-home care by court order under s. 39.402 receive competent legal representation.

(2) **RESPONSIBILITIES.**--

(a) The Office of the State Courts Administrator shall establish a 3-year pilot Attorney Ad Litem Program in the Ninth Judicial Circuit.

(b) The Office of the State Courts Administrator shall establish the pilot program in the Ninth Judicial Circuit by October 1, 2000. The Ninth Judicial Circuit may contract with a private or public entity in the Ninth Judicial Circuit to establish the pilot program. The private or public entity must have appropriate expertise in representing the rights of children taken into custody by the Department of Children and Family Services. The Office of the State Courts Administrator shall identify measurable outcomes, including, but not limited to, the impact of counsel on child safety, improvements in the provision of appropriate services, and any reduction in the length of stay of children in state care. The pilot program shall

be established and operate independently of any other state agency responsible for the care of children taken into custody.

(c) The Ninth Judicial Circuit shall designate an attorney within the Ninth Judicial Circuit to conduct the administrative oversight of the pilot program. The program administrator must be a member in good standing of The Florida Bar and must have 5 or more years of experience in the area of child advocacy, child welfare, or juvenile law. The administrative oversight of the pilot program is subject to supervision by the Ninth Judicial Circuit.

(d) The Office of the State Courts Administrator in conjunction with the pilot program shall develop a training program for attorneys ad litem which includes, but need not be limited to, appropriate standards of practice for attorneys who represent children.

(e) Within funds specifically appropriated for this pilot program, the Office of the State Courts Administrator in conjunction with the pilot program shall design an appropriate attorney ad litem program and may establish the number of attorneys needed to serve as attorneys ad litem and may employ attorneys and other personnel. An attorney ad litem must be a member in good standing of The Florida Bar and may not serve as an attorney ad litem until he or she has completed the training program.

(f) The court shall appoint the entity responsible for representation of children in the Ninth Judicial Circuit under the pilot program who are continued in out-of-home care at the shelter hearing conducted under s. 39.402 if the court deems attorney ad litem representation necessary. At any time following the shelter hearing, the court may appoint an attorney ad litem upon the motion of any party, or upon the court's own motion if an attorney ad litem has not yet been appointed and the court deems such representation necessary. The attorney ad litem's representation shall be limited to proceedings initiated under this chapter only. The court must appoint a guardian ad litem pursuant to s. 39.822 for all children who have been appointed an attorney ad litem. Upon this action by the court, the department shall provide to the administrator, at a minimum, the name of the child, the location and placement of the child, the name of the department's authorized agent and contact information, copies of all notices sent to the parent or legal custodian of the child, and other information or records concerning the child.

(g) Upon the court's direction, the pilot program administrator shall assign an attorney ad litem to represent the child. Once assigned, the attorney ad litem shall represent the child's wishes for purposes of proceedings under this chapter as long as the child's wishes are consistent with the safety and well-being of the child. The child's attorney must in all circumstances fulfill the same duties of advocacy, loyalty, confidentiality, and competent representation which are due an adult client. The court must approve any action by the attorney ad litem restricting access to the child by the guardian ad litem or by any other party. The attorney ad litem shall represent the child until the program is discharged by order of the court because permanency has been achieved or the court believes that the attorney ad litem is no longer necessary.

(h) The Office of the State Courts Administrator shall conduct research and gather statistical information to evaluate the establishment, operation, and impact of the pilot program in meeting the legal needs of dependent children. In assessing the effects of the pilot program, including achievement of outcomes identified under paragraph (b), the evaluation must include a comparison of children within the Ninth Judicial Circuit who are appointed an attorney ad litem with those who are not. The office shall submit a report to the Legislature and the Governor by October 1, 2001, and by October 1, 2002, regarding its findings. The office shall submit a final report by October 1, 2003, which must include an evaluation of the pilot program; findings on the feasibility of a statewide program; and recommendations, if any, for locating, establishing, and operating a statewide program.

(3) **STANDARDS.**--The Supreme Court is requested, by October 1, 2000, to adopt rules of juvenile procedure which include the duties, responsibilities, and conduct of an attorney ad litem. The Office of the State Courts Administrator, in consultation with the Dependency Court Improvement Committee of the Supreme Court, shall develop implementation guidelines for the attorney ad litem pilot program.

(4) FUNDING.--The Office of the State Courts Administrator shall conduct the pilot program subject to the specific appropriation of funds.

(5) The provisions in this section of the act shall take effect October 1, 2000.

**History.**--s. 88, ch. 2000-139; s. 1, ch. 2001-370.

**PART VI  
PETITION, ARRAIGNMENT, ADJUDICATION,  
AND DISPOSITION**

39.501	Petition for dependency.
39.502	Notice, process, and service.
39.503	Identity or location of parent unknown; special procedures.
39.504	Injunction pending disposition of petition; penalty.
39.505	No answer required.
39.506	Arraignment hearings.
39.507	Adjudicatory hearings; orders of adjudication.
39.5075	Citizenship or residency status for immigrant children who are dependents.
39.5085	Relative Caregiver Program.
39.509	Grandparents rights.
39.510	Appeal.

**39.501 Petition for dependency.--**

(1) All proceedings seeking an adjudication that a child is dependent shall be initiated by the filing of a petition by an attorney for the department, or any other person who has knowledge of the facts alleged or is informed of them and believes that they are true.

(2) The purpose of a petition seeking the adjudication of a child as a dependent child is the protection of the child and not the punishment of the person creating the condition of dependency.

(3)(a) The petition shall be in writing, shall identify and list all parents, if known, and all current legal custodians of the child, and shall be signed by the petitioner under oath stating the petitioner's good faith in filing the petition. When the petition is filed by the department, it shall be signed by an attorney for the department.

(b) The form of the petition and its contents shall be determined by rules of juvenile procedure adopted by the Supreme Court.

(c) The petition must specifically set forth the acts or omissions upon which the petition is based and the identity of the person or persons alleged to have committed the acts or omissions, if known. The petition need not contain allegations of acts or omissions by both parents.

(d) The petitioner must state in the petition, if known, whether:

1. A parent or legal custodian named in the petition has previously unsuccessfully participated in voluntary services offered by the department;

2. A parent or legal custodian named in the petition has participated in mediation and whether a mediation agreement exists;

3. A parent or legal custodian has rejected the voluntary services offered by the department; or

4. The department has determined that voluntary services are not appropriate for the parent or legal custodian and the reasons for such determination.

(4) When a child has been placed in shelter status by order of the court, a petition alleging dependency must be filed within 21 days after the shelter hearing, or within 7 days after any party files a demand for the early filing of a dependency petition, whichever comes first. In all other cases, the petition must be filed within a reasonable time after the date the child was referred to protective investigation. The child's parent or legal custodian must be served with a copy of the petition at least 72 hours before the arraignment hearing.



(5) A petition for termination of parental rights may be filed at any time.

**History.**--s. 20, ch. 78-414; s. 7, ch. 84-311; s. 1, ch. 85-338; s. 7, ch. 87-289; s. 14, ch. 88-337; s. 6, ch. 90-306; s. 5, ch. 92-170; s. 8, ch. 94-164; s. 62, ch. 98-403; s. 25, ch. 99-193.

**Note.**--Former s. 39.404.

### **39.502 Notice, process, and service.--**

(1) Unless parental rights have been terminated, all parents must be notified of all proceedings or hearings involving the child. Notice in cases involving shelter hearings and hearings resulting from medical emergencies must be that most likely to result in actual notice to the parents. In all other dependency proceedings, notice must be provided in accordance with subsections (4)-(9).

(2) Personal appearance of any person in a hearing before the court obviates the necessity of serving process on that person.

(3) Upon the filing of a petition containing allegations of facts which, if true, would establish that the child is a dependent child, and upon the request of the petitioner, the clerk or deputy clerk shall issue a summons.

(4) The summons shall require the person on whom it is served to appear for a hearing at a time and place specified, not less than 72 hours after service of the summons. A copy of the petition shall be attached to the summons.

(5) The summons shall be directed to, and shall be served upon, all parties other than the petitioner.

(6) It is the duty of the petitioner or moving party to notify all participants and parties known to the petitioner or moving party of all hearings subsequent to the initial hearing unless notice is contained in prior court orders and these orders were provided to the participant or party. Proof of notice or provision of orders may be provided by certified mail with a signed return receipt.

(7) Service of the summons and service of pleadings, papers, and notices subsequent to the summons on persons outside this state must be made pursuant to s. 61.509.

(8) It is not necessary to the validity of a proceeding covered by this part that the parents be present if their identity or residence is unknown after a diligent search has been made, but in this event the petitioner shall file an affidavit of diligent search prepared by the person who made the search and inquiry, and the court may appoint a guardian ad litem for the child.

(9) When an affidavit of diligent search has been filed under subsection (8), the petitioner shall continue to search for and attempt to serve the person sought until excused from further search by the court. The petitioner shall report on the results of the search at each court hearing until the person is identified or located or further search is excused by the court.

(10) Service by publication shall not be required for dependency hearings and the failure to serve a party or give notice to a participant shall not affect the validity of an order of adjudication or disposition if the court finds that the petitioner has completed a diligent search for that party.

(11) Upon the application of a party or the petitioner, the clerk or deputy clerk shall issue, and the court on its own motion may issue, subpoenas requiring attendance and testimony of witnesses and production of records, documents, and other tangible objects at any hearing.

(12) All process and orders issued by the court shall be served or executed as other process and orders of the circuit court and, in addition, may be served or executed by authorized agents of the department or the guardian ad litem.

(13) Subpoenas may be served within the state by any person over 18 years of age who is not a party to the proceeding and, in addition, may be served by authorized agents of the department or the guardian ad litem.

(14) No fee shall be paid for service of any process or other papers by an agent of the department or the guardian ad litem. If any process, orders, or any other papers are served or executed by any sheriff, the sheriff's fees shall be paid by the county.

(15) A party who is identified as a person with mental illness or with a developmental disability must be informed by the court of the availability of advocacy services through the department, the Association for Retarded Citizens, or other appropriate mental health or developmental disability advocacy groups and encouraged to seek such services.

(16) If the party to whom an order is directed is present or represented at the final hearing, service of the order is not required.

(17) The parent or legal custodian of the child, the attorney for the department, the guardian ad litem, the foster or preadoptive parents, and all other parties and participants shall be given reasonable notice of all proceedings and hearings provided for under this part. All foster or preadoptive parents must be provided with at least 72 hours' notice, verbally or in writing, of all proceedings or hearings relating to children in their care or children they are seeking to adopt to ensure the ability to provide input to the court.

(18) In all proceedings under this part, the court shall provide to the parent or legal custodian of the child, at the conclusion of any hearing, a written notice containing the date of the next scheduled hearing. The court shall also include the date of the next hearing in any order issued by the court.

**History.**--s. 20, ch. 78-414; s. 2, ch. 83-255; s. 6, ch. 92-170; s. 9, ch. 94-164; s. 4, ch. 97-276; s. 63, ch. 98-403; s. 26, ch. 99-193; s. 20, ch. 2000-139; s. 1, ch. 2002-65. As of June 18, 2008, pending signature by the Governor.

**Note.**--Former s. 39.405.

### **39.503 Identity or location of parent unknown; special procedures.--**

(1) If the identity or location of a parent is unknown and a petition for dependency or shelter is filed, the court shall conduct the following inquiry of the parent or legal custodian who is available, or, if no parent or legal custodian is available, of any relative or custodian of the child who is present at the hearing and likely to have the information:

(a) Whether the mother of the child was married at the probable time of conception of the child or at the time of birth of the child.

(b) Whether the mother was cohabiting with a male at the probable time of conception of the child.

(c) Whether the mother has received payments or promises of support with respect to the child or because of her pregnancy from a man who claims to be the father.

(d) Whether the mother has named any man as the father on the birth certificate of the child or in connection with applying for or receiving public assistance.

(e) Whether any man has acknowledged or claimed paternity of the child in a jurisdiction in which the mother resided at the time of or since conception of the child, or in which the child has resided or resides.

(2) The information required in subsection (1) may be supplied to the court or the department in the form of

a sworn affidavit by a person having personal knowledge of the facts.

(3) If the inquiry under subsection (1) identifies any person as a parent or prospective parent, the court shall require notice of the hearing to be provided to that person.

(4) If the inquiry under subsection (1) fails to identify any person as a parent or prospective parent, the court shall so find and may proceed without further notice.

(5) If the inquiry under subsection (1) identifies a parent or prospective parent, and that person's location is unknown, the court shall direct the petitioner to conduct a diligent search for that person before scheduling a disposition hearing regarding the dependency of the child unless the court finds that the best interest of the child requires proceeding without notice to the person whose location is unknown.

(6) The diligent search required by subsection (5) must include, at a minimum, inquiries of all relatives of the parent or prospective parent made known to the petitioner, inquiries of all offices of program areas of the department likely to have information about the parent or prospective parent, inquiries of other state and federal agencies likely to have information about the parent or prospective parent, inquiries of appropriate utility and postal providers, a thorough search of at least one electronic database specifically designed for locating persons, and inquiries of appropriate law enforcement agencies. Pursuant to s. 453 of the Social Security Act, 42 U.S.C. s. 653(c)(4), the department, as the state agency administering Titles IV-B and IV-E of the act, shall be provided access to the federal and state parent locator service for diligent search activities.

(7) Any agency contacted by a petitioner with a request for information pursuant to subsection (6) shall release the requested information to the petitioner without the necessity of a subpoena or court order.

(8) If the inquiry and diligent search identifies a prospective parent, that person must be given the opportunity to become a party to the proceedings by completing a sworn affidavit of parenthood and filing it with the court or the department. A prospective parent who files a sworn affidavit of parenthood while the child is a dependent child but no later than at the time of or prior to the adjudicatory hearing in any termination of parental rights proceeding for the child shall be considered a parent for all purposes under this section unless the other parent contests the determination of parenthood. If the known parent contests the recognition of the prospective parent as a parent, the prospective parent shall not be recognized as a parent until proceedings under chapter 742 have been concluded. However, the prospective parent shall continue to receive notice of hearings as a participant pending results of the chapter 742 proceedings.

**History.**--s. 10, ch. 94-164; s. 5, ch. 97-276; s. 64, ch. 98-403; s. 18, ch. 99-2; s. 27, ch. 99-193; s. 21, ch. 2000-139. As of June 18, 2008, pending signature by the Governor.

**Note.**--Former s. 39.4051.

### **39.504 Injunction pending disposition of petition; penalty.--**

(1)(a) At any time after a protective investigation has been initiated pursuant to part III of this chapter ~~When a petition for shelter placement or a petition for dependency has been filed or when a child has been taken into custody and reasonable cause, as defined in paragraph (b), exists~~, the court, upon the request of the department, a law enforcement officer, the state attorney, or other responsible person, or upon its own motion, may, if there is reasonable cause, shall have the authority to issue an injunction to prevent any act of child abuse or any unlawful sexual offense involving a child.

~~(b) Reasonable cause for the issuance of an injunction exists if there is evidence of child abuse or an unlawful sexual offense involving a child or if there is a reasonable likelihood of such abuse or offense occurring based upon a recent overt act or failure to act.~~

(2) Notice shall be provided to the parties as set forth in the Florida Rules of Juvenile Procedure, unless the child is reported to be in imminent danger, in which case the court may issue an injunction immediately. A judge may issue an emergency injunction pursuant to this section without notice ~~if at times when~~ the court is closed for the transaction of judicial business. ~~If When such~~ an immediate injunction is issued, the court ~~must shall~~ hold a hearing on the next day of judicial business ~~either~~ to dissolve the injunction or to continue or modify it in accordance with ~~the other provisions of~~ this section.

(3)(a) ~~If In every instance in which~~ an injunction is issued under this section, the primary purpose of the injunction ~~must be shall be primarily~~ to protect and promote the best interests of the child, taking the preservation of the child's immediate family into consideration. ~~The effective period of the injunction shall be determined by the court, except that the injunction will expire at the time of the disposition of the petition for shelter placement or dependency.~~

~~(a)(b)~~ The injunction shall apply to the alleged or actual offender in a case of child abuse or acts of domestic violence ~~an unlawful sexual offense involving a child~~. The conditions of the injunction shall be determined by the court, which conditions may include ordering the alleged or actual offender to:

1. Refrain from further abuse or acts of domestic violence ~~unlawful sexual activity involving a child~~.
2. Participate in a specialized treatment program.
3. Limit contact or communication with the child victim, other children in the home, or any other child.
4. Refrain from contacting the child at home, school, work, or wherever the child may be found.
5. Have limited or supervised visitation with the child.
6. Pay temporary support for the child or other family members; the costs of medical, psychiatric, and psychological treatment for the child ~~victim~~ incurred as a result of the offenses; and similar costs for other family members.

7. Vacate the home in which the child resides.

~~(b)(e)~~ If the intent of the injunction is to protect the child from domestic violence, the conditions may also include:

1. Awarding the exclusive use and possession of the dwelling to the caregiver or excluding the alleged or actual offender from the residence of the caregiver.
2. Awarding temporary custody of the child to the caregiver.
3. Establishing temporary support for the child. ~~At any time prior to the disposition of the petition, the alleged or actual offender may offer the court evidence of changed circumstances as a ground to dissolve or modify the injunction.~~

This paragraph does not preclude the adult victim of domestic violence from seeking protection under s. 741.30.

(c) The terms of the injunction shall remain in effect until modified or dissolved by the court. The petitioner, respondent, or caregiver may move at any time to modify or dissolve the injunction. The injunction is valid and enforceable in all counties in the state.

(4) Service of process on the respondent shall be carried out pursuant to s. 741.30. The department shall deliver a copy of any injunction issued pursuant to this section shall be delivered to the protected party, or to a parent, or caregiver, or individual acting in the place of a parent who is not the respondent, and to any law enforcement agency having jurisdiction to enforce such injunction. Law enforcement officers may exercise their arrest powers as provided in s. 901.15(6) to enforce the terms of the injunction. Upon delivery of the injunction to the appropriate law enforcement agency, the agency shall have the duty and responsibility to enforce the injunction.

(5) Any person who fails to comply with an injunction issued pursuant to this section commits is guilty of a

misdeemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

**History.**--s. 1, ch. 84-226; s. 1, ch. 91-224; s. 228, ch. 95-147; s. 10, ch. 95-228; s. 65, ch. 98-403; s. 28, ch. 99-193. As of June 18, 2008, pending signature by the Governor.

**Note.**--Former s. 39.4055.

**39.505 No answer required.**--No answer to the petition or any other pleading need be filed by any child, parent, or legal custodian, but any matters which might be set forth in an answer or other pleading may be pleaded orally before the court or filed in writing as any such person may choose. Notwithstanding the filing of an answer or any pleading, the respondent shall, prior to an adjudicatory hearing, be advised by the court of the right to counsel and shall be given an opportunity to deny the allegations in the petition for dependency or to enter a plea to allegations in the petition before the court.

**History.**--s. 20, ch. 78-414; s. 229, ch. 95-147; s. 66, ch. 98-403.

**Note.**--Former s. 39.406.

### **39.506 Arraignment hearings.**--

(1) When a child has been sheltered by order of the court, an arraignment hearing must be held no later than 28 days after the shelter hearing, or within 7 days after the date of filing of the dependency petition if a demand for early filing has been made by any party, for the parent or legal custodian to admit, deny, or consent to findings of dependency alleged in the petition. If the parent or legal custodian admits or consents to the findings in the petition, the court shall conduct a disposition hearing within 15 days after the arraignment hearing. However, if the parent or legal custodian denies any of the allegations of the petition, the court shall hold an adjudicatory hearing within 30 days after the date of the arraignment hearing unless a continuance is granted pursuant to this chapter.

(2) When a child is in the custody of the parent or legal custodian, upon the filing of a petition the clerk shall set a date for an arraignment hearing within a reasonable time after the date of the filing. If the parent or legal custodian admits or consents to an adjudication, the court shall conduct a disposition hearing within 15 days after the arraignment hearing. However, if the parent or legal custodian denies any of the allegations of dependency, the court shall hold an adjudicatory hearing within 30 days after the date of the arraignment hearing.

(3) Failure of a person served with notice to personally appear at the arraignment hearing constitutes the person's consent to a dependency adjudication. The document containing the notice to respond or appear must contain, in type at least as large as the balance of the document, the following or substantially similar language: "FAILURE TO PERSONALLY APPEAR AT THE ARRAIGNMENT HEARING CONSTITUTES CONSENT TO THE ADJUDICATION OF THIS CHILD (OR CHILDREN) AS A DEPENDENT CHILD (OR CHILDREN) AND MAY ULTIMATELY RESULT IN LOSS OF CUSTODY OF THIS CHILD (OR CHILDREN)." If a person appears for the arraignment hearing and the court orders that person to personally appear at the adjudicatory hearing for dependency, stating the date, time, and place of the adjudicatory hearing, then that person's failure to appear for the scheduled adjudicatory hearing constitutes consent to a dependency adjudication.

(4) At the arraignment hearing, each party shall provide to the court a permanent mailing address. The court shall advise each party that this address will be used by the court and the petitioner for notice purposes unless and until the party notifies the court and the petitioner in writing of a new mailing address.

(5) If at the arraignment hearing the parent or legal custodian consents or admits to the allegations in the petition, the court shall proceed to hold a disposition hearing no more than 15 days after the date of the arraignment hearing unless a continuance is necessary.

(6) At any arraignment hearing, if the child is in an out-of-home placement, the court shall order visitation rights absent a clear and convincing showing that visitation is not in the best interest of the child. Any order for visitation or other contact must conform to the provisions of s. 39.0139.

(7) The court shall review whether the department has made a reasonable effort to prevent or eliminate the need for removal or continued removal of the child from the home. If the court determines that the department has not made such an effort, the court shall order the department to provide appropriate and available services to assure the protection of the child in the home when such services are necessary for the child's physical, mental, or emotional health and safety.

(8) At the arraignment hearing, the court shall review the necessity for the child's continued placement in the shelter. The court shall also make a written determination regarding the child's continued placement in shelter within 24 hours after any violation of the time requirements for the filing of a petition or prior to the court's granting any continuance as specified in subsection (5).

(9) At the conclusion of the arraignment hearing, all parties shall be notified in writing by the court of the date, time, and location for the next scheduled hearing.

**History.**--s. 9, ch. 84-311; s. 12, ch. 94-164; s. 10, ch. 98-280; s. 67, ch. 98-403; s. 29, ch. 99-193; s.3, ch. 2002-216; s. 3, ch. 2007-109.

**Note.**--Former s. 39.408(1).

### **39.507 Adjudicatory hearings; orders of adjudication.--**

(1)(a) The adjudicatory hearing shall be held as soon as practicable after the petition for dependency is filed and in accordance with the Florida Rules of Juvenile Procedure, but no later than 30 days after the arraignment.

(b) Adjudicatory hearings shall be conducted by the judge without a jury, applying the rules of evidence in use in civil cases and adjourning the hearings from time to time as necessary. In a hearing on a petition in which it is alleged that the child is dependent, a preponderance of evidence will be required to establish the state of dependency. Any evidence presented in the dependency hearing which was obtained as the result of an anonymous call must be independently corroborated. In no instance shall allegations made in an anonymous report of abuse, abandonment, or neglect be sufficient to support an adjudication of dependency in the absence of corroborating evidence.

(2) All hearings, except as provided in this section, shall be open to the public, and a person may not be excluded except on special order of the judge, who may close any hearing to the public upon determining that the public interest or the welfare of the child is best served by so doing. The parents or legal custodians shall be allowed to obtain discovery pursuant to the Florida Rules of Juvenile Procedure, provided such discovery does not violate the provisions of s. 39.202. Hearings involving more than one child may be held simultaneously when the children involved are related to each other or were involved in the same case. The child and the parents, caregivers, or legal custodians of the child may be examined separately and apart from each other.

(3) Except as otherwise specifically provided, nothing in this section prohibits the publication of the proceedings in a hearing.

(4) If the court finds at the adjudicatory hearing that the child named in a petition is not dependent, it shall enter an order so finding and dismissing the case.

(5) If the court finds that the child named in the petition is dependent, but finds that no action other than supervision in the child's home is required, it may enter an order briefly stating the facts upon which its

finding is based, but withholding an order of adjudication and placing the child's home under the supervision of the department. If the court later finds that the parents of the child have not complied with the conditions of supervision imposed, the court may, after a hearing to establish the noncompliance, but without further evidence of the state of dependency, enter an order of adjudication and shall thereafter have full authority under this chapter to provide for the child as adjudicated. If the child is to remain in an out-of-home placement by order of the court, the court must adjudicate the child dependent.

(6) If the court finds that the child named in a petition is dependent, but chooses not to withhold adjudication or is prohibited from withholding adjudication, it shall incorporate that finding in an order of adjudication entered in the case, briefly stating the facts upon which the finding is made, and the court shall thereafter have full authority under this chapter to provide for the child as adjudicated.

(7)(a) For as long as a court maintains jurisdiction over a dependency case, only one order adjudicating each child in the case dependent shall be entered. This order establishes the legal status of the child for purposes of proceedings under this chapter and may be based on the conduct of one parent, both parents, or a legal custodian.

(b) However, the court must determine whether each parent or legal custodian identified in the case abused, abandoned, or neglected the child in a subsequent evidentiary hearing. If the evidentiary hearing is conducted subsequent to the adjudication of the child, the court shall supplement the adjudicatory order, disposition order, and the case plan, as necessary. With the exception of proceedings pursuant to s. 39.811, the child's dependency status may not be retried or readjudicated.

(c) If a court adjudicates a child dependent and the child is in out-of-home care, the court shall inquire of the parent or parents whether the parents have relatives who might be considered as a placement for the child. The court shall advise the parents that, if the parents fail to substantially comply with the case plan, their parental rights may be terminated and that the child's out-of-home placement may become permanent. The parent or parents shall provide to the court and all parties identification and location information of the relatives.

(8) At the conclusion of the adjudicatory hearing, if the child named in the petition is found dependent, the court shall schedule the disposition hearing within 30 days after the last day of the adjudicatory hearing. All parties shall be notified in writing at the conclusion of the adjudicatory hearing by the clerk of the court of the date, time, and location of the disposition hearing.

(9) An order of adjudication by a court that a child is dependent shall not be deemed a conviction, nor shall the child be deemed to have been found guilty or to be a criminal by reason of that adjudication, nor shall that adjudication operate to impose upon the child any of the civil disabilities ordinarily imposed by or resulting from conviction or disqualify or prejudice the child in any civil service application or appointment.

(10) After an adjudication of dependency, or a finding of dependency where adjudication is withheld, the court may order a person who has custody or is requesting custody of the child to submit to a substance abuse assessment or evaluation. The assessment or evaluation must be administered by a qualified professional, as defined in s. 397.311. The court may also require such person to participate in and comply with treatment and services identified as necessary, including, when appropriate and available, participation in and compliance with a treatment-based drug court program established under s. 397.334. In addition to supervision by the department, the court, including the treatment-based drug court program, may oversee the progress and compliance with treatment by a person who has custody or is requesting custody of the child. The court may impose appropriate available sanctions for noncompliance upon a person who has custody or is requesting custody of the child or make a finding of noncompliance for consideration in

determining whether an alternative placement of the child is in the child's best interests. Any order entered under this subsection may be made only upon good cause shown. This subsection does not authorize placement of a child with a person seeking custody, other than the parent or legal custodian, who requires substance abuse treatment.

**History.**--s. 20, ch. 78-414; s. 9, ch. 84-311; s. 7, ch. 87-133; s. 12, ch. 94-164; s. 231, ch. 95-147; s. 12, ch. 95-228; s. 68, ch. 98-403; s. 30, ch. 99-193; s. 11, ch. 2006-86; s. 4, ch. 2006-97. As of June 18, 2008, pending signature by the Governor.

**Note.**--Former ss. 39.408(2), 39.409.

### **39.5075 Citizenship or residency status for immigrant child who are dependents.--**

(1) As used in this section, the term:

(a) "Eligible for long-term foster care" means that reunification with a child's parent is not an appropriate option for permanency for the child.

(b) "May be eligible for special immigrant juvenile status under federal law" means:

1. The child has been found dependent based on allegations of abuse, neglect, or abandonment;
2. The child is eligible for long-term foster care;
3. It is in the best interest of the child to remain in the United States; and
4. The child remains under the jurisdiction of the juvenile court.

(2) Whenever a child is adjudicated dependent, the department or community-based care provider shall determine whether the child is a citizen of the United States. The department or community-based care provider shall report to the court in its first judicial review concerning the child whether the child is a citizen of the United States and, if not, the steps that have been taken to address the citizenship or residency status of the child. Services to children alleged to have been abused, neglected, or abandoned must be provided without regard to the citizenship of the child except where alienage or immigration status is explicitly set forth as a statutory condition of coverage or eligibility.

(3) If the child is not a citizen, the department or community-based care provider shall include in the case plan developed for the child a recommendation as to whether the permanency plan for the child will include remaining in the United States. If the case plan calls for the child to remain in the United States, and the child is in need of documentation to effectuate this plan, the department or community-based care provider must evaluate the child's case to determine whether the child may be eligible for special immigrant juvenile status under federal law.

(4) If the child may be eligible for special immigrant juvenile status, the department or community-based care provider shall petition the court for an order finding that the child meets the criteria for special immigrant juvenile status. The ruling of the court on this petition must include findings as to the express wishes of the child, if the child is able to express such wishes, and any other circumstances that would affect whether the best interests of the child would be served by applying for special immigrant juvenile status.

(5) No later than 60 days after an order finding that the child is eligible for special immigrant juvenile status and that applying for this status is in the best interest of the child, the department or community-based care provider shall, directly or through volunteer or contracted legal services, file a petition for special immigrant juvenile status and the application for adjustment of status to the appropriate federal authorities on behalf of the child.

(6) If a petition and application have been filed and the petition and application have not been granted by the time the child reaches 18 years of age, the court may retain jurisdiction over the dependency case solely for the purpose of allowing the continued consideration of the petition and application by federal authorities. Review hearings for the child shall be set solely for the purpose of determining the status of the petition and



application. The court's jurisdiction terminates upon the final decision of the federal authorities. Retention of jurisdiction in this instance does not affect the services available to a young adult under s. 409.1451. The court may not retain jurisdiction of the case after the immigrant child's 22<sup>nd</sup> birthday.

(7) In any judicial review report provided to the court for a child for whom the court has granted the order described in subsection (4), the court shall be advised of the status of the petition and application process concerning the child.

(8) The department shall adopt rules to administer this section.

*History.--s. 1, ch. 2005-245.*

### **39.5085 Relative Caregiver Program.--**

(1) It is the intent of the Legislature in enacting this section to:

(a) Recognize family relationships in which a grandparent or other relative is the head of a household that includes a child otherwise at risk of foster care placement.

(b) Enhance family preservation and stability by recognizing that most children in such placements with grandparents and other relatives do not need intensive supervision of the placement by the courts or by the department.

(c) Recognize that permanency in the best interests of the child can be achieved through a variety of permanency options, including permanent guardianship under s. 39.6221 if the guardian is a relative, by permanent placement with a fit and willing relative under s. 39.6231, by a relative, guardianship under chapter 744, or adoption, by providing additional placement options and incentives that will achieve permanency and stability for many children who are otherwise at risk of foster care placement because of abuse, abandonment, or neglect, but who may successfully be able to be placed by the dependency court in the care of such relatives.

(d) Reserve the limited casework and supervisory resources of the courts and the department for those cases in which children do not have the option for safe, stable care within the family.

(2)(a) The Department of Children and Family Services shall establish and operate the Relative Caregiver Program pursuant to eligibility guidelines established in this section as further implemented by rule of the department. The Relative Caregiver Program shall, within the limits of available funding, provide financial assistance to:

1. Relatives who are within the fifth degree by blood or marriage to the parent or stepparent of a child and who are caring full-time for that dependent child in the role of substitute parent as a result of a court's determination of child abuse, neglect, or abandonment and subsequent placement with the relative under this chapter.

2. Relatives who are within the fifth degree by blood or marriage to the parent or stepparent of a child and who are caring full-time for that dependent child, and a dependent half-brother or half-sister of that dependent child, in the role of substitute parent as a result of a court's determination of child abuse, neglect, or abandonment and subsequent placement with the relative under this chapter. The placement may be court-ordered temporary legal custody to the relative under protective supervision of the department pursuant to s. 39.521(1)(b)3., or court-ordered placement in the home of a relative as a permanency option under s. 39.6221 or s. 39.6231 or under former 39.622 if the placement was made before July 1, 2006. The Relative Caregiver Program shall offer financial assistance to caregivers who are relatives and who would be unable to serve in that capacity without the relative caregiver payment because of financial burden, thus exposing the child to the trauma of placement in a shelter or in foster care.

(b) Caregivers who are relatives and who receive assistance under this section must be capable, as determined by a home study, of providing a physically safe environment and a stable, supportive home for the children under their care, and must assure that the children's well-being is met, including, but not limited

to, the provision of immunizations, education, and mental health services as needed.

(c) Relatives who qualify for and participate in the Relative Caregiver Program are not required to meet foster care licensing requirements under s. 409.175.

(d) Relatives who are caring for children placed with them by the court pursuant to this chapter shall receive a special monthly relative caregiver benefit established by rule of the department. The amount of the special benefit payment shall be based on the child's age within a payment schedule established by rule of the department and subject to availability of funding. The statewide average monthly rate for children judicially placed with relatives who are not licensed as foster homes may not exceed 82 percent of the statewide average foster care rate, nor may the cost of providing the assistance described in this section to any relative caregiver exceed the cost of providing out-of-home care in emergency shelter or foster care.

(e) Children receiving cash benefits under this section are not eligible to simultaneously receive WAGES cash benefits under chapter 414.

(f) Within available funding, the Relative Caregiver Program shall provide relative caregivers with family support and preservation services, flexible funds in accordance with s. 409.165, subsidized child care, and other available services in order to support the child's safety, growth, and healthy development. Children living with relative caregivers who are receiving assistance under this section shall be eligible for Medicaid coverage.

(g) The department may use appropriate available state, federal, and private funds to operate the Relative Caregiver Program.

**History.**--s. 1, ch. 98-78; s. 70, ch. 98-403; s. 32, ch. 99-193; s. 24, ch. 2000-139; s. 1, ch. 2002-38; s. 12, ch. 2006-86; s. 2, ch. 2007-5.

**39.509 Grandparents rights.**--Notwithstanding any other provision of law, a maternal or paternal grandparent as well as a stepgrandparent is entitled to reasonable visitation with his or her grandchild who has been adjudicated a dependent child and taken from the physical custody of the parent unless the court finds that such visitation is not in the best interest of the child or that such visitation would interfere with the goals of the case plan. Reasonable visitation may be unsupervised and, where appropriate and feasible, may be frequent and continuing. Any order for visitation or other contact must conform to the provisions of s. 39.0139.

(1) Grandparent visitation may take place in the home of the grandparent unless there is a compelling reason for denying such a visitation. The department's caseworker shall arrange the visitation to which a grandparent is entitled pursuant to this section. The state shall not charge a fee for any costs associated with arranging the visitation. However, the grandparent shall pay for the child's cost of transportation when the visitation is to take place in the grandparent's home. The caseworker shall document the reasons for any decision to restrict a grandparent's visitation.

(2) A grandparent entitled to visitation pursuant to this section shall not be restricted from appropriate displays of affection to the child, such as appropriately hugging or kissing his or her grandchild. Gifts, cards, and letters from the grandparent and other family members shall not be denied to a child who has been adjudicated a dependent child.

(3) Any attempt by a grandparent to facilitate a meeting between the child who has been adjudicated a dependent child and the child's parent or legal custodian, or any other person in violation of a court order shall automatically terminate future visitation rights of the grandparent.

(4) When the child has been returned to the physical custody of his or her parent, the visitation rights granted pursuant to this section shall terminate.

(5) The termination of parental rights does not affect the rights of grandparents unless the court finds that

such visitation is not in the best interest of the child or that such visitation would interfere with the goals of permanency planning for the child.

(6) In determining whether grandparental visitation is not in the child's best interest, consideration may be given to the following:

(a) The finding of guilt, regardless of adjudication, or entry or plea of guilty or nolo contendere to charges under the following statutes, or similar statutes of other jurisdictions: s. 787.04, relating to removing minors from the state or concealing minors contrary to court order; s. 794.011, relating to sexual battery; s. 798.02, relating to lewd and lascivious behavior; chapter 800, relating to lewdness and indecent exposure; s. 826.04, relating to incest; or chapter 827, relating to the abuse of children.

(b) The designation by a court as a sexual predator as defined in s. 775.21 or a substantially similar designation under laws of another jurisdiction.

(c) A report of abuse, abandonment, or neglect under ss. 415.101-415.113 or this chapter and the outcome of the investigation concerning such report.

**History.**--s. 9, ch. 90-273; s. 72, ch. 91-45; s. 7, ch. 93-156; s. 6, ch. 97-95; s. 71, ch. 98-403; s. 33, ch. 99-193; s. 4, ch. 2007-109.

**Note.**--Former s. 39.4105.

### **39.510 Appeal.--**

(1) Any party to the proceeding who is affected by an order of the court, or the department may appeal to the appropriate district court of appeal within the time and in the manner prescribed by the Florida Rules of Appellate Procedure. Appointed counsel shall be compensated as provided in this chapter.

(2) When the notice of appeal is filed in the circuit court by a party other than the department, an attorney for the department shall represent the state and the court upon appeal and shall be notified of the appeal by the clerk.

(3) The taking of an appeal shall not operate as a supersedeas in any case unless pursuant to an order of the court, except that a permanent order of commitment to a licensed child-placing agency or the department for subsequent adoption shall be suspended while the appeal is pending, but the child shall continue in custody under the order until the appeal is decided.

(4) The case on appeal shall be docketed, and any papers filed in the appellate court shall be entitled, with the initials but not the name of the child and the court case number, and the papers shall remain sealed in the office of the clerk of the appellate court when not in use by the appellate court and shall not be open to public inspection. The decision of the appellate court shall be likewise entitled and shall refer to the child only by initials and court case number.

(5) The original order of the appellate court, with all papers filed in the case on appeal, shall remain in the office of the clerk of the appellate court, sealed and not open to inspection except by order of the appellate court. The clerk of the appellate court shall return to the circuit court all papers transmitted to the appellate court from the circuit court, together with a certified copy of the order of the appellate court.

**History.**--s. 20, ch. 78-414; s. 11, ch. 84-311; s. 9, ch. 90-306; s. 8, ch. 92-170; s. 72, ch. 98-403; s. 34, ch. 99-193.

**Note.**--Former s. 39.413.

**PART VII  
DISPOSITION; POSTDISPOSITION  
CHANGE OF CUSTODY**

- 39.521 Disposition hearings; powers of disposition.  
39.522 Postdisposition change of custody.  
39.523 Placement in residential group care.

**39.521 Disposition hearings; powers of disposition.--**

(1) A disposition hearing shall be conducted by the court, if the court finds that the facts alleged in the petition for dependency were proven in the adjudicatory hearing, or if the parents or legal custodians have consented to the finding of dependency or admitted the allegations in the petition, have failed to appear for the arraignment hearing after proper notice, or have not been located despite a diligent search having been conducted.

(a) A written case plan and a predisposition study prepared by an authorized agent of the department must be filed with the court and served upon the parents of the child, provided to the representative of the guardian ad litem program, if the program has been appointed, and provided to all other parties, not less than 72 hours before the disposition hearing. All such case plans must be approved by the court. If the court does not approve the case plan at the disposition hearing, the court must set a hearing within 30 days after the disposition hearing to review and approve the case plan. The court may grant an exception to the requirement for a predisposition study by separate order or within the judge's order of disposition upon finding that all the family and child information required by subsection (2) is available in other documents filed with the court.

(b) When any child is adjudicated by a court to be dependent, the court having jurisdiction of the child has the power by order to:

1. Require the parent and, when appropriate, the legal custodian and the child, to participate in treatment and services identified as necessary. The court may require the person who has custody or who is requesting custody of the child to submit to a substance abuse assessment or evaluation. The assessment or evaluation must be administered by a qualified professional, as defined in s. 397.311. The court may also require such person to participate in and comply with treatment and services identified as necessary, including, when appropriate and available, participation in and compliance with a treatment-based drug court program established under s. 397.334. In addition to supervision by the department, the court, including the treatment-based drug court program, may oversee the progress and compliance with treatment by a person who has custody or is requesting custody of the child. The court may impose appropriate available sanctions for noncompliance upon a person who has custody or is requesting custody of the child or make a finding of noncompliance for consideration in determining whether an alternative placement of the child is in the child's best interests. Any order entered under this subparagraph may be made only upon good cause shown. This subparagraph does not authorize placement of a child with a person seeking custody of the child, other than the child's parent or legal custodian, who requires substance abuse treatment.

2. Require, if the court deems necessary, the parties to participate in dependency mediation.

3. Require placement of the child either under the protective supervision of an authorized agent of the department in the home of one or both of the child's parents or in the home of a relative of the child or another adult approved by the court, or in the custody of the department. Protective supervision continues until the court terminates it or until the child reaches the age of 18, whichever date is first. Protective supervision shall be terminated by the court whenever the court determines that permanency has been achieved for the child, whether with a parent, another relative, or a legal custodian, and that protective

supervision is no longer needed. The termination of supervision may be with or without retaining jurisdiction, at the court's discretion, and shall in either case be considered a permanency option for the child. The order terminating supervision by the department shall set forth the powers of the custodian of the child and shall include the powers ordinarily granted to a guardian of the person of a minor unless otherwise specified. Upon the court's termination of supervision by the department, no further judicial reviews are required, so long as permanency has been established for the child.

(c) At the conclusion of the disposition hearing, the court shall schedule the initial judicial review hearing which must be held no later than 90 days after the date of the disposition hearing or after the date of the hearing at which the court approves the case plan, whichever occurs earlier, but in no event shall the review hearing be held later than 6 months after the date of the child's removal from the home.

(d) The court shall, in its written order of disposition, include all of the following:

1. The placement or custody of the child.
2. Special conditions of placement and visitation.
3. Evaluation, counseling, treatment activities, and other actions to be taken by the parties, if ordered.
4. The persons or entities responsible for supervising or monitoring services to the child and parent.
5. Continuation or discharge of the guardian ad litem, as appropriate.
6. The date, time, and location of the next scheduled review hearing, which must occur within the earlier of:
  - a. Ninety days after the disposition hearing;
  - b. Ninety days after the court accepts the case plan;
  - c. Six months after the date of the last review hearing; or
  - d. Six months after the date of the child's removal from his or her home, if no review hearing has been held since the child's removal from the home.

7. If the child is in an out-of-home placement, child support to be paid by the parents, or the guardian of the child's estate if possessed of assets which under law may be disbursed for the care, support, and maintenance of the child. The court may exercise jurisdiction over all child support matters, shall adjudicate the financial obligation, including health insurance, of the child's parents or guardian, and shall enforce the financial obligation as provided in chapter 61. The state's child support enforcement agency shall enforce child support orders under this section in the same manner as child support orders under chapter 61. Placement of the child shall not be contingent upon issuance of a support order.

8.a. If the court does not commit the child to the temporary legal custody of an adult relative, legal custodian, or other adult approved by the court, the disposition order shall include the reasons for such a decision and shall include a determination as to whether diligent efforts were made by the department to locate an adult relative, legal custodian, or other adult willing to care for the child in order to present that placement option to the court instead of placement with the department.

b. If no suitable relative is found and, the child is placed with the department or a legal custodian or other adult approved by the court, both the department and the court shall consider transferring temporary legal custody to an adult relative approved by the court at a later date, but neither the department nor the court is obligated to so place the child if it is in the child's best interest to remain in the current placement.

For the purposes of this section, "diligent efforts to locate an adult relative" means a search similar to the diligent search for a parent, but without the continuing obligation to search after an initial adequate search is completed.

9. Other requirements necessary to protect the health, safety, and well-being of the child, to preserve the stability of the child's educational placement, and to promote family preservation or reunification whenever possible.

(e) If the court finds that the prevention or reunification efforts of the department will allow the child to remain safely at home or be safely returned to the home, the court shall allow the child to remain in or return to the home after making a specific finding of fact that the reasons for removal have been remedied to the extent that the child's safety, well-being, and physical, mental, and emotional health will not be endangered.

(f) If the court places the child in an out-of-home placement, the disposition order must include a written determination that the child cannot safely remain at home with reunification or family preservation services and that removal of the child is necessary to protect the child. If the child ~~is~~ ~~has been~~ removed before the disposition hearing, the order must also include a written determination as to whether, after removal, the department ~~has~~ made a reasonable effort to reunify the parent and child, ~~if reasonable efforts are required~~. Reasonable efforts to reunify are not required if the court ~~finds~~ ~~has found~~ that any of the acts listed in ~~s. 39.806(1)(f)-(l)~~ ~~s. 39.806(1)(f)-(i)~~ have occurred. The department has the burden of demonstrating that it has made reasonable efforts ~~under this paragraph~~.

1. For the purposes of this paragraph, the term "reasonable effort" means the exercise of reasonable diligence and care by the department to provide the services ordered by the court or delineated in the case plan.

2. In support of its determination as to whether reasonable efforts have been made, the court shall:

- a. Enter written findings as to whether ~~or not~~ prevention or reunification efforts were indicated.
- b. If prevention or reunification efforts were indicated, include a brief written description of what appropriate and available prevention and reunification efforts were made.
- c. Indicate in writing why further efforts could or could not have prevented or shortened the separation of the parent and child.

3. A court may find that the department ~~has~~ made a reasonable effort to prevent or eliminate the need for removal if:

- a. The first contact of the department with the family occurs during an emergency;
- b. The appraisal by the department of the home situation indicates ~~that it presents~~ a substantial and immediate danger to the child's safety or physical, mental, or emotional health which cannot be mitigated by the provision of preventive services;
- c. The child cannot safely remain at home, ~~either~~ because there are no preventive services that can ensure the health and safety of the child or, even with appropriate and available services being provided, the health and safety of the child cannot be ensured; or
- d. The parent is alleged to have committed any of the acts listed as grounds for expedited termination of parental rights ~~under s. 39.806 (1)(f)-(l) in s. 39.806(1)(f)-(i)~~.

4. A reasonable effort by the department for reunification ~~of the parent and child~~ has been made if the appraisal of the home situation by the department indicates that the severity of the conditions of dependency is such that reunification efforts are inappropriate. The department has the burden of demonstrating to the court that reunification efforts were inappropriate.

5. If the court finds that the prevention or reunification effort of the department would not have permitted the child to remain safely at home, the court may commit the child to the temporary legal custody of the department or take any other action authorized by this chapter.

(2) The predisposition study must provide the court with the following documented information:

(a) The capacity and disposition of the parents to provide the child with food, clothing, medical care, or other remedial care recognized and permitted under the laws of this state in lieu of medical care, and other material needs.

(b) The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity.

(c) The mental and physical health of the parents.

- (d) The home, school, and community record of the child.
- (e) The reasonable preference of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference.
- (f) Evidence of domestic violence or child abuse.
- (g) An assessment defining the dangers and risks of returning the child home, including a description of the changes in and resolutions to the initial risks.
- (h) A description of what risks are still present and what resources are available and will be provided for the protection and safety of the child.
- (i) A description of the benefits of returning the child home.
- (j) A description of all unresolved issues.
- (k) A Florida Abuse Hotline Information System (FAHIS) history and criminal records check for all caregivers, family members, and individuals residing within the household from which the child was removed.
- (l) The complete report and recommendation of the child protection team of the Department of Health or, if no report exists, a statement reflecting that no report has been made.
- (m) All opinions or recommendations from other professionals or agencies that provide evaluative, social, reunification, or other services to the parent and child.
- (n) A listing of appropriate and available prevention and reunification services for the parent and child to prevent the removal of the child from the home or to reunify the child with the parent after removal, including the availability of family preservation services and an explanation of the following:
  - 1. If the services were or were not provided.
  - 2. If the services were provided, the outcome of the services.
  - 3. If the services were not provided, why they were not provided.
  - 4. If the services are currently being provided and if they need to be continued.
- (o) A listing of other prevention and reunification services that were available but determined to be inappropriate and why.
- (p) Whether dependency mediation was provided.
- (q) If the child has been removed from the home and there is a parent who may be considered for custody pursuant to this section, a recommendation as to whether placement of the child with that parent would be detrimental to the child.
- (r) If the child has been removed from the home and will be remaining with a relative or other adult approved by the court, a home study report concerning the proposed placement shall be included in the predisposition report. Prior to recommending to the court any out-of-home placement for a child other than placement in a licensed shelter or foster home, the department shall conduct a study of the home of the proposed legal custodians, which must include, at a minimum:
  - 1. An interview with the proposed legal custodians to assess their ongoing commitment and ability to care for the child.
  - 2. Records checks through the Florida Abuse Hotline Information System (FAHIS), and local and statewide criminal and juvenile records checks through the Department of Law Enforcement, on all household members 12 years of age or older and any other persons made known to the department who are frequent visitors in the home. Out-of-state criminal records checks must be initiated for any individual designated above who has resided in a state other than Florida provided that state's laws allow the release of these records. The out-of-state criminal records must be filed with the court within 5 days after receipt by the department or its agent.
  - 3. An assessment of the physical environment of the home.
  - 4. A determination of the financial security of the proposed legal custodians.
  - 5. A determination of suitable child care arrangements if the proposed legal custodians are employed outside of the home.

6. Documentation of counseling and information provided to the proposed legal custodians regarding the dependency process and possible outcomes.

7. Documentation that information regarding support services available in the community has been provided to the proposed legal custodians.

The department shall not place the child or continue the placement of the child in a home under shelter or postdisposition placement if the results of the home study are unfavorable, unless the court finds that this placement is in the child's best interest.

(s) If the child has been removed from the home, a determination of the amount of child support each parent will be required to pay pursuant to s. 61.30.

(t) If placement of the child with anyone other than the child's parent is being considered, the predisposition study shall include the designation of a specific length of time as to when custody by the parent will be reconsidered.

Any other relevant and material evidence, including other written or oral reports, may be received by the court in its effort to determine the action to be taken with regard to the child and may be relied upon to the extent of its probative value, even though not competent in an adjudicatory hearing. Except as otherwise specifically provided, nothing in this section prohibits the publication of proceedings in a hearing.

(3) When any child is adjudicated by a court to be dependent, the court shall determine the appropriate placement for the child as follows:

(a) If the court determines that the child can safely remain in the home with the parent with whom the child was residing at the time the events or conditions arose that brought the child within the jurisdiction of the court and that remaining in this home is in the best interest of the child, then the court shall order conditions under which the child may remain or return to the home and that this placement be under the protective supervision of the department for not less than 6 months.

(b) If there is a parent with whom the child was not residing at the time the events or conditions arose that brought the child within the jurisdiction of the court who desires to assume custody of the child, the court shall place the child with that parent upon completion of a home study, unless the court finds that such placement would endanger the safety, well-being, or physical, mental, or emotional health of the child. Any party with knowledge of the facts may present to the court evidence regarding whether the placement will endanger the safety, well-being, or physical, mental, or emotional health of the child. If the court places the child with such parent, it may do either of the following:

1. Order that the parent assume sole custodial responsibilities for the child. The court may also provide for reasonable visitation by the noncustodial parent. The court may then terminate its jurisdiction over the child.

2. Order that the parent assume custody subject to the jurisdiction of the circuit court hearing dependency matters. The court may order that reunification services be provided to the parent from whom the child has been removed, that services be provided solely to the parent who is assuming physical custody in order to allow that parent to retain later custody without court jurisdiction, or that services be provided to both parents, in which case the court shall determine at every review hearing which parent, if either, shall have custody of the child. The standard for changing custody of the child from one parent to another or to a relative or another adult approved by the court shall be the best interest of the child.

(c) If no fit parent is willing or available to assume care and custody of the child, place the child in the temporary legal custody of an adult relative, the adoptive parent of the child's sibling, or another ~~other~~ adult approved by the court who is willing to care for the child, under the protective supervision of the department. The department must supervise this placement until the child reaches permanency status in this



home, and in no case for a period of less than 6 months. Permanency in a relative placement shall be by adoption, long-term custody, or guardianship.

(d) If the child cannot be safely placed in a nonlicensed placement, the court shall commit the child to the temporary legal custody of the department. Such commitment invests in the department all rights and responsibilities of a legal custodian. The department shall not return any child to the physical care and custody of the person from whom the child was removed, except for court-approved visitation periods, without the approval of the court. Any order for visitation or other contact must conform to the provisions of s. 39.0139. The term of such commitment continues until terminated by the court or until the child reaches the age of 18. After the child is committed to the temporary legal custody of the department, all further proceedings under this section are governed by this chapter.

Protective supervision continues until the court terminates it or until the child reaches the age of 18, whichever date is first. Protective supervision shall be terminated by the court whenever the court determines that permanency has been achieved for the child, whether with a parent, another relative, or a legal custodian, and that protective supervision is no longer needed. The termination of supervision may be with or without retaining jurisdiction, at the court's discretion, and shall in either case be considered a permanency option for the child. The order terminating supervision by the department shall set forth the powers of the custodian of the child and shall include the powers ordinarily granted to a guardian of the person of a minor unless otherwise specified. Upon the court's termination of supervision by the department, no further judicial reviews are required, so long as permanency has been established for the child.

(4) An agency granted legal custody shall have the right to determine where and with whom the child shall live, but an individual granted legal custody shall exercise all rights and duties personally unless otherwise ordered by the court.

(5) In carrying out the provisions of this chapter, the court may order the parents and legal custodians of a child who is found to be dependent to participate in family counseling and other professional counseling activities deemed necessary for the rehabilitation of the parent or child.

(6) With respect to a child who is the subject in proceedings under this chapter, the court may issue to the department an order to show cause why it should not return the child to the custody of the parents upon expiration of the case plan, or sooner if the parents have substantially complied with the case plan.

(7) The court may enter an order ending its jurisdiction over a child when a child has been returned to the parents, provided the court shall not terminate its jurisdiction or the department's supervision over the child until 6 months after the child's return. The court shall determine whether its jurisdiction should be continued or terminated in such a case based on a report of the department or agency or the child's guardian ad litem, and any other relevant factors; if its jurisdiction is to be terminated, the court shall enter an order to that effect.

**History.**--s. 20, ch. 78-414; s. 14, ch. 79-164; s. 2, ch. 80-102; s. 15, ch. 80-290; s. 11, ch. 83-217; ss. 9, 10, ch. 84-311; s. 6, ch. 85-80; s. 83, ch. 86-220; s. 8, ch. 87-289; s. 13, ch. 87-397; s. 30, ch. 88-337; s. 1, ch. 90-182; s. 2, ch. 90-211; ss. 7, 8, ch. 90-306; s. 71, ch. 91-45; s. 2, ch. 91-183; s. 5, ch. 92-158; s. 7, ch. 92-170; ss. 12, 13, ch. 94-164; s. 62, ch. 95-228; s. 4, ch. 97-96; s. 8, ch. 97-101; s. 9, ch. 97-276; s. 6, ch. 98-137; s. 11, ch. 98-280; s. 69, ch. 98-403; s. 31, ch. 99-193; s. 23, ch. 2000-139; s. 3, ch. 2001-68; s. 1, ch. 2002-219; s. 5, ch. 2005-239; s. 13, ch. 2006-86; s. 5, ch. 2006-97; s. 5, ch. 2007-109. As of June 18, 2008, pending signature by the Governor.

**Note.**--Former ss. 39.408(3), (4), 39.41; s. 39.508.

**39.522 Postdisposition change of custody.**--The court may change the temporary legal custody or the conditions of protective supervision at a postdisposition hearing, without the necessity of another adjudicatory hearing.

(1) A child who has been placed in the child's own home under the protective supervision of an authorized agent of the department, in the home of a relative, in the home of a legal custodian, or in some other place may be brought before the court by the department or by any other interested person, upon the filing of a petition alleging a need for a change in the conditions of protective supervision or the placement. If the parents or other legal custodians deny the need for a change, the court shall hear all parties in person or by counsel, or both. Upon the admission of a need for a change or after such hearing, the court shall enter an order changing the placement, modifying the conditions of protective supervision, or continuing the conditions of protective supervision as ordered. The standard for changing custody of the child shall be the best interest of the child. When applying this standard, the court shall consider the continuity of the child's placement in the same out-of-home residence as a factor when determining the best interests of the child. If the child is not placed in foster care, then the new placement for the child must meet the home study criteria and court approval pursuant to this chapter.

(2) In cases where the issue before the court is whether a child should be reunited with a parent, the court shall determine whether the parent has substantially complied with the terms of the case plan to the extent that the safety, well-being, and physical, mental, and emotional health of the child is not endangered by the return of the child to the home.

**History.**--s. 25, ch. 2000-139; s. 14, ch. 2006-86.

### **39.523 Placement in residential group care.--**

(1) Except as provided in s. 39.407, any dependent child 11 years of age or older who has been in licensed family foster care for 6 months or longer and who is then moved more than once and who is a child with extraordinary needs as defined in s. 409.1676 must be assessed for placement in licensed residential group care. The assessment procedures shall be conducted by the department or its agent and shall incorporate and address current and historical information from any psychological testing or evaluation that has occurred; current and historical information from the guardian ad litem, if one has been assigned; current and historical information from any current therapist, teacher, or other professional who has knowledge of the child and has worked with the child; information regarding the placement of any siblings of the child and the impact of the child's placement in residential group care on the child's siblings; the circumstances necessitating the moves of the child while in family foster care and the recommendations of the former foster families, if available; the status of the child's case plan and a determination as to the impact of placing the child in residential group care on the goals of the case plan; the age, maturity, and desires of the child concerning placement; the availability of any less restrictive, more family-like setting for the child in which the foster parents have the necessary training and skills for providing a suitable placement for the child; and any other information concerning the availability of suitable residential group care. If such placement is determined to be appropriate as a result of this procedure, the child must be placed in residential group care, if available.

(2) The results of the assessment described in subsection (1) and the actions taken as a result of the assessment must be included in the next judicial review of the child. At each subsequent judicial review, the court must be advised in writing of the status of the child's placement, with special reference regarding the stability of the placement and the permanency planning for the child.

(3) Any residential group care facility that receives children under the provisions of this subsection shall establish special permanency teams dedicated to overcoming the special permanency challenges presented by this population of children. Each facility shall report to the department its success in achieving permanency for children placed by the department in its care at intervals that allow the current information to be provided to the court at each judicial review for the child.

(4) This section does not prohibit the department from assessing and placing children who do not meet the criteria in subsection (1) in residential group care if such placement is the most appropriate placement for such children.

(5)(a) By December 1 of each year, the department shall report to the Legislature on the placement of children in licensed residential group care during the year, including the criteria used to determine the placement of children, the number of children who were evaluated for placement, the number of children who were placed based upon the evaluation, and the number of children who were not placed. The department shall maintain data specifying the number of children who were referred to licensed residential child care for whom placement was unavailable and the counties in which such placement was unavailable. The department shall include this data in its report to the Legislature due on December 1, so that the Legislature may consider this information in developing the General Appropriations Act.

(b) As part of the report required in paragraph (a), the department shall also provide a detailed account of the expenditures incurred for “Special Categories: Grants and Aids- Specialized Residential Group Care Services” for the fiscal year immediately preceding the date of the report. This section of the report must include whatever supporting data is necessary to demonstrate full compliance with paragraph (6)(c). The document must present the information by district and must specify, at a minimum, the number of additional beds, the average rate per bed, the number of additional persons served, and a description of the enhanced and expanded services provided.

(6)(a) The provisions of this section shall be implemented to the extent of available appropriations contained in the annual General Appropriations Act for such purpose.

(b) Each year, funds included in the General Appropriations Act for Enhanced Residential Group Care as provided for in s. 409.1676, shall be appropriated in a separately identified special category that is designated in the act as “Special Categories: Grants and Aids - Specialized Residential Group Care Services.”

(c) Each fiscal year, all funding increases for Enhanced Residential Group Care as provided in s. 409.1676, which are included in the General Appropriations Act shall be appropriated in a lump-sum category as defined in s. 216.011(1)(aa). In accordance with s. 216.181(6)(a), the Executive Office of the Governor shall require the department to submit a spending plan that identifies the residential group care bed capacity shortage throughout the state and proposes a distribution formula by district which addresses the reported deficiencies. The spending plan must have as its first priority the reduction or elimination of any bed shortage identified and must also provide for program enhancements to ensure that residential group care programs meet a minimum level of expected performance and provide for expansion of the comprehensive residential group care services described in s. 409.1676. Annual appropriation increases appropriated in the lump-sum appropriation must be used in accordance with the provisions of the spending plan.

(d) Funds from “Special Categories: Grants and Aids - Specialized Residential Group Care Services” may be used as one-time startup funding for residential group care purposes that include, but are not limited to, remodeling or renovation of existing facilities, construction costs, leasing costs, purchase of equipment and furniture, site development, and other necessary and reasonable costs associated with the startup of facilities or programs upon the recommendation of the lead community-based provider if one exists and upon specific approval of the terms and conditions by the secretary of the department.

**History.**—s. 2, ch. 2002-219.

**PART VIII  
CASE PLANS**

39.6011	Case plan development.
39.6012	Case plan tasks; services.
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**39.6011 Case plan development.--**

(1) The department shall prepare a draft of the case plan for each child receiving services under this chapter. A parent of a child may not be threatened or coerced with the loss of custody or parental rights for failing to admit in the case plan of abusing, neglecting, or abandoning a child. Participating in the development of a case plan is not an admission to any allegation of abuse, abandonment, or neglect, and it is not a consent to a finding of dependency or termination of parental rights. The case plan shall be developed subject to the following requirements:

(a) The case plan must be developed in a face-to-face conference with the parent of the child, any court-appointed guardian ad litem, and, if appropriate, the child and the temporary custodian of the child.

(b) The parent may receive assistance from any person or social service agency in preparing the case plan. The social service agency, the department, and the court, when applicable, shall inform the parent of the right to receive such assistance, including the right to assistance of counsel.

(c) If a parent is unwilling or unable to participate in developing a case plan, the department shall document that unwillingness or inability to participate. The documentation must be provided in writing to the parent when available for the court record, and the department shall prepare a case plan conforming as nearly as possible with the requirements set forth in this section. The unwillingness or inability of the parent to participate in developing a case plan does not preclude the filing of a petition for dependency or for termination of parental rights. The parent, if available, must be provided a copy of the case plan and be advised that he or she may, at any time before the filing of a petition for termination of parental rights, enter into a case plan and that he or she may request judicial review of any provision of the case plan with which he or she disagrees at any court hearing set for the child.

(2) The case plan must be written simply and clearly in English and, if English is not the principal language of the child's parent, to the extent possible in the parent's principal language. Each case plan must contain:

(a) A description of the identified problem being addressed, including the parent's behavior or acts resulting in risk to the child and the reason for the intervention by the department.

(b) The permanency goal as defined in s. 39.01(51).

(c) If concurrent planning is being used, a description of the permanency goal of reunification with the parent or legal custodian in addition to a description of one of the remaining permanency goals described in s. 39.01 s. 39.01(51).

(d) The date the compliance period expires. The case plan must be limited to as short a period as possible for accomplishing its provisions. The plan's compliance period expires no later than 12 months after the date the child was initially removed from the home or the date the case plan was accepted by the court, whichever occurs sooner.

(e) A written notice to the parent that failure of the parent to substantially comply with the case plan may result in the termination of parental rights, and that a material breach of the case plan may result in the filing of a petition for termination of parental rights sooner than the compliance period set forth in the case plan.

(3) The case plan must be signed by all parties, except that the signature of a child may be waived if the child is not of an age or capacity to participate in the case-planning process. Signing the case plan constitutes an acknowledgement that the case plan has been developed by the parties and that they are in agreement as to the terms and conditions contained in the case plan. The refusal of a parent to sign the case plan does not prevent the court from accepting the case plan if the case plan is otherwise acceptable to the court. Signing the case plan does not constitute an admission to any allegation of abuse, abandonment, or neglect and does not constitute consent to a finding of dependency or termination of parental rights. Before signing the case plan, the department shall explain the provisions of the plan to all persons involved in its implementation, including, when appropriate, the child.

(4) The case plan must describe:

(a) The role of the foster parents or legal custodians when developing the services that are to be provided to the child, foster parents, or legal custodians;

(b) The minimum number of face-to-face meetings to be held each month between the parents and the department's family services counselors to review the progress of the plan, to eliminate barriers to progress, and to resolve conflicts or disagreements; and

(c) The parent's responsibility for financial support of the child, including, but not limited to, health insurance and child support. The case plan must list the costs associated with any services or treatment that the parent and child are expected to receive which are the financial responsibility of the parent. The determination of child support and other financial support shall be made independently of any determination of indigency under s. 39.013.

(5) When the permanency goal for a child is adoption, the case plan must include documentation of the steps the agency is taking to find an adoptive family or other permanent living arrangement for the child. At a minimum, the documentation shall include recruitment efforts that are specific to the child, such as the use of state, regional, and national adoption exchanges, including electronic exchange systems.

(6) After the case plan has been developed, the department shall adhere to the following procedural requirements:

(a) If the parent's substantial compliance with the case plan requires the department to provide services to the parents or the child and the parents agree to begin compliance with the case plan before the case plan's acceptance by the court, the department shall make the appropriate referrals for services that will allow the parents to begin the agreed-upon tasks and services immediately.

(b) After the case plan has been agreed upon and signed by the parties, a copy of the plan must be given immediately to the parties, including the child if appropriate, and to other persons as directed by the court.

1. A case plan must be prepared, but need not be submitted to the court, for a child who will be in care no longer than 30 days unless that child is placed in out-of-home care a second time within a 12-month period.

2. In each case in which a child has been placed in out-of-home care, a case plan must be prepared within 60 days after the department removes the child from the home and shall be submitted to the court before the disposition hearing for the court to review and approve.

3. After jurisdiction attaches, all case plans must be filed with the court and a copy provided to all the parties whose whereabouts are known not less than 3 business days before the disposition hearing. The department shall file with the court, and provide copies to the parties, all case plans prepared before jurisdiction of the court attached.

(7) The case plan must be filed with the court and copies provided to all parties, including the child if appropriate, not less than 3 business days before the disposition hearing.

(8) The case plan must describe a process for making available to all physical custodians and family services counselors the information required by s. 39.6012(2) and for ensuring that this information follows the child until permanency has been achieved.

**History.**—s. 15, ch. 2006-86. As of June 18, 2008, pending signature by the Governor.

### **39.6012 Case plan tasks; services.--**

(1) The services to be provided to the parent and the tasks that must be completed are subject to the following:

(a) The services described in the case plan must be designed to improve the conditions in the home and aid in maintaining the child in the home, facilitate the child's safe return to the home, ensure proper care of the child, or facilitate the child's permanent placement. The services offered must be the least intrusive possible into the life of the parent and child, must focus on clearly defined objectives, and must provide the most efficient path to quick reunification or permanent placement given the circumstances of the case and the child's need for safe and proper care.

(b) The case plan must describe each of the tasks with which the parent must comply and the services to be provided to the parent, specifically addressing the identified problem, including:

1. The type of services or treatment.
2. The date the department will provide each service or referral for the service if the service is being provided by the department or its agent.
3. The date by which the parent must complete each task.
4. The frequency of services or treatment provided. The frequency of the delivery of services or treatment provided shall be determined by the professionals providing the services or treatment on a case-by-case basis and adjusted according to their best professional judgment.
5. The location of the delivery of the services.
6. The staff of the department or service provider accountable for the services or treatment.
7. A description of the measurable objectives, including the timeframes specified for achieving the objectives of the case plan and addressing the identified problem.

(2) The case plan must include all available information that is relevant to the child's care including, at a minimum:

(a) A description of the identified needs of the child while in care.

(b) A description of the plan for ensuring that the child receives safe and proper care and that services are provided to the child in order to address the child's needs. To the extent available and accessible, the following health, mental health, and education information and records of the child must be attached to the case plan and updated throughout the judicial-review process:

1. The names and addresses of the child's health, mental health, and educational providers;
2. The child's grade-level performance;
3. The child's school record;
4. Assurances that the child's placement takes into account proximity to the school in which the child is enrolled at the time of placement;

5. A record of the child's immunizations;
6. The child's known medical history, including any known problems;
7. The child's medications, if any; and
8. Any other relevant health, mental health, and education information concerning the child.

(3) In addition to any other requirement, if the child is in an out-of-home placement, the case plan must include:

- (a) A description of the type of placement in which the child is to be living.
- (b) A description of the parent's visitation rights and obligations and the plan for sibling visitation if the child has siblings and is separated from them.
- (c) When appropriate, for a child who is 13 years of age or older, a written description of the programs and services that will help the child prepare for the transition from foster care to independent living.
- (d) A discussion of the safety and the appropriateness of the child's placement, which placement is intended to be safe, and the least restrictive and the most family-like setting available consistent with the best interest and special needs of the child and in as close proximity as possible to the child's home.

**History.**—s. 16, ch. 2006-86.

### **39.6013 Case plan amendments.--**

(1) After the case plan has been developed under s. 39.6011, the tasks and services agreed upon in the plan may not be changed or altered in any way except as provided in this section.

(2) The case plan may be amended at any time in order to change the goal of the plan, employ the use of concurrent planning, add or remove tasks the parent must complete to substantially comply with the plan, provide appropriate services for the child, and update the child's health, mental health, and education records required by s. 39.6012.

(3) The case plan may be amended upon approval of the court if all parties are in agreement regarding the amendments to the plan and the amended plan is signed by all parties and submitted to the court with a memorandum of explanation.

(4) The case plan may be amended by the court or upon motion of any party at any hearing to change the goal of the plan, employ the use of concurrent planning, or add or remove tasks the parent must complete in order to substantially comply with the plan if there is a preponderance of evidence demonstrating the need for the amendment. The need to amend the case plan may be based on information discovered or circumstances arising after the approval of the case plan for:

- (a) A previously unaddressed condition that, without services, may prevent the child from safely returning to the home or may prevent the child from safely remaining in the home;
- (b) The child's need for permanency, taking into consideration the child's age and developmental needs;
- (c) The failure of a party to substantially comply with a task in the original case plan, including the ineffectiveness of a previously offered service; or
- (d) An error or oversight in the case plan.

(5) The case plan may be amended by the court or upon motion of any party at any hearing to provide appropriate services to the child if there is competent evidence demonstrating the need for the amendment. The reason for amending the case plan may be based on information discovered or circumstances arising after the approval of the case plan regarding the provision of safe and proper care to the child.

(6) The case plan is deemed amended as to the child's health, mental health, and education records required by s. 39.6012 when the child's updated health and education records are filed by the department under s. 39.701(7)(a).

(7) Amendments must include service interventions that are the least intrusive into the life of the parent and child, must focus on clearly defined objectives, and must provide the most efficient path to quick reunification or permanent placement given the circumstances of the case and the child's need for safe and proper care. A copy of the amended plan must be immediately given to the persons identified in s. 39.6011(6)(b).

**History.**—s. 17, ch. 2006-86; s. 3, ch. 2007-5.

### **39.602 Case planning when parents do not participate and the child is in out-of-home care.--**

(1) In the event the parents will not or cannot participate in preparation of a case plan, the department shall submit a full explanation of the circumstances and state the nature of its efforts to secure such persons' participation in the preparation of a case plan.

(2) In a case in which the physical, emotional, or mental condition or physical location of the parent is the basis for the parent's nonparticipation, it is the burden of the department to provide substantial evidence to the court that such condition or location has rendered the parent unable or unwilling to participate in the preparation of a case plan, either pro se or through counsel. The supporting documentation must be submitted to the court at the time the plan is filed.

(3) The plan must include, but need not be limited to, the specific services to be provided by the department, the goals and plans for the child, and the time for accomplishing the provisions of the plan and for accomplishing permanence for the child.

(4)(a) At least 72 hours prior to the hearing in which the court will consider approval of the case plan, all parties must be provided with a copy of the plan developed by the department. If the location of one or both parents is unknown, this must be documented in writing and included in the plan submitted to the court. After the filing of the plan, if the location of an absent parent becomes known, that parent must be served with a copy of the plan.

(b) Before the filing of the plan, the department shall advise each parent, both orally and in writing, that the failure of the parents to substantially comply with a plan may result in the termination of parental rights, but only after notice and hearing as provided in this chapter. If, after the plan has been submitted to the court, an absent parent is located, the department shall advise the parent, both orally and in writing, that the failure of the parents to substantially comply with a plan may result in termination of parental rights, but only after notice and hearing as provided in this chapter. Proof of written notification must be filed with the court.

**History.**—s. 9, ch. 87-289; s. 32, ch. 88-337; s. 26, ch. 94-164; s. 17, ch. 95-228; s. 12, ch. 98-280; s. 75, ch. 98-403; s. 36, ch. 99-193.

**Note.**—Former s. 39.452(1)-(4).

### **39.603 Court approvals of case planning.--**

(1) All case plans and amendments to case plans must be approved by the court. At the hearing on the case plan, which shall occur in conjunction with the disposition hearing unless otherwise directed by the court, the court shall determine:

(a) All parties who were notified and are in attendance at the hearing, either in person or through a legal representative. The court may appoint a guardian ad litem under Rule 1.210, Florida Rules of Civil



Procedure, to represent the interests of any parent, if the location of the parent is known but the parent is not present at the hearing and the development of the plan is based upon the physical, emotional, or mental condition or physical location of the parent.

(b) If the plan is consistent with previous orders of the court placing the child in care.

(c) If the plan is consistent with the requirements for the content of a plan as specified in this chapter.

(d) In involuntary placements, whether each parent was notified of the right to counsel at each stage of the dependency proceedings, in accordance with the Florida Rules of Juvenile Procedure.

(e) Whether each parent whose location was known was notified of the right to participate in the preparation of a case plan and of the right to receive assistance from any other person in the preparation of the case plan.

(f) Whether the plan is meaningful and designed to address facts and circumstances upon which the court based the finding of dependency in involuntary placements or the plan is meaningful and designed to address facts and circumstances upon which the child was placed in out-of-home care voluntarily.

(2) When the court determines that any of the elements considered at the hearing related to the plan have not been met, the court shall require the parties to make necessary amendments to the plan under s. 39.6013. The amended plan must be submitted to the court for review and approval within 30 days after the hearing. A copy of the amended plan must also be provided to each party, if the location of the party is known, at least 3 business days before filing with the court.

(3) A parent who has not participated in the development of a case plan must be served with a copy of the plan developed by the department, if the parent can be located, at least 72 hours prior to the court hearing. Any parent is entitled to, and may seek, a court review of the plan prior to the initial judicial review and must be informed of this right by the department at the time the department serves the parent with a copy of the plan. If the location of an absent parent becomes known to the department, the department shall inform the parent of the right to a court review at the time the department serves the parent with a copy of the case plan.

**History.**--s. 9, ch. 87-289; s. 32, ch. 88-337; s. 26, ch. 94-164; s. 17, ch. 95-228; s. 76, ch. 98-403; s. 37, ch. 99-193; s. 27, ch. 2000-139; s. 18, ch. 2006-86.

**Note.**--Former s. 39.452(5).

### **39.604 Rilya Wilson Act; short title; legislative intent; requirements; attendance and reporting responsibilities.--**

(1) **SHORT TITLE.**--This section may be cited as the "Rilya Wilson Act."

(2) **LEGISLATIVE INTENT.**-- The Legislature recognizes that children who are in the care of the state due to abuse, neglect, or abandonment are at increased risk of poor school performance and other behavioral and social problems. It is the intent of the Legislature that children who are currently in the care of the state be provided with an age-appropriate education program to help ameliorate the negative consequences of abuse, neglect, or abandonment.

(3) **REQUIREMENTS.**--A child who is age 3 years to school entry, under court ordered protective supervision or in the custody of the Family Safety Program Office of the Department of Children and Family Services or a community-based lead agency, and enrolled in a licensed early education or child care program must be enrolled to participate in the program 5 days a week. Notwithstanding the requirements of s. 39.202, the Department of Children and Family Services must notify operators of the licensed early education or child care program, subject to the reporting requirements of this act, of the enrollment of any child age 3 years to school entry, under court ordered protective supervision or in the custody of the Family

Safety Program Office of the Department of Children and Family Services or a community-based lead agency. The case plan developed for a child pursuant to this chapter who is enrolled in a licensed early education or child care program must contain the participation in this program as a required action. An exemption to participating in the licensed early education or child care program 5 days a week may be granted by the court.

(4) ATTENDANCE AND REPORTING REQUIREMENTS.--

(a) A child enrolled in a licensed early education or child care program who meets the requirements of subsection (3) may not be withdrawn from the program without the prior written approval of the Family Safety Program Office of the Department of Children and Family Services or the community-based lead agency.

(b)1. If a child covered by this section is absent from the program on a day when he or she is supposed to be present, the person with whom the child resides must report the absence to the program by the end of the business day. If the person with whom the child resides, whether the parent or caregiver, fails to timely report the absence, the absence is considered to be unexcused. The program shall report any unexcused absence or seven consecutive excused absences of a child who is enrolled in the program and covered by this act to the local designated staff of the Family Safety Program Office of the Department of Children and Family Services or the community-based lead agency by the end of the business day following the unexcused absence or seventh consecutive excused absence.

2. The department or community-based lead agency shall conduct a site visit to the residence of the child upon receiving a report of two consecutive unexcused absences or seven consecutive excused absences.

3. If the site visit results in a determination that the child is missing, the department or community-based lead agency shall report the child as missing to a law enforcement agency and proceed with the necessary actions to locate the child pursuant to procedures for locating missing children.

4. If the site visit results in a determination that the child is not missing, the parent or caregiver shall be notified that failure to ensure that the child attends the licensed early education or child care program is a violation of the case plan. If more than two site visits are conducted pursuant to this subsection, staff shall initiate action to notify the court of the parent or caregiver's noncompliance with the case plan.

**History.**—s. 1, ch. 2003-292.

**PART IX  
PERMANENCY**

- 39.621 Permanency determination by the court.
- 39.6221 Permanent guardianship of a dependent child.
- 39.6231 Permanent placement with a fit and willing relative.
- 39.6241 Another planned permanent living arrangement.

**39.621 Permanency determination by the court.--**

(1) Time is of the essence for permanency of children in the dependency system. A permanency hearing must be held no later than 12 months after the date the child was removed from the home or no later than 30 days after a court determines that reasonable efforts to return a child to either parent are not required, whichever occurs first. The purpose of the permanency hearing is to determine when the child will achieve the permanency goal or whether modifying the current goal is in the best interest of the child. A permanency hearing must be held at least every 12 months for any child who continues to receive supervision from the department or awaits adoption.

(2) The permanency goals available under this chapter, listed in order of preference, are:

- (a) Reunification;
- (b) Adoption, if a petition for termination of parental rights has been or will be filed;
- (c) Permanent guardianship of a dependent child under s. 39.6221;
- (d) Permanent placement with a fit and willing relative under s. 39.6231; or
- (e) Placement in another planned permanent living arrangement under s. 39.6241.

(3)(a) At least 3 business days before the permanency hearing, the department shall file its judicial review social services report with the court and serve copies of the report on all parties. The report must include a recommended permanency goal for the child, suggest changes to the case plan, if needed, and describe why the recommended goal is in the best interest of the child.

(b) Before the permanency hearing, the department shall advise the child and the individuals with whom the child will be placed about the availability of more permanent and legally secure placements and what type of financial assistance is associated with each placement.

(4) At the permanency hearing, the court shall determine:

- (a) Whether the current permanency goal for the child is appropriate or should be changed;
- (b) When the child will achieve one of the permanency goals; and
- (c) Whether the department has made reasonable efforts to finalize the permanency plan currently in effect.

(5) The best interest of the child is the primary consideration in determining the permanency goal for the child. The court must also consider:

- (a) The reasonable preference of the child if the court has found the child to be of sufficient intelligence, understanding, and experience to express a preference; and
- (b) Any recommendation of the guardian ad litem.

(6) If a child will not be reunified with a parent, adoption, under chapter 63, is the primary permanency option. If the child is placed with a relative or with a relative of the child's half-brother or half-sister as a

permanency option, the court may recognize the permanency of this placement without requiring the relative to adopt the child.

If the court approves a permanency goal of permanent guardianship of a dependent child, placement with a fit and willing relative, or another planned permanent living arrangement, the court shall make findings as to why this permanent placement is established without adoption of the child to follow. If the court approves a permanency goal of another planned permanent living arrangement, the court shall document the compelling reasons for choosing this goal.

(7) The findings of the court regarding reasonable efforts to finalize the permanency plan must be explicitly documented, made on a case-by-case basis, and stated in the court order.

(8) The case plan must list the tasks necessary to finalize the permanency placement and shall be updated at the permanency hearing if necessary. If a concurrent case plan is in place, the court may choose between the permanency goal options presented and shall approve the goal that is in the child's best interest.

(9) The permanency placement is intended to continue until the child reaches the age of majority and may not be disturbed absent a finding by the court that the circumstances of the permanency placement are no longer in the best interest of the child. If a parent who has not had his or her parental rights terminated makes a motion for reunification or increased contact with the child, the court shall hold a hearing to determine whether the dependency case should be reopened and whether there should be a modification of the order. At the hearing, the parent must demonstrate that the safety, well-being, and physical, mental, and emotional health of the child is not endangered by the modification.

(10) The court shall base its decision concerning any motion by a parent for reunification or increased contact with a child on the effect of the decision on the safety, well-being, and physical and emotional health of the child. Factors that must be considered and addressed in the findings of fact of the order on the motion must include:

- (a) The compliance or noncompliance of the parent with the case plan;
- (b) The circumstances which caused the child's dependency and whether those circumstances have been resolved;
- (c) The stability and longevity of the child's placement;
- (d) The preferences of the child, if the child is of sufficient age and understanding to express a preference;
- (e) The recommendation of the current custodian; and
- (f) The recommendation of the guardian ad litem, if one has been appointed.

(11) Placement of a child in a permanent guardianship, with a fit and willing relative, or in another planned permanent living arrangement does not terminate the parent-child relationship, including, but not limited to:

- (a) The right of the child to inherit from his or her parents;
- (b) The parents' right to consent to the child's adoption; or
- (c) The parents' responsibility to provide financial, medical, and other support for the child as ordered by the court.

**History.** -- s. 28, ch. 2000-139; s. 19, ch. 2006-86.

### **39.6221 Permanent guardianship of a dependent child.--**

(1) If a court determines that reunification or adoption is not in the best interest of the child, the court may place the child in a permanent guardianship with a relative or other adult approved by the court if all of the following conditions are met:

- (a) The child has been in the placement for not less than the preceding 6 months.
- (b) The permanent guardian is suitable and able to provide a safe and permanent home for the child.
- (c) The court determines that the child and the relative or other adult are not likely to need supervision or services of the department to ensure the stability of the permanent guardianship.
- (d) The permanent guardian has made a commitment to provide for the child until the child reaches the age of majority and to prepare the child for adulthood and independence.
- (e) The permanent guardian agrees to give notice of any change in his or her residential address or the residence of the child by filing a written document in the dependency file of the child with the clerk of the court.

(2) In its written order establishing a permanent guardianship, the court shall:

- (a) List the circumstances or reasons why the child's parents are not fit to care for the child and why reunification is not possible by referring to specific findings of fact made in its order adjudicating the child dependent or by making separate findings of fact;
- (b) State the reasons why a permanent guardianship is being established instead of adoption;
- (c) Specify the frequency and nature of visitation or contact between the child and his or her parents;
- (d) Specify the frequency and nature of visitation or contact between the child and his or her grandparents, under s. 39.509;
- (e) Specify the frequency and nature of visitation or contact between the child and his or her siblings; and
- (f) Require that the permanent guardian not return the child to the physical care and custody of the person from whom the child was removed without the approval of the court.

(3) The court shall give the permanent guardian a separate order establishing the authority of the permanent guardian to care for the child, and providing any other information the court deems proper which can be provided to persons who are not parties to the proceeding as necessary, notwithstanding the confidentiality provisions of s. 39.202.

(4) A permanent guardianship of a dependent child established under this chapter is not a plenary guardianship and is not subject to the requirements of chapter 744.

(5) The court shall retain jurisdiction over the case and the child shall remain in the custody of the permanent guardian unless the order creating the permanent guardianship is modified by the court. The court shall discontinue regular review hearings and relieve the department of the responsibility for supervising the placement of the child. Notwithstanding the retention of jurisdiction, the placement shall be considered permanency for the child.

(6) Placement of a child in a permanent guardianship does not terminate the parent-child relationship, including:

- (a) The right of the child to inherit from his or her parents;
- (b) The parents' right to consent to the child's adoption; and
- (c) The parents' responsibility to provide financial, medical, and other support for the child as ordered by the court.

**History.**--s. 20, ch. 2006-86; s. 4, ch. 2007-5.

### **39.6231 Permanent placement with a fit and willing relative.--**

(1) If a court finds that reunification or adoption are not in the best interests of a child, the court may place the child with a fit and willing relative as a permanency option if:

- (a) The child has been in the placement for at least the preceding 6 months;

- (b) The relative has made a commitment to provide for the child until the child reaches the age of majority and to prepare the child for adulthood and independence;
- (c) The relative is suitable and able to provide a safe and permanent home for the child; and
- (d) The relative agrees to give notice of any change in his or her residence or the residence of the child by filing a written document with the clerk of court.

(2) The department and the guardian ad litem shall provide the court with a recommended list and description of services needed by the child and the family in order to ensure the permanency of the placement.

(3) In its written order placing the child with a fit and willing relative, the court shall:

- (a) List the circumstances or reasons why reunification is not possible by referring to specific findings of fact made in its order adjudicating the child dependent or by making separate findings of fact;
- (b) State the reasons why permanent placement with a fit and willing relative is being established instead of adoption;
- (c) Specify the frequency and nature of visitation or contact between the child and his or her parents;
- (d) Specify the frequency and nature of visitation or contact between the child and his or her grandparents, under s. 39.509;
- (e) Specify the frequency and nature of visitation or contact between the child and his or her siblings; and
- (f) Require that the relative not return the child to the physical care and custody of the person from whom the child was removed without the approval of the court.

(4) The court shall give the relative a separate order establishing his or her authority to care for the child and providing other information the court deems proper which can be provided to entities and individuals who are not parties to the proceeding as necessary, notwithstanding the confidentiality of s. 39.202.

(5) The department shall continue to supervise the placement with the relative until further court order. The court shall continue to review the placement at least once every 6 months.

(6) Each party to the proceeding must be advised by the department and the court that placement with a fit and willing relative does not preclude the possibility of the child returning to the custody of the parent.

(7) The court shall continue to conduct permanency hearings in order to reevaluate the possibility of adoption or permanent guardianship of the child.

**History.**--s. 21, ch. 2006-86.

### **39.6241 Another planned permanent living arrangement.--**

(1) If a court finds that reunification is not in the best interests of a child, the court may approve placement of the child in another planned permanent living arrangement if:

- (a) The court finds a more permanent placement, such as adoption, permanent guardianship, or placement with a fit and willing relative, is not in the best interests of the child;
- (b) The department documents reasons why the placement will endure and how the proposed arrangement will be more stable and secure than ordinary foster care;
- (c) The court finds that the health, safety, and well-being of the child will not be jeopardized by such an arrangement; and

(d) There are compelling reasons to show that placement in another planned permanent living arrangement is the most appropriate permanency goal. Compelling reasons for such placement may include, but are not limited to:

1. The case of a parent and child who have a significant bond but the parent is unable to care for the child because of an emotional or physical disability, and the child's foster parents have committed to raising him or her to the age of majority and to facilitate visitation with the disabled parent;

2. The case of a child for whom an Indian tribe has identified another planned permanent living arrangement for the child; or

3. The case of a foster child who is 16 years of age or older who chooses to remain in foster care, and the child's foster parents are willing to care for the child until the child reaches 18 years of age.

(2) The department and the guardian ad litem must provide the court with a recommended list and description of services needed by the child, such as independent living services and medical, dental, educational, or psychological referrals, and a recommended list and description of services needed by his or her caregiver.

(3) The department shall continue to supervise the planned permanent living arrangement until the court orders otherwise. The court shall continue to review the placement at least once every 6 months.

**History.**--s. 22, ch. 2006-86.

**PART X  
JUDICIAL REVIEWS**

- 39.701            Judicial review.  
39.702            Citizen review panels.  
39.704            Exemptions from judicial review.

**39.701 Judicial review.--**

(1)(a) The court shall have continuing jurisdiction in accordance with this section and shall review the status of the child at least every 6 months as required by this subsection or more frequently if the court deems it necessary or desirable.

(b) The court shall retain jurisdiction over a child returned to his or her parents for a minimum period of 6 months following the reunification, but, at that time, based on a report of the social service agency and the guardian ad litem, if one has been appointed, and any other relevant factors, the court shall make a determination as to whether supervision by the department and the court's jurisdiction shall continue or be terminated.

(2)(a) The court shall review the status of the child and shall hold a hearing as provided in this part at least every 6 months until the child reaches permanency status. The court may dispense with the attendance of the child at the hearing, but may not dispense with the hearing or the presence of other parties to the review unless before the review a hearing is held before a citizen review panel.

(b) Citizen review panels may conduct hearings to review the status of a child. The court shall select the cases appropriate for referral to the citizen review panels and may order the attendance of the parties at the review panel hearings. However, any party may object to the referral of a case to a citizen review panel. Whenever such an objection has been filed with the court, the court shall review the substance of the objection and may conduct the review itself or refer the review to a citizen review panel. All parties retain the right to take exception to the findings or recommended orders of a citizen review panel in accordance with Rule 1.490(h), Florida Rules of Civil Procedure.

(c) Notice of a hearing by a citizen review panel must be provided as set forth in subsection (5). At the conclusion of a citizen review panel hearing, each party may propose a recommended order to the chairperson of the panel. Thereafter, the citizen review panel shall submit its report, copies of the proposed recommended orders, and a copy of the panel's recommended order to the court. The citizen review panel's recommended order must be limited to the dispositional options available to the court in subsection (9) Each party may file exceptions to the report and recommended order of the citizen review panel in accordance with Rule 1.490, Florida Rules of Civil Procedure.

(3)(a) The initial judicial review hearing must be held no later than 90 days after the date of the disposition hearing or after the date of the hearing at which the court approves the case plan, whichever comes first, but in no event shall the review be held later than 6 months after the date the child was removed from the home. Citizen review panels shall not conduct more than two consecutive reviews without the child and the parties coming before the court for a judicial review.

(b) If the citizen review panel recommends extending the goal of reunification for any case plan beyond 12 months from the date the child was removed from the home or the case plan was adopted, whichever date came first, the court must schedule a judicial review hearing to be conducted by the court within 30 days after receiving the recommendation from the citizen review panel.



(c) If the child is placed in the custody of the department or a licensed child-placing agency for the purpose of adoptive placement, judicial reviews must be held at least every 6 months until the adoption is finalized.

(d) If the department and the court have established a formal agreement that includes specific authorization for particular cases, the department may conduct administrative reviews instead of the judicial reviews for children in out-of-home care. Notices of such administrative reviews must be provided to all parties. However, an administrative review may not be substituted for the first judicial review, and in every case the court must conduct a judicial review at least every 6 months. Any party dissatisfied with the results of an administrative review may petition for a judicial review.

(e) The clerk of the circuit court shall schedule judicial review hearings in order to comply with the mandated times cited in this section.

(f) In each case in which a child has been voluntarily placed with the licensed child-placing agency, the agency shall notify the clerk of the court in the circuit where the child resides of such placement within 5 working days. Notification of the court is not required for any child who will be in out-of-home care no longer than 30 days unless that child is placed in out-of-home care a second time within a 12-month period. If the child is returned to the custody of the parents before the scheduled review hearing or if the child is placed for adoption, the child-placing agency shall notify the court of the child's return or placement within 5 working days, and the clerk of the court shall cancel the review hearing.

(4) The court shall schedule the date, time, and location of the next judicial review during the judicial review hearing and shall list same in the judicial review order.

(5) Notice of a judicial review hearing or a citizen review panel hearing, and a copy of the motion for judicial review, if any, must be served by the clerk of the court upon all of the following persons, if available to be served, regardless of whether the person was present at the previous hearing at which the date, time, and location of the hearing was announced:

(a) The social service agency charged with the supervision of care, custody, or guardianship of the child, if that agency is not the movant.

(b) The foster parent or legal custodian in whose home the child resides.

(c) The parents.

(d) The guardian ad litem for the child, or the representative of the guardian ad litem program if the program has been appointed.

(e) The attorney for the child.

(f) The child, if the child is 13 years of age or older.

(g)(e) Any preadoptive parent.

(h)(f) Such other persons as the court may in its discretion direct.

~~Service of notice is not required on any of the persons listed in paragraphs (a) (f) if the person was present at the previous hearing during which the date, time, and location of the hearing was announced.~~

(6)(a) In addition to paragraphs (1)(a) and (2)(a), the court shall hold a judicial review hearing within 90 days after a child's 17th birthday. The court shall also issue an order, separate from the order on judicial review, that the disability of nonage of the youth has been removed pursuant to s. 743.045. The court shall continue to hold timely judicial review hearings thereafter. In addition, the court may review the status of the child more frequently during the year prior to the child's 18th birthday if necessary. At each review held under this subsection, in addition to any information or report provided to the court, the foster parent, legal custodian, guardian ad litem, and the child shall be given the opportunity to address the court with any information relevant to the child's best interests, particularly as it relates to independent living transition

services. In addition to any information or report provided to the court, the department shall include in its judicial review social study report written verification that the child:

1. Has been provided with a current Medicaid card and has been provided all necessary information concerning the Medicaid program sufficient to prepare the youth to apply for coverage upon reaching age 18, if such application would be appropriate.
2. Has been provided with a certified copy of his or her birth certificate and, if the child does not have a valid driver's license, a Florida identification card issued under s. 322.051.
3. Has been provided information relating to Social Security Insurance benefits if the child is eligible for these benefits. If the child has received these benefits and they are being held in trust for the child, a full accounting of those funds must be provided and the child must be informed about how to access those funds.
4. Has been provided with information and training related to budgeting skills, interviewing skills, and parenting skills.
5. Has been provided with all relevant information related to the Road-to-Independence Program, including, but not limited to, eligibility requirements, forms necessary to apply, and assistance in completing the forms. The child shall also be informed that, if he or she is eligible for the Road-to-Independence Program, he or she may reside with the licensed foster family or group care provider with whom the child was residing at the time of attaining his or her 18<sup>th</sup> birthday or may reside in another licensed foster home or with a group care provider arranged by the department.
6. Has an open bank account, or has identification necessary to open an account, and has been provided with essential banking skills.
7. Has been provided with information on public assistance and how to apply.
8. Has been provided a clear understanding of where he or she will be living on his or her 18th birthday, how living expenses will be paid, and what educational program or school he or she will be enrolled in.
9. Has been provided with notice of the youth's right to petition for the court's continuing jurisdiction for 1 year after the youth's 18<sup>th</sup> birthday as specified in s. 39.013(2) and with information on how to obtain access to the court.
10. Has been encouraged to attend all judicial review hearings occurring after his or her 17<sup>th</sup> birthday.

(b) At the first judicial review hearing held subsequent to the child's 17th birthday, in addition to the requirements of subsection (7), the department shall provide the court with an updated case plan that includes specific information related to independent living services that have been provided since the child's 13th birthday, or since the date the child came into foster care, whichever came later.

(c) At the time of a judicial review hearing held pursuant to this subsection, if, in the opinion of the court, the department has not complied with its obligations as specified in the written case plan or in the provision of independent living services as required by s. 409.1451 and this subsection, the court shall issue a show cause order. If cause is shown for failure to comply, the court shall give the department 30 days within which to comply and, on failure to comply with this or any subsequent order, the department may be held in contempt.

(7)(a) Before every judicial review hearing or citizen review panel hearing, the social service agency shall make an investigation and social study concerning all pertinent details relating to the child and shall furnish to the court or citizen review panel a written report that includes, but is not limited to:

1. A description of the type of placement the child is in at the time of the hearing, including the safety of the child and the continuing necessity for and appropriateness of the placement.
2. Documentation of the diligent efforts made by all parties to the case plan to comply with each applicable provision of the plan.

3. The amount of fees assessed and collected during the period of time being reported.
  4. The services provided to the foster family or legal custodian in an effort to address the needs of the child as indicated in the case plan.
  5. A statement that either:
    - a. The parent, though able to do so, did not comply substantially with the case plan, and the agency recommendations;
    - b. The parent did substantially comply with the case plan; or
    - c. The parent has partially complied with the case plan, with a summary of additional progress needed and the agency recommendations.
  6. A statement from the foster parent or legal custodian providing any material evidence concerning the return of the child to the parent or parents.
  7. A statement concerning the frequency, duration, and results of the parent-child visitation, if any, and the agency recommendations for an expansion or restriction of future visitation.
  8. The number of times a child has been removed from his or her home and placed elsewhere, the number and types of placements that have occurred, and the reason for the changes in placement.
  9. The number of times a child's educational placement has been changed, the number and types of educational placements which have occurred, and the reason for any change in placement.
  10. If the child has reached 13 years of age but is not yet 18 years of age, the results of the preindependent-living, life-skills, or independent-living assessment, the specific services needed, and the status of the delivery of the identified services.
  11. Copies of all medical, psychological, and educational records that support the terms of the case plan and that have been produced concerning the parents or any caregiver since the last judicial review hearing.
  12. Copies of the child's current health, mental health, and education records as identified in s. 39.6012.
    - (b) A copy of the social service agency's written report and the written report of the guardian ad litem must be served on all parties whose whereabouts are known; to the foster parents or legal custodians; and to the citizen review panel, at least 72 hours before the judicial review hearing or citizen review panel hearing. The requirement for providing parents with a copy of the written report does not apply to those parents who have voluntarily surrendered their child for adoption or who have had their parental rights to the child terminated.
    - (c) In a case in which the child has been permanently placed with the social service agency, the agency shall furnish to the court a written report concerning the progress being made to place the child for adoption. If the child cannot be placed for adoption, a report on the progress made by the child towards alternative permanency goals or placements, including, but not limited to, guardianship, long-term custody, long-term licensed custody, or independent living, must be submitted to the court. The report must be submitted to the court at least 72 hours before each scheduled judicial review.
    - (d) In addition to or in lieu of any written statement provided to the court, the foster parent or legal custodian, or any preadoptive parent, shall be given the opportunity to address the court with any information relevant to the best interests of the child at any judicial review hearing.
- (8) The court and any citizen review panel shall take into consideration the information contained in the social services study and investigation and all medical, psychological, and educational records that support the terms of the case plan; testimony by the social services agency, the parent, the foster parent or legal custodian, the guardian ad litem if one has been appointed for the child, and any other person deemed appropriate; and any relevant and material evidence submitted to the court, including written and oral reports to the extent of their probative value. These reports and evidence may be received by the court in its effort to determine the action to be taken with regard to the child and may be relied upon to the extent of

their probative value, even though not competent in an adjudicatory hearing. In its deliberations, the court and any citizen review panel shall seek to determine:

- (a) If the parent was advised of the right to receive assistance from any person or social service agency in the preparation of the case plan.
- (b) If the parent has been advised of the right to have counsel present at the judicial review or citizen review hearings. If not so advised, the court or citizen review panel shall advise the parent of such right.
- (c) If a guardian ad litem needs to be appointed for the child in a case in which a guardian ad litem has not previously been appointed or if there is a need to continue a guardian ad litem in a case in which a guardian ad litem has been appointed.
- (d) The compliance or lack of compliance of all parties with applicable items of the case plan, including the parents' compliance with child support orders.
- (e) The compliance or lack of compliance with a visitation contract between the parent and the social service agency for contact with the child, including the frequency, duration, and results of the parent-child visitation and the reason for any noncompliance.
- (f) The compliance or lack of compliance of the parent in meeting specified financial obligations pertaining to the care of the child, including the reason for failure to comply if such is the case.
- (g) Whether the child is receiving safe and proper care according to s. 39.6012, including, but not limited to, the appropriateness of the child's current placement, including whether the child is in a setting that is as family-like and as close to the parent's home as possible, consistent with the child's best interests and special needs, and including maintaining stability in the child's educational placement.
- (h) A projected date likely for the child's return home or other permanent placement.
- (i) When appropriate, the basis for the unwillingness or inability of the parent to become a party to a case plan. The court and the citizen review panel shall determine if the efforts of the social service agency to secure party participation in a case plan were sufficient.
- (j) For a child who has reached 13 years of age but is not yet 18 years of age, the adequacy of the child's preparation for adulthood and independent living.
- (k) If amendments to the case plan are required. Amendments to the case plan must be made under s. 39.6013.

(9)(a) Based upon the criteria set forth in subsection (8) and the recommended order of the citizen review panel, if any, the court shall determine whether or not the social service agency shall initiate proceedings to have a child declared a dependent child, return the child to the parent, continue the child in out-of-home care for a specified period of time, or initiate termination of parental rights proceedings for subsequent placement in an adoptive home. Amendments to the case plan must be prepared as prescribed in s. 39.6013. If the court finds that the prevention or reunification efforts of the department will allow the child to remain safely at home or be safely returned to the home, the court shall allow the child to remain in or return to the home after making a specific finding of fact that the reasons for the creation of the case plan have been remedied to the extent that the child's safety, well-being, and physical, mental, and emotional health will not be endangered.

(b) The court shall return the child to the custody of the parents at any time it determines that they have substantially complied with the case plan, if the court is satisfied that reunification will not be detrimental to the child's safety, well-being, and physical, mental, and emotional health.

(c) If, in the opinion of the court, the social service agency has not complied with its obligations as specified in the written case plan, the court may find the social service agency in contempt, shall order the social service agency to submit its plans for compliance with the agreement, and shall require the social service agency to show why the child could not safely be returned to the home of the parents.

(d) If, at any judicial review, the court finds that the parents have failed to substantially comply with the case plan to the degree that further reunification efforts are without merit and not in the best interest of

the child, on its own motion, the court may order the filing of a petition for termination of parental rights, whether or not the time period as contained in the case plan for substantial compliance has expired.

(e) No later than 6 months after the date that the child was placed in shelter care, the court shall conduct a judicial review hearing to review the child's permanency goal as identified in the case plan. At the hearing the court shall make findings regarding the likelihood of the child's reunification with the parent or legal custodian within 12 months after the removal of the child from the home. If, at this hearing, the court makes a written finding that it is not likely that the child will be reunified with the parent or legal custodian within 12 months after the child was removed from the home, the department must file with the court, and serve on all parties, a motion to amend the case plan under s. 39.6013 and declare that it will use concurrent planning for the case plan. The department must file the motion no later than 10 business days after receiving the written finding of the court. The department must attach the proposed amended case plan to the motion. If concurrent planning is already being used, the case plan must document the efforts the department is taking to complete the concurrent goal.

(f) The court may issue a protective order in assistance, or as a condition, of any other order made under this part. In addition to the requirements included in the case plan, the protective order may set forth requirements relating to reasonable conditions of behavior to be observed for a specified period of time by a person or agency who is before the court; and the order may require any person or agency to make periodic reports to the court containing such information as the court in its discretion may prescribe.

**History.**--s. 9, ch. 87-289; s. 11, ch. 90-306; s. 3, ch. 90-309; s. 3, ch. 91-183; s. 49, ch. 92-58; s. 6, ch. 92-158; s. 27, ch. 94-164; s. 78, ch. 98-403; s. 38, ch. 99-193; s. 32, ch. 2000-139; s. 2, ch. 2004-362; s. 7, ch. 2005-2; s. 2, ch. 2005-179; s. 23, ch. 2006-86; s. 8, ch. 2006-194. As of June 18, 2008, pending signature by the Governor.

**Note.**--Former s. 39.453.

### **39.702 Citizen review panels.--**

(1) Citizen review panels may be established in each judicial circuit and shall be authorized by an administrative order executed by the chief judge of each circuit. The court shall administer an oath of office to each citizen review panel member which shall authorize the panel member to participate in citizen review panels and make recommendations to the court pursuant to the provisions of this section.

(2) Citizen review panels shall be administered by an independent not-for-profit agency. For the purpose of this section, an organization that has filed for nonprofit status under the provisions of s. 501(c)(3) of the United States Internal Revenue Code is an independent not-for-profit agency for a period of 1 year after the date of filing. At the end of that 1-year period, in order to continue conducting citizen reviews, the organization must have qualified for nonprofit status under s. 501(c)(3) of the United States Internal Revenue Code and must submit to the chief judge of the circuit court a consumer's certificate of exemption that was issued to the organization by the Florida Department of Revenue and a report of the organization's progress. If the agency has not qualified for nonprofit status, the court must rescind its administrative order that authorizes the agency to conduct citizen reviews. All independent not-for-profit agencies conducting citizen reviews must submit citizen review annual reports to the court.

(3) For the purpose of this section, a citizen review panel shall be composed of five volunteer members and shall conform with the requirements of this chapter. The presence of three members at a panel hearing shall constitute a quorum. Panel members shall serve without compensation.

(4) Based on the information provided to each citizen review panel pursuant to s. 39.701, each citizen review panel shall provide the court with a report and recommendations regarding the placement and dispositional alternatives the court shall consider before issuing a judicial review order.

(5) The independent not-for-profit agency authorized to administer each citizen review panel shall:

(a) In collaboration with the department, develop policies to assure that citizen review panels comply with all applicable state and federal laws.

(b) Establish policies for the recruitment, selection, retention, and terms of volunteer panel members. Final selection of citizen review panel members shall, to the extent possible, reflect the multicultural composition of the community which they serve. A criminal background check and personal reference check shall be conducted on each citizen review panel member prior to the member serving on a citizen review panel.

(c) In collaboration with the department, develop, implement, and maintain a training program for citizen review volunteers and provide training for each panel member prior to that member serving on a review panel. Such training may include, but shall not be limited to, instruction on dependency laws, departmental policies, and judicial procedures.

(d) Ensure that all citizen review panel members have read, understood, and signed an oath of confidentiality relating to written or verbal information provided to the panel members for review hearings.

(e) Establish policies to avoid actual or perceived conflicts of interest by panel members during the review process and to ensure accurate, fair reviews of each child dependency case.

(f) Establish policies to ensure ongoing communication with the department and the court.

(g) Establish policies to ensure adequate communication with the parent, the foster parent or legal custodian, the guardian ad litem, and any other person deemed appropriate.

(h) Establish procedures that encourage attendance and participation of interested persons and parties, including the parents, foster parents, or legal custodian with whom the child is placed, at citizen review hearings.

(i) Coordinate with existing citizen review panels to ensure consistency of operating procedures, data collection, analysis, and report generation.

(j) Make recommendations as necessary to the court concerning attendance of essential persons at the review and other issues pertinent to an effective review process.

(k) Ensure consistent methods of identifying barriers to the permanent placement of the child and delineation of findings and recommendations to the court.

(6) The department and agents of the department shall submit information to the citizen review panel when requested and shall address questions asked by the citizen review panel to identify barriers to the permanent placement of each child.

**History.**--s. 12, ch. 90-306; s. 50, ch. 92-58; s. 79, ch. 98-403; s. 39, ch. 99-193.

**Note.**--Former s. 39.4531.

**39.704 Exemptions from judicial review.**--Judicial review does not apply to:

(1) Minors who have been placed in adoptive homes by a licensed child-placing agency; or

(2) Minors who are refugees or entrants to whom federal regulations apply and who are in the care of a social service agency.

**History.**--s. 9, ch. 87-289; s. 14, ch. 90-306; s. 81, ch. 98-403; s. 41, ch. 99-193.

**Note.**--Former s. 39.456.

**PART XI  
TERMINATION OF PARENTAL RIGHTS**

39.801	Procedures and jurisdiction; notice; service of process.
39.802	Petition for termination of parental rights; filing; elements.
39.803	Identity or location of parent unknown after filing of termination of parental rights petition; special procedures.
39.804	Penalties for false statements of paternity.
39.805	No answer required.
39.8055	Requirement to file a petition to terminate parental rights; exceptions.
39.806	Grounds for termination of parental rights.
39.807	Right to counsel; guardian ad litem.
39.808	Advisory hearing; pretrial status conference.
39.809	Adjudicatory hearing.
39.810	Manifest best interests of the child.
39.811	Powers of disposition; order of disposition.
39.812	Postdisposition relief; petition for adoption.
39.813	Continuing jurisdiction.
39.814	Oaths, records, and confidential information.
39.815	Appeal.
39.816	Authorization for pilot and demonstration projects.
39.817	Foster care privatization demonstration pilot project.

**39.801 Procedures and jurisdiction; notice; service of process.--**

(1) All procedures, including petitions, pleadings, subpoenas, summonses, and hearings, in termination of parental rights proceedings shall be according to the Florida Rules of Juvenile Procedure unless otherwise provided by law.

(2) The circuit court shall have exclusive original jurisdiction of a proceeding involving termination of parental rights.

(3) Before the court may terminate parental rights, in addition to the other requirements set forth in this part, the following requirements must be met:

(a) Notice of the date, time, and place of the advisory hearing for the petition to terminate parental rights and a copy of the petition must be personally served upon the following persons, specifically notifying them that a petition has been filed:

1. The parents of the child.
2. The legal custodians of the child.
3. If the parents who would be entitled to notice are dead or unknown, a living relative of the child, unless upon diligent search and inquiry no such relative can be found.
4. Any person who has physical custody of the child.
5. Any grandparent entitled to priority for adoption under s. 63.0425.
6. Any prospective parent who has been identified under s. 39.503 or s. 39.803.
7. The guardian ad litem for the child or the representative of the guardian ad litem program, if the program has been appointed.

The document containing the notice to respond or appear must contain, in type at least as large as the type in the balance of the document, the following or substantially similar language: "FAILURE TO PERSONALLY APPEAR AT THIS ADVISORY HEARING CONSTITUTES CONSENT TO THE

TERMINATION OF PARENTAL RIGHTS OF THIS CHILD (OR CHILDREN). IF YOU FAIL TO APPEAR ON THE DATE AND TIME SPECIFIED, YOU MAY LOSE ALL LEGAL RIGHTS AS A PARENT TO THE CHILD OR CHILDREN NAMED IN THE PETITION ATTACHED TO THIS NOTICE."

(b) If a party required to be served with notice as prescribed in paragraph (a) cannot be served, notice of hearings must be given as prescribed by the rules of civil procedure, and service of process must be made as specified by law or civil actions.

(c) Notice as prescribed by this section may be waived, in the discretion of the judge, with regard to any person to whom notice must be given under this subsection if the person executes, before two witnesses and a notary public or other officer authorized to take acknowledgments, a written surrender of the child to a licensed child-placing agency or the department.

(d) If the person served with notice under this section fails to personally appear at the advisory hearing, the failure to personally appear shall constitute consent for termination of parental rights by the person given notice. If a parent appears for the advisory hearing and the court orders that parent to personally appear at the adjudicatory hearing for the petition for termination of parental rights, stating the date, time, and location of said hearing, then failure of that parent to personally appear at the adjudicatory hearing shall constitute consent for termination of parental rights.

(4) Upon the application of any party, the clerk or deputy clerk shall issue, and the court on its own motion may issue, subpoenas requiring the attendance and testimony of witnesses and the production of records, documents, or other tangible objects at any hearing.

(5) All process and orders issued by the court must be served or executed as other process and orders of the circuit court and, in addition, may be served or executed by authorized agents of the department or the guardian ad litem.

(6) Subpoenas may be served within the state by any person over 18 years of age who is not a party to the proceeding and, in addition, may be served or executed by authorized agents of the department or of the guardian ad litem.

(7) A fee may not be paid for service of any process or other papers by an agent of the department or the guardian ad litem. If any process, orders, or other papers are served or executed by any sheriff, the sheriff's fees must be paid by the county.

**History.**--s. 9, ch. 87-289; s. 1, ch. 92-96; s. 32, ch. 94-164; ss. 6, 11, ch. 97-276; s. 83, ch. 98-403; s. 42, ch. 99-193.

**Note.**--Former ss. 39.46, 39.462.

### **39.802 Petition for termination of parental rights; filing; elements.--**

(1) All proceedings seeking an adjudication to terminate parental rights pursuant to this chapter must be initiated by the filing of an original petition by the department, the guardian ad litem, or any other person who has knowledge of the facts alleged or is informed of them and believes that they are true.

(2) The form of the petition is governed by the Florida Rules of Juvenile Procedure. The petition must be in writing and signed by the petitioner or, if the department is the petitioner, by an employee of the department, under oath stating the petitioner's good faith in filing the petition.

(3) When a petition for termination of parental rights has been filed, the clerk of the court shall set the case before the court for an advisory hearing.



(4) A petition for termination of parental rights filed under this chapter must contain facts supporting the following allegations:

(a) That at least one of the grounds listed in s. 39.806 has been met.

(b) That the parents of the child were informed of their right to counsel at all hearings that they attended and that a dispositional order adjudicating the child dependent was entered in any prior dependency proceeding relied upon in offering a parent a case plan as described in s. 39.806.

(c) That the manifest best interests of the child, in accordance with s. 39.810, would be served by the granting of the petition.

(5) When a petition for termination of parental rights is filed under s. 39.806(1), a separate petition for dependency need not be filed and the department need not offer the parents a case plan with a goal of reunification, but may instead file with the court a case plan with a goal of termination of parental rights to allow continuation of services until the termination is granted or until further orders of the court are issued.

(6) The fact that a child has been previously adjudicated dependent as alleged in a petition for termination of parental rights may be proved by the introduction of a certified copy of the order of adjudication or the order of disposition of dependency.

(7) The fact that the parent of a child was informed of the right to counsel in any prior dependency proceeding as alleged in a petition for termination of parental rights may be proved by the introduction of a certified copy of the order of adjudication or the order of disposition of dependency containing a finding of fact that the parent was so advised.

(8) If the department has entered into a case plan with a parent with the goal of reunification, and a petition for termination of parental rights based on the same facts as are covered in the case plan is filed prior to the time agreed upon in the case plan for the performance of the case plan, then the petitioner must allege and prove by clear and convincing evidence that the parent has materially breached the provisions of the case plan.

**History.**--s. 9, ch. 87-289; s. 15, ch. 90-306; s. 14, ch. 92-170; ss. 29, 30, ch. 94-164; s. 13, ch. 97-276; s. 84, ch. 98-403; s. 43, ch. 99-193; s. 2, ch. 2001-3; s. 31, ch. 2006-86.

**Note.**--Former ss. 39.461, 39.4611.

### **39.803 Identity or location of parent unknown after filing of termination of parental rights petition; special procedures.--**

(1) If the identity or location of a parent is unknown and a petition for termination of parental rights is filed, the court shall conduct the following inquiry of the parent who is available, or, if no parent is available, of any relative, caregiver, or legal custodian of the child who is present at the hearing and likely to have the information:

(a) Whether the mother of the child was married at the probable time of conception of the child or at the time of birth of the child.

(b) Whether the mother was cohabiting with a male at the probable time of conception of the child.

(c) Whether the mother has received payments or promises of support with respect to the child or because of her pregnancy from a man who claims to be the father.

(d) Whether the mother has named any man as the father on the birth certificate of the child or in connection with applying for or receiving public assistance.

(e) Whether any man has acknowledged or claimed paternity of the child in a jurisdiction in which the mother resided at the time of or since conception of the child, or in which the child has resided or resides.

(2) The information required in subsection (1) may be supplied to the court or the department in the form of a sworn affidavit by a person having personal knowledge of the facts.

(3) If the inquiry under subsection (1) identifies any person as a parent or prospective parent, the court shall require notice of the hearing to be provided to that person.

(4) If the inquiry under subsection (1) fails to identify any person as a parent or prospective parent, the court shall so find and may proceed without further notice.

(5) If the inquiry under subsection (1) identifies a parent or prospective parent, and that person's location is unknown, the court shall direct the petitioner to conduct a diligent search for that person before scheduling an adjudicatory hearing regarding the petition for termination of parental rights to the child unless the court finds that the best interest of the child requires proceeding without actual notice to the person whose location is unknown.

(6) The diligent search required by subsection (5) must include, at a minimum, inquiries of all known relatives of the parent or prospective parent, inquiries of all offices of program areas of the department likely to have information about the parent or prospective parent, inquiries of other state and federal agencies likely to have information about the parent or prospective parent, inquiries of appropriate utility and postal providers, and inquiries of appropriate law enforcement agencies.

(7) Any agency contacted by petitioner with a request for information pursuant to subsection (6) shall release the requested information to the petitioner without the necessity of a subpoena or court order.

(8) If the inquiry and diligent search identifies a prospective parent, that person must be given the opportunity to become a party to the proceedings by completing a sworn affidavit of parenthood and filing it with the court or the department. A prospective parent who files a sworn affidavit of parenthood while the child is a dependent child but no later than at the time of or prior to the adjudicatory hearing in the termination of parental rights proceeding for the child shall be considered a parent for all purposes under this section.

**History.**--s. 85, ch. 98-403; s. 33, ch. 2000-139.

**39.804 Penalties for false statements of paternity.**--Any male person or any mother of a dependent child who knowingly and willfully makes a false statement concerning the paternity of a child in conjunction with a petition to terminate parental rights under this chapter and causes such false statement of paternity to be filed with the court commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. A person who makes a statement claiming paternity in good faith is immune from criminal liability under this section.

**History.**--s. 34, ch. 94-164; s. 86, ch. 98-403; s. 34, ch. 2000-139.

**Note.**--Former s. 39.4627.

**39.805 No answer required.**--No answer to the petition or any other pleading need be filed by any child or parent, but any matters which might be set forth in an answer or other pleading may be pleaded orally before the court or filed in writing as any such person may choose. Notwithstanding the filing of any answer or any pleading, the child or parent shall, prior to the adjudicatory hearing, be advised by the court of the right to counsel and shall be given an opportunity to deny the allegations in the petition for termination of parental rights or to enter a plea to allegations in the petition before the court.

**History.**--s. 9, ch. 87-289; s. 242, ch. 95-147; s. 87, ch. 98-403; s. 44, ch. 99-193.

**Note.**--Former s. 39.463.

**39.8055 Requirement to file a petition to terminate parental rights; exceptions.--**

(1) The department shall file a petition to terminate parental rights within 60 days after any of the following if:

(a) At the time of the 12-month judicial review hearing, a child is not returned to the physical custody of the parents;

(b) A petition for termination of parental rights has not otherwise been filed, and the child has been in out-of-home care under the responsibility of the state for 12 ~~15~~ of the most recent 22 months, calculated on a cumulative basis, but not including any trial home visits or time during which the child was a runaway;

(c) A parent has been convicted of ~~the~~ the murder of ~~the other parent~~, manslaughter of ~~the other parent~~, aiding or abetting the murder, or conspiracy or solicitation to murder the other parent or another child of the parent, or a felony battery that resulted in serious bodily injury to the child or to another ~~any other~~ child of the parent; or

(d) A court determines that reasonable efforts to reunify the child and parent are not required.

(2) Notwithstanding subsection (1), the department may choose not to file or join in a petition to terminate the parental rights of a parent if:

(a) The child is being cared for by a relative under s. 39.6231; or

(b) The department has documented in the report to the court a compelling reason for determining that filing such a petition is not in the best interests of the child. Compelling reasons for not filing or joining a petition to terminate parental rights may include, but are not limited to:

1. Adoption is not the appropriate permanency goal for the child.

2. No grounds to file a petition to terminate parental rights exist.

3. The child is an unaccompanied refugee minor as defined in 45 C.F.R. 400.111.

4. There are international legal obligations or compelling foreign-policy reasons that would preclude terminating parental rights.

5. The department has not provided to the family, consistent with the time period in the case plan, services that the department deems necessary for the safe return of the child to the home.

(3) Upon good cause shown by any party or on its own motion, the court may review the decision by the department that compelling reasons exist for not filing or joining a petition for termination of parental rights.

*History.--s. 24, ch. 2006-86. As of June 18, 2008, pending signature by the Governor.*

**39.806 Grounds for termination of parental rights.--**

(1) Grounds for the termination of parental rights may be established under any of the following circumstances:

(a) When the parent or parents have voluntarily executed a written surrender of the child and consented to the entry of an order giving custody of the child to the department for subsequent adoption and the department is willing to accept custody of the child.

1. The surrender document must be executed before two witnesses and a notary public or other person authorized to take acknowledgments.

2. The surrender and consent may be withdrawn after acceptance by the department only after a finding by the court that the surrender and consent were obtained by fraud or under duress.

(b) Abandonment as defined in s. 39.01(1) or when the identity or location of the parent or parents is unknown and cannot be ascertained by diligent search within 60 days.

(c) When the parent or parents engaged in conduct toward the child or toward other children that demonstrates that the continuing involvement of the parent or parents in the parent-child relationship threatens the life, safety, well-being, or physical, mental, or emotional health of the child irrespective of the

provision of services. Provision of services may be evidenced by proof that services were provided through a previous plan or offered as a case plan from a child welfare agency.

(d) When the parent of a child is incarcerated in a state or federal correctional institution and either:

1. The period of time for which the parent is expected to be incarcerated will constitute a substantial portion of the period of time before the child will attain the age of 18 years;
2. The incarcerated parent has been determined by the court to be a violent career criminal as defined in s. 775.084, a habitual violent felony offender as defined in s. 775.084, or a sexual predator as defined in s. 775.21; has been convicted of first degree or second degree murder in violation of s. 782.04 or a sexual battery that constitutes a capital, life, or first degree felony violation of s. 794.011; or has been convicted of an offense in another jurisdiction which is substantially similar to one of the offenses listed in this paragraph. As used in this section, the term "substantially similar offense" means any offense that is substantially similar in elements and penalties to one of those listed in this subparagraph, and that is in violation of a law of any other jurisdiction, whether that of another state, the District of Columbia, the United States or any possession or territory thereof, or any foreign jurisdiction; or
3. The court determines by clear and convincing evidence that continuing the parental relationship with the incarcerated parent would be harmful to the child and, for this reason, that termination of the parental rights of the incarcerated parent is in the best interest of the child.

(e) When a child has been adjudicated dependent, a case plan has been filed with the court, and:

1. The child continues to be abused, neglected, or abandoned by the parent or parents. ~~In this case,~~ The failure of the parent or parents to substantially comply with the case plan for a period of 9 ~~12~~ months after an adjudication of the child as a dependent child or the child's placement into shelter care, whichever occurs ~~came~~ first, constitutes evidence of continuing abuse, neglect, or abandonment unless the failure to substantially comply with the case plan was due ~~either~~ to the parent's lack of financial resources ~~of the parents~~ or to the failure of the department to make reasonable efforts to reunify the parent and child. The 9-month ~~12-month~~ period begins to run only after the child's placement into shelter care or the entry of a disposition order placing the custody of the child with the department or a person other than the parent and the court's approval ~~by the court~~ of a case plan having the ~~with~~ a goal of reunification with the parent, whichever occurs ~~came~~ first; ~~or~~
2. The parent or parents ~~have~~ has materially breached the case plan ~~by making it unlikely that he or she will be able to substantially comply with the case plan before the time for compliance expires.~~ Time is of the essence for permanency of children in the dependency system. In order to prove the parent or parents ~~have~~ has materially breached the case plan, the court must find by clear and convincing evidence that the parent or parents ~~are~~ is unlikely or unable to substantially comply with the case plan before time ~~expires~~ to comply with the case plan expires.

(f) ~~When~~ The parent or parents engaged in egregious conduct or had the opportunity and capability to prevent and knowingly failed to prevent egregious conduct that threatens the life, safety, or physical, mental, or emotional health of the child or the child's sibling.

1. As used in this subsection, the term "sibling" means another child who resides with or is cared for by the parent or parents regardless of whether the child is related legally or by consanguinity.
2. As used in this subsection, the term "egregious conduct" means abuse, abandonment, neglect, or any other conduct ~~of the parent or parents~~ that is deplorable, flagrant, or outrageous by a normal standard of conduct. Egregious conduct may include an act or omission that occurred only once but was of such intensity, magnitude, or severity as to endanger the life of the child.

(g) ~~When~~ The parent or parents have subjected the child or another child to aggravated child abuse as defined in s. 827.03, sexual battery or sexual abuse as defined in s. 39.01, or chronic abuse.

(h) ~~When~~ The parent or parents have committed the murder, manslaughter, aiding or abetting the murder, or conspiracy or solicitation to murder the other parent or another child, or a felony battery that resulted in serious bodily injury to the child or to another child ~~committed murder or voluntary manslaughter of another child, or a felony assault that results in serious bodily injury to the child or another~~

~~child, or aided or abetted, attempted, conspired, or solicited to commit such a murder or voluntary manslaughter or felony assault.~~

(i) ~~When~~ The parental rights of the parent to a sibling of the child have been terminated involuntarily.

(j) The parent or parents have a history of extensive, abusive, and chronic use of alcohol or a controlled substance which renders them incapable of caring for the child, and have refused or failed to complete available treatment for such use during the 3-year period immediately preceding the filing of the petition for the termination of parental rights.

(k) A test administered at birth that indicated that the child's blood, urine, or meconium contained any amount of alcohol or a controlled substance or metabolites of such substances, the presence of which was not the result of medical treatment administered to the mother or the newborn infant, and the biological mother of the child is the biological mother of at least one other child who was adjudicated dependent after a finding of harm to the child's health or welfare due to exposure to a controlled substance or alcohol as defined in s. 39.01(31)(g), after which the biological mother had the opportunity to participate in substance abuse treatment.

(l) On three or more occasions the child or another child of the parent or parents has been placed in out-of-home care pursuant to this chapter, and the conditions that led to the child's out-of-home placement were caused by the parent or parents.

(2) Reasonable efforts to preserve and reunify families are not required if a court of competent jurisdiction has determined that any of the events described in paragraphs (1)(e)-(l) ~~(1)(e)-(i)~~ have occurred.

(3) ~~If~~ ~~When~~ a petition for termination of parental rights is filed under subsection (1), a separate petition for dependency need not be filed and the department need not offer the parents a case plan having with a goal of reunification, but may instead file with the court a case plan having with a goal of termination of parental rights to allow continuation of services until the termination is granted or until further orders of the court are issued.

(4) ~~If~~ ~~When~~ an expedited termination of parental rights petition is filed, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child.

**History.**--s. 9, ch. 87-289; s. 16, ch. 90-306; s. 4, ch. 90-309; s. 7, ch. 92-158; s. 35, ch. 94-164; s. 1, ch. 97-226; s. 12, ch. 97-276; s. 88, ch. 98-403; s. 2, ch. 98-417; s. 45, ch. 99-193; s. 35, ch. 2000-139; s. 3, ch. 2001-3; s. 25, ch. 2006-86. As of June 18, 2008, pending signature by the Governor.

**Note.**--Former s. 39.464.

### **39.807 Right to counsel; guardian ad litem.--**

(1)(a) At each stage of the proceeding under this part, the court shall advise the parent of the right to have counsel present. The court shall appoint counsel for indigent parents. The court shall ascertain whether the right to counsel is understood and, where appropriate, is knowingly and intelligently waived. The court shall enter its findings in writing with respect to the appointment or waiver of counsel for indigent parents.

(b) Once counsel has been retained or, in appropriate circumstances, appointed to represent the parent of the child, the attorney shall continue to represent the parent throughout the proceedings or until the court has approved discontinuing the attorney-client relationship. If the attorney-client relationship is discontinued, the court shall advise the parent of the right to have new counsel retained or appointed for the remainder of the proceedings.

(c)1. No waiver of counsel may be accepted if it appears that the parent is unable to make an intelligent and understanding choice because of mental condition, age, education, experience, the nature or complexity of the case, or other factors.

2. A waiver of counsel made in court must be of record. A waiver made out of court must be in writing with not less than two attesting witnesses and must be filed with the court. The witnesses shall attest to the voluntary execution of the waiver.

3. If a waiver of counsel is accepted at any stage of the proceedings, the offer of assistance of counsel must be renewed by the court at each subsequent stage of the proceedings at which the parent appears without counsel.

(d) This subsection does not apply to any parent who has voluntarily executed a written surrender of the child and consent to the entry of a court order therefor.

(2)(a) The court shall appoint a guardian ad litem to represent the best interest of the child in any termination of parental rights proceedings and shall ascertain at each stage of the proceedings whether a guardian ad litem has been appointed.

(b) The guardian ad litem has the following responsibilities:

1. To investigate the allegations of the petition and any subsequent matters arising in the case and, unless excused by the court, to file a written report. This report must include a statement of the wishes of the child and the recommendations of the guardian ad litem and must be provided to all parties and the court at least 72 hours before the disposition hearing.

2. To be present at all court hearings unless excused by the court.

3. To represent the best interests of the child until the jurisdiction of the court over the child terminates or until excused by the court.

(c) A guardian ad litem is not required to post bond but shall file an acceptance of the office.

(d) A guardian ad litem is entitled to receive service of pleadings and papers as provided by the Florida Rules of Juvenile Procedure.

(e) This subsection does not apply to any voluntary relinquishment of parental rights proceeding.

**History.**--s. 9, ch. 87-289; s. 17, ch. 90-306; s. 36, ch. 94-164; s. 89, ch. 98-403; s. 46, ch. 99-193; s. 36, ch. 2000-139.

**Note.**--Former s. 39.465.

### **39.808 Advisory hearing; pretrial status conference.--**

(1) An advisory hearing on the petition to terminate parental rights must be held as soon as possible after all parties have been served with a copy of the petition and a notice of the date, time, and place of the advisory hearing for the petition.

(2) At the hearing the court shall inform the parties of their rights under s. 39.807, shall appoint counsel for the parties in accordance with legal requirements, and shall appoint a guardian ad litem to represent the interests of the child if one has not already been appointed.

(3) The court shall set a date for an adjudicatory hearing to be held within 45 days after the advisory hearing, unless all of the necessary parties agree to some other hearing date.

(4) An advisory hearing is not required if a petition is filed seeking an adjudication for termination of parental rights based on a voluntary surrender of parental rights. Adjudicatory hearings for petitions for voluntary termination must be held within 21 days after the filing of the petition. Notice of the use of this subsection must be filed with the court at the same time as the filing of the petition to terminate parental rights.

(5) Not less than 10 days before the adjudicatory hearing on a petition for involuntary termination of parental rights, the court shall conduct a pretrial status conference to determine the order in which each party may present witnesses or evidence, the order in which cross-examination and argument shall occur,

and any other matters that may aid in the conduct of the adjudicatory hearing to prevent any undue delay in the conduct of the adjudicatory hearing.

**History.**--s. 9, ch. 87-289; s. 33, ch. 88-337; s. 18, ch. 90-306; s. 37, ch. 94-164; s. 90, ch. 98-403; s. 47, ch. 99-193.

**Note.**--Former s. 39.466.

### **39.809 Adjudicatory hearing.--**

(1) In a hearing on a petition for termination of parental rights, the court shall consider the elements required for termination. Each of these elements must be established by clear and convincing evidence before the petition is granted.

(2) The adjudicatory hearing must be held within 45 days after the advisory hearing, but reasonable continuances for the purpose of investigation, discovery, or procuring counsel or witnesses may, when necessary, be granted.

(3) The adjudicatory hearing must be conducted by the judge without a jury, applying the rules of evidence in use in civil cases and adjourning the case from time to time as necessary. For purposes of the adjudicatory hearing, to avoid unnecessary duplication of expense, the judge may consider in-court testimony previously given at any properly noticed hearing, without regard to the availability or unavailability of the witness at the time of the actual adjudicatory hearing, if the recorded testimony itself is made available to the judge. Consideration of such testimony does not preclude the witness being subpoenaed to answer supplemental questions.

(4) All hearings involving termination of parental rights are confidential and closed to the public. Hearings involving more than one child may be held simultaneously when the children involved are related to each other or were involved in the same case. The child and the parents may be examined separately and apart from each other.

(5) The judge shall enter a written order with the findings of fact and conclusions of law.

**History.**--s. 9, ch. 87-289; s. 19, ch. 90-306; ss. 8, 10, ch. 92-158; s. 38, ch. 94-164; s. 91, ch. 98-403.

**Note.**--Former s. 39.467.

**39.810 Manifest best interests of the child.--**In a hearing on a petition for termination of parental rights, the court shall consider the manifest best interests of the child. This consideration shall not include a comparison between the attributes of the parents and those of any persons providing a present or potential placement for the child. For the purpose of determining the manifest best interests of the child, the court shall consider and evaluate all relevant factors, including, but not limited to:

(1) Any suitable permanent custody arrangement with a relative of the child. However the availability of a nonadoptive placement with a relative may not receive greater consideration than any other factor weighing on the manifest best interest of the child and may not be considered as a factor weighing against termination of parental rights. If a child has been in a stable or preadoptive placement for not less than 6 months, the availability of a different placement, including a placement with a relative, may not be considered as a ground to deny the termination of parental rights.

(2) The ability and disposition of the parent or parents to provide the child with food, clothing, medical care or other remedial care recognized and permitted under state law instead of medical care, and other material needs of the child.

- (3) The capacity of the parent or parents to care for the child to the extent that the child's safety, well-being, and physical, mental, and emotional health will not be endangered upon the child's return home.
- (4) The present mental and physical health needs of the child and such future needs of the child to the extent that such future needs can be ascertained based on the present condition of the child.
- (5) The love, affection, and other emotional ties existing between the child and the child's parent or parents, siblings, and other relatives, and the degree of harm to the child that would arise from the termination of parental rights and duties.
- (6) The likelihood of an older child remaining in long-term foster care upon termination of parental rights, due to emotional or behavioral problems or any special needs of the child.
- (7) The child's ability to form a significant relationship with a parental substitute and the likelihood that the child will enter into a more stable and permanent family relationship as a result of permanent termination of parental rights and duties.
- (8) The length of time that the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity.
- (9) The depth of the relationship existing between the child and the present custodian.
- (10) The reasonable preferences and wishes of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference.
- (11) The recommendations for the child provided by the child's guardian ad litem or legal representative.

**History.**--s. 31, ch. 94-164; s. 18, ch. 95-228; s. 92, ch. 98-403.; s. 26, ch. 2006-86.

**Note.**--Former s. 39.4612.

### **39.811 Powers of disposition; order of disposition.--**

- (1) If the court finds that the grounds for termination of parental rights have not been established by clear and convincing evidence, the court shall:
- (a) If grounds for dependency have been established, adjudicate or readjudicate the child dependent and:
1. Enter an order placing or continuing the child in out-of-home care under a case plan; or
  2. Enter an order returning the child to the parent or parents. The court shall retain jurisdiction over a child returned to the parent or parents for a period of 6 months, but, at that time, based on a report of the social service agency and any other relevant factors, the court shall make a determination as to whether its jurisdiction shall continue or be terminated.
- (b) If grounds for dependency have not been established, dismiss the petition.
- (2) If the child is in the custody of the department and the court finds that the grounds for termination of parental rights have been established by clear and convincing evidence, the court shall, by order, place the child in the custody of the department for the purpose of adoption.
- (3) If the child is in the custody of one parent and the court finds that the grounds for termination of parental rights have been established for the remaining parent by clear and convincing evidence, the court shall enter an order terminating the rights of the parent for whom the grounds have been established and placing the child in the custody of the remaining parent, granting that parent sole parental responsibility for the child.



(4) If the child is neither in the custody of the department nor in the custody of a parent and the court finds that the grounds for termination of parental rights have been established for either or both parents, the court shall enter an order terminating parental rights for the parent or parents for whom the grounds for termination have been established and placing the child with the department or an appropriate legal custodian. If the parental rights of both parents have been terminated, or if the parental rights of only one parent have been terminated and the court makes specific findings based on evidence presented that placement with the remaining parent is likely to be harmful to the child, the court may order that the child be placed with a legal custodian other than the department after hearing evidence of the suitability of the intended placement. Suitability of the intended placement includes the fitness and capabilities of the proposed legal custodian to function as the primary caregiver for a particular child; and the compatibility of the child with the home in which the child is intended to be placed. If the court orders that a child be placed with a legal custodian under this subsection, the court shall appoint a legal custodian as the guardian for the child as provided in s. 744.3021 or s. 39.621. The court may modify the order placing the child in the custody of the legal custodian and revoke the guardianship established under s. 744.3021 or another relationship if the court subsequently finds the placement to be no longer in the best interest of the child.

(5) If the court terminates parental rights, the court shall enter a written order of disposition briefly stating the facts upon which its decision to terminate the parental rights is made. An order of termination of parental rights, whether based on parental consent or after notice served as prescribed in this part, permanently deprives the parents of any right to the child.

(6) The parental rights of one parent may be severed without severing the parental rights of the other parent only under the following circumstances:

- (a) If the child has only one surviving parent;
- (b) If the identity of a prospective parent has been established as unknown after sworn testimony;
- (c) If the parent whose rights are being terminated became a parent through a single-parent adoption;
- (d) If the protection of the child demands termination of the rights of a single parent; or
- (e) If the parent whose rights are being terminated meets any of the criteria specified in s.

39.806(1)(d) and ~~(f)-(1)~~ ~~(f)-(i)~~.

(7)(a) The termination of parental rights does not affect the rights of grandparents unless the court finds that continued visitation is not in the best interests of the child or that such visitation would interfere with the permanency goals for the child.

(b) If the court terminates parental rights, it may, as appropriate, order that the parents, siblings, or relatives of the parent whose rights are terminated be allowed to maintain some communication or contact with the child pending adoption if the best interests of the child support this continued communication or contact, except as provided in paragraph (a). If the court orders such continued communication or contact, which may include, but is not limited to, visits, letters, and cards or telephone calls, the nature and frequency of the communication or contact must be set forth in written order and may be reviewed upon motion of any party, or, for purposes of this subsection, an identified prospective adoptive parent. If a child is placed for adoption, the nature and frequency of the communication or contact must be reviewed by the court at the time the child is placed for adoption.

(8) If the court terminates parental rights, it shall, in its order of disposition, provide for a hearing, to be scheduled no later than 30 days after the date of disposition, in which the department shall provide to the court an amended case plan that identifies the permanency goal for the child. Reasonable efforts must be made to place the child in a timely manner in accordance with the permanency plan and to complete whatever steps are necessary to finalize the permanent placement of the child. Thereafter, until the adoption

of the child is finalized or the child reaches the age of 18 years, whichever occurs first, the court shall hold hearings at 6-month intervals to review the progress being made toward permanency for the child.

(9) After termination of parental rights, the court shall retain jurisdiction over any child for whom custody is given to a social service agency until the child is adopted. The court shall review the status of the child's placement and the progress being made toward permanent adoptive placement. As part of this continuing jurisdiction, for good cause shown by the guardian ad litem for the child, the court may review the appropriateness of the adoptive placement of the child.

**History.**--s. 9, ch. 87-289; s. 34, ch. 88-337; s. 21, ch. 90-306; s. 73, ch. 91-45; s. 39, ch. 94-164; s. 2, ch. 97-226; s. 1, ch. 98-50; s. 93, ch. 98-403; s. 48, ch. 99-193; s. 37, ch. 2000-139; s. 4, ch. 2001-3; s. 27, ch. 2006-86. As of June 18, 2008, pending signature by the Governor.

**Note.**--Former s. 39.469.

### **39.812 Postdisposition relief; petition for adoption.--**

(1) If the department is given custody of a child for subsequent adoption in accordance with this chapter, the department may place the child with an agency as defined in s. 63.032, with a child-caring agency registered under s. 409.176, or in a family home for prospective subsequent adoption. The department may thereafter become a party to any proceeding for the legal adoption of the child and appear in any court where the adoption proceeding is pending and consent to the adoption, and that consent alone shall in all cases be sufficient.

(2) In any subsequent adoption proceeding, the parents are not entitled to notice of the proceeding and are not entitled to knowledge at any time after the order terminating parental rights is entered of the whereabouts of the child or of the identity or location of any person having the custody of or having adopted the child, except as provided by order of the court pursuant to this chapter or chapter 63. In any habeas corpus or other proceeding involving the child brought by any parent of the child, an agent or contract provider of the department may not be compelled to divulge that information, but may be compelled to produce the child before a court of competent jurisdiction if the child is still subject to the guardianship of the department.

(3) The entry of the custody order to the department does not entitle the department to guardianship of the estate or property of the child, but the department shall be the guardian of the person of the child.

(4) The court shall retain jurisdiction over any child placed in the custody of the department until the child is adopted. After custody of a child for subsequent adoption has been given to the department, the court has jurisdiction for the purpose of reviewing the status of the child and the progress being made toward permanent adoptive placement. As part of this continuing jurisdiction, for good cause shown by the guardian ad litem for the child, the court may review the appropriateness of the adoptive placement of the child. When a licensed foster parent or court-ordered custodian has applied to adopt a child who has resided with the foster parent or custodian for at least 6 months and who has previously been permanently committed to the legal custody of the department and the department does not grant the application to adopt, the department may not, in the absence of a prior court order authorizing it to do so, remove the child from the foster home or custodian, except when:

- (a) There is probable cause to believe that the child is at imminent risk of abuse or neglect;
- (b) Thirty days have expired following written notice to the foster parent or custodian of the denial of the application to adopt, within which period no formal challenge of the department's decision has been filed; or
- (c) The foster parent or custodian agrees to the child's removal.

(5) The petition for adoption must be filed in the division of the circuit court which entered the judgment terminating parental rights, unless a motion for change of venue is granted pursuant to s. 47.122. A copy of the consent executed by the department as ~~required under s. 63.062(7)~~ must be attached to the petition, unless waived pursuant to s. 63.062(7) the court determines that such consent is being unreasonably withheld and provided that the petitioner has filed with the court a favorable preliminary adoptive home study performed by a licensed child placing agency, a child caring agency registered under s. 409.176, or a licensed professional or agency described in s. 61.20(2). The petition must be accompanied by a statement, signed by the prospective adoptive parents, acknowledging receipt of all information required to be disclosed under s. 63.085 and a form provided by the department which details the social and medical history of the child and each parent and includes the social security number and date of birth for each parent, if such information is available or readily obtainable. The prospective adoptive parents ~~person seeking to adopt the child~~ may not file a petition for adoption until the judgment terminating parental rights becomes final. An adoption proceeding under this subsection is governed by chapter 63, ~~as limited under s. 63.037.~~

**History.**--s. 9, ch. 87-289; s. 41, ch. 94-164; s. 14, ch. 95-228; s. 94, ch. 98-403; s. 5, ch. 2001-3; s. 1, ch. 2004-389; s. 1, ch. 2008-151.

**Note.**--Former s. 39.47.

**39.813 Continuing jurisdiction.**--The court which terminates the parental rights of a child who is the subject of termination proceedings pursuant to this chapter shall retain exclusive jurisdiction in all matters pertaining to the child's adoption pursuant to chapter 63.

**History.**--s. 95, ch. 98-403.

**39.814 Oaths, records, and confidential information.**--

(1) The judge, clerks or deputy clerks, and authorized agents of the department shall each have the power to administer oaths and affirmations.

(2) The court shall make and keep records of all cases brought before it pursuant to this part and shall preserve the records of proceedings under this part pursuant to the Florida Rules of Judicial Administration. Records of cases where orders were entered permanently depriving a parent of the custody of a child shall be preserved permanently.

(3) The clerk shall keep all court records required by this part separate from other records of the circuit court. All court records required by this part shall not be open to inspection by the public. All records shall be inspected only upon order of the court by persons deemed by the court to have a proper interest therein, except that, custodians of the child and their attorneys, law enforcement agencies, and the department and its designees shall always have the right to inspect and copy any official record pertaining to the child. The court may permit authorized representatives of recognized organizations compiling statistics for proper purposes to inspect and make abstracts from official records, under whatever conditions upon their use and disposition the court may deem proper, and may punish by contempt proceedings any violation of those conditions.

(4) All information obtained pursuant to this part in the discharge of official duty by any judge, employee of the court, authorized agent of the department, or law enforcement agent shall be confidential and exempt from the provisions of s. 119.07(1) and shall not be disclosed to anyone other than the authorized personnel of the court, the department and its designees, law enforcement agents, and others entitled under this part to receive that information, except upon order of the court.

(5) All orders of the court entered pursuant to this part shall be in writing and signed by the judge, except that the clerk or deputy clerk may sign a summons or notice to appear.

(6) No court record of proceedings under this part shall be admissible in evidence in any other civil or criminal proceeding, except that:

(a) Records of proceedings under this part forming a part of the record on appeal shall be used in the appellate court in the manner hereinafter provided.

(b) Records necessary therefor shall be admissible in evidence in any case in which a person is being tried upon a charge of having committed perjury.

(c) A final order entered pursuant to an adjudicatory hearing is admissible in evidence in any subsequent civil proceeding relating to placement of, access to, parental time with, adoption of, or parental rights and responsibilities for the same child or a sibling of that child.

(d) Evidence admitted in any proceeding under this part may be admissible in evidence when offered by any party in a subsequent civil proceeding relating to placement of, access to, parental time with, adoption of, or parental rights and responsibilities for the same child or a sibling of that child if:

1. Notice is given to the opposing party or opposing party's counsel of the intent to offer the evidence and a copy of such evidence is delivered to the opposing party or opposing party's counsel; and
2. The evidence is otherwise admissible in the subsequent civil proceeding.

(7) Final orders, records, and evidence in any proceeding under this part which are subsequently admitted in evidence pursuant to subsection (6) remain subject to subsections (3) and (4).

**History.**--s. 9, ch. 87-289; s. 14, ch. 90-360; s. 17, ch. 96-406; s. 3, ch. 97-226; s. 96, ch. 98-403; s. 49, ch. 99-193; s. 6, ch. 2005-239.

**Note.**--Former s. 39.471.

### **39.815 Appeal.--**

(1) Any child, any parent or guardian ad litem of any child, any other party to the proceeding who is affected by an order of the court, or the department may appeal to the appropriate district court of appeal within the time and in the manner prescribed by the Florida Rules of Appellate Procedure. The district court of appeal shall give an appeal from an order terminating parental rights priority in docketing and shall render a decision on the appeal as expeditiously as possible. Appointed counsel shall be compensated as provided in s. 27.5304(6).

(2) An attorney for the department shall represent the state upon appeal. When a notice of appeal is filed in the circuit court, the clerk shall notify the attorney for the department, together with the attorney for the parent, the guardian ad litem, and any attorney for the child.

(3) The taking of an appeal does not operate as a supersedeas in any case unless the court so orders. However, a termination of parental rights order with placement of the child with a licensed child-placing agency or the department for subsequent adoption is suspended while the appeal is pending, but the child shall continue in an out-of-home placement under the order until the appeal is decided.

(4) The case on appeal must be docketed and any papers filed in the appellate court must be titled with the initials, but not the name, of the child and the court case number, and the papers must remain sealed in the office of the clerk of the appellate court when not in use by the appellate court and may not be open to public inspection. The decision of the appellate court must be likewise titled and may refer to the child only by initials and court case number.

(5) The original order of the appellate court, with all papers filed in the case on appeal, must remain in the office of the clerk of the appellate court, sealed and not open to inspection except by order of the appellate court. The clerk of the appellate court shall return to the circuit court all papers transmitted to the appellate court from the circuit court, together with a certified copy of the order of the appellate court.

**History.**--s. 9, ch. 87-289; s. 22, ch. 90-306; s. 1, ch. 90-309; s. 15, ch. 92-170; s. 42, ch. 94-164; s. 97, ch. 98-403; s. 50, ch. 99-193; s. 59, ch. 2003-402; s.22, ch. 2007-62.

**Note.**--Former s. 39.473.

### **39.816 Authorization for pilot and demonstration projects.--**

(1) Contingent upon receipt of a federal grant or contract pursuant to s. 473A(i) of the Social Security Act, 42 U.S.C. s. 673A(i), enacted November 19, 1997, the department is authorized to establish one or more pilot projects for the following purposes:

- (a) The development of best practice guidelines for expediting termination of parental rights.
- (b) The development of models to encourage the use of concurrent planning.
- (c) The development of specialized units and expertise in moving children toward adoption as a permanency goal.
- (d) The development of risk assessment tools to facilitate early identification of the children who will be at risk of harm if returned home.
- (e) The development of models to encourage the fast-tracking of children who have not attained 1 year of age, into preadoptive placements.
- (f) The development of programs that place children into preadoptive families without waiting for termination of parental rights.

(2) Contingent upon receipt of federal authorization and funding pursuant to s. 1130(a) of the Social Security Act, 42 U.S.C. s. 1320a-9, enacted November 19, 1997, the department is authorized to establish one or more demonstration projects for the following purposes:

- (a) Identifying and addressing barriers that result in delays to adoptive placements for children in out-of-home care.
- (b) Identifying and addressing parental substance abuse problems that endanger children and result in the placement of children in out-of-home care. This purpose may be accomplished through the placement of children with their parents in residential treatment facilities, including residential treatment facilities for postpartum depression, that are specifically designed to serve parents and children together, in order to promote family reunification, and that can ensure the health and safety of the children.
- (c) Addressing kinship care.

**History.**--s. 98, ch. 98-403.

**39.817 Foster care privatization demonstration pilot project.--**A pilot project shall be established through The Ounce of Prevention Fund of Florida to contract with a private entity for a foster care privatization demonstration project. No more than 30 children with a goal of family reunification shall be accepted into the program on a no-eject-or-reject basis as identified by the department. Sibling groups shall be kept together in one placement in their own communities. Foster care parents shall be paid employees of the program. The program shall provide for public/private partnerships, community collaboration, counseling, and medical and legal assistance, as needed. For purposes of identifying measurable outcomes, the pilot project shall be located in a department district with an integrated district management which was selected as a family transition program site, has a population of less than 500,000, has a total caseload of no more than 400, with and without board payment, and has a total foster care caseload of no more than 250.

**History.**--s. 99, ch. 98-403.

**PART XII  
GUARDIANS AD LITEM  
AND GUARDIAN ADVOCATES**

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**39.820 Definitions.**--As used in this part, the term:

(1) "Guardian ad litem" as referred to in any civil or criminal proceeding includes the following: a certified guardian ad litem program, a duly certified volunteer, a staff attorney, contract attorney, or certified pro bono attorney working on behalf of a guardian ad litem or the program; staff members of a program office; a court-appointed attorney; or a responsible adult who is appointed by the court to represent the best interests of a child in a proceeding as provided for by law, including, but not limited to, this chapter, who is a party to any judicial proceeding as a representative of the child, and who serves until discharged by the court.

(2) "Guardian advocate" means a person appointed by the court to act on behalf of a drug dependent newborn pursuant to the provisions of this part.

**History.**--s. 101, ch. 98-403.

**39.821 Qualifications of guardians ad litem.**--

(1) Because of the special trust or responsibility placed in a guardian ad litem, the Guardian Ad Litem Program may use any private funds collected by the program, or any state funds so designated, to conduct a security background investigation before certifying a volunteer to serve. A security background investigation must include, but need not be limited to, employment history checks, checks of references, local criminal records checks through local law enforcement agencies, and statewide criminal records checks through the Department of Law Enforcement. Upon request, an employer shall furnish a copy of the personnel record for the employee or former employee who is the subject of a security background investigation conducted under this section. The information contained in the personnel record may include, but need not be limited to, disciplinary matters and the reason why the employee was terminated from employment. An employer who releases a personnel record for purposes of a security background investigation is presumed to have acted in good faith and is not liable for information contained in the record without a showing that the employer maliciously falsified the record. A security background investigation conducted under this section must ensure that a person is not certified as a guardian ad litem if the person has been convicted of, regardless of adjudication, or entered a plea of nolo contendere or guilty

to, any offense prohibited under the provisions of the Florida Statutes specified in s. 435.04(2) or under any similar law in another jurisdiction. Before certifying an applicant to serve as a guardian ad litem, the Guardian Ad Litem Program may request a federal criminal records check of the applicant through the Federal Bureau of Investigation. In analyzing and evaluating the information obtained in the security background investigation, the program must give particular emphasis to past activities involving children, including, but not limited to, child-related criminal offenses or child abuse. The program has the sole discretion in determining whether to certify a person based on his or her security background investigation. The information collected pursuant to the security background investigation is confidential and exempt from s. 119.07(1).

(2) This section does not apply to a certified guardian ad litem who was certified before October 1, 1995, an attorney who is a member in good standing of The Florida Bar, or a licensed professional who has undergone a comparable security background investigation as a condition of licensure within 5 years of applying for certification as a guardian ad litem.

(3) It is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, for any person to willfully, knowingly, or intentionally fail, by false statement, misrepresentation, impersonation, or other fraudulent means, to disclose in any application for a volunteer position or for paid employment with the Guardian Ad Litem Program, any material fact used in making a determination as to the applicant's qualifications for such position.

**History.**--s. 2, ch. 96-109; s. 102, ch. 98-403; s. 19, ch. 99-2; s. 25, ch. 2005-236.

**Note.**--Former s. 415.5077.

### **39.822 Appointment of guardian ad litem for abused, abandoned, or neglected child.--**

(1) A guardian ad litem shall be appointed by the court at the earliest possible time to represent the child in any child abuse, abandonment, or neglect judicial proceeding, whether civil or criminal. Any person participating in a civil or criminal judicial proceeding resulting from such appointment shall be presumed prima facie to be acting in good faith and in so doing shall be immune from any liability, civil or criminal, that otherwise might be incurred or imposed.

(2) In those cases in which the parents are financially able, the parent or parents of the child shall reimburse the court, in part or in whole, for the cost of provision of guardian ad litem services. Reimbursement to the individual providing guardian ad litem services shall not be contingent upon successful collection by the court from the parent or parents.

(3) Upon presentation by a guardian ad litem of a court order appointing the guardian ad litem:

(a) An agency, as defined in chapter 119, shall allow the guardian ad litem to inspect and copy records related to the best interests of the child who is the subject of the appointment, including, but not limited to, records made confidential or exempt from s. 119.07(1) or s. 24(a), Art. I of the State Constitution. The guardian ad litem shall maintain the confidential or exempt status of any records shared by an agency under this paragraph.

(b) A person or organization, other than an agency under paragraph (a), shall allow the guardian ad litem to inspect and copy any records related to the best interests of the child who is the subject of the appointment, including, but not limited to, confidential records.

For the purposes of this subsection, the term "records related to the best interests of the child" includes, but is not limited to, medical, mental health, substance abuse, child care, education, law enforcement, court, social services, and financial records.

(4) The guardian ad litem or the program representative shall review all disposition recommendations and changes in placements, and must be present at all critical stages of the dependency proceeding or submit a written report of recommendations to the court. Written reports must be filed with the court and served on all parties whose whereabouts are known at least 72 hours prior to the hearing.

**History.**--ss. 1, 2, 3, 4, 5, 6, ch. 63-24; s. 941, ch. 71-136; ss. 1, 1A, ch. 71-97; s. 32, ch. 73-334; s. 65, ch. 74-383; s. 1, ch. 75-101; s. 1, ch. 75-185; s. 4, ch. 76-237; s. 1, ch. 77-77; s. 3, ch. 77-429; ss. 1, 2, ch. 78-322; s. 3, ch. 78-326; s. 22, ch. 78-361; s. 1, ch. 78-379; s. 181, ch. 79-164; s. 1, ch. 79-203; s. 10, ch. 84-226; s. 3, ch. 90-211; s. 103, ch. 98-403; s. 51, ch. 99-193; s. 26, ch. 2005-236.

**Note.**--Former ss. 828.041, 827.07(16); s. 415.508.

**39.823 Guardian advocates for drug dependent newborns.**--The Legislature finds that increasing numbers of drug dependent children are born in this state. Because of the parents' continued dependence upon drugs, the parents may temporarily leave their child with a relative or other adult or may have agreed to voluntary family services under s. 39.301(14). The relative or other adult may be left with a child who is likely to require medical treatment but for whom they are unable to obtain medical treatment. The purpose of this section is to provide an expeditious method for such relatives or other responsible adults to obtain a court order which allows them to provide consent for medical treatment and otherwise advocate for the needs of the child and to provide court review of such authorization.

**History.**--s. 2, ch. 89-345; s. 104, ch. 98-403; s. 19, ch. 99-168; s. 5, ch. 2003-127.

**Note.**--Former s. 415.5082.

### **39.824 Procedures and jurisdiction.**--

(1) The Supreme Court is requested to adopt rules of juvenile procedure by October 1, 1989, to implement this part. All procedures, including petitions, pleadings, subpoenas, summonses, and hearings in cases for the appointment of a guardian advocate shall be according to the Florida Rules of Juvenile Procedure unless otherwise provided by law.

(2) The circuit court shall have exclusive original jurisdiction of a proceeding in which appointment of a guardian advocate is sought. The court shall retain jurisdiction over a child for whom a guardian advocate is appointed until specifically relinquished by court order.

**History.**--s. 2, ch. 89-345; s. 105, ch. 98-403.

**Note.**--Former s. 415.5083.

**39.825 Petition for appointment of a guardian advocate.**--A petition for appointment of a guardian advocate may be filed by the department, any relative of the child, any licensed health care professional, or any other interested person. The petition shall be in writing and shall be signed by the petitioner under oath stating his or her good faith in filing the petition. The form of the petition and its contents shall be determined by the Florida Rules of Juvenile Procedure.

**History.**--s. 2, ch. 89-345; s. 72, ch. 97-103; s. 106, ch. 98-403.

**Note.**--Former s. 415.5084.

### **39.826 Process and service.**--

(1) Personal appearance of a person in a hearing before the court shall obviate the necessity of serving process upon that person.

(2) Upon the filing of a petition requesting the appointment of a guardian advocate, and upon request of the petitioner, the clerk or deputy clerk shall issue a summons.



(3) The summons shall require the person on whom it is served to appear for a hearing at a time and place specified. Except in cases of medical emergency, the time shall be not less than 24 hours after service of the summons. The summons shall be directed to and shall be served upon the parents. It shall not be necessary to the validity of a proceeding for the appointment of a guardian advocate that the parents be present if their identity or presence is unknown after a diligent search and inquiry have been made, if they have become residents of a state other than this state, or if they evade service or ignore a summons, but in this event the person who made the search and inquiry shall file a certificate of those facts.

(4) Upon the application of a party, the clerk or deputy clerk shall issue, and the court on its own motion may issue, subpoenas requiring attendance and testimony of witnesses and production of records, documents, or other tangible objects at any hearing.

**History.**--s. 2, ch. 89-345; s. 107, ch. 98-403.

**Note.**--Former s. 415.5085.

### **39.827 Hearing for appointment of a guardian advocate.--**

(1) When a petition for appointment of a guardian advocate has been filed with the circuit court, the hearing shall be held within 14 days unless all parties agree to a continuance. If a child is in need of necessary medical treatment as defined in s. 39.01, s. 984.03, or s. 985.03, the court shall hold a hearing within 24 hours.

(2) At the hearing, the parents have the right to be present, to present testimony, to call and cross-examine witnesses, to be represented by counsel at their own expense, and to object to the appointment of the guardian advocate.

(3) The hearing shall be conducted by the judge without a jury, applying the rules of evidence in use in civil cases. In a hearing on a petition for appointment of a guardian advocate, the moving party shall prove all the elements in s. 39.828 by a preponderance of the evidence.

(4) The hearing under this section shall remain confidential and closed to the public. The clerk shall keep all court records required by this part separate from other records of the circuit court. All court records required by this part shall be confidential and exempt from the provisions of s. 119.07(1). All records shall be inspected only upon order of the court by persons deemed by the court to have a proper interest therein, except that a child and the parents or custodians of the child and their attorneys and the department and its designees shall always have the right to inspect and copy any official record pertaining to the child. The court may permit authorized representatives of recognized organizations compiling statistics for proper purposes to inspect and make abstracts from official records, under whatever conditions upon their use and disposition the court may deem proper, and may punish by contempt proceedings any violation of those conditions. All information obtained pursuant to this part in the discharge of official duty by any judge, employee of the court, or authorized agent of the department shall be confidential and exempt from the provisions of s. 119.07(1) and shall not be disclosed to anyone other than the authorized personnel of the court or the department and its designees, except upon order of the court.

**History.**--s. 2, ch. 89-345; s. 19, ch. 91-71; s. 274, ch. 96-406; s. 44, ch. 98-280; s. 108, ch. 98-403.

**Note.**--Former s. 415.5086.

### **39.828 Grounds for appointment of a guardian advocate.--**

(1) The court shall appoint the person named in the petition as a guardian advocate with all the powers and duties specified in s. 39.829 for an initial term of 1 year upon a finding that:

(a) The child named in the petition is or was a drug dependent newborn as described in s. 39.01(32)(g) ~~s. 39.01(31)(g)~~;

(b) The parent or parents of the child have voluntarily relinquished temporary custody of the child to a relative or other responsible adult;

(c) The person named in the petition to be appointed the guardian advocate is capable of carrying out the duties as provided in s. 39.829; and

(d) A petition to adjudicate the child dependent under this chapter has not been filed.

(2) The appointment of a guardian advocate does not remove from the parents the right to consent to medical treatment for their child. The appointment of a guardian advocate does not prevent the filing of a subsequent petition under this chapter to have the child adjudicated dependent.

**History.**--s. 2, ch. 89-345; s. 62, ch. 94-164; s. 109, ch. 98-403; s. 32, ch. 2006-86. As of June 18, 2008, pending signature by the Governor.

**Note.**--Former s. 415.5087.

**39.829 Powers and duties of guardian advocate.**--It is the duty of the guardian advocate to oversee the care, health, and medical treatment of the child; to advise the court regarding any change in the status of the child; and to respond to any medical crisis of the child, including providing consent to any needed medical treatment. The guardian advocate shall report to the department if the natural parents abandon the child or if the natural parents reclaim custody of the child.

**History.**--s. 2, ch. 89-345; s. 110, ch. 98-403.

**Note.**--Former s. 415.5088.

**39.8295 Review and removal of guardian advocate.**--

(1) At the end of the initial 1-year appointment, the court shall review the status of the child's care, health, and medical condition for the purpose of determining whether to reauthorize the appointment of the guardian advocate. If the court finds that all of the elements of s. 39.828 are still met, the court shall reauthorize the guardian advocate for another year.

(2) At any time, the court may, upon its own motion, or upon the motion of the department, a family member, or other interested person remove a guardian advocate. A guardian advocate shall be removed if the court finds that the guardian advocate is not properly discharging his or her responsibilities or is acting in a manner inconsistent with his or her appointment, that the parents have assumed parental responsibility to provide for the child, or that the child has been adjudicated dependent pursuant to this chapter.

**History.**--s. 2, ch. 89-345; s. 111, ch. 98-403.

**Note.**--Former s. 415.5089.

**39.8296 Statewide Guardian Ad Litem Office; legislative findings and intent; creation; appointment of executive director; duties of office.**--

(1) LEGISLATIVE FINDINGS AND INTENT.--

(a) The Legislature finds that for the past 20 years, the Guardian Ad Litem Program has been the only mechanism for best interest representation for children in Florida who are involved in dependency proceedings.

(b) The Legislature also finds that while the Guardian Ad Litem Program has been supervised by court administration within the circuit courts since the program's inception, there is a perceived conflict of interest created by the supervision of program staff by the judges before whom they appear.

(c) The Legislature further finds that the Governors Blue Ribbon Task Force concluded that “if there is any program that costs the least and benefits the most, this one is it,” and that the guardian ad litem volunteer is an “indispensable intermediary between the child and the court, between the child and DCF.”

(d) It is therefore the intent of the Legislature to place the Guardian Ad Litem Program in an appropriate place and provide a statewide infrastructure to increase functioning and standardization among the local programs currently operating in the 20 judicial circuits.

(2) STATEWIDE GUARDIAN AD LITEM OFFICE.--There is created a Statewide Guardian Ad Litem Office within the Justice Administrative Commission. The Justice Administrative Commission shall provide administrative support and service to the office to the extent requested by the executive director within the available resources of the commission. The Statewide Guardian Ad Litem Office shall not be subject to control, supervision, or direction by the Justice Administrative Commission in the performance of its duties, but the employees of the office shall be governed by the classification plan and salary and benefits plan approved by the Justice Administrative Commission.

(a) The head of the Statewide Guardian Ad Litem Office is the executive director, who shall be appointed by the Governor from a list of a minimum of three eligible applicants submitted by a Guardian Ad Litem Qualifications Committee. The Guardian Ad Litem Qualifications Committee shall be composed of five persons, two persons appointed by the Governor, two persons appointed by the Chief Justice of the Supreme Court, and one person appointed by the Statewide Guardian Ad Litem Association. The committee shall provide for statewide advertisement and the receiving of applications for the position of executive director. The Governor shall appoint an executive director from among the recommendations, or the Governor may reject the nominations and request the submission of new nominees. The executive director must have knowledge in dependency law and knowledge of social service delivery systems available to meet the needs of children who are abused, neglected, or abandoned. The executive director shall serve on a full-time basis and shall personally, or through representatives of the office, carry out the purposes and functions of the Statewide Guardian Ad Litem Office in accordance with state and federal law. The executive director shall report to the Governor. The executive director shall serve a 3-year term, subject to removal for cause by the Governor. Any person appointed to serve as the executive director may be permitted to serve more than one term.

(b) The Statewide Guardian Ad Litem Office shall, within available resources, have oversight responsibilities for and provide technical assistance to all guardian ad litem and attorney ad litem programs located within the judicial circuits.

1. The office shall identify the resources required to implement methods of collecting, reporting, and tracking reliable and consistent case data.

2. The office shall review the current guardian ad litem programs in Florida and other states.

3. The office, in consultation with local guardian ad litem offices, shall develop statewide performance measures and standards.

4. The office shall develop a guardian ad litem training program. The office shall establish a curriculum committee to develop the training program specified in this subparagraph. The curriculum committee shall include, but not be limited to, dependency judges, directors of circuit guardian ad litem programs, active certified guardians ad litem, a mental health professional who specializes in the treatment of children, a member of a child advocacy group, a representative of the Florida Coalition Against Domestic Violence, and a social worker experienced in working with victims and perpetrators of child abuse.

5. The office shall review the various methods of funding guardian ad litem programs, shall maximize the use of those funding sources to the extent possible, and shall review the kinds of services being provided by circuit guardian ad litem programs.

6. The office shall determine the feasibility or desirability of new concepts of organization, administration, financing, or service delivery designed to preserve the civil and constitutional rights and fulfill other needs of dependent children.

7. No later than October 1, 2004, the office shall submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the Supreme Court an interim report describing the progress of the office in meeting the goals as described in this section. No later than October 1, 2004, the office shall submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the Supreme Court a proposed plan including alternatives for meeting the state's guardian ad litem and attorney ad litem needs. This plan may include recommendations for less than the entire state, may include a phase-in system, and shall include estimates of the cost of each of the alternatives. Each year thereafter, the office shall provide a status report and provide further recommendations to address the need for guardian ad litem services and related issues.

**History.** -- s 1, ch 2003-53; s. 91, ch. 2003-399; s. 1, ch. 2006-18.

<sup>1</sup>Note. --Section 91, ch. 2003-399, amended paragraph (2)(b) “[i]n order to implement Specific Appropriations 819A-819D of the 2003-2004 General Appropriations Act.”

### **39.8298 Guardian Ad Litem direct-support organization.--**

(1) **AUTHORITY.**--The Statewide Guardian Ad Litem Office created under s. 39.8296 is authorized to create a direct-support organization.

(a) The direct-support organization must be a Florida corporation not for profit, incorporated under the provisions of chapter 617. The direct-support organization shall be exempt from paying fees under s. 617.0122.

(b) The direct-support organization shall be organized and operated to conduct programs and activities; raise funds; request and receive grants, gifts, and bequests of moneys; acquire, receive, hold, invest, and administer, in its own name, securities, funds, objects of value, or other property, real or personal; and make expenditures to or for the direct or indirect benefit of the Statewide Guardian Ad Litem Office.

(c) If the executive director of the Statewide Guardian Ad Litem Office determines the direct-support organization is operating in a manner that is inconsistent with the goals and purposes of the Statewide Guardian Ad Litem Office or not acting in the best interest of the state, the executive director may terminate the contract and thereafter the organization may not use the name of the Statewide Guardian Ad Litem Office.

(2) **CONTRACT.**--The direct-support organization shall operate under a written contract with the Statewide Guardian Ad Litem Office. The written contract must, at a minimum, provide for:

(a) Approval of the articles of incorporation and bylaws of the direct-support organization by the executive director of the Statewide Guardian Ad Litem Office.

(b) Submission of an annual budget for the approval by the executive director of the Statewide Guardian Ad Litem Office.

(c) The reversion without penalty to the Statewide Guardian Ad Litem Office, or to the state if the Statewide Guardian Ad Litem Office ceases to exist, of all moneys and property held in trust by the direct-support organization for the Statewide Guardian Ad Litem Office if the direct-support organization ceases to exist or if the contract is terminated.

(d) The fiscal year of the direct-support organization, which must begin July 1 of each year and end June 30 of the following year.

(e) The disclosure of material provisions of the contract and the distinction between the Statewide Guardian Ad Litem Office and the direct-support organization to donors of gifts, contributions, or bequests, as well as on all promotional and fundraising publications.

(3) **BOARD OF DIRECTORS.**--The executive director of the Statewide Guardian Ad Litem Office shall appoint a board of directors for the direct-support organization. The executive director may designate employees of the Statewide Guardian Ad Litem Office to serve on the board of directors. Members of the board shall serve at the pleasure of the executive director.

(4) **USE OF PROPERTY AND SERVICES.**--The executive director of the Statewide Guardian Ad Litem Office:

(a) May authorize the use of facilities and property other than money that are owned by the Statewide Guardian Ad Litem Office to be used by the direct-support organization.

(b) May authorize the use of personal services provided by employees of the Statewide Guardian Ad Litem Office. For the purposes of this section, the term "personal services" includes full-time personnel and part-time personnel as well as payroll processing.

(c) May prescribe the conditions by which the direct-support organization may use property, facilities, or personal services of the office.

(d) Shall not authorize the use of property, facilities, or personal services of the direct-support organization if the organization does not provide equal employment opportunities to all persons, regardless of race, color, religion, sex, age, or national origin.

(5) **MONEYS.**--Moneys of the direct-support organization may be held in a separate depository account in the name of the direct-support organization and subject to the provisions of the contract with the Statewide Guardian Ad Litem Office.

(6) **ANNUAL AUDIT.**--The direct-support organization shall provide for an annual financial audit in accordance with s. 215.981.

(7) **LIMITS ON DIRECT-SUPPORT ORGANIZATION.**--The direct-support organization shall not exercise any power under s. 617.0302(12) or (16). No state employee shall receive compensation from the direct-support organization for service on the board of the directors or for services rendered to the direct-support organization.

**History.**--s. 1, ch. 2007-149.

**PART XIII  
DOMESTIC VIOLENCE**

- 39.901 Domestic violence cases; treatment and rehabilitation of victims and perpetrators; legislative intent.
- 39.902 Definitions.
- 39.903 Duties and functions of the department with respect to domestic violence.
- 39.904 Report to the Legislature on the status of domestic violence cases.
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- 39.9055 Certified domestic violence centers; capital improvement grant program.
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- 39.908 Confidentiality of information received by department or domestic violence center.

**39.901 Domestic violence cases; treatment and rehabilitation of victims and perpetrators; legislative intent.**--The Legislature recognizes that certain persons who assault, batter, or otherwise abuse their spouses and the persons subject to such domestic violence are in need of treatment and rehabilitation. It is the intent of the Legislature to assist in the development of domestic violence centers for the victims of domestic violence and to provide a place where the parties involved may be separated until they can be properly assisted.

**History.**--s. 1, ch. 78-281; s. 1, ch. 84-343; s. 113, ch. 98-403.

**Note.**--Former s. 409.601; s. 415.601.

**39.902 Definitions.**--As used in this part, the term:

(1) "Domestic violence" has the meaning set forth in s. 741.28.

(2) "Domestic violence center" means an agency that provides services to victims of domestic violence, as its primary mission.

(3) "Family or household member" has the meaning set forth in s. 741.28.

**History.**--s. 2, ch. 78-281; s. 2, ch. 79-402; s. 1, ch. 82-135; s. 71, ch. 83-218; s. 1, ch. 84-128; s. 2, ch. 84-343; s. 17, ch. 92-58; s. 19, ch. 93-200; s. 30, ch. 94-134; s. 30, ch. 94-135; s. 137, ch. 97-101; s. 114, ch. 98-403; s. 3, ch. 2002-55.

**Note.**--Former s. 409.602; s. 415.602.

**39.903 Duties and functions of the department with respect to domestic violence.**--

(1) The department shall:

(a) Develop by rule criteria for the approval or rejection of certification or funding of domestic violence centers.

(b) Develop by rule minimum standards for domestic violence centers to ensure the health and safety of the clients in the centers.

(c) Receive and approve or reject applications for certification of domestic violence centers. If any of the required services are exempted from certification by the department under s. 39.905(1)(c), the center shall not receive funding for those services.

(d) Evaluate each certified domestic violence center annually to ensure compliance with the minimum standards. The department has the right to enter and inspect the premises of certified domestic violence centers at any reasonable hour in order to effectively evaluate the state of compliance of these centers with this part and rules relating to this part.

(e) Adopt rules to implement this part.

(f) Promote the involvement of certified domestic violence centers in the coordination, development, and planning of domestic violence programming in the districts and the state.

(2) The department shall serve as a clearinghouse for information relating to domestic violence.

(3) The department shall operate the domestic violence program, which provides supervision, direction, coordination, and administration of statewide activities related to the prevention of domestic violence.

(4) The department shall enlist the assistance of public and voluntary health, education, welfare, and rehabilitation agencies in a concerted effort to prevent domestic violence and to treat persons engaged in or subject to domestic violence. With the assistance of these agencies, the department, within existing resources, shall formulate and conduct a research and evaluation program on domestic violence. Efforts on the part of these agencies to obtain relevant grants to fund this research and evaluation program must be supported by the department.

(5) The department shall develop and provide educational programs on domestic violence for the benefit of the general public, persons engaged in or subject to domestic violence, professional persons, or others who care for or may be engaged in the care and treatment of persons engaged in or subject to domestic violence.

(6) The department shall cooperate with, assist in, and participate in, programs of other properly qualified agencies, including any agency of the Federal Government, schools of medicine, hospitals, and clinics, in planning and conducting research on the prevention, care, treatment, and rehabilitation of persons engaged in or subject to domestic violence.

(7) The department shall contract with a statewide association whose primary purpose is to represent and provide technical assistance to certified domestic violence centers. This association shall implement, administer, and evaluate all services provided by the certified domestic violence centers. The association shall receive and approve or reject applications for funding of certified domestic violence centers. When approving funding for a newly certified domestic violence center, the association shall make every effort to minimize any adverse economic impact on existing certified domestic violence centers or services provided within the same service area. In order to minimize duplication of services, the association shall make every effort to encourage subcontracting relationships with existing certified domestic violence centers within the same service area. In distributing funds allocated by the Legislature for certified domestic violence centers, the association shall use a formula approved by the department as specified in s. 39.905(7)(a).

**History.**--s. 3, ch. 78-281; s. 3, ch. 79-402; ss. 2, 3, ch. 84-128; ss. 3, 5, ch. 84-343; s. 31, ch. 94-134; s. 31, ch. 94-135; s. 2, ch. 95-187; s. 55, ch. 96-418; s. 115, ch. 98-403; s. 4, ch. 2002-55; s. 1, ch. 2003-11.

**Note.**--Former s. 409.603; s. 415.603.

**39.904 Report to the Legislature on the status of domestic violence cases.**--On or before January 1 of each year, the department shall furnish to the President of the Senate and the Speaker of the House of Representatives a report on the status of domestic violence in this state, which report shall include, but is not limited to, the following:

(1) The incidence of domestic violence in this state.

- (2) An identification of the areas of the state where domestic violence is of significant proportions, indicating the number of cases of domestic violence officially reported, as well as an assessment of the degree of unreported cases of domestic violence.
- (3) An identification and description of the types of programs in the state that assist victims of domestic violence or persons who commit domestic violence, including information on funding for the programs.
- (4) The number of persons who are treated by or assisted by local domestic violence programs that receive funding through the department.
- (5) A statement on the effectiveness of such programs in preventing future domestic violence.
- (6) An inventory and evaluation of existing prevention programs.
- (7) A listing of potential prevention efforts identified by the department; the estimated annual cost of providing such prevention services, both for a single client and for the anticipated target population as a whole; an identification of potential sources of funding; and the projected benefits of providing such services.

**History.**--s. 4, ch. 84-343; s. 138, ch. 97-101; s. 116, ch. 98-403.

**Note.**--Former s. 415.604.

### **39.905 Domestic violence centers.--**

(1) Domestic violence centers certified under this part must:

- (a) Provide a facility which will serve as a center to receive and house persons who are victims of domestic violence. For the purpose of this part, minor children and other dependents of a victim, when such dependents are partly or wholly dependent on the victim for support or services, may be sheltered with the victim in a domestic violence center.
- (b) Receive the annual written endorsement of local law enforcement agencies.
- (c) Provide minimum services which include, but are not limited to, information and referral services, counseling and case management services, temporary emergency shelter for more than 24 hours, a 24-hour hotline, training for law enforcement personnel, assessment and appropriate referral of resident children, and educational services for community awareness relative to the incidence of domestic violence, the prevention of such violence, and the care, treatment, and rehabilitation for persons engaged in or subject to domestic violence. If a 24-hour hotline, professional training, or community education is already provided by a certified domestic violence center within a district, the department may exempt such certification requirements for a new center serving the same district in order to avoid duplication of services.
- (d) Participate in the provision of orientation and training programs developed for law enforcement officers, social workers, and other professionals and paraprofessionals who work with domestic violence victims to better enable such persons to deal effectively with incidents of domestic violence.
- (e) Establish and maintain a board of directors composed of at least three citizens, one of whom must be a member of a local, municipal, or county law enforcement agency.
- (f) Comply with rules adopted pursuant to this part.
- (g) File with the department a list of the names of the domestic violence advocates who are employed or who volunteer at the domestic violence center who may claim a privilege under s. 90.5036 to refuse to disclose a confidential communication between a victim of domestic violence and the advocate regarding the domestic violence inflicted upon the victim. The list must include the title of the position held by the advocate whose name is listed and a description of the duties of that position. A domestic violence center must file amendments to this list as necessary.



(h) Demonstrate local need and ability to sustain operations through a history of 18 consecutive months' operation as a domestic violence center, including 12 months' operation of an emergency shelter as provided in paragraph (c), and a business plan which addresses future operations and funding of future operations.

(i) If its center is a new center applying for certification, demonstrate that the services provided address a need identified in the most current statewide needs assessment approved by the department.

(2) If the department finds that there is failure by a center to comply with the requirements established under this part or with the rules adopted pursuant thereto, the department may deny, suspend, or revoke the certification of the center.

(3) The annual certificate shall automatically expire on the termination date shown on the certificate.

(4) The domestic violence centers shall establish procedures pursuant to which persons subject to domestic violence may seek services from these centers voluntarily.

(5) Domestic violence centers may be established throughout the state when private, local, state, or federal funds are available.

(6) In order to receive state funds, a center must:

(a) Obtain certification pursuant to this part. However, the issuance of a certificate will not obligate the department to provide funding.

(b) Receive at least 25 percent of its funding from one or more local, municipal, or county sources, public or private. Contributions in kind, whether materials, commodities, transportation, office space, other types of facilities, or personal services, may be evaluated and counted as part of the required local funding.

(7)(a) All funds collected and appropriated to the domestic violence program for certified domestic violence centers shall be distributed annually according to an allocation formula approved by the department. In developing the formula, the factors of population, rural characteristics, geographical area, and the incidence of domestic violence shall be considered.

(b) A contract between the statewide association and a certified domestic violence center shall contain provisions assuring the availability and geographic accessibility of services throughout the district. For this purpose, a center may distribute funds through subcontracts or to center satellites, provided such arrangements and any subcontracts are approved by the statewide association.

**History.**--s. 5, ch. 78-281; s. 4, ch. 79-402; s. 2, ch. 82-135; s. 4, ch. 82-192; s. 3, ch. 84-128; s. 5, ch. 84-343; s. 32, ch. 94-134; s. 32, ch. 94-135; ss. 3, 8, ch. 95-187; s. 117, ch. 98-403; s. 2, ch. 2003-11.

**Note.**--Former s. 409.605; s. 415.605.

**39.9055 Certified domestic violence centers; capital improvement grant program.**--There is established a certified domestic violence center capital improvement grant program.

(1) A certified domestic violence center as defined in s. 39.905 may apply to the Department of Children and Family Services for a capital improvement grant. The grant application must provide information that includes:

(a) A statement specifying the capital improvement that the certified domestic violence center proposes to make with the grant funds.

(b) The proposed strategy for making the capital improvement.

(c) The organizational structure that will carry out the capital improvement.

- (d) Evidence that the certified domestic violence center has difficulty in obtaining funding or that funds available for the proposed improvement are inadequate.
- (e) Evidence that the funds will assist in meeting the needs of victims of domestic violence and their children in the certified domestic violence center service area.
- (f) Evidence of a satisfactory recordkeeping system to account for fund expenditures.
- (g) Evidence of ability to generate local match.

(2) Certified domestic violence centers as defined in s. 39.905 may receive funding subject to legislative appropriation, upon application to the Department of Children and Family Services, for projects to construct, acquire, repair, improve, or upgrade systems, facilities, or equipment, subject to availability of funds. An award of funds under this section must be made in accordance with a needs assessment developed by the Florida Coalition Against Domestic Violence and the Department of Children and Family Services. The department annually shall perform this needs assessment and shall rank in order of need those centers that are requesting funds for capital improvement.

(3) The Department of Children and Family Services shall, in collaboration with the Florida Coalition Against Domestic Violence, establish criteria for awarding the capital improvement funds that must be used exclusively for support and assistance with the capital improvement needs of the certified domestic violence centers, as defined in s. 39.905.

(4) The Department of Children and Family Services shall ensure that the funds awarded under this section are used solely for the purposes specified in this section. The department will also ensure that the grant process maintains the confidentiality of the location of the certified domestic violence centers, pursuant to s. 39.908. The total amount of grant moneys awarded under this section may not exceed the amount appropriated for this program.

**History.**--s. 2, ch. 2000-220.

**39.906 Referral to centers and notice of rights.**--Any law enforcement officer who investigates an alleged incident of domestic violence shall advise the victim of such violence that there is a domestic violence center from which the victim may receive services. The law enforcement officer shall give the victim immediate notice of the legal rights and remedies available in accordance with the provisions of s. 741.29.

**History.**--s. 7, ch. 78-281; s. 6, ch. 79-402; s. 6, ch. 84-343; s. 28, ch. 94-134; s. 28, ch. 94-135; s. 118, ch. 98-403.

**Note.**--Former s. 409.607; s. 415.606.

**39.908 Confidentiality of information received by department or domestic violence center.**--

(1) Information about clients received by the department or by authorized persons employed by or volunteering services to a domestic violence center, through files, reports, inspection, or otherwise, is confidential and exempt from the provisions of s. 119.07(1). Information about the location of domestic violence centers and facilities is confidential and exempt from the provisions of s. 119.07(1).

(2) Information about domestic violence center clients may not be disclosed without the written consent of the client to whom the information or records pertain. For the purpose of state law regarding searches and seizures, domestic violence centers shall be treated as private dwelling places. Information about a client or the location of a domestic violence center may be given by center staff or volunteers to law enforcement, firefighting, medical, or other personnel in the following circumstances:

- (a) To medical personnel in a medical emergency.

(b) Upon a court order based upon an application by a law enforcement officer for a criminal arrest warrant which alleges that the individual sought to be arrested is located at the domestic violence shelter.

(c) Upon a search warrant that specifies the individual or object of the search and alleges that the individual or object is located at the shelter.

(d) To firefighting personnel in a fire emergency.

(e) To any other person necessary to maintain the safety and health standards in the domestic violence shelter.

(f) Information solely about the location of the domestic violence shelter may be given to those with whom the agency has an established business relationship.

(3) The restriction on the disclosure or use of the information about domestic violence center clients does not apply to:

(a) Communications from domestic violence shelter staff or volunteers to law enforcement officers when the information is directly related to a client's commission of a crime or threat to commit a crime on the premises of a domestic violence shelter; or

(b) Reporting suspected abuse of a child or a vulnerable adult as required by law. However, when cooperating with protective investigation services staff, the domestic violence shelter staff and volunteers must protect the confidentiality of other clients at the domestic violence center.

**History.**--s. 6, ch. 78-281; s. 5, ch. 79-402; s. 7, ch. 84-343; s. 22, ch. 91-71; s. 33, ch. 94-134; s. 33, ch. 94-135; s. 277, ch. 96-406; s. 119, ch. 98-403.

**Note.**--Former s. 409.606; s. 415.608.

**SOCIAL WELFARE****CHAPTER 409****SOCIAL AND ECONOMIC ASSISTANCE****409.1451 Independent living transition services.--****(1) SYSTEM OF SERVICES.--**

(a) The Department of Children and Family Services, its agents, or community-based providers operating pursuant to s. 409.1671 shall administer a system of independent living transition services to enable older children in foster care and young adults who exit foster care at age 18 to make the transition to self-sufficiency as adults.

(b) The goals of independent living transition services are to assist older children in foster care and young adults who were formerly in foster care to obtain life skills and education for independent living and employment, to have a quality of life appropriate for their age, and to assume personal responsibility for becoming self-sufficient adults.

(c) State funds for foster care or federal funds shall be used to establish a continuum of services for eligible children in foster care and eligible young adults who were formerly in foster care which accomplish the goals for the system of independent living transition services by providing services for foster children, pursuant to subsection (4), and services for young adults who were formerly in foster care, pursuant to subsection (5).

(d) For children in foster care, independent living transition services are not an alternative to adoption. Independent living transition services may occur concurrently with continued efforts to locate and achieve placement in adoptive families for older children in foster care.

**(2) ELIGIBILITY.--**

(a) The department shall serve children who have reached 13 years of age but are not yet 18 years of age and who are in foster care by providing services pursuant to subsection (4). Children to be served must meet the eligibility requirements set forth for specific services as provided in this section.

(b) The department shall serve young adults who have reached 18 years of age but are not yet 23 years of age and who were in foster care when they turned 18 years of age or, after reaching 16 years of age were adopted from foster care or placed with a court-approved dependency guardian and have spent a minimum of 6 months in foster care within the 12 months immediately preceding such placement or adoption, by providing services pursuant to subsection (5). Young adults to be served must meet the eligibility requirements set forth for specific services in this section.

**(3) PREPARATION FOR INDEPENDENT LIVING.--**

(a) It is the intent of the Legislature for the Department of Children and Family Services to assist older children in foster care and young adults who exit foster care at age 18 in making the transition to independent living and self-sufficiency as adults. The department shall provide such children and young adults with opportunities to participate in life skills activities in their foster families and communities which are reasonable and appropriate for their respective ages or for any special needs they may have and shall provide them with services to build life skills and increase their ability to live independently and become self-sufficient. To support the provision of opportunities for participation in age-appropriate life skills activities, the department shall:

1. Develop a list of age-appropriate activities and responsibilities to be offered to all children involved in independent living transition services and their foster parents.

2. Provide training for staff and foster parents to address the issues of older children in foster care in transitioning to adulthood, which shall include information on high school completion, grant applications, vocational school opportunities, supporting education and employment opportunities, and opportunities to participate in appropriate daily activities.

3. Develop procedures to maximize the authority of foster parents, family foster homes, residential child-caring agencies, or other authorized caregivers to approve participation in age-appropriate activities of children in their care. The age-appropriate activities and the authority of the foster parent, family foster home, residential child-caring agency or caregiver shall be developed into a written plan that the foster parent, family foster home, residential child-caring agency, or caregiver, the child, and the case manager all develop together, sign, and follow. This plan must include specific goals and objectives and be reviewed and updated no less than quarterly. Foster parents, family foster homes, residential child-caring agencies, or other authorized caregivers who have developed a written plan as described in this subparagraph shall not be held responsible under administrative rules or laws pertaining to state licensure or have their licensure status in any manner jeopardized as a result of the actions of a child engaged in the approved age-appropriate activities specified in the written plan.

4. Provide opportunities for older children in foster care to interact with mentors.

5. Develop and implement procedures for older children to directly access and manage the personal allowance they receive from the department in order to learn responsibility and participate in age-appropriate life skills activities to the extent feasible.

6. Make a good faith effort to fully explain, prior to execution of any signature, if required, any document, report, form, or other record, whether written or electronic, presented to a child or young adult pursuant to this chapter and allow for the recipient to ask any appropriate questions necessary to fully understand the document. It shall be the responsibility of the person presenting the document to the child or young adult to comply with this subparagraph.

(b) It is further the intent of the Legislature that each child in foster care, his or her foster parents, if applicable, and the department or community-based provider set early achievement and career goals for the child's postsecondary educational and work experience. The department and community-based providers shall implement the model set forth in this paragraph to help ensure that children in foster care are ready for postsecondary education and the workplace.

1. For children in foster care who have reached 13 years of age, the department or community-based provider shall ensure that the child's case plan includes an educational and career path based upon both the abilities and interests of each child. The child, the foster parents, and a teacher or other school staff member shall be included to the fullest extent possible in developing the path. The path shall be reviewed at each judicial hearing as part of the case plan and shall accommodate the needs of children served in exceptional education programs to the extent appropriate for each individual. Such children may continue to follow the courses outlined in the district school board student progression plan. Children in foster care, with the assistance of their foster parents, and the department or community-based provider shall choose one of the following postsecondary goals:

a. Attending a 4-year college or university, a community college plus university, or a military academy;

b. Receiving a 2-year postsecondary degree;

c. Attaining a postsecondary career and technical certificate or credential; or

d. Beginning immediate employment, including apprenticeship, after completion of a high school diploma or its equivalent, or enlisting in the military.

2. In order to assist the child in foster care in achieving his or her chosen goal, the department or community-based provider shall, with the participation of the child and foster parents, identify:

a. The core courses necessary to qualify for a chosen goal.

b. Any elective courses which would provide additional help in reaching a chosen goal.

c. The grade point requirement and any additional information necessary to achieve a specific goal.

d. A teacher, other school staff member, employee of the department or community-based care provider, or community volunteer who would be willing to work with the child as an academic advocate or mentor if foster parent involvement is insufficient or unavailable.

3. In order to complement educational goals, the department and community-based providers are encouraged to form partnerships with the business community to support internships, apprenticeships, or other work-related opportunities.

4. The department and community-based providers shall ensure that children in foster care and their foster parents are made aware of the postsecondary goals available and shall assist in identifying the coursework necessary to enable the child to reach the chosen goal.

(c) All children in foster care and young adults formerly in foster care are encouraged to take part in learning opportunities that result from participation in community service activities.

(d) Children in foster care and young adults formerly in foster care shall be provided with the opportunity to change from one postsecondary goal to another, and each postsecondary goal shall allow for changes in each individual's needs and preferences. Any change, particularly a change that will result in additional time required to achieve a goal, shall be made with the guidance and assistance of the department or community-based provider.

(4) SERVICES FOR CHILDREN IN FOSTER CARE.--The department shall provide the following transition to independence services to children in foster care who meet prescribed conditions and are determined eligible by the department. The service categories available to children in foster care which facilitate successful transition into adulthood are:

(a) *Preindependent living services*.--

1. Preindependent living services include, but are not limited to, life skills training, educational field trips, and conferences. The specific services to be provided to a child shall be determined using a preindependent living assessment.

2. A child who has reached 13 years of age but is not yet 15 years of age who is in foster care is eligible for such services.

3. The department shall conduct an annual staffing for each child who has reached 13 years of age but is not yet 15 years of age to ensure that the preindependent living training and services to be provided as determined by the preindependent living assessment are being received and to evaluate the progress of the child in developing the needed independent living skills.

4. At the first annual staffing that occurs following a child's 14th birthday, and at each subsequent staffing, the department or community-based provider shall ensure that the child's case plan includes an educational and career path based upon both the abilities and interests of each child and shall provide to each child detailed personalized information on services provided by the Road-to-Independence Program, including requirements for eligibility; on other grants, scholarships, and waivers that are available and should be sought by the child with assistance from the department, including, but not limited to, the Bright Futures Scholarship Program, as provided in ss. 1009.53-1009.538; on application deadlines; and on grade requirements for such programs.

5. Information related to both the preindependent living assessment and all staffings, which shall be reduced to writing and signed by the child participant, shall be included as a part of the written report required to be provided to the court at each judicial review held pursuant to s. 39.701.

(b) *Life skills services*.--

1. Life skills services may include, but are not limited to, independent living skills training, including training to develop banking and budgeting skills, interviewing skills, parenting skills, and time management or organizational skills, educational support, employment training, and counseling. Children receiving these services should also be provided with information related to social security insurance benefits and public assistance. The specific services to be provided to a child shall be determined using an independent life skills assessment.

2. A child who has reached 15 years of age but is not yet 18 years of age who is in foster care is eligible for such services.

3. The department shall conduct a staffing at least once every 6 months for each child who has reached 15 years of age but is not yet 18 years of age to ensure that the appropriate independent living training and services as determined by the independent life skills assessment are being received and to evaluate the progress of the child in developing the needed independent living skills.

4. The department shall provide to each child in foster care during the calendar month following the child's 17th birthday an independent living assessment to determine the child's skills and abilities to live independently and become self-sufficient. Based on the results of the independent living assessment, services and training shall be provided in order for the child to develop the necessary skills and abilities prior to the child's 18th birthday.

5. Information related to both the independent life skills assessment and all staffings, which shall be reduced to writing and signed by the child participant, shall be included as a part of the written report required to be provided to the court at each judicial review held pursuant to s. 39.701.

*(c) Subsidized independent living services.--*

1. Subsidized independent living services are living arrangements that allow the child to live independently of the daily care and supervision of an adult in a setting that is not required to be licensed under s. 409.175.

2. A child who has reached 16 years of age but is not yet 18 years of age is eligible for such services and shall be formally evaluated for placement in a subsidized independent living arrangement, if he or she:

a. Is adjudicated dependent under chapter 39; has been placed in licensed out-of-home care for at least 6 months prior to entering subsidized independent living; and has a permanency goal of adoption, independent living, or long-term licensed care; and

b. Is able to demonstrate independent living skills, as determined by the department, using established procedures and assessments.

3. Independent living arrangements established for a child must be part of an overall plan leading to the total independence of the child from the department's supervision. The plan must include, but need not be limited to, a description of the skills of the child and a plan for learning additional identified skills; the behavior that the child has exhibited which indicates an ability to be responsible and a plan for developing additional responsibilities, as appropriate; a plan for future educational, vocational, and training skills; present financial and budgeting capabilities and a plan for improving resources and ability; a description of the proposed residence; documentation that the child understands the specific consequences of his or her conduct in the independent living program; documentation of proposed services to be provided by the department and other agencies, including the type of service and the nature and frequency of contact; and a plan for maintaining or developing relationships with the family, other adults, friends, and the community, as appropriate.

4. Subsidy payments in an amount established by the department may be made directly to a child under the direct supervision of a caseworker or other responsible adult approved by the department.

(5) SERVICES FOR YOUNG ADULTS FORMERLY IN FOSTER CARE.--Based on the availability of funds, the department shall provide or arrange for the following services to young adults formerly in foster care who meet the prescribed conditions and are determined eligible by the department. The department, or a community-based care lead agency when the agency is under contract with the department to provide the services described under this subsection, shall develop a plan to implement those services. A plan shall be developed for each community-based care service area in the state. Each plan that is developed by a community-based care lead agency shall be submitted to the department. Each plan shall include the number of young adults to be served each month of the fiscal year and specify the number of young adults who will reach 18 years of age who will be eligible for the plan and the number of young adults who will reach 23 years of age and will be ineligible for the plan or who are otherwise ineligible during each month of the

fiscal year; staffing requirements and all related costs to administer the services and program; expenditures to or on behalf of the eligible recipients; costs of services provided to young adults through an approved plan for housing, transportation, and employment; reconciliation of these expenses and any additional related costs with the funds allocated for these services; and an explanation of and a plan to resolve any shortages or surpluses in order to end the fiscal year with a balanced budget. The categories of services available to assist a young adult formerly in foster care to achieve independence are:

(a) *Aftercare support services.*--

1. Aftercare support services are available to assist young adults who were formerly in foster care in their efforts to continue to develop the skills and abilities necessary for independent living. The aftercare support services available include, but are not limited to, the following:

- a. Mentoring and tutoring.
- b. Mental health services and substance abuse counseling.
- c. Life skills classes, including credit management and preventive health activities.
- d. Parenting classes.
- e. Job and career skills training.
- f. Counselor consultations.
- g. Temporary financial assistance.
- h. Financial literacy skills training.

The specific services to be provided under this subparagraph shall be determined by an aftercare services assessment and may be provided by the department or through referrals in the community.

2. Temporary assistance provided to prevent homelessness shall be provided as expeditiously as possible and within the limitations defined by the department.

3. A young adult who has reached 18 years of age but is not yet 23 years of age who leaves foster care at 18 years of age but who requests services prior to reaching 23 years of age is eligible for such services.

(b) *Road-to-Independence Program.*--

1. The Road-to-Independence Program is intended to help eligible students who are former foster children in this state to receive the educational and vocational training needed to achieve independence. The amount of the award shall be based on the living and educational needs of the young adult and may be up to, but may not exceed, the amount of earnings that the student would have been eligible to earn working a 40-hour-a-week federal minimum wage job.

2. A young adult who has earned a standard high school diploma or its equivalent as described in s. 1003.43 or s. 1003.435, has earned a special diploma or special certificate of completion as described in s. 1003.438, or has reached 18 years of age but is not yet 21 years of age is eligible for the initial award, and a young adult under 23 years of age is eligible for renewal awards, if he or she:

- a. Was a dependent child, under chapter 39, and was living in licensed foster care or in subsidized independent living at the time of his or her 18th birthday or is currently living in licensed foster care or subsidized independent living, or, after reaching the age of 16 was adopted from foster care or placed with a court-approved dependency guardian and has spent a minimum of 6 months in foster care immediately preceding such placement or adoption;
- b. Spent at least 6 months living in foster care before reaching his or her 18th birthday;
- c. Is a resident of this state as defined in s. 1009.40; and
- d. Meets one of the following qualifications:

(I) Has earned a standard high school diploma or its equivalent as described in s. 1003.43 or s. 1003.435, or has earned a special diploma or special certificate of completion as described in s. 1003.438, and has been admitted for full-time enrollment in an eligible postsecondary education institution as defined in s. 1009.533;



(II) Is enrolled full time in an accredited high school; or

(III) Is enrolled full time in an accredited adult education program designed to provide the student with a high school diploma or its equivalent.

3. A young adult applying for the Road-to-Independence Program must apply for any other grants and scholarships for which he or she may qualify. The department shall assist the young adult in the application process and may use the federal financial aid grant process to determine the funding needs of the young adult.

4. An award shall be available to a young adult who is considered a full-time student or its equivalent by the educational institution in which he or she is enrolled, unless that young adult has a recognized disability preventing full-time attendance. The amount of the award, whether it is being used by a young adult working toward completion of a high school diploma or its equivalent or working toward completion of a postsecondary education program, shall be determined based on an assessment of the funding needs of the young adult. This assessment must consider the young adult's living and educational costs and other grants, scholarships, waivers, earnings, and other income to be received by the young adult. An award shall be available only to the extent that other grants and scholarships are not sufficient to meet the living and educational needs of the young adult, but an award may not be less than \$25 in order to maintain Medicaid eligibility for the young adult as provided in s. 409.903.

5. The amount of the award may be disregarded for purposes of determining the eligibility for, or the amount of, any other federal or federally supported assistance.

6.a. The department must advertise the criteria, application procedures, and availability of the program to:

(I) Children and young adults in, leaving, or formerly in foster care.

(II) Case managers.

(III) Guidance and family services counselors.

(IV) Principals or other relevant school administrators.

(V) Guardians ad litem.

(VI) Foster parents.

b. The department shall issue awards from the program for each young adult who meets all the requirements of the program to the extent funding is available.

c. An award shall be issued at the time the eligible student reaches 18 years of age.

d. A young adult who is eligible for the Road-to-Independence Program, transitional support services, or aftercare services and who so desires shall be allowed to reside with the licensed foster family or group care provider with whom he or she was residing at the time of attaining his or her 18th birthday or to reside in another licensed foster home or with a group care provider arranged by the department.

e. If the award recipient transfers from one eligible institution to another and continues to meet eligibility requirements, the award must be transferred with the recipient.

f. Funds awarded to any eligible young adult under this program are in addition to any other services or funds provided to the young adult by the department through transitional support services or aftercare services.

g. The department shall provide information concerning young adults receiving funding through the Road-to-Independence Program to the Department of Education for inclusion in the student financial assistance database, as provided in s. 1009.94.

h. Funds are intended to help eligible young adults who are former foster children in this state to receive the educational and vocational training needed to become independent and self-supporting. The funds shall be terminated when the young adult has attained one of four postsecondary goals under subsection (3) or reaches 23 years of age, whichever occurs earlier. In order to initiate postsecondary education, to allow for a change in career goal, or to obtain additional skills in the same educational or vocational area, a young adult may earn no more than two diplomas, certificates, or credentials. A young adult attaining an associate of arts or associate of science degree shall be permitted to work toward

completion of a bachelor of arts or a bachelor of science degree or an equivalent undergraduate degree. Road-to-Independence Program funds may not be used for education or training after a young adult has attained a bachelor of arts or a bachelor of science degree or an equivalent undergraduate degree.

i. The department shall evaluate and renew each award annually during the 90-day period before the young adult's birthday. In order to be eligible for a renewal award for the subsequent year, the young adult must:

(I) Complete the number of hours, or the equivalent considered full time by the educational institution, unless that young adult has a recognized disability preventing full-time attendance, in the last academic year in which the young adult earned an award, except for a young adult who meets the requirements of s. 1009.41.

(II) Maintain appropriate progress as required by the educational institution, except that, if the young adult's progress is insufficient to renew the award at any time during the eligibility period, the young adult may restore eligibility by improving his or her progress to the required level.

j. Funds may be terminated during the interim between an award and the evaluation for a renewal award if the department determines that the award recipient is no longer enrolled in an educational institution as defined in sub-subparagraph 2.d., or is no longer a state resident. The department shall notify a recipient who is terminated and inform the recipient of his or her right to appeal.

k. An award recipient who does not qualify for a renewal award or who chooses not to renew the award may subsequently apply for reinstatement. An application for reinstatement must be made before the young adult reaches 23 years of age, and a student may not apply for reinstatement more than once. In order to be eligible for reinstatement, the young adult must meet the eligibility criteria and the criteria for award renewal for the program.

(c) *Transitional support services.--*

1. In addition to any services provided through aftercare support or the Road-to-Independence Program, a young adult formerly in foster care may receive other appropriate short-term funding and services, which may include financial, housing, counseling, employment, education, mental health, disability, and other services, if the young adult demonstrates that the services are critical to the young adult's own efforts to achieve self-sufficiency and to develop a personal support system. The department or community-based care provider shall work with the young adult in developing a joint transition plan that is consistent with a needs assessment identifying the specific need for transitional services to support the young adult's own efforts. The young adult must have specific tasks to complete or maintain included in the plan and be accountable for the completion of or making progress towards the completion of these tasks. If the young adult and the department or community-based care provider cannot come to agreement regarding any part of the plan, the young adult may access a grievance process to its full extent in an effort to resolve the disagreement.

2. A young adult formerly in foster care is eligible to apply for transitional support services if he or she has reached 18 years of age but is not yet 23 years of age, was a dependent child pursuant to chapter 39, was living in licensed foster care or in subsidized independent living at the time of his or her 18th birthday, and had spent at least 6 months living in foster care before that date.

3. If at any time the services are no longer critical to the young adult's own efforts to achieve self-sufficiency and to develop a personal support system, they shall be terminated.

(d) *Payment of aftercare, Road-to-Independence Program, or transitional support funds.--*

1. Payment of aftercare, Road-to-Independence Program, or transitional support funds shall be made directly to the recipient unless the recipient requests in writing to the community-based care lead agency, or the department, that the payments or a portion of the payments be made directly on the recipient's behalf in order to secure services such as housing, counseling, education, or employment training as part of the young adult's own efforts to achieve self-sufficiency.

2. After the completion of aftercare support services that satisfy the requirements of sub-subparagraph (a)1.h., payment of awards under the Road-to-Independence Program shall be made by direct deposit to the recipient, unless the recipient requests in writing to the community-based care lead agency or the department that:

- a. The payments be made directly to the recipient by check or warrant;
- b. The payments or a portion of the payments be made directly on the recipient's behalf to institutions the recipient is attending to maintain eligibility under this section; or
- c. The payments be made on a two-party check to a business or landlord for a legitimate expense, whether reimbursed or not. A legitimate expense for the purposes of this sub-subparagraph shall include automobile repair or maintenance expenses; educational, job, or training expenses; and costs incurred, except legal costs, fines, or penalties, when applying for or executing a rental agreement for the purposes of securing a home or residence.

3. The community-based care lead agency may purchase housing, transportation, or employment services to ensure the availability and affordability of specific transitional services thereby allowing an eligible young adult to utilize these services in lieu of receiving a direct payment. Prior to purchasing such services, the community-based care lead agency must have a plan approved by the department describing the services to be purchased, the rationale for purchasing the services, and a specific range of expenses for each service that is less than the cost of purchasing the service by an individual young adult. The plan must include a description of the transition of a young adult using these services into independence and a timeframe for achievement of independence. An eligible young adult who prefers a direct payment shall receive such payment. The plan must be reviewed annually and evaluated for cost-efficiency and for effectiveness in assisting young adults in achieving independence, preventing homelessness among young adults, and enabling young adults to earn a livable wage in a permanent employment situation.

4. The young adult who resides with a foster family may not be included as a child in calculating any licensing restriction on the number of children in the foster home.

*(e) Appeals process.--*

1. The Department of Children and Family Services shall adopt by rule a procedure by which a young adult may appeal an eligibility determination or the department's failure to provide aftercare, Road-to-Independence Program, or transitional support services, or the termination of such services, if such funds are available.

2. The procedure developed by the department must be readily available to young adults, must provide timely decisions, and must provide for an appeal to the Secretary of Children and Family Services. The decision of the secretary constitutes final agency action and is reviewable by the court as provided in s. 120.68.

(6) **ACCOUNTABILITY.--**The department shall develop outcome measures for the program and other performance measures in order to maintain oversight of the program. The department shall prepare a report on the outcome measures and the department's oversight activities and submit the report to the President of the Senate, the Speaker of the House of Representatives, and the committees with jurisdiction over issues relating to children and families in the Senate and the House of Representatives no later than January 31 of each year. The report must include:

(a) An analysis of performance on the outcome measures developed under this section reported for each community-based care lead agency and compared with the performance of the department on the same measures.

(b) A description of the department's oversight of the program, including, by lead agency, any programmatic or fiscal deficiencies found, corrective actions required, and current status of compliance.

(c) Any rules adopted or proposed under this section since the last report. For the purposes of the first report, any rules adopted or proposed under this section must be included.

(7) INDEPENDENT LIVING SERVICES ADVISORY COUNCIL.--The Secretary of Children and Family Services shall establish the Independent Living Services Advisory Council for the purpose of reviewing and making recommendations concerning the implementation and operation of the independent living transition services. This advisory council shall continue to function as specified in this subsection until the Legislature determines that the advisory council can no longer provide a valuable contribution to the department's efforts to achieve the goals of the independent living transition services.

(a) Specifically, the advisory council shall assess the implementation and operation of the system of independent living transition services and advise the department on actions that would improve the ability of the independent living transition services to meet the established goals. The advisory council shall keep the department informed of problems being experienced with the services, barriers to the effective and efficient integration of services and support across systems, and successes that the system of independent living transition services has achieved. The department shall consider, but is not required to implement, the recommendations of the advisory council.

(b) The advisory council shall report to the appropriate substantive committees of the Senate and the House of Representatives on the status of the implementation of the system of independent living transition services; efforts to publicize the availability of aftercare support services, the Road-to-Independence Program, and transitional support services; the success of the services; problems identified; recommendations for department or legislative action; and the department's implementation of the recommendations contained in the Independent Living Services Integration Workgroup Report submitted to the Senate and the House substantive committees December 31, 2002. This advisory council report shall be submitted by December 31 of each year that the council is in existence and shall be accompanied by a report from the department which identifies the recommendations of the advisory council and either describes the department's actions to implement these recommendations or provides the department's rationale for not implementing the recommendations.

(c) Members of the advisory council shall be appointed by the secretary of the department. The membership of the advisory council must include, at a minimum, representatives from the headquarters and district offices of the Department of Children and Family Services, community-based care lead agencies, the Agency for Workforce Innovation, the Department of Education, the Agency for Health Care Administration, the State Youth Advisory Board, Workforce Florida, Inc., the Statewide Guardian Ad Litem Office, foster parents, recipients of Road-to-Independence Program funding, and advocates for foster children. The secretary shall determine the length of the term to be served by each member appointed to the advisory council, which may not exceed 4 years.

(d) The Department of Children and Family Services shall provide administrative support to the Independent Living Services Advisory Council to accomplish its assigned tasks. The advisory council shall be afforded access to all appropriate data from the department, each community-based care lead agency, and other relevant agencies in order to accomplish the tasks set forth in this section. The data collected may not include any information that would identify a specific child or young adult.

(e) The advisory council report required under paragraph (b) to be submitted to the substantive committees of the Senate and the House of Representatives by December 31, 2008, shall include an analysis of the system of independent living transition services for young adults who attain 18 years of age while in foster care prior to completing high school or its equivalent and recommendations for department or legislative action. The council shall assess and report on the most effective method of assisting these young adults to complete high school or its equivalent by examining the practices of other states.

(8) PERSONAL PROPERTY.--Property acquired on behalf of clients of this program shall become the personal property of the clients and is not subject to the requirements of chapter 273 relating to state-owned tangible personal property. Such property continues to be subject to applicable federal laws.

(9) MEDICAL ASSISTANCE FOR YOUNG ADULTS FORMERLY IN FOSTER CARE.--The

department shall enroll in the Florida KidCare program, outside the open enrollment period, each young adult who is eligible as described in paragraph (2)(b) and who has not yet reached his or her 19th birthday.

(a) A young adult who was formerly in foster care at the time of his or her 18th birthday and who is 18 years of age but not yet 19, shall pay the premium for the Florida KidCare program as required in s. 409.814.

(b) A young adult who has health insurance coverage from a third party through his or her employer or who is eligible for Medicaid is not eligible for enrollment under this subsection.

(10) RULEMAKING.--The department shall adopt by rule procedures to administer this section, including balancing the goals of normalcy and safety for the youth and providing the caregivers with as much flexibility as possible to enable the youth to participate in normal life experiences. The department shall not adopt rules relating to reductions in awards. The department shall engage in appropriate planning to prevent, to the extent possible, a reduction in awards after issuance.

**History.**--s. 3, ch. 2002-19; s. 44, ch. 2003-1; s. 6, ch. 2003-146; s. 1, ch. 2004-362; s. 3, ch. 2005-179; s. 11, ch. 2006-194; s. 2, ch. 2007-147; s. 1, ch. 2008-122.

**PART II. DEPENDENCY AND  
TERMINATION OF  
PARENTAL RIGHTS PROCEEDINGS**

**A. GENERAL PROVISIONS**

**RULE 8.201. COMMENCEMENT OF PROCEEDINGS**

**(a) Commencement of Proceedings.** Proceedings are commenced when:

- (1) an initial shelter petition is filed;
- (2) a petition alleging dependency is filed; or
- (3) a petition for termination of parental rights is filed.

**(b) File to Be Opened.** Upon commencement of any dependency or termination of parental rights proceeding, the clerk shall open a file and assign a case number.

**RULE 8.203. APPLICATION OF UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT**

Any pleading filed commencing proceedings as set forth in rule 8.201 shall be accompanied by an affidavit, to the extent of affiant's personal knowledge, under the Uniform Child Custody Jurisdiction and Enforcement Act. Each party has a continuing duty to inform the court of any custody proceeding in this or any other state of which information is obtained during the proceeding.

**RULE 8.205. TRANSFER OF CASES**

**(a) Transfer of Cases Within Circuit Court.** If it should appear at any time in a proceeding initiated in a division other than the division of the circuit court assigned to handle dependency matters that facts are alleged that essentially constitute a dependency or the termination of parental rights, the court may upon consultation with the administrative judge assigned to dependency cases order the transfer of action and the transmittal of all relevant papers to the division assigned to handle dependency matters. The division assigned to handle dependency matters shall then assume jurisdiction only over matters pertaining to dependency, custody, visitation, and child support.

**(b) Transfer of Cases Within the State of Florida.** The court may transfer any case after adjudication, when adjudication is withheld, or before adjudication where witnesses are available in another jurisdiction, to the circuit court for the county in which is located the domicile or usual residence of the child or such other circuit as the court may determine to be for the best interest of the child and to promote the efficient administration of justice. The transferring court shall enter an order transferring its jurisdiction and certifying the case to the proper court, furnishing all parties, the clerk, and the attorney's office handling dependency matters for the state in the receiving court a copy of the order of transfer within 5 days. The clerk shall also transmit a certified copy of the file to the receiving court within 5 days.

**(c) Transfer of Cases Among States.** If it should appear at any time that an action is pending in another state, the court may transfer jurisdiction over the action to a more convenient forum state, may stay the proceedings, or may dismiss the action.

**RULE 8.210. PARTIES AND PARTICIPANTS**

**(a) Parties.** For the purpose of these rules the terms "party" and "parties" shall include the petitioner, the child, the parent(s) of the child, the department, and the guardian ad litem or the representative of the guardian ad litem program, when the program has been appointed.

**(b) Participants.** “Participant” means any person who is not a party but who should receive notice of hearings involving the child. Participants include foster parents or the legal custodian of the child, identified prospective parents, actual custodians of the child, grandparents entitled to notice of an adoption proceeding as provided by law, the state attorney, and any other person whose participation may be in the best interest of the child. The court may add additional participants. Participants may be granted leave by the court to be heard without the necessity of filing a motion to intervene and shall have no other rights of a party except as provided by law.

**(c) Parent or Legal Custodian.** For the purposes of these rules, when the phrase “parent(s) or legal custodian(s)” is used, it refers to the rights or responsibilities of the parent and, only if there is no living parent with intact parental rights, to the rights or responsibilities of the legal custodian who has assumed the role of the parent.

#### **RULE 8.215. GUARDIAN AD LITEM**

**(a) Request.** At any stage of the proceedings, any party may request or the court may appoint a guardian ad litem to represent any child alleged to be dependent.

**(b) Appointment.** The court shall appoint a guardian ad litem to represent the child in any proceeding as required by law and shall ascertain at each stage of the proceeding whether a guardian ad litem should be appointed if one has not yet been appointed.

**(c) Duties and Responsibilities.** The guardian ad litem shall be a responsible adult, who may or may not be an attorney, or a certified guardian ad litem program, and shall have the following responsibilities:

(1) To gather information concerning the allegations of the petition and any subsequent matters arising in the case and, unless excused by the court, to file a written report. This report shall include a summary of the guardian ad litem’s findings, a statement of the wishes of the child, and the recommendations of the guardian ad litem and shall be provided to all parties and the court at least 72 hours before the hearing for which the report is prepared.

(2) To be present at all court hearings unless excused by the court.

(3) To represent the interests of the child until the jurisdiction of the court over the child terminates, or until excused by the court.

(4) To perform such other duties as are consistent with the scope of the appointment.

**(d) Bond.** A guardian ad litem shall not be required to post bond but shall file an acceptance of the office.

**(e) Service.** A guardian ad litem shall be entitled to receive service of pleadings and papers as provided by rule 8.225.

**(f) Practice of Law by Lay Guardians.** The duties of lay guardians shall not include the practice of law.

**(g) Substitution or Discharge.** The court, on its own motion or that of any party, including the child, may substitute or discharge the guardian ad litem for reasonable cause.

#### **RULE 8.217. ATTORNEY AD LITEM**

**(a) Request.** At any stage of the proceedings, any party may request or the court may consider whether an attorney ad litem is necessary to represent any child alleged to be dependent, if one has not already been appointed.

**(b) Appointment.** The court may appoint an attorney ad litem to represent the child in any proceeding as allowed by law.

**(c) Duties and Responsibilities.** The attorney ad litem shall be an attorney who has completed any additional requirements as provided by law. The attorney ad litem shall have the responsibilities provided by law.

**(d) Service.** An attorney ad litem shall be entitled to receive service of pleadings and papers as provided by rule 8.225.

**RULE 8.220. STYLE OF PLEADING AND ORDERS**

All pleadings and orders shall be styled: “In the interest of ....., a child,” or: “In the interest of ....., children.”

**RULE 8.224. PERMANENT MAILING ADDRESS**

(a) **Designation.** On the first appearance before the court, each party shall provide a permanent mailing address to the court. The court shall advise each party that this address will be used by the court, the petitioner, and other parties for notice unless and until the party notifies the court and the petitioner, in writing, of a new address.

(b) **Effect of Filing.** On the filing of a permanent address designation with the court, the party then has an affirmative duty to keep the court and the petitioner informed of any address change. Any address change must be filed with the court as an amendment to the permanent address designation.

(c) **Service to Permanent Mailing Address.** Service of any summons, notice, pleadings, subpoenas, or other papers to the permanent mailing address on file with the court will be presumed to be appropriate service.

**RULE 8.225. PROCESS, DILIGENT SEARCHES, AND SERVICE OF PLEADINGS AND PAPERS**

**(a) Summons and Subpoenas.**

(1) **Summons.** Upon the filing of a dependency petition, the clerk shall issue a summons. The summons shall require the person on whom it is served to appear for a hearing at a time and place specified not less than 72 hours after service of the summons. A copy of the petition shall be attached to the summons.

(2) **Subpoenas.** Subpoenas for testimony before the court, for production of tangible evidence, and for taking depositions shall be issued by the clerk of the court, the court on its own motion, or any attorney of record for a party. Subpoenas may be served within the state by any person over 18 years of age who is not a party to the proceeding. In dependency and termination of parental rights proceedings, subpoenas may also be served by authorized agents of the department or the guardian ad litem. Except as otherwise required by this rule, the procedure for issuance of a subpoena by an attorney of record in a proceeding shall be as provided in the Florida Rules of Civil Procedure.

(3) **Service of Summons and Other Process to Persons Residing in the State.** The summons and other process shall be served upon all parties other than the petitioner as required by law. The summons and other process may be served by authorized agents of the department or the guardian ad litem.

(A) Service by publication shall not be required for dependency hearings and shall be required only for service of summons in a termination of parental rights proceeding for parents whose identities are known but whose whereabouts cannot be determined despite a diligent search. Service by publication in these circumstances shall be considered valid service.

(B) The failure to serve a party or give notice to a participant in a dependency hearing shall not affect the validity of an order of adjudication or disposition if the court finds that the petitioner has completed a diligent search that failed to ascertain the identity or location of that party.

(C) Personal appearance of any person in a hearing before the court eliminates the requirement for serving process upon that person.

**(4) Service of Summons and Other Process to Persons Residing Outside of the State in Dependency Proceedings.**

(A) Service of the summons and other process on parents, parties, participants, petitioners, or persons outside this state shall be in a manner reasonably calculated to give actual notice, and may be made:



(i) by personal delivery outside this state in a manner prescribed for service of process within this state;

(ii) in a manner prescribed by the law of the place in which service is made for service of process in that place in an action in any of its courts of general jurisdiction;

(iii) by any form of mail addressed to the person to be served and requesting a receipt; or

(iv) as directed by the court. Service by publication shall not be required for dependency hearings.

(B) Notice under this rule shall be served, mailed, delivered, or last published at least 20 days before any hearing in this state.

(C) Proof of service outside this state may be made by affidavit of the person who made the service or in the manner prescribed by the law of this state, the order pursuant to which the service is made, or the law of the place in which the service is made. If service is made by mail, proof may be in a receipt signed by the addressee or other evidence of delivery to the addressee.

(D) Personal appearance of any person in a hearing before the court eliminates the requirement for serving process upon that person.

**(b) Paternity Inquiry and Diligent Search.**

**(1) Identity Unknown.** If the identity of a parent is unknown, and a petition for dependency, shelter care, or termination of parental rights is filed, the court shall conduct the inquiry required by law. The information required by law may be submitted to the court in the form of a sworn affidavit executed by a person having personal knowledge of the facts.

**(2) Location Unknown.** If the location of a parent is unknown and that parent has not filed a permanent address designation with the court, the petitioner shall undertake a diligent search as required by law.

**(3) Affidavit of Diligent Search.** If the location of a parent is unknown after the diligent search has been completed, the petitioner shall file with the court an affidavit of diligent search executed by the person who made the search and inquiry.

**(4) Continuing Duty.** After filing an affidavit of diligent search in a dependency or termination of parental rights proceeding, the petitioner, and, if the court requires, the department, are under a continuing duty to search for and attempt to serve the parent whose location is unknown until excused from further diligent search by the court. The department shall report on the results of the continuing search at each court hearing until the person is located or until further search is excused by the court.

**(5) Effect of Paternity Inquiry and Diligent Search.**

(A) Failure to serve parents whose identity or residence is unknown shall not affect the validity of an order of adjudication or disposition if the court finds the petitioner has completed a diligent search.

(B) If the court inquiry fails to identify any person as a parent or prospective parent, the court shall so find and may proceed without further notice.

(C) If the inquiry, diligent search, or subsequent search identifies and locates any person who may be a parent or prospective parent, the court shall require notice of the hearing to be provided to that person. That person must then be given an opportunity to become a party to the proceedings by completing a sworn affidavit of parenthood and filing it with the court or the department.

**(c) Notice and Service of Pleadings and Papers.**

**(1) Notice of Arraignment Hearings in Dependency Cases.** Notice of the arraignment hearing must be served on all parties with the summons and petition. The document containing the notice to appear in a dependency arraignment hearing must contain, in type at least as large as the balance of the document, the following or substantially similar language: “FAILURE TO PERSONALLY APPEAR AT THE ARRAIGNMENT HEARING CONSTITUTES CONSENT TO THE ADJUDICATION OF THIS CHILD (OR THESE CHILDREN) AS A DEPENDENT CHILD (OR CHILDREN) AND MAY ULTIMATELY RESULT IN LOSS OF CUSTODY OF THIS CHILD (OR THESE CHILDREN).”

**(2) Notice of Assessment of Child Support.** Other than as part of a disposition order, if the court, on its own motion or at the request of any party, seeks to impose or enforce a child support obligation on any

parent, all parties and participants are entitled to reasonable notice that child support will be addressed at a future hearing.

**(3) Notice of Hearings to Participants and Parties Whose Identity or Address are Known.** All participants and parties whose identity and address are known must be notified of all proceedings and hearings subsequent to the initial hearing, unless otherwise provided by law. Notice to parents in proceedings involving shelter hearings and hearings resulting from medical emergencies must be that which is most likely to result in actual notice. It is the duty of the petitioner or moving party to notify all participants and parties known to the petitioner or moving party of all hearings subsequent to the initial hearing, except hearings which must be noticed by the court. Additional notice is not required if notice was provided to the parties in writing by the court or is contained in prior court orders and those orders were provided to the participant or party.

**(4) Service of Pleadings, Orders, and Papers.** Unless the court orders otherwise, every pleading, order, and paper filed in the action after the initial petition, shall be served on each party or the party's attorney. Nothing herein shall be construed to require that a plea be in writing or that an application for witness subpoena be served.

**(5) Method of Service.** When service is required or permitted to be made upon a party or participant represented by an attorney, service shall be made upon the attorney unless service upon the party or participant is ordered by the court.

(A) Service is excused if the identity or residence of the party or participant is unknown and a diligent search for that person has been completed in accordance with law.

(B) Service upon the attorney shall be made by delivering a copy to the attorney or by mailing it to the attorney's last known address.

(C) Delivery of a copy within this rule shall mean:

(i) handing it to the attorney;

(ii) leaving it at the attorney's office with the person in charge thereof;

(iii) if there is no one in charge of the office, leaving it a conspicuous place therein; or

(iv) transmitting it by facsimile to the attorney's or party's office with a cover sheet containing the sender's name, firm, address, telephone number, and facsimile number, the number of pages transmitted, and the recipient's facsimile number. When service is made by facsimile, a copy shall also be served by any other method permitted by this rule. Facsimile service occurs when transmission is complete.

(D) If the party or participant is not represented by an attorney, service of all pleadings or papers shall be upon the party or participant. Service may be made by mail to the party's or participant's permanent mailing address, if one has been provided to the court; to the last known address, if a permanent mailing address has not been provided to the court; or by leaving it at their usual place of abode with some person of their family above 15 years of age and informing such person of the contents.

(E) Service by mail shall be complete upon mailing.

**(6) Filing.** The filing of pleadings and other papers with the court as required by these rules shall be made by filing the original with the clerk of the court either before service or immediately thereafter. The court may permit the papers to be filed with it, in which event the filing date shall be noted thereon and the papers shall be transmitted to the office of the clerk.

**(7) Certificate of Service.** When any authorized person shall in substance certify:

"I certify that a copy/copies has/have been furnished to (insert names or names) by (delivery) (mail) (fax) on (date).

Title"

this certificate shall be taken as prima facie proof of such service in compliance with all rules of court and law. The certificate must be signed by the attorney of record, clerk or deputy clerk, judicial assistant, or judge.

#### **RULE 8.230. PLEADINGS TO BE SIGNED**

**(a) Pleading to Be Signed by Attorney.** Every written paper or pleading of a party represented by an attorney shall be signed in the attorney's individual name by such attorney, whose Florida Bar number, address, and telephone number, including area code, shall be stated and who shall be duly licensed to practice law in Florida. The attorney may be required by an order of court to vouch for the authority to represent such party and to give the address of such party. Except when otherwise specifically provided by these rules or applicable statute, pleadings as such need not be verified or accompanied by affidavit.

**(b) Pleading to Be Signed by Unrepresented Party.** A party who has no attorney but who represents himself or herself shall sign a written pleading or other paper to be filed and state his or her address and telephone number, including area code.

**(c) Effect of Signing Pleading.** The signature of a person shall constitute a certificate that the paper or pleading has been read; that to the best of the person's knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay. If a pleading or paper is not signed, or is signed with intent to defeat the purpose of this rule, it may be stricken and the action may proceed as though the pleading or paper had not been filed.

#### **RULE 8.235. MOTIONS**

**(a) Motions in General.** An application to the court for an order shall be made by motion which shall be in writing unless made during a hearing; shall be signed by the party making the motion or by the party's attorney; shall state with particularity the grounds therefor; and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion or in a written report to the court for a scheduled hearing provided the notice or report are served on the parties as required by law.

**(b) Motion to Dismiss.** Any party may file a motion to dismiss any petition or other pleading, setting forth the grounds on which the motion is based. If a motion to dismiss is granted where a child is being sheltered under an order, the child may be continued in shelter under previous order of the court upon the representation that a new or amended petition will be filed.

**(c) Sworn Motion to Dismiss.** Before the adjudicatory hearing the court may entertain a motion to dismiss the petition on the ground that there are no material disputed facts and the undisputed facts do not establish a prima facie case of dependency. The facts on which such motion is based shall be specifically alleged and the motion sworn to by the party. The motion shall be filed a reasonable time before the date of the adjudicatory hearing. The opposing parties may traverse or demur to this motion. Factual matters alleged in it shall be deemed admitted unless specifically denied by the party. The motion shall be denied if the party files a written traverse that with specificity denies under oath the material fact or facts alleged in the motion to dismiss.

**(d) Motion to Sever.** A motion may be made for a severance of 2 or more counts of a multi-count petition, or for the severance of the cases of 2 or more children alleged to be dependent in the same petition. The court may grant motions for severance of jointly-brought cases for good cause shown.

**RULE 8.240. COMPUTATION, CONTINUANCE, EXTENSION,  
AND ENLARGEMENT OF TIME**

**(a) Computation.** In computing any period of time prescribed or allowed by these rules, except rules 8.300 and 8.305, by order of court, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is not included. The last day of the period so computed shall be counted, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, a Sunday, nor a legal holiday. When the period of time prescribed or allowed shall be less than 7 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation.

**(b) Enlargement of Time.** When by these rules, by a notice given under them, or by order of court an act is required or allowed to be done at or within a specified time, the court for good cause shown, within the limits established by law, and subject to the provisions of subdivision (d) of this rule, may, at any time, in its discretion (1) with or without notice, order the period enlarged if a request is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) on motion made and notice after the expiration of the specified period permit the act to be done when the failure to act was the result of excusable neglect. The court may not, except as provided by law or elsewhere in these rules, extend the time for making a motion for new trial, for rehearing, or vacation of judgment, or for taking an appeal. This rule shall not be construed to apply to shelter hearings.

**(c) Time for Service.**

**(1) Motions and Notice of Hearing.** A copy of any written motion that may not be heard ex parte and a copy of the notice of hearing shall be served a reasonable time before the time specified for the hearing.

**(2) Additional Time After Service by Mail.** Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of notice or other paper is served by mail, 5 days shall be added to the prescribed period.

**(d) Continuances and Extensions of Time.**

(1) A motion for continuance, extension, or waiver of the time standards provided by law and found in this rule shall be in writing and signed by the requesting party. On a showing of good cause, the court shall allow a motion for continuance or extension to be made ore tenus at any time during the proceedings.

(2) A motion for continuance, extension, or waiver of the time standards provided by law shall not be made in advance of the particular circumstance or need that would warrant delay of the proceedings.

(3) A motion for continuance, extension, or waiver of the time standards provided by law shall state all of the facts that the movant contends entitle the movant to a continuance, extension, or waiver of time including:

(A) the task that must be completed by the movant to preserve the rights of a party or the best interests of the child who is the subject of the proceedings;

(B) the minimum number of days absolutely necessary to complete this task; and

(C) the total number of days the proceedings have been continued at the request of any party within any 12-month period.

(4) These time limitations do not include the following:

(A) Periods of delay resulting from a continuance granted at the request of the child's counsel or the child's guardian ad litem or, if the child is of sufficient capacity to express reasonable consent, at the request of or with the consent of the child.

(B) Periods of delay because of unavailability of evidence that is material to the case if the requesting party has exercised due diligence to obtain the evidence and there are substantial grounds to believe that the evidence will be available within 30 days. However, if the requesting party is not prepared to proceed within 30 days, any other party may move for issuance of an order to show cause or the court on its own motion may impose appropriate sanctions, which may include dismissal of the petition.

(C) Periods of delay to allow the requesting party additional time to prepare the case and additional time is justified because of an exceptional circumstance.

(D) Reasonable periods of delay necessary to accomplish notice of the hearing to the parent or legal custodian.

(5) Notwithstanding subdivision (4), proceedings may not be continued or extended for more than a total of 60 days for all parties within any 12-month period. A continuance or extension of time standards beyond 60 days in any 12-month period may be granted only on a finding by the court of extraordinary circumstances and that the continuance or extension of time standards is necessary to preserve the constitutional rights of a party or that there is substantial evidence demonstrating that the child's best interests will be affirmatively harmed without the granting of a continuance or extension of time.

## **RULE 8.245. DISCOVERY**

**(a) Scope of Discovery.** Unless otherwise limited by the court in accordance with these rules, the scope of discovery is as follows:

**(1) In General.** Parties may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter of the pending action, whether it relates to the claim or defense of the party seeking discovery or the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

**(2) Claims of Privilege or Protection of Trial Preparation Materials.** When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and describe the nature of the document, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will allow other parties to assess the applicability of the privilege or protection.

### **(b) Required Disclosure.**

(1) At any time after the filing of a shelter petition, a petition alleging a child to be a dependent child, or a petition for termination of parental rights, on written demand of any party, the party to whom the demand is directed shall disclose and permit inspecting, copying, testing, or photographing matters material to the cause. If the child had no living parent with intact parental rights at the time the dependency allegations arose, then the person who was serving as the legal custodian of the child at that time is entitled to obtain discovery during the pendency of a shelter or dependency petition.

(2) The following information shall be disclosed by any party on demand:

(A) The names and addresses of all persons known to have information relevant to the proof or defense of the petition's allegations.

(B) The statement of any person furnished in compliance with the preceding paragraph. The term "statement" means a written statement made by this person and signed or otherwise adopted or approved by the person, or a stenographic, mechanical, electronic, or other recording, or a transcript of it, or that is a substantially verbatim recital of an oral statement made by this person to an officer or agent of the state and recorded contemporaneously with the making of the oral statement. The court may prohibit any party from introducing in evidence the material not disclosed, to secure and maintain fairness in the just determination of the cause.

(C) Any written or recorded statement and the substance of any oral statement made by the demanding party or a person alleged to be involved in the same transaction. If the number of oral statements made to any person are so numerous that, as a practical matter, it would be impossible to list the substance of all the oral statements, then the party to whom the demand is directed will disclose that person's identity and the fact that this person has knowledge of numerous statements. This disclosure will allow the demanding party to depose that person.

(D) Tangible papers or objects belonging to the demanding party that are to be used at the adjudicatory hearing.

(E) Reports or statements of experts, including results of physical or mental examinations and of scientific tests, experiments, or comparisons.

(3) The disclosures required by subdivision (a) of this rule shall be made within 10 days from the receipt of the demand for them. Disclosure may be made by allowing the requesting party to review the files of the party from whom discovery is requested after redaction of nondiscoverable information.

**(c) Limitations on Disclosure.**

(1) On application, the court may deny or partially restrict disclosure authorized by this rule if it finds there is a substantial risk to any person of physical harm, intimidation, bribery, economic reprisals, or unnecessary annoyance or embarrassment resulting from the disclosure, that outweighs any usefulness of the disclosure to the party requesting it.

(2) Disclosure shall not be required of legal research or of records, correspondence, or memoranda, to the extent that they contain the opinion, theories, or conclusions of the parties' attorneys or members of their legal staff.

**(d) Production of Documents and Things for Inspection and Other Purposes.**

**(1) Request; Scope.** Any party may request any other party

(A) to produce and permit the party making the request, or someone acting on the requesting party's behalf, to inspect and copy any designated documents, including writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which information can be obtained, translated, if necessary, by the party to whom the request is directed through detection devices into reasonably usable form, that constitute or contain matters within the scope of subdivision (a) and that are in the possession, custody, or control of the party to whom the request is directed; and

(B) to inspect and copy, test, or sample any tangible things that constitute or contain matters within the scope of subdivision (a) and that are in the possession, custody, or control of the party to whom the request is directed.

**(2) Procedure.** Without leave of court the request may be served on the petitioner after commencement of proceedings and on any other party with or after service of the summons and initial petition on that party. The request shall set forth the items to be inspected, either by individual item or category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection or performing the related acts. The party to whom the request is directed shall serve a written response within 15 days after service of the request, except that a respondent may serve a response within 30 days after service of the process and initial pleading on that respondent. The court may allow a shorter or longer time. For each item or category the response shall state that inspection and related activities will be permitted as requested unless the request is objected to, in which event the reasons for the objection shall be stated. If an objection is made to part of an item or category, the part shall be specified. When producing documents, the producing party shall either produce them as they are kept in the usual course of business or shall identify them to correspond with the categories in the request. The party submitting the request may move for an order under subdivision (k) concerning any objection, failure to respond to the request, or any part of it, or failure to permit inspection as requested.

**(3) Persons Not Parties.** This rule does not preclude an independent action against a person not a party for production of documents and things.

**(4) Filing of Documents.** Unless required by the court, a party shall not file any of the documents or things produced with the response. Documents or things may be filed when they should be considered by the court in determining a matter pending before the court.

**(e) Production of Documents and Things Without Deposition.**

**(1) Request; Scope.** A party may seek inspection and copying of any documents or things within the scope of subdivision (d)(1) from a person who is not a party by issuance of a subpoena directing the

production of the documents or things when the requesting party does not seek to depose the custodian or other person in possession of the documents or things.

**(2) Procedure.** A party desiring production under this rule shall serve notice on every other party of the intent to serve a subpoena under this rule at least 5 days before the subpoena is issued if service is by delivery and 10 days before the subpoena is issued if service is by mail. The proposed subpoena shall be attached to the notice and shall state the time, place, and method for production of the documents or things, and the name and address of the person who is to produce the documents or things, if known, and if not known, a general description sufficient to identify the person or the particular class or group to which the person belongs; shall include a designation of the items to be produced; and shall state that the person who will be asked to produce the documents or things has the right to object to the production under this rule and that the person will not be required to surrender the documents or things. A copy of the notice and proposed subpoena shall not be furnished to the person on whom the subpoena is to be served. If any party serves an objection to production under this rule within 10 days of service of the notice, the documents or things shall not be produced under this rule and relief may be obtained under subdivision (g).

**(3) Subpoena.** If no objection is made by a party under subdivision (e)(2), an attorney of record in the action may issue a subpoena or the party desiring production shall deliver to the clerk for issuance a subpoena and a certificate of counsel or pro se party that no timely objection has been received from any party. The clerk shall issue the subpoena and deliver it to the party desiring production. The subpoena shall be identical to the copy attached to the notice, shall specify that no testimony may be taken, and shall require only production of the documents or things specified in it. The subpoena may give the recipient an option to deliver or mail legible copies of the documents or things to the party serving the subpoena. The person on whom the subpoena is served may condition the preparation of copies on the payment in advance of the reasonable costs of preparing the copies. The subpoena shall require production only in the county of the residence of the custodian or other person in possession of the documents or things or in the county where the documents or things are located or where the custodian or person in possession usually conducts business. If the person on whom the subpoena is served objects at any time before the production of the documents or things, the documents or things shall not be produced under this rule, and relief may be obtained under subdivision (g).

**(4) Copies Furnished.** If the subpoena is complied with by delivery or mailing of copies as provided in subdivision (e)(3), the party receiving the copies shall furnish a legible copy of each item furnished to any other party who requests it on the payment of the reasonable cost of preparing the copies.

**(5) Independent Action.** This rule does not affect the right of any party to bring an independent action for production of documents and things.

**(f) Protective Orders.** On motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending may make any order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense that justice requires, including one or more of the following:

- (1) that the discovery not be had;
  - (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place;
  - (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;
  - (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;
  - (5) that discovery be conducted with no one present except persons designated by the court;
  - (6) that a deposition after being sealed be opened only by order of the court;
  - (7) that confidential research or information not be disclosed or be disclosed only in a designated way;
- and

(8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery.

**(g) Depositions.**

**(1) Time and Place.**

(A) At any time after the filing of the petition alleging a child to be dependent or a petition for termination of parental rights, any party may take the deposition on oral examination of any person who may have information relevant to the allegations of the petition.

(B) The deposition shall be taken in a building in which the adjudicatory hearing may be held, in another place agreed on by the parties, or where the trial court may designate by special or general order. A resident of the state may be required to attend an examination only in the county in which he or she resides, is employed, or regularly transacts business in person.

**(2) Procedure.**

(A) The party taking the deposition shall give written notice to each other party. The notice shall state the time and place the deposition is to be taken and the name of each person to be examined.

(B) Subpoenas for taking depositions shall be issued by the clerk of the court, the court, or any attorney of record for a party.

(C) After notice to the parties the court, for good cause shown, may extend or shorten the time and may change the place of taking.

(D) Except as otherwise provided by this rule, the procedure for taking the deposition, including the scope of the examination and obtaining protective orders, shall be the same as that provided by the Florida Rules of Civil Procedure.

**(3) Use of Deposition.** Any deposition taken under this rule may be used at any hearing covered by these rules by any party for the following purposes:

(A) For the purpose of impeaching the testimony of the deponent as a witness.

(B) For testimonial evidence, when the deponent, whether or not a party, is unavailable to testify because of one or more of the following reasons:

(i) He or she is dead.

(ii) He or she is at a greater distance than 100 miles from the place of hearing or is out of the state unless it appears that the absence of the witness was procured by the party offering the deposition.

(iii) The party offering the deposition has been unable to procure the attendance of the witness by subpoena.

(iv) He or she is unable to attend or testify because of age, illness, infirmity, or imprisonment.

(v) It has been shown on application and notice that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

(vi) The witness is an expert or skilled witness.

**(4) Use of Part of Deposition.** If only part of a deposition is offered in evidence by a party, an adverse party may require the party to introduce any other part that in fairness ought to be considered with the part introduced, and any party may introduce any other parts.

**(5) Refusal to Obey Subpoena.** A person who refuses to obey a subpoena served on the person for the taking of a deposition may be adjudged in contempt of the court from which the subpoena issued.

**(6) Limitations on Use.** Except as provided in subdivision (3), no deposition shall be used or read in evidence when the attendance of the witness can be procured. If it appears to the court that any person whose deposition has been taken has absented himself or herself by procurement, inducements, or threats by or on behalf of any party, the deposition shall not be read in evidence on behalf of that party.



**(h) Perpetuating Testimony Before Action or Pending Appeal.**

**(1) Before Action.**

**(A) Petition.** A person who desires to perpetuate the person's own testimony or that of another person regarding any matter that may be cognizable in any court of this state may file a verified petition in the circuit court in the county of the residence of any expected adverse party. The petition shall be titled in the name of the petitioner and shall show:

(i) that the petitioner expects to be a party to an action cognizable in a court of Florida, but is presently unable to bring it or cause it to be brought;

(ii) the subject matter of the expected action and the person's interest in it;

(iii) the facts that the person desires to establish by the proposed testimony and the reasons for desiring to perpetuate it;

(iv) the names or a description of the persons expected to be adverse parties and their names and addresses so far as known; and

(v) the names and addresses of the persons to be examined and the substance of the testimony expected to be elicited from each and asking for an order authorizing the petitioner to take the deposition of the persons to be examined named in the petition for the purpose of perpetuating their testimony.

**(B) Notice and Service.** The petitioner shall serve a notice on each person named in the petition as an expected adverse party, with a copy of the petition, stating that the petitioner will apply to the court at a time and place in the notice for an order described in the petition. At least 20 days before the date of the hearing, the notice shall be served either within or without the county in the manner provided by law for serving of summons. However, if service cannot with due diligence be made on any expected adverse party named in the petition, the court may order service by publication or otherwise and shall appoint an attorney for persons not served in the manner provided by law for service of summons. The attorney shall represent the adverse party and, if he or she is not otherwise represented, shall cross-examine the deponent.

**(C) Order and Examination.** If the court is satisfied that the perpetuation of the testimony may prevent a failure or delay of justice, it shall make an order designating or describing the persons whose depositions may be taken and specifying the subject matter of the examination and whether the deposition shall be taken on oral examination or written interrogatories. The deposition may then be taken in accordance with these rules and the court may make orders in accordance with the requirements of these rules. For the purpose of applying these rules to depositions for perpetuating testimony, each reference in them to the court in which the action is pending shall be deemed to refer to the court in which the petition for the deposition was filed.

**(D) Use of Deposition.** If a deposition to perpetuate testimony is taken under these rules, it may be used in any action involving the same subject matter subsequently brought in any court of Florida in accordance with the provisions of subdivision (g)(3).

**(2) Pending Appeal.** If an appeal has been taken from a judgment of any court or before the taking of an appeal if the time for it has not expired, the court in which the judgment was rendered may allow the taking of the depositions of witnesses to perpetuate their testimony for use in further proceedings in the court. In such case, the party who desires to perpetuate the testimony may move for leave to take the deposition on the same notice and service as if the action were pending in the court. The motion shall show the names and addresses of persons to be examined, the substance of the testimony expected to be elicited from each, and the reasons for perpetuating the testimony. If the court finds that the perpetuation is proper to avoid a failure or delay in justice, it may make orders as provided for by this rule and the deposition may then be taken and used in the same manner and under the same conditions as are prescribed in these rules for depositions taken in actions pending in the court.

**(3) Perpetuation Action.** This rule does not limit the power of a court to entertain an action to perpetuate testimony.

**(i) Rules Governing Depositions of Children Under 16.**

(1) The taking of a deposition of a child witness or victim under the age of 16 may be limited or precluded by the court for good cause shown.

(2) The court after proper notice to all parties and an evidentiary hearing, based on good cause shown, may set conditions for the deposition of a child under the age of 16 including:

(A) designating the place of the deposition;

(B) designating the length of time of the deposition;

(C) permitting or prohibiting the attendance of any person at the deposition;

(D) requiring the submission of questions before the examination;

(E) choosing a skilled interviewer to pose the questions;

(F) limiting the number or scope of the questions to be asked; or

(G) imposing any other conditions the court feels are necessary for the protection of the child.

(3) Good cause is shown based on, but not limited to, one or more of the following considerations:

(A) The age of the child.

(B) The nature of the allegations.

(C) The relationship between the child victim and the alleged abuser.

(D) The child has undergone previous interviews for the purposes of criminal or civil proceedings that were recorded either by videotape or some other manner of recording and the requesting party has access to the recording.

(E) The examination would adversely affect the child.

(F) The manifest best interests of the child require the limitations or restrictions.

(4) The court, in its discretion, may order the consolidation of the taking of depositions of a child under the age of 16 when the child is the victim or witness in a pending proceeding arising from similar facts or circumstances.

**(j) Supplemental Discovery.** If, subsequent to compliance with these rules, a party discovers additional witnesses, evidence, or material that the party would have been under a duty to disclose or produce at the time of the previous compliance, the party shall promptly disclose or produce such witnesses, evidence, or material in the same manner as required under these rules for initial discovery.

**(k) Sanctions.**

(1) If at any time during the course of the proceedings, it is brought to the attention of the court that a party has failed to comply with an applicable discovery rule or with an order issued under an applicable discovery rule, the court may:

(A) order the party to comply with the discovery or inspection of materials not previously disclosed or produced;

(B) grant a continuance;

(C) order a new hearing;

(D) prohibit the party from calling a witness not disclosed or introducing in evidence the material not disclosed; or

(E) enter an order that it deems just under the circumstances.

(2) Willful violation by counsel of an applicable discovery rule or an order issued under it may subject counsel to appropriate sanction by the court.

**RULE 8.250. EXAMINATIONS, EVALUATION, AND TREATMENT**

**(a) Child.** Mental or physical examination of a child may be obtained as provided by law.

**(b) Parent, Legal Custodian, or Other Person who has Custody or is Requesting Custody.** At any time after the filing of a shelter, dependency, or termination of parental rights petition, or after an adjudication of dependency or a finding of dependency when adjudication is withheld, when the mental or physical condition, including the blood group, of a parent, legal custodian, or other person who has custody or is requesting custody of a child is in controversy, any party may request the court to order the person to

submit to a physical or mental examination or a substance abuse evaluation or assessment by a qualified professional. The order may be made only on good cause shown and after notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made. The person whose examination is sought may, after receiving notice of the request for an examination, request a hearing seeking to quash the request. The court may, on its own motion, order a parent, legal custodian, or other person who has custody or is requesting custody to undergo such evaluation, treatment, or counseling activities as authorized by law.

#### **RULE 8.255. GENERAL PROVISIONS FOR HEARINGS**

**(a) Presence of Counsel.** The department must be represented by an attorney at every stage of these proceedings.

**(b) Presence of Child.** The child has a right to be present at the hearing unless the court finds that the child's mental or physical condition or age is such that a court appearance is not in the best interest of the child. Any party may file a motion to require or excuse the presence of the child.

**(c) Separate Examinations.** The child and the parents, caregivers, or legal custodians of the child may be examined separately and apart from each other.

**(d) Examination of Child; Special Protections.**

**(1) Testimony by Child.** A child may be called to testify in open court by any party to the proceeding or the court, and may be examined or cross-examined.

**(2) In-Camera Examination.**

(A) On motion and hearing, the child may be examined by the court outside the presence of other parties as provided by law. The court shall assure that proceedings are recorded, unless otherwise stipulated by the parties.

(B) The motion may be filed by any party or the trial court on its own motion.

(C) The court shall make specific written findings of fact, on the record, as to the basis for its ruling.

These findings may include but are not limited to:

(i) the age of the child;

(ii) the nature of the allegation;

(iii) the relationship between the child and the alleged abuser;

(iv) the likelihood that the child would suffer emotional or mental harm if required to testify in open court;

(v) whether the child's testimony is more likely to be truthful if given outside the presence of other parties;

(vi) whether cross-examination would adversely affect the child; and

(vii) the manifest best interest of the child.

(D) The child may be called to testify by means of closed-circuit television or by videotaping as provided by law.

**(e) Invoking the Rule.** Before the examination of any witness the court may, and on the request of any party shall, exclude all other witnesses. The court may cause witnesses to be kept separate and to be prevented from communicating with each other until all are examined.

**(f) Continuances.** As permitted by law, the court may grant a continuance before or during a hearing for good cause shown by any party.

**(g) Record.** A record of the testimony in all hearings shall be made by an official court reporter, a court-approved stenographer, or a recording device. The records of testimony shall be preserved as required by law. Official records of testimony shall be transcribed only on order of the court.

**(h) Notice.** When these rules do not require a specific notice, all parties will be given reasonable notice of any hearing.

## **RULE 8.257. GENERAL MAGISTRATES**

**(a) Appointment.** Judges of the circuit court may appoint as many general magistrates from among the members of The Florida Bar in the circuit as the judges find necessary, and the general magistrates shall continue in office until removed by the court. The order of appointment shall be recorded. Every person appointed as a general magistrate shall take the oath required of officers by the Constitution and the oath shall be recorded before the magistrate discharges any duties of that office.

### **(b) Referral.**

**(1) Consent.** No matter shall be heard by a general magistrate without an appropriate order of referral and the consent to the referral of all parties. Consent, as defined in this rule, to a specific referral, once given, cannot be withdrawn without good cause shown before the hearing on the merits of the matter referred. Consent may be express or implied in accordance with the requirements of this rule.

**(2) Objection.** A written objection to the referral to a general magistrate must be filed within 10 days of the service of the order of referral. If the time set for the hearing is less than 10 days after service of the order of referral, the objection must be filed before commencement of the hearing. Failure to file a written objection within the applicable time period is deemed to be consent to the order of referral.

### **(3) Order.**

(A) The order of referral shall contain the following language in bold type:

**A REFERRAL TO A GENERAL MAGISTRATE REQUIRES THE CONSENT OF ALL PARTIES. YOU ARE ENTITLED TO HAVE THIS MATTER HEARD BEFORE A JUDGE. IF YOU DO NOT WANT TO HAVE THIS MATTER HEARD BEFORE THE GENERAL MAGISTRATE, YOU MUST FILE A WRITTEN OBJECTION TO THE REFERRAL WITHIN 10 DAYS OF THE TIME OF SERVICE OF THIS ORDER. IF THE TIME SET FOR THE HEARING IS LESS THAN 10 DAYS AFTER THE SERVICE OF THIS ORDER, THE OBJECTION MUST BE MADE BEFORE THE HEARING. FAILURE TO FILE A WRITTEN OBJECTION WITHIN THE APPLICABLE TIME PERIOD IS DEEMED TO BE A CONSENT TO THE REFERRAL. REVIEW OF THE REPORT AND RECOMMENDATIONS MADE BY THE GENERAL MAGISTRATE SHALL BE BY EXCEPTIONS AS PROVIDED IN FLORIDA RULE OF JUVENILE PROCEDURE 8.257(f). A RECORD, WHICH INCLUDES A TRANSCRIPT OF PROCEEDINGS, WILL BE REQUIRED TO SUPPORT THE EXCEPTIONS.**

(B) The order of referral shall state with specificity the matter or matters being referred. The order of referral shall also state whether electronic recording or a court reporter is provided by the court.

**(4) Setting Hearing.** When a referral is made to a general magistrate, any party or the general magistrate may set the action for hearing.

**(c) General Powers and Duties.** Every general magistrate shall perform all of the duties that pertain to the office according to the practice in chancery and rules of court and under the direction of the court. A general magistrate shall be empowered to administer oaths and conduct hearings, which may include the taking of evidence. All grounds for disqualification of a judge shall apply to general magistrates.

### **(d) Hearings.**

(1) The general magistrate shall assign a time and place for proceedings as soon as reasonably possible after the referral is made and give notice to each of the parties either directly or by directing counsel to file and serve a notice of hearing. If any party fails to appear, the general magistrate may proceed ex parte or may adjourn the proceeding to a future day, giving notice of the adjournment to the absent party. The general magistrate shall proceed with reasonable diligence in every referral and with the least delay practicable. Any party may apply to the court for an order to the general magistrate to speed the proceedings and to make the report and to certify to the court the reason for any delay.

(2) The general magistrate shall take testimony and establish a record which may be by electronic means as provided by Florida Rule of Judicial Administration 2.535(g)(3) or by a court reporter. The parties may not waive this requirement.

(3) The general magistrate shall have authority to examine under oath the parties and all witnesses on all matters contained in the referral, to require production of all books, papers, writings, vouchers, and other documents applicable to it, and to examine on oath orally all witnesses produced by the parties. The general magistrate may take all actions concerning evidence that can be taken by the circuit court and in the same manner. The general magistrate shall have the same powers as a circuit judge to use communications equipment as defined and regulated by Florida Rule of Judicial Administration 2.530.

(4) The notice or order setting a matter for hearing shall state whether electronic recording or a court reporter is provided by the court. If the court provides electronic recording, the notice shall also state that any party may provide a court reporter at that party's expense, subject to the court's approval.

**(e) Report.**

(1) The general magistrate shall file a report that includes findings of fact, conclusions of law, and recommendations and serve copies on all parties. If a court reporter was present, the report shall contain the name and address of the reporter.

(2) The report and recommendations shall contain the following language in bold type:

**SHOULD YOU WISH TO SEEK REVIEW OF THE REPORT AND RECOMMENDATIONS MADE BY THE GENERAL MAGISTRATE, YOU MUST FILE EXCEPTIONS WITHIN 10 DAYS OF SERVICE OF THE REPORT AND RECOMMENDATIONS IN ACCORDANCE WITH FLORIDA RULE OF JUVENILE PROCEDURE 8.257(f). YOU WILL BE REQUIRED TO PROVIDE THE COURT WITH A RECORD SUFFICIENT TO SUPPORT YOUR EXCEPTIONS WITHIN 10 DAYS OF SERVICE OF THE REPORT AND RECOMMENDATIONS OR YOUR EXCEPTIONS WILL BE DENIED. A RECORD ORDINARILY INCLUDES A WRITTEN TRANSCRIPT OF ALL RELEVANT PROCEEDINGS. THE PERSON SEEKING REVIEW MUST HAVE THE TRANSCRIPT PREPARED FOR THE COURT'S REVIEW.**

**(f) Exceptions.** The parties may file exceptions to the report within 10 days from the time it is served on them. Any party may file cross-exceptions within 5 days from the service of the exceptions. However, the filing of cross-exceptions shall not delay the hearing on the exceptions unless good cause is shown. If no exceptions are filed within that period, the court shall take appropriate action on the report. If exceptions are filed, they shall be heard on reasonable notice by either party or the court.

**(g) Record.** For the purpose of the hearing on exceptions, a record, substantially in conformity with this rule, shall be provided to the court by the party seeking review. The record shall consist of the court file, including the transcript of the relevant proceedings before the general magistrate, and all depositions and evidence presented to the general magistrate.

(1) The transcript of all relevant proceedings, if any, shall be delivered to the judge and provided to all other parties not less than 48 hours before the hearing on exceptions.

(2) If less than a full transcript of the proceedings taken before the general magistrate is ordered prepared by the excepting party, that party shall promptly file a notice setting forth the portions of the transcript that have been ordered. The responding party shall be permitted to designate any additional portions of the transcript necessary to the adjudication of the issues raised in the exceptions or cross-exceptions.

(3) The cost of the original and all copies of the transcript of the proceedings shall be borne initially by the party seeking review. Should any portion of the transcript be required as a result of a designation filed by the responding party, the party making the designation shall bear the initial cost of the additional transcript.

**(h) Prohibition on Magistrate Presiding over Certain Hearings.** Notwithstanding the provisions of this rule, a general magistrate shall not preside over a shelter hearing under section 39.402, Florida Statutes, an adjudicatory hearing under section 39.507, Florida Statutes, or an adjudicatory hearing under section 39.809, Florida Statutes.

## **RULE 8.260. ORDERS**

**(a) General Requirements.** All orders of the court shall be reduced to writing as soon after they are entered as is consistent with orderly procedure and shall contain specific findings of fact and conclusions of law.

**(b) Transmittal to Parties.** A copy of all orders shall be transmitted by the court or under its direction to all parties at the time of entry of the order.

**(c) Other Options.** The court may require

(1) that orders be prepared by a party;

(2) that the party serve the order; and

(3) on a case-by-case basis, that proposed orders be furnished to all parties before entry of the order by the court.

**(d) Precedence of Orders.** Orders of the circuit court hearing dependency matters shall be filed in any dissolution or other custody action or proceeding involving the same child. These orders shall take precedence over other custody and visitation orders. They may be filed under seal and not be open to inspection by the public.

## **RULE 8.265. MOTION FOR REHEARING**

**(a) Basis.** After the court has entered an order, any party may move for rehearing upon one or more of the following grounds:

(1) That the court erred in the decision of any matter of law arising during the hearing.

(2) That a party did not receive a fair and impartial hearing.

(3) That any party required to be present at the hearing was not present.

(4) That there exists new and material evidence, which, if introduced at the hearing would probably have changed the court's decision and could not with reasonable diligence have been discovered before and produced at the hearing.

(5) That the court is without jurisdiction of the proceeding.

(6) That the judgment is contrary to the law and evidence.

**(b) Time and Method.**

(1) A motion for rehearing may be made and ruled upon immediately after the court announces its judgment but must be made within 10 days of the entry of the order.

(2) If the motion is made in writing, it shall be served as provided in these rules for service of other pleadings.

(3) A motion for rehearing shall not toll the time for the taking of an appeal.

**(c) Court Action.**

(1) A rehearing may be granted to all or any of the parties on all or any part of the issues. All orders granting a rehearing shall state the specific issues to be reheard.

(2) If the motion for rehearing is granted the court may vacate or modify the order or any part of it and allow additional proceedings as it deems just. It may enter a new judgment, and may order or continue the child in a shelter or out-of-home placement pending further proceedings.

(3) The court on its own initiative may vacate or modify any order within the time limitation provided in subdivision (b).

## **RULE 8.270. RELIEF FROM JUDGMENTS OR ORDERS**

**(a) Clerical Mistakes.** Clerical mistakes in judgments, orders, or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time on its own initiative or on motion of any party, after such notice, if any, as the court orders. During the pendency of an appeal such

mistakes may be so corrected before the record on appeal is docketed in the appellate court and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

**(b) Extraordinary Relief.** On motion and upon such terms as are just, the court may relieve a party or the party's legal representative from an order, judgment, or proceeding for the following reasons:

(1) Mistake, inadvertence, surprise, or excusable neglect.

(2) Newly discovered evidence which by due diligence could not have been discovered in time to move for rehearing.

(3) Fraud (intrinsic or extrinsic), misrepresentation, or other misconduct of any other party.

(4) That the order or judgment or any part thereof is void.

The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than 1 year after the judgment, order, or proceeding was taken.

**(c) Limitation.** After the court loses jurisdiction of the cause, as provided by law, a motion for relief of judgment or order under subdivision (b) shall not be heard.

### **RULE 8.285. CONTEMPT**

**(a) Direct Contempt.** A contempt may be punished summarily if the court saw or heard the conduct constituting the contempt committed in the actual presence of the court. The judgment of guilt of contempt shall include a recital of those facts upon which the adjudication of guilt is based. Prior to the adjudication of guilt the court shall inform the person accused of the accusation and inquire as to whether there is any cause to show why he or she should not be adjudged guilty of contempt by the court and sentenced. The accused shall be given the opportunity to present evidence of excusing or mitigating circumstances. The judgment shall be signed by the court and entered of record. Sentence shall be pronounced in open court.

**(b) Indirect Contempt.** An indirect contempt shall be prosecuted in the following manner:

**(1) Order to Show Cause.** The court on its own motion or upon affidavit of any person having knowledge of the facts may issue and sign an order directed to the one accused of contempt, stating the essential facts constituting the contempt charged and requiring the accused to appear before the court to show cause why he or she should not be held in contempt of court. The order shall specify the time and place of the hearing, with a reasonable time allowed for the preparation of a defense after service of the order on the one accused. It shall be served in the same manner as a summons. Nothing herein shall be construed to prevent the one accused of contempt from waiving the service of process.

**(2) Motions; Answer.** The accused, personally or by counsel, may move to dismiss the order to show cause, move for a statement of particulars, or answer such order by way of explanation or defense. All motions and the answer shall be in writing unless specified otherwise by the court. The accused's omission to file a motion or answer shall not be deemed an admission of guilt of the contempt charged.

**(3) Order of Arrest; Bail.** The court may issue an order of arrest of the one accused of contempt if the court has reason to believe the accused will not appear in response to the order to show cause. The accused shall be entitled to bail in the manner provided by law in criminal cases.

**(4) Arraignment; Hearing.** The accused may be arraigned at the hearing, or prior thereto upon request. A hearing to determine the guilt or innocence of the accused shall follow a plea of not guilty. The court may conduct a hearing without assistance of counsel or may be assisted by the state attorney or by an attorney appointed for the purpose. The accused is entitled to be represented by counsel, have compulsory process for the attendance of witnesses, and may testify in his or her own defense. All issues of law and fact shall be determined by the court.

**(5) Disqualification of the Judge.** If the contempt charged involves disrespect to or criticism of a judge, the judge shall be disqualified by the chief judge of the circuit.

**(6) Verdict; Judgment.** At the conclusion of the hearing the court shall sign and enter of record a judgment of guilty or not guilty. There should be included in a judgment of guilty a recital of the facts constituting the contempt of which the accused has been found and adjudicated guilty.

**(7) Sentence.** Prior to the pronouncement of sentence the court shall inform the accused of the accusation and judgment against him or her and inquire as to whether there is any cause to show why sentence should not be pronounced. The accused shall be afforded the opportunity to present evidence of mitigating circumstances. The sentence shall be pronounced in open court and in the presence of the one found guilty of contempt.

#### **RULE 8.290. DEPENDENCY MEDIATION**

**(a) Definitions.** The following definitions apply to this rule:

(1) “Dependency matters” means proceedings arising under Chapter 39, Florida Statutes.

(2) “Dependency mediation” means mediation of dependency matters.

(3) “Mediation” means a process whereby a neutral third person called a mediator acts to encourage and facilitate the resolution of a dispute between two or more parties. It is an informal and nonadversarial process with the objective of helping the disputing parties reach a mutually acceptable and voluntary agreement. In mediation, decision-making authority rests with the parties. The role of the mediator includes, but is not limited to, assisting the parties in identifying issues, fostering joint problem-solving, and exploring settlement alternatives.

**(b) Applicability.** This rule applies only to mediation of dependency matters.

**(c) Compliance with Statutory Time Requirements.** Dependency mediation shall be conducted in compliance with the statutory time requirements for dependency matters.

**(d) Referral.** Except as provided by this rule, all matters and issues described in subdivision (a)(1) may be referred to mediation. All referrals to mediation shall be in written form, shall advise the parties of their right to counsel, and shall set a date for hearing before the court to review the progress of the mediation. The mediator or mediation program shall be appointed by the court or stipulated to by the parties. If the court refers the matter to mediation, the mediation order shall address all applicable provisions of this rule. The mediation order shall be served on all parties and on counsel under the provisions of the Florida Rules of Juvenile Procedure.

**(e) Appointment of the Mediator.**

**(1) Court Appointment.** The court, in the order of referral to mediation, shall appoint a certified dependency mediator selected by rotation or by such other procedures as may be adopted by administrative order of the chief judge in the circuit in which the action is pending.

**(2) Party Stipulation.** Within 10 days of the filing of the order of referral to mediation, the parties may agree upon a stipulation with the court designating:

(A) another certified dependency mediator to replace the one selected by the judge; or

(B) a mediator, other than a senior judge, who is not certified as a mediator but who, in the opinion of the parties and upon review by the presiding judge, is otherwise qualified by training or experience to mediate all or some of the issues in the particular case.

**(f) Fees.** Dependency mediation referrals may be made to a mediator or mediation program that charges a fee. Any order of referral to a mediator or mediation program charging a fee shall advise the parties that they may timely object to mediation on grounds of financial hardship. On the objection of a party or the court’s own motion, the court may, after considering the objecting party’s ability to pay and any other pertinent information, reduce or eliminate the fee.

**(g) Objection to Mediation.** Within 10 days of the filing of the order of referral to mediation, any party or participant ordered to mediation may make a written objection to the court about the order of referral if good cause for such objection exists. If a party objects, mediation shall not be conducted until the court rules on the objection.

**(h) Scheduling.** The mediation conference may be held at any stage of the proceedings. Unless otherwise scheduled by the court, the mediator or the mediation program shall schedule the mediation conference.



**(i) Disqualification of the Mediator.** Any party may move to enter an order disqualifying a mediator for good cause. If the court rules that a mediator is disqualified from mediating a case, an order shall be entered with the name of a qualified replacement. Nothing in this provision shall preclude mediators from disqualifying themselves or refusing any assignment.

**(j) Substitute Mediator.** If a mediator agreed upon by the parties or appointed by a court cannot serve, a substitute mediator can be agreed upon or appointed in the same manner as the original mediator. A mediator shall not mediate a case assigned to another mediator without the agreement of the parties or approval of the court. A substitute mediator shall have the same qualifications as the original mediator.

**(k) Discovery.** Unless stipulated by the parties or ordered by the court, the mediation process shall not suspend discovery.

**(l) Appearances.**

**(1) Order Naming or Prohibiting Attendance of Parties.** The court shall enter an order naming the parties and the participants who must appear at the mediation and any parties or participants who are prohibited from attending the mediation. Additional participants may be included by court order or by mutual agreement of all parties.

**(2) Physical Presence of Adult Parties and Participants.** Unless otherwise agreed to by the parties or ordered by the court, any party or participant ordered to mediation shall be physically present at the mediation conference. Persons representing an agency, department, or program must have full authority to enter into an agreement that shall be binding on that agency, department, or program. In the discretion of the mediator, and with the agreement of the attending parties, dependency mediation may proceed in the absence of any party or participant ordered to mediation.

**(3) Appearance of Counsel.** In the discretion of the mediator, and with the agreement of the attending parties, dependency mediation may proceed in the absence of counsel unless otherwise ordered by the court.

**(4) Appearance of Child.** The court may prohibit the child from appearing at mediation upon determining that such appearance is not in the best interest of the child. No minor child shall be required to appear at mediation unless the court has previously determined by written order that it is in the child's best interest to be physically present. The court shall specify in the written order of referral to mediation any special protections necessary for the child's appearance.

**(5) Sanctions for Failure to Appear.** If a party or participant ordered to mediation fails to appear at a duly-noticed mediation conference without good cause, the court, on motion of any party or on its own motion, may impose sanctions. Sanctions against the party or participant failing to appear may include one or more of the following: contempt of court, an award of mediator fees, an award of attorney fees, an award of costs, or other remedies as deemed appropriate by the court.

**(m) Caucus with Parties and Participants.** During the mediation session, the mediator may meet and consult privately with any party, participant or counsel.

**(n) Continuances.** The mediator may end the mediation session at any time and may set new times for reconvening the mediation. No further notification shall be required for parties or participants present at the mediation session.

**(o) Report on Mediation.**

(1) If agreement is reached on all or part of any matter or issue, including legal or factual issues to be determined by the court, the agreement shall be immediately reduced to writing, signed by the attending parties, and promptly submitted to the court by the mediator with copies to all parties and counsel.

(2) If the parties do not reach an agreement as to any matter as a result of mediation, the mediator shall report the lack of an agreement to the court without comment or recommendation.

**(p) Court Hearing and Order On Mediated Agreement.** On receipt of a full or partial mediation agreement, the court shall hold a hearing and enter an order accepting or rejecting the agreement consistent with the best interest of the child. The court may modify the terms of the agreement with the consent of all parties to the agreement.

**(q) Imposition of Sanctions On Breach of Agreement.** In the event of any breach or failure to perform under the court-approved agreement, the court, on a motion of any party or on its own motion, may impose sanctions. The sanctions may include contempt of court, vacating the agreement, imposition of costs and attorney fees, or any other remedy deemed appropriate by the court.

## **B. TAKING CHILDREN INTO CUSTODY AND SHELTER HEARINGS**

### **RULE 8.300. TAKING INTO CUSTODY**

**(a) Affidavit.** An affidavit or verified petition may be filed alleging facts under existing law sufficient to establish grounds to take a child into custody. The affidavit or verified petition shall:

- (1) be in writing and signed;
- (2) specify the name, address, date of birth, and sex of the child, or, if unknown, designate the child by any name or description by which he or she can be identified with reasonable certainty;
- (3) specify that the child is of an age subject to the jurisdiction of the court; and
- (4) state the reasons the child should be taken into custody.

**(b) Criteria for Order.** The court may issue an order to take a child into custody based on sworn testimony meeting the criteria in subdivision (a).

**(c) Order.** The order to take into custody shall:

- (1) be in writing and signed;
- (2) specify the name, address, and sex of the child or, if unknown, designate the child by any name or description by which he or she can be identified with reasonable certainty;
- (3) specify that the child is of an age subject to the jurisdiction of the court;
- (4) state the reasons the child should be taken into custody;
- (5) order that the child be held in a suitable place pending transfer of physical custody to an authorized agent of the department; and
- (6) state the date when issued, and the county and court where issued.

### **RULE 8.305. SHELTER PETITION, HEARING, AND ORDER**

**(a) Shelter Petition.** If a child has been or is to be removed from the home and maintained in an out-of-home placement for more than 24 hours, the person requesting placement shall file a written petition that shall:

- (1) specify the name, address, date of birth, and sex of the child or, if unknown, designate the child by any name or description by which he or she can be identified with reasonable certainty;
- (2) specify the name and address, if known, of the child's parents or legal custodian and how each was notified of the shelter hearing;
- (3) if the child has been removed from the home, state the date and time of the removal;
- (4) specify that the child is of an age subject to the jurisdiction of the court;
- (5) state the reasons the child needs to be placed in a shelter;
- (6) list the reasonable efforts, if any, that were made by the department to prevent or eliminate the need for the removal or continued removal of the child from the home or, if no such efforts were made, a description of the emergency that prevented these efforts;
- (7) recommend where the child is to be placed or the agency to be responsible for placement; and
- (8) be signed by the petitioner and, if represented by counsel, by the petitioner's attorney.

**(b) Shelter Hearing.**

(1) The parents or legal custodians of the child shall be given actual notice of the date, time, and location of the shelter hearing. If the parents are outside the jurisdiction of the court, are not known, cannot be located, or refuse or evade service, they shall be given such notice as best ensures their actual knowledge of

the date, time, and location of the shelter hearing. If the parents or legal custodians are not present at the hearing, the person providing, or attempting to provide, notice to the parents or legal custodians shall advise the court in person or by sworn affidavit of the attempts made to provide notice and the results of those attempts.

(2) The court shall conduct an informal hearing on the petition within the time limits provided by law. The court shall determine at the hearing the existence of probable cause to believe the child is dependent and whether the other criteria provided by law for placement in a shelter have been met. The shelter hearing may be continued for up to 72 hours with the child remaining in shelter care if either:

(A) the parents or legal custodians appear for the shelter hearing without legal counsel and request a continuance to consult with legal counsel; or

(B) the court determines that additional time is necessary to obtain and review documents pertaining to the family to appropriately determine the risk to the child.

(3) The issue of probable cause shall be determined in a nonadversarial manner, applying the standard of proof necessary for an arrest warrant.

(4) At the hearing, all interested persons present shall have an opportunity to be heard and present evidence on the criteria for placement provided by law.

(5) The court may base its determination on a sworn complaint, testimony, or an affidavit and may hear all relevant and material evidence, including oral and written reports, to the extent of its probative value even though it would not be competent at an adjudicatory hearing.

(6) The court shall advise the parent or legal custodian of:

(A) the right to be represented by counsel as provided by law;

(B) the reason the child is in custody and why continued placement is requested;

(C) the right to present placement alternatives; and

(D) the time, date, and location of the next hearing and of the importance of the parents' or legal custodians' active participation in subsequent proceedings and hearings.

(7) The court shall appoint:

(A) a guardian ad litem to represent the child unless the court finds representation unnecessary;

(B) an attorney ad litem to represent the child if the court finds the appointment necessary and authorized by law; and

(C) an attorney for indigent parents unless waived by the parent.

(8) The court shall determine visitation rights absent a clear and convincing showing that visitation is not in the best interest of the child.

(9) The court shall inquire of the parents whether the parents have relatives who might be considered for placement of the child. The parents shall provide to the court and all parties identification and location information regarding the relatives. The court shall advise the parents that the parents have a continuing duty to inform the department of any relative who should be considered for placement of the child.

(10) The court shall advise the parents that if the parents fail to substantially comply with the case plan their parental rights may be terminated and the child's out-of-home placement may become permanent.

(11) If the shelter hearing is conducted by a judge other than a judge assigned to hear dependency cases, a judge assigned to hear dependency cases shall hold a shelter review on the status of the child within 2 working days after the shelter hearing.

**(c) Shelter Order.** An order granting shelter care must identify the parties present at the hearing and contain written findings that:

(1) placement in shelter care is necessary based on the criteria provided by law;

(2) placement in shelter care is in the best interest of the child;

(3) continuation of the child in the home is contrary to the welfare of the child because the home situation presents a substantial and immediate danger to the child's physical, mental, or emotional health or safety that cannot be mitigated by the provision of preventive services;

(4) there is probable cause to believe the child is dependent;

(5) the department has made reasonable efforts to prevent or eliminate the need for removal of the child from the home, including a description of which specific services, if available, could prevent or eliminate the need for removal or continued removal from the home, the date by which the services are expected to become available, and, if services are not available to prevent or eliminate the need for removal or continued removal of the child from the home, an explanation of why the services are not available for the child;

(6) the court notified the parents or legal custodians of the time, date, and location of the next dependency hearing, and of the importance of their active participation in all subsequent proceedings and hearings; and

(7) the court notified the parents or legal custodians of their right to counsel as provided by law.

**(d) Release from Shelter Care.** No child shall be released from shelter care after a shelter order has been entered except on order of the court unless the shelter order authorized release by the department.

## C. PETITION, ARRAIGNMENT, ADJUDICATION, AND DISPOSITION

### RULE 8.310. DEPENDENCY PETITIONS

#### **(a) Contents.**

(1) A dependency petition may be filed as provided by law. Each petition shall be entitled a petition for dependency and shall allege sufficient facts showing the child to be dependent based upon applicable law.

(2) The petition shall contain allegations as to the identity and residence of the parents or legal custodians, if known.

(3) The petition shall identify the age, sex, and name of the child. Two or more children may be the subject of the same petition.

(4) Two or more allegations of dependency may appear in the same petition, in separate counts. The petition need not contain allegations of acts or omissions by both parents.

(5) The petition must describe what voluntary services and/or dependency mediation the parents or legal custodians were offered and the outcome of each.

**(b) Verification.** The petition shall be signed stating under oath the signer's good faith in filing the petition. No objection to a petition on the grounds that it was not signed or verified, as herein provided, shall be entertained after a plea to the merits.

**(c) Amendments.** At any time prior to the conclusion of an adjudicatory hearing, an amended petition may be filed or the petition may be amended by motion; however, after a written answer or plan has been filed, amendments shall be permitted only with the permission of the court, unless all parties consent. Amendments shall be freely permitted in the interest of justice and the welfare of the child. A continuance may be granted on motion and a showing that the amendment prejudices or materially affects any party.

**(d) Defects and Variances.** No petition or any count thereof shall be dismissed, or any judgment vacated, on account of any defect in the form of the petition or of misjoinder of counts. If the court is of the opinion that the petition is so vague, indistinct, and indefinite as to mislead the child, parent, or legal custodian and prejudice any of them in the preparation of a defense, the petitioner may be required to furnish a more definite statement.

**(e) Voluntary Dismissal.** The petitioner without leave of the court, at any time prior to entry of an order of adjudication, may request a voluntary dismissal of the petition by serving a notice requesting dismissal on all parties, or, if during a hearing, by so stating on the record. The petition shall be dismissed and the court loses jurisdiction unless another party adopts the petition within 72 hours.

### **RULE 8.315. ARRAIGNMENTS AND PREHEARING CONFERENCES**

**(a) Arraignment.** Before the adjudicatory hearing, the court shall conduct a hearing to determine whether an admission, consent, or denial to the petition shall be entered, and whether the parties are represented by counsel or are entitled to appointed counsel as provided by law. If an admission or consent is entered and no denial is entered by any other parent or legal custodian, the court shall schedule a disposition hearing to be conducted within 15 days. If a denial is entered, the court shall set an adjudicatory hearing within the period of time provided by law and appoint counsel when required.

**(b) Withdrawal of Plea.** The court may for good cause, at any time before the beginning of a disposition hearing, permit an admission of the allegations of the petition or a consent to dependency to be withdrawn and, if an adjudication has been entered, set aside the adjudication. In a subsequent adjudicatory hearing the court shall disregard an admission or consent that has been withdrawn.

**(c) Prehearing Conference.** Before any adjudicatory hearing, the court may set or the parties may request that a prehearing conference be held to determine the order in which each party may present witnesses or evidence and the order in which cross-examination and argument shall occur. The court may also enter findings on the record of any stipulations entered into by the parties and consider any other matters that may aid in the conduct of the adjudicatory hearing.

**(d) Status Hearing.** Within 60 days of the filing of the petition, a status hearing shall be held with all parties present unless an adjudicatory or disposition hearing has begun. Subsequent status hearings shall be held every 30 days unless an adjudicatory or disposition hearing has begun.

### **RULE 8.320. PROVIDING COUNSEL TO PARTIES**

#### **(a) Duty of the Court.**

(1) At each stage of the dependency proceeding the court shall advise the parent of the right to have counsel present.

(2) The court shall appoint counsel to indigent parents or others who are so entitled as provided by law, unless appointment of counsel is waived by that person.

(3) The court shall ascertain whether the right to counsel is understood.

#### **(b) Waiver of Counsel.**

(1) No waiver of counsel shall be accepted where it appears that the parent is unable to make an intelligent and understanding choice because of age, education, experience, the nature or complexity of the case, or other factors.

(2) A waiver of counsel made in court shall be of record. The court shall question the party in sufficient detail to ascertain that the waiver is made knowingly, intelligently, and voluntarily.

(3) If a waiver is accepted at any stage of the proceedings, the offer of assistance of counsel shall be renewed by the court at each subsequent stage of the proceedings at which the party appears without counsel.

### **RULE 8.325. ANSWERS AND PLEADINGS**

**(a) No Answer Required.** No written answer to the petition need be filed by the parent or legal custodian. The parent or legal custodian of the child may enter an oral or written answer to the petition or remain silent.

**(b) Denial of Allegations.** If the parent or legal custodian denies the allegations of the petition, remains silent, or pleads evasively, the court shall enter a denial of dependency and set the case for an adjudicatory hearing.

**(c) Admission of or Consent to Dependency.** The parent or legal custodian may admit or consent to a finding of dependency. The court shall determine that any admission or consent to a finding of dependency is made voluntarily and with a full understanding of the nature of the allegations and the possible

consequences of the admission or consent, and that the parent has been advised of the right to be represented by counsel. The court shall incorporate these findings into its order in addition to findings of fact specifying the act or acts causing dependency, by whom committed, and facts on which the findings are based. If the answer admits the allegations of the petition it shall constitute consent to a predisposition study.

### **RULE 8.330. ADJUDICATORY HEARINGS**

**(a) Hearing by Judge.** The adjudicatory hearing shall be conducted by the judge, without a jury, utilizing the rules of evidence in use in civil cases. At this hearing the court shall determine whether the allegations of the dependency petition have been sustained by a preponderance of the evidence. If the court is of the opinion that the allegations are sustained by clear and convincing evidence, it may enter an order so stating.

**(b) Examination of Witnesses.** A party may call any person as a witness. A party shall have the right to examine or cross-examine all witnesses. However, the child and the parents, caregivers, or legal custodians of the child may be examined separately and apart from each other.

**(c) Presence of Parties.** All parties have the right to be present at all hearings. A party may appear in person or, at the discretion of the court for good cause shown, by an audio or audiovisual device. No party shall be excluded from any hearing unless so ordered by the court for disruptive behavior or as provided by law. If a person appears for the arraignment hearing and the court orders that person to personally appear at the adjudicatory hearing for dependency, stating the date, time, and place of the adjudicatory hearing, then that person's failure to appear for the scheduled adjudicatory hearing constitutes consent to a dependency adjudication.

**(d) Joint and Separate Hearings.** When 2 or more children are alleged to be dependent children, the hearing may be held simultaneously when the several children involved are related to each other or involved in the same case, unless the court orders separate hearings.

**(e) Motion for Judgment of Dismissal.** In all proceedings, if at the close of the evidence for the petitioner the court is of the opinion that the evidence is insufficient to warrant a finding of dependency, it may, and on the motion of any party shall, enter an order dismissing the petition for insufficiency of the evidence.

**(f) Dismissal.** If the court shall find that the allegations in the petition have not been sustained, it shall enter an order dismissing the case.

**(g) Findings and Orders.** In all cases in which dependency is established:

(1) The court shall enter a written order stating the legal basis for a finding of dependency, specifying the facts upon which the finding of dependency is based, and stating whether the court made the finding by a preponderance of the evidence or by clear and convincing evidence.

(2) The court shall advise the parents that if the parents fail to substantially comply with the case plan, their parental rights may be terminated.

(3) If the child is in out-of-home placement, the court shall inquire of the parents whether the parents have relatives who might be considered as placement for the child. The parents shall provide to the court and all parties identification and location information for the relatives.

### **RULE 8.335. ALTERNATIVES PENDING DISPOSITION**

If the court finds that the evidence supports the allegations of the petition, it may make a finding of dependency as provided by law. If the predisposition and other reports required by law are available, the court may proceed to disposition or continue the case for a disposition hearing. If the case is continued, the court may refer the case to appropriate agencies for additional study and recommendation. The court may order the child continued in placement, designate the placement or the agency that will be responsible for the child's placement, and enter such other orders deemed necessary to protect the health, safety, and well-being of the child, including diagnosis, evaluation, treatment, and visitation.

### **RULE 8.340. DISPOSITION HEARINGS**

**(a) Information Available to Court.** At the disposition hearing the court, after establishing compliance with the dispositional considerations, determinations, and discussions required by law, may receive any relevant and material evidence helpful in determining the proper disposition to be made. It shall include written reports required by law, and may include, but shall not be limited to, any psychiatric or psychological evaluations of the child or his or her parent, caregiver, or legal custodian that may be obtained and that are relevant and material. Such evidence may be received by the court and may be relied upon to the extent of its probative value, even though not competent in an adjudicatory hearing.

**(b) Disclosure to Parties.** All parties shall be entitled to disclosure of all information in all reports submitted to the court.

**(c) Orders of Disposition.** The court shall in its written order of disposition include:

- (1) the placement or custody of the child;
- (2) special conditions of placement and visitation;
- (3) evaluation, counseling, treatment activities, and other actions to be taken by the parties, when ordered;
- (4) supervising or monitoring agencies, and continuation or discharge of the guardian ad litem, when appropriate;
- (5) date, time, and location for subsequent case review as required by law;
- (6) child support payments, if the child is in an out-of-home placement;
- (7) if the child is placed in foster care, the reasons why the child was not placed in the legal custody of an adult relative, legal custodian, or other adult approved by the court;
- (8) approval of the case plan or direction to amend the case plan within 30 days; and
- (9) such other requirements as are deemed necessary to protect the health, safety, and well-being of the child.

### **RULE 8.345. POST-DISPOSITION RELIEF**

**(a) Motion for Modification of Placement.** A child who has been placed in his or her own home, in the home of a relative, or in some other place, under the supervision or legal custody of the department, may be brought before the court by the department or any interested person on a motion for modification of placement. If neither the parents, the legal custodian, nor any appointed guardian ad litem or attorney ad litem object to the change, then the court may enter an order making the change in placement without a hearing. If the parents, the legal custodian, or any appointed guardian ad litem or attorney ad litem object to the change of placement, the court shall conduct a hearing and thereafter enter an order changing the placement, modifying the conditions of placement, continuing placement as previously ordered, or placing the child with the department or a licensed child-caring agency.

**(b) Motion for Termination of Supervision or Jurisdiction.** Any party requesting termination of agency supervision or the jurisdiction of the court or both shall do so by written motion or in a written report to the court. The court shall hear all parties present and enter an order terminating supervision or terminating jurisdiction and supervision or continuing them as previously ordered. The court shall not terminate jurisdiction unless the child is returned to the parent and has been in the placement for at least 6 months, the child is adopted, or the child attains the age of 18.

**RULE 8.350. PLACEMENT OF CHILD INTO RESIDENTIAL TREATMENT CENTER AFTER ADJUDICATION OF DEPENDENCY**

**(a) Placement.**

(1) Any reference in this rule to a residential treatment center is to a residential treatment center or facility licensed under section 394.875, Florida Statutes, for residential mental health treatment. Any reference to hospital is to a hospital licensed under chapter 395, Florida Statutes, for residential mental health treatment. This rule does not apply to placement under sections 394.463 or 394.467, Florida Statutes.

(2) The placement of any child who has been adjudicated dependent for residential mental health treatment shall be as provided by law.

(3) Whenever the department believes that a child in its legal custody may require placement in a residential treatment center or hospital, the department shall arrange to have the child assessed by a qualified evaluator as provided by law and shall file notice of this with the court and all parties. Upon the filing of this notice by the department, the court shall appoint a guardian ad litem for the child, if one has not already been appointed, and may also appoint an attorney for the child. Both the guardian ad litem and attorney, if appointed, shall meet the child and shall have the opportunity to discuss the child's suitability for residential treatment with the qualified evaluator conducting the assessment. Upon the completion of the evaluator's written assessment, the department shall provide a copy to the court and to all parties. The guardian ad litem shall also provide a written report to the court and to all parties indicating the guardian ad litem's recommendation as to the child's placement in residential treatment and the child's wishes.

(4) If the department seeks to place the child in a residential treatment center or hospital, the department shall immediately file a motion for placement of the child with the court. This motion shall include a statement as to why the child is suitable for this placement and why less restrictive alternatives are not appropriate and also shall include the written findings of the qualified evaluator. The motion shall state whether all parties, including the child, are in agreement.

(5) If the evaluator's written assessment indicates that the child requires immediate placement in a residential treatment center or hospital and that such placement cannot wait for a hearing, then the department may place the child pending a hearing, unless the court orders otherwise.

(6) The guardian ad litem must be represented by an attorney at all proceedings under this rule, unless the guardian ad litem is acting as an attorney. If the department's motion, the guardian ad litem's report, or another party based on communication with the child indicates that the child does not agree with the department's motion, then the court shall appoint an attorney to represent the child, if one has not already been appointed.

(7) Upon the filing of a motion for placement, the court shall set the matter for a status hearing within 48 hours, excluding weekends and holidays. The department shall timely provide notice of the date, time, and place of the hearing to all parties and participants.

(8) The child's attorney or guardian ad litem shall notify the child of the date, time, and place of the hearing. No hearing shall proceed without the presence of the child's guardian ad litem and attorney, unless excused by the court for good cause shown. Should the hearing occur in the absence of the guardian ad litem and attorney, upon request the court shall set the matter for an additional hearing within 24 hours, at which time the attorney and guardian ad litem shall be present.

(9) If the child appears at the status hearing not represented by an attorney, the court shall directly inquire of the child whether he or she disagrees with the motion for placement. If the child does not appear and is not represented by an attorney at the status hearing, the court shall diligently pursue all available information to determine if the child disagrees with the department's motion for placement. If no party disagrees with the department's motion at the status hearing, then the motion for placement may be approved by the court. However, if any party, including the child, disagrees, then the court shall set the matter for hearing within 10 working days.

(10) If counsel is not immediately available to represent the child, and the court determines that the child will be harmed if the hearing on placement is postponed, then the hearing may be held in the absence of



counsel. The child shall be present at the hearing unless the court determines pursuant to subdivision (c) that a court appearance is not in the child's best interest. In such circumstances, the child shall be provided the opportunity to express his or her views to the court by a method deemed appropriate by the court. Further, if counsel is not available at the time of the hearing, counsel shall be appointed as soon as practical thereafter and the court shall set an additional hearing at which time both counsel and the child shall be present.

**(11) Hearing on Placement.**

(A) At the hearing, the court shall consider, at a minimum, all of the following:

(i) based on an independent assessment of the child, the recommendation of a department representative or authorized agent that the residential treatment or hospitalization is in the child's best interest and a showing that the placement is the least restrictive available alternative;

(ii) the recommendation of the guardian ad litem;

(iii) a case review committee recommendation, if there has been one;

(iv) the written findings of the evaluation and suitability assessment prepared by a qualified evaluator; and

(v) the views regarding placement in residential treatment that the child expresses to the court.

(B) All parties shall be permitted to present evidence and witnesses concerning the suitability of the placement.

(C) If the court determines that the child is not suitable for residential treatment, the court shall order the department to place the child in the least restrictive setting that is best suited to meet the child's needs.

**(b) Continuing Residential Placement Reviews.**

(1) The court shall conduct a hearing to review the status of the child's residential treatment plan no later than 3 months after the child's admission to the residential treatment program. An independent review of the child's progress toward achieving the goals and objectives of the treatment plan must be completed by a qualified evaluator and submitted to the court and all parties in writing at least 72 hours before the 3-month review hearing.

(2) Review hearings shall be conducted every 3 months thereafter, until the child is placed in a less restrictive setting. At each 3-month review hearing, if the child appears and is not represented by an attorney, the court shall directly inquire of the child whether he or she disagrees with continued placement. If the child does not appear and is not represented by an attorney, the court shall diligently pursue all information available to determine if the child disagrees with continued placement. If the court determines that the child disagrees with the continued placement, the court shall appoint an attorney for the child.

(3) If the court determines at any hearing that the child is not suitable for continued residential treatment, the court shall order the department to place the child in the least restrictive setting that is best suited to meet the child's needs.

**(c) Presence of Child.** The child shall be present at all court hearings unless the court finds that the child's mental or physical condition is such that a court appearance is not in the child's best interest. In such circumstances, the child shall be provided the opportunity to express his or her views to the court by a method deemed appropriate by the court.

**(d) Standard of Proof.** At the hearing, the court shall determine whether the evidence supporting involuntary commitment of a dependent child to a residential mental health treatment facility is clear and convincing.

**RULE 8.355. ADMINISTRATION OF PSYCHOTROPIC MEDICATION TO A CHILD IN SHELTER CARE OR IN FOSTER CARE WHEN PARENTAL CONSENT HAS NOT BEEN OBTAINED**

**(a) Motion for Court Authorization for Administration of Psychotropic Medications.**

(1) Whenever the department believes that a child in its physical or legal custody requires the administration of a psychotropic medication, and the child's parents or legal guardians have not provided

express and informed consent as provided by law, the department or its agent shall file a motion with the court to authorize the administration of the psychotropic medication before the administration of the medication, except as provided in subdivision (c) of this rule. In all cases in which a motion is required, the motion shall include the following information:

(A) The written report of the department describing the efforts made to enable the prescribing physician to obtain express and informed consent for providing the medication to the child and describing other treatments considered or recommended for the child; and

(B) The prescribing physician's signed medical report, as required by law.

(2) The department must serve a copy of the motion, and notify all parties of its proposed administration of psychotropic medication to the child in writing, or by whatever other method best ensures that all parties receive notification of the proposed action, within 48 hours after filing the motion for court authorization.

(3) If any party objects to the proposed administration of the psychotropic medication to the child, that party must file its objection within 2 working days after being notified of the department's motion.

**(b) Court Action on Department's Motion for Administration of Psychotropic Medication.**

(1) If no party timely files an objection to the department's motion, the court may enter its order authorizing the proposed administration of the psychotropic medication without a hearing. Based on its determination of the best interests of the child, the court may order additional medical consultation or require the department to obtain a second opinion within a reasonable time, not more than 21 calendar days. When the court orders an additional medical consultation or second medical opinion, the department shall file a written report including the results of this additional consultation or a copy of the second medical opinion with the court within the time required by the court, and shall serve a copy of the report as required by subdivision (a)(2) of this rule.

(2) If any party timely files its objection to the proposed administration of the psychotropic medication to the child, the court shall hold a hearing as soon as possible on the department's motion.

(A) At such hearing, the medical report of the prescribing physician is admissible in evidence.

(B) At such hearing, the court shall ask the department whether additional medical, mental health, behavioral, counseling, or other services are being provided to the child that the prescribing physician considers to be necessary or beneficial in treating the child's medical condition, and which the physician recommends or expects to be provided to the child with the medication.

(C) The court may order additional medical consultation or a second medical opinion, as provided in subdivision (b)(1) of this rule.

(D) After considering the department's motion and any testimony received, the court may order that the department provide or continue to provide the proposed psychotropic medication to the child, on a determination that it is in the child's best interest to do so.

**(c) Emergency Situations.**

**(1) Shelter Care.** When a child is initially removed from the home and taken into custody under section 39.401, Florida Statutes, and the department continues to administer a current prescription of psychotropic medication to the child, the department shall request court authorization for the continued administration of the medication at the shelter hearing. This request shall be included in the shelter petition.

(A) The department shall provide all information in its possession to the court in support of its request at the shelter hearing. The court may authorize the continued administration of the psychotropic medication only until the arraignment hearing on the petition for adjudication, or for 28 days following the date of the child's removal, whichever occurs first.

(B) When the department believes, based on the required physician's evaluation, that it is appropriate to continue the psychotropic medication beyond the time authorized by the court at the shelter hearing, the department shall file a motion seeking continued court authorization at the same time as it files the dependency petition, within 21 days after the shelter hearing.

**(2) When Delay Would Cause Significant Harm.** Whenever the department believes, based on the certification of the prescribing physician, that delay in providing the prescribed psychotropic medication to

the child would, more likely than not, cause significant harm to the child, the department must submit a motion to the court seeking continuation of the medication within 3 working days after the department begins providing the medication to the child.

(A) The motion seeking authorization for the continued administration of the psychotropic medication to the child shall include all information required in subdivision (a)(1) of this rule. The required medical report must also include the specific reasons why the child may experience significant harm, and the nature and the extent of the potential harm, resulting from a delay in authorizing the prescribed medication.

(B) The department shall serve the motion on all parties within 3 working days after the department begins providing the medication to the child.

(C) The court shall hear the department's motion at the next regularly scheduled court hearing required by law, or within 30 days after the date of the prescription, whichever occurs sooner. However, if any party files an objection to the motion, the court shall hold a hearing within 7 days.

**(3) In Emergency Psychiatric Placements.** The department may authorize the administration of psychotropic medications to a child in its custody in advance of a court order in hospitals, crisis stabilization units, and in statewide inpatient psychiatric programs. Should the department do so, it must seek court authorization for the continued administration of the medication as required in subdivision (a) of this rule.

## D. CASE PLANS

### RULE 8.400. CASE PLAN DEVELOPMENT

**(a) Case Planning Conference.** The case plan must be developed in a face-to-face conference with the parents, the guardian ad litem, attorney ad litem and, if appropriate, the child and the temporary custodian of the child.

**(b) Contents.** The case plan must be written simply and clearly in English and the principal language of the parents, if possible. Each case plan must contain

(1) a description of the problem being addressed, including the parent's behavior or acts resulting in risk to the child and the reason for the intervention by the department;

(2) a permanency goal;

(3) if it is a concurrent plan, a description of the permanency goal of reunification with the parent or legal custodian and one of the remaining permanency goals;

(4) the date the compliance period expires; and

(5) a written notice to the parent that failure of the parent to substantially comply with the case plan may result in the termination of parental rights, and that a material breach of the case plan may result in the filing of a petition for termination of parental rights sooner than the expiration of the compliance period.

**(c) Expiration of Case Plan.** The case plan compliance period expires no later than 12 months after the date the child was initially removed from the home or the date the case plan was accepted by the court, whichever occurs first.

**(d) Department Responsibility.**

(1) The department shall prepare a draft of a case plan for each child receiving services under F.S. Chapter 39.

(2) The department shall document, in writing, a parent's unwillingness or inability to participate in the development of the case plan, provide the written documentation to the parent when available for the court record, and prepare a case plan.

(3) After the case plan has been developed, and before acceptance by the court, the department shall make the appropriate referrals for services that will allow the parents to begin the agreed-upon tasks and services immediately if the parents agree to begin compliance.

(4) The department must immediately give the parties, including the child if appropriate, a signed copy of the agreed-upon case plan.

(5) The department must prepare, but need not submit to the court, a case plan for a child who will be in care no longer than 30 days unless that child is placed in out of home care a second time within a 12-month period.

(6) The department must prepare a case plan for a child in out of home care within 60 days after the department removes the child from the home and shall submit the plan to the court before the disposition hearing for the court to review and approve.

(7) Not less than 3 business days before the disposition hearing, the department must file a case plan with the court.

(8) After jurisdiction attaches, the department shall file with the court all case plans, including all case plans prepared before jurisdiction of the court attached. The department shall provide a copy of the case plans filed to all the parties whose whereabouts are known, not less than 3 business days before the disposition hearing.

**(e) Signature.** The case plan must be signed by all parties except the child, if the child is not of an age or capacity to participate in the case planning process.

**(f) Service.** Each party, including the child, if appropriate, must be provided with a copy of the case plan not less than 3 business days before the disposition hearing. If the location of a parent is unknown, this fact must be documented in writing and included in the plan.

#### **RULE 8.410. APPROVAL OF CASE PLANS**

**(a) Hearing.** The court shall review the contents of the case plan at the disposition hearing unless a continuance for the filing of the case plan has been granted by the court.

**(b) Determinations by Court.** At the hearing, the court shall determine if:

(1) The plan is consistent with the previous orders of the court placing the child in care.

(2) The plan is consistent with the requirements for the content of a case plan as provided by law.

(3) The parents were advised of their right to have counsel present at all prior hearings and the parents were advised of their right to participate in the preparation of the case plan and to have counsel or any other person assist in the preparation of the case plan.

(4) The case plan is meaningful and designed to address the facts, circumstances, and problems on which the court based its order of dependency for the child.

(5) The plan adequately addresses the goals and needs of the child.

**(c) Amendment of Initial Case Plan.** During the hearing, if the court determines that the case plan does not meet statutory requirements and include previous court orders, it shall order the parties to make amendments to the plan. The amended plan must be submitted to the court within 30 days for another hearing and approval. A copy of the amended plan must be provided to each party, if the location of the party is known, at least 3 business days before filing with the court. If the parties do not agree on the final terms, the court shall order those conditions and tasks it believes must be accomplished to obtain permanency for the child. In addition, the court may order the department to provide those services necessary to assist in achieving the goal of the case plan.

**(d) Entry of Findings.** The court shall enter its findings with respect to the review of the case plan in writing and make specific findings on each element required by law to be included in a case plan.

**(e) Review Hearing.** The court will set a hearing to review the performance of the parties to the case plan no later than 90 days after the disposition hearing or the hearing at which the case plan was approved, 6 months from the date on which the child was removed from the home, or 6 months from the date of the last judicial review, whichever comes first.

## **RULE 8.415. JUDICIAL REVIEW OF DEPENDENCY CASES**

**(a) Required Review.** All dependent children shall have their status reviewed as provided by law.

### **(b) Scheduling Hearings.**

**(1) Initial Review Hearing.** The court shall determine when the first review hearing shall be held and the clerk of the court shall immediately schedule the review hearing. In no case shall the hearing be scheduled for later than 6 months from the date of removal from the home or 90 days from the disposition or case plan approval hearing, whichever comes first. In every case, the court must conduct a judicial review at least every 6 months.

**(2) Subsequent Review Hearings.** At each judicial review hearing, the court shall schedule the next judicial review hearing which shall be conducted within 6 months. The clerk of the court, at the judicial review hearing, shall provide the parties with written notice of the date, time, and location of the next judicial review hearing.

**(c) Report.** In all cases, the department or its agent shall prepare a report to the court. The report shall contain facts showing the court to have jurisdiction of the cause as a dependency case. It shall contain information as to the identity and residence of the parent, if known, and the legal custodian, the dates of the original dependency adjudication and any subsequent judicial review proceedings, and a request for one or more of the following forms of relief:

(1) that the child's placement be changed;

(2) that the case plan be continued to permit the parents or social service agency to complete the tasks assigned to them in the agreement; or

(3) that proceedings be instituted to terminate parental rights and legally free the child for adoption.

**(d) Service.** A copy of the report containing recommendations and, if not previously provided by the court, a notice of review hearing shall be served on all persons who are required by law to be served at least 72 hours before the judicial review hearing.

**(e) Information Available to Court.** At the judicial review hearing the court may receive any relevant and material evidence pertinent to the cause. This shall include written reports required by law and may include, but shall not be limited to, any psychiatric or psychological evaluations of the child or parent, caregiver, or legal custodian that may be obtained and that are material and relevant. This evidence may be received by the court and relied on to the extent of its probative value, even though it may not be competent in an adjudicatory hearing.

### **(f) Court Action.**

(1) The court shall hold a hearing to review the compliance of the parties with the case plan and to determine what assigned tasks were and were not accomplished and the reasons for any nonachievement.

(2) If the court finds that the parents have substantially complied with the case plan, the court shall return the child to the custody of the parents if the court is satisfied that reunification will not be detrimental to the child's safety, well-being, or physical, mental, or emotional health.

(3) If the court finds that the social service agency has not complied with its obligations, the court may find the social service agency to be in contempt, shall order the social service agency to submit its plan for compliance with the case plan, and shall require the social service agency to show why the child could not be safely returned to the home of the parents. If the court finds that the child could not be safely returned to the parents, it shall extend the case plan for a period of not more than 6 months to allow the social service agency to comply with its obligations under the case plan.

(4) At any judicial review held under section 39.701(6), Florida Statutes, if, in the opinion of the court, the department has not complied with its obligations as specified in the written case plan or in the provision of independent living services as required by sections 39.701(6) and 409.1451, Florida Statutes, the court shall issue a show cause order. If cause is shown for failure to comply, the court shall give the department 30 days within which to comply and, on failure to comply with this or any subsequent order, the court may hold the department in contempt.

(5) When a child is returned to the parents, the court shall not terminate its jurisdiction over the child until 6 months after the return. Based on a report of the department and any other relevant factors, the court shall then determine whether jurisdiction should be continued or terminated. If its jurisdiction is to be terminated, it shall enter an order to that effect.

(6) When a child has not been returned to the parent, but has been permanently committed to the department for subsequent adoption, the court shall continue to hold judicial review hearings on the status of the child at least every 6 months until the adoption is finalized. These hearings shall be held in accordance with these rules.

(7) If a youth in the legal custody of the department immediately before his or her 18th birthday petitions the court at any time before his or her 19th birthday requesting the court's continued jurisdiction, the court may retain or reinstate jurisdiction for a period of time not to continue beyond the date of the youth's 19th birthday. This continued jurisdiction is for the purpose of determining whether appropriate aftercare support, Road-to-Independence Scholarship, transitional support, mental health, and developmental disability services have been provided to the youth.

(8) If a petition for special immigrant juvenile status and an application for adjustment of status have been filed on behalf of a foster child and the petition and application have not been granted by the time the child reaches 18 years of age, the court may retain jurisdiction solely for the purpose of allowing the continued consideration of the petition and application by federal authorities. Review hearings shall be set solely for the purpose of determining the status of the petition and application. The court's jurisdiction shall terminate on the final decision of the federal authorities, or on the immigrant child's 22nd birthday, whichever occurs first.

(9) The court shall enter a written order on the conclusion of the review hearing including a statement of the facts, those findings it was directed to determine by law, a determination of the future course of the proceedings, and the date, time, and place of the next hearing.

**(g) Administrative Review.** The department, under a formal agreement with the court in particular cases, may conduct administrative reviews instead of judicial reviews for children in out-of-home placement. Notice must be provided to all parties. An administrative review may not be substituted for the first judicial review or any subsequent 6-month review. Any party may petition the court for a judicial review as provided by law.

**(h) Concurrent Planning.**

(1) At the initial judicial review hearing, the court shall make findings regarding the likelihood of the child's reunification with the parent or legal custodian within 12 months after the removal of the child from the home.

(2) If the court makes a written finding that it is not likely that the child will be reunified with the parent or legal custodian within 12 months after the child was removed from the home, the department must file a motion to amend the case plan and declare that it will use concurrent planning for the case plan.

(3) The department must file the motion to amend the case plan no later than 10 business days after receiving the written finding of the court and attach the proposed amended case plan to the motion.

(4) If concurrent planning is already being used, the case plan must document the efforts the department is making to complete the concurrent goal.

## **RULE 8.420. CASE PLAN AMENDMENTS**

**(a) Modifications.** After the case plan has been developed, the tasks and services agreed upon in the plan may not be changed or altered except as follows.

(1) The case plan may be amended at any time to change the goal of the plan, employ the use of concurrent planning, add or remove tasks the parent must complete to substantially comply with the plan, provide appropriate services for the child, and update the child's health, mental health, and education records.

(2) The case plan may be amended on approval of the court if all parties are in agreement regarding the amendments to the plan and the amended plan is signed by all parties and submitted to the court with a memorandum of explanation.

(3) The case plan may be amended by the court or on motion of any party at any hearing to change the goal of the plan, employ the use of concurrent planning, or add or remove the tasks the parent must complete in order to substantially comply with the plan, if there is a preponderance of evidence demonstrating the need for the amendment.

(4) The case plan may be amended by the court or on motion of any party at any hearing to provide appropriate services to the child if there is competent evidence demonstrating the need for the amendment.

(5) The case plan is deemed amended as to the child's health, mental health, and education records when the child's updated health and education records are filed by the department.

**(b) Basis to Amend the Case Plan.** The need to amend the case plan may be based on information discovered or circumstances arising after the approval of the case plan for:

(1) a previously unaddressed condition that, without services, may prevent the child from safely returning to or remaining in the home;

(2) the child's need for permanency;

(3) the failure of a party to substantially comply with a task in the original case plan, including the ineffectiveness of a previously offered service;

(4) an error or oversight in the case plan; or

(5) information discovered or circumstances arising after the approval of the plan regarding the provision of safe and proper care for the child.

**(c) Service.** A copy of the amended plan must be immediately given to all parties.

#### **RULE 8.425. PERMANENCY HEARINGS**

**(a) Required Review.** A permanency hearing must be held no later than 12 months after the date the child was removed from the home or no later than 30 days after a court determines that reasonable efforts to return a child to either parent are not required, whichever occurs first. A permanency hearing must be held at least every 12 months for any child who continues to receive supervision from the department or awaits adoption.

**(b) Determinations at Hearing.**

(1) The court shall determine

(A) whether the current permanency goal for the child is appropriate or should be changed;

(B) when the child will achieve one of the permanency goals; and

(C) whether the department has made reasonable efforts to finalize the permanency plan currently in effect.

(2) The court shall approve a permanency goal for the child as provided by law choosing from the following options, listed in order of preference:

(A) reunification;

(B) adoption, if a petition for termination of parental rights has been or will be filed;

(C) permanent guardianship of a dependent child under section 39.6221, Florida Statutes;

(D) permanent placement with a fit and willing relative under section 39.6231, Florida Statutes; or

(E) placement in another planned permanent living arrangement under section 39.6241, Florida Statutes.

(3) The best interest of the child is the primary consideration in determining the permanency goal. The court must also consider the reasonable preference of the child if the court has found the child to be of sufficient intelligence, understanding, and experience to express a preference and any recommendation of the guardian ad litem.

**(c) Case Plan.** The case plan must list the tasks necessary to finalize the permanency placement and shall be amended at the permanency hearing if necessary. If a concurrent case plan is in place, the court shall approve a single goal that is in the child's best interest.

**(d) Permanency Order.**

(1) The findings of the court regarding reasonable efforts to finalize the permanency plan must be explicitly documented, made on a case-by-case basis, and stated in the court order.

(2) The court shall enter an order approving the permanency goal for the child.

(3) If the court approves a permanency goal of permanent guardianship of a dependent child, placement with a fit and willing relative, or another planned permanent living arrangement, the court shall make findings as to why this permanent placement is established without adoption of the child to follow. The department and the guardian ad litem must provide the court with a recommended list and description of services needed by the child, such as independent living services and medical, dental, educational, or psychological referrals, and a recommended list and description of services needed by his or her caregiver.

(4) If the court establishes a permanent guardianship for the child, the court's written order shall

(A) transfer parental rights with respect to the child relating to protection, education, care and control of the person, custody of the person, and decision-making on behalf of the child to the permanent guardian;

(B) list the circumstances or reasons why the child's parents are not fit to care for the child and why reunification is not possible by referring to specific findings of fact made in its order adjudicating the child dependent or by making separate findings of fact;

(C) state the reasons why a permanent guardianship is being established instead of adoption;

(D) specify the frequency and nature of visitation or contact between the child and his or her parents, siblings, and grandparents; and

(E) require that the permanent guardian not return the child to the physical care and custody of the person from whom the child was removed without the approval of the court.

(5) The court shall retain jurisdiction over the case and the child shall remain in the custody of the permanent guardian unless the order creating the permanent guardianship is modified by the court. The court shall discontinue regular review hearings and relieve the department of the responsibility for supervising the placement of the child. Notwithstanding the retention of jurisdiction, the placement shall be considered permanency for the child.

(6) If the court permanently places a child with a fit and willing relative, the court's written order shall

(A) list the circumstances or reasons why reunification is not possible by referring to specific findings of fact made in its order adjudicating the child dependent or by making separate findings of fact;

(B) state the reasons why permanent placement with a fit and willing relative is being established instead of adoption;

(C) specify the frequency and nature of visitation or contact between the child and his or her parents, siblings, and grandparents; and

(D) require that the relative not return the child to the physical care and custody of the person from whom the child was removed without the approval of the court.

(7) If the court establishes another planned permanent living arrangement as the child's permanency option:

(A) The court must find that a more permanent placement, such as adoption, permanent guardianship, or placement with a fit and willing relative, is not in the best interests of the child.

(B) The department shall document reasons why the placement will endure and how the proposed arrangement will be more stable and secure than ordinary foster care.

(C) The court must find that the health, safety, and well-being of the child will not be jeopardized by such an arrangement.

(D) The court must find that compelling reasons exist to show that placement in another planned permanent living arrangement is the most appropriate permanency goal.



**(e) Entry of Separate Order Establishing Permanency.** If the court permanently places a child in a permanent guardianship or with a fit and willing relative, the court shall enter a separate order establishing the authority of the permanent guardian or relative to care for the child, reciting that individual's powers and authority with respect to the child and providing any other information the court deems proper which can be provided to persons who are not parties to the proceeding as necessary, notwithstanding the confidentiality provisions of Chapter 39, Florida Statutes.

**(f) Recommendations for Sustaining Permanency.** If the court approves a goal of placement with a fit and willing relative or another planned permanent living arrangement, the department and the guardian ad litem must provide the court with a recommended list and description of services needed by the child, and a recommended list and description of services needed by his or her caregiver.

#### **RULE 8.430. MODIFICATION OF PERMANENCY ORDER**

**(a) Best Interests of Child.** The permanency placement is intended to continue until the child reaches the age of majority and may not be disturbed absent a finding by the court that the circumstances of the permanency placement are no longer in the best interest of the child.

**(b) Request for Modification by a Parent.**

(1) If a parent who has not had his or her parental rights terminated makes a motion for reunification or increased contact with the child, the court shall first hold a hearing to determine whether the dependency case should be reopened and whether there should be a modification of the order. At the hearing, the parent must demonstrate that the safety, well-being, and physical, mental, and emotional health of the child is not endangered by the modification.

(2) The court shall base its decision concerning any motion by a parent for reunification or increased contact with a child on the effect of the decision on the safety, well-being, and physical and emotional health of the child. Factors that must be considered and addressed in the findings of fact of the order on the motion must include

(A) the compliance or noncompliance of the parent with the case plan;

(B) the circumstances which caused the child's dependency and whether those circumstances have been resolved;

(C) the stability and length of the child's placement;

(D) the preference of the child, if the child is of sufficient age and understanding to express a preference;

(E) the recommendation of the current custodian; and

(F) the recommendation of the guardian ad litem, if one has been appointed.

### **E. TERMINATION OF PARENTAL RIGHTS**

#### **RULE 8.500. PETITION**

**(a) Initiation of Proceedings.**

(1) All proceedings seeking the termination of parental rights to a child shall be initiated by the filing of an original petition in the pending dependency action, if any.

(2) A petition for termination of parental rights may be filed at any time by the department, the guardian ad litem, or any person having knowledge of the facts. Each petition shall be titled a petition for termination of parental rights.

(3) When provided by law, a separate petition for dependency need not be filed.

**(b) Contents.**

(1) The petition shall contain allegations as to the identity and residence of the parents, if known.

(2) The petition shall identify the age, sex, and name of the child. Two or more children may be the subject of the same petition.

(3) The petition shall include facts supporting allegations that each of the applicable statutory elements for termination of parental rights has been met.

(4) When required by law, the petition shall contain a showing that the parents were offered a case plan and did not substantially comply with it.

(5) The petition shall have a certified copy of the birth certificate of each child named in it attached unless the petitioner, after diligent search and inquiry, is unable to produce it, in which case the petition shall state the date and place of birth of each child, unless these matters cannot be ascertained after diligent search and inquiry or for other good cause.

**(c) Verification.** The petition shall be signed under oath stating the good faith of the petitioner in filing it. No objection to a petition on the grounds that it was not signed or verified as required shall be entertained after a plea to the merits.

**(d) Amendments.** At any time before the conclusion of an adjudicatory hearing, an amended petition may be filed or the petition may be amended by motion. However, after a written answer has been filed or the adjudicatory hearing has commenced, amendments shall be permitted only with the permission of the court unless all parties consent. Amendments shall be freely permitted in the interest of justice and the welfare of the child. A continuance shall be granted on motion and a showing that the amendment prejudices or materially affects any party.

**(e) Defects and Variances.** No petition or any count of it shall be dismissed, or any judgment vacated, because of any defect in the form of the petition or of misjoinder of counts. If the court is of the opinion that the petition is so vague, indistinct, and indefinite as to mislead the parent and prejudice him or her in the preparation of a defense, the petitioner will be required to furnish a more definite statement.

**(f) Voluntary Dismissal.** The petitioner, without leave of the court, at any time before entry of an order of adjudication, may request a voluntary dismissal of the petition by serving a notice of request of dismissal on all parties or, if during a hearing, by so stating on the record. The petition shall be dismissed and the court loses jurisdiction unless another party adopts the petition within 72 hours. Unless otherwise stated, the dismissal shall be without prejudice.

**(g) Parental Consent.**

(1) The parents of the child may consent to the petition for termination of parental rights at any time, in writing or orally, on the record.

(2) If, before the filing of the petition for termination of parental rights, the parents have consented to the termination of parental rights and executed surrenders and waivers of notice of hearing as provided by law, this shall be alleged in the petition and copies shall be attached to the petition and presented to the court.

(3) If the parents appear and enter an oral consent on the record to the termination of parental rights, the court shall determine the basis on which a factual finding may be made and shall incorporate these findings into its order of disposition.

## **RULE 8.505. PROCESS AND SERVICE**

**(a) Personal Service.** On the filing of a petition requesting the termination of parental rights, a copy of the petition and notice of the date, time, and place of the advisory hearing must be personally served on

(1) the parents;

(2) the legal custodians or caregivers of the child;

(3) if the natural parents are dead or unknown, a living relative of the child, unless on diligent search and inquiry no relative can be found;

(4) any person who has physical custody of the child;

(5) any grandparents entitled by law to notice of the adoption proceeding;

(6) any prospective parent identified by law;

(7) the guardian ad litem for the child or the representative of the guardian ad litem program, if the program has been appointed;

(8) the attorney ad litem for the child if one has been appointed; and

(9) any other person as provided by law.

**(b) Contents.** The document containing the notice to appear shall notify the required persons of the filing of the petition and must contain in type at least as large as the balance of the document the following or substantially similar language:

“FAILURE TO PERSONALLY APPEAR AT THE ADVISORY HEARING CONSTITUTES CONSENT TO THE TERMINATION OF PARENTAL RIGHTS OF THIS CHILD (THESE CHILDREN). IF YOU FAIL TO APPEAR ON THE DATE AND TIME SPECIFIED, YOU MAY LOSE ALL LEGAL RIGHTS AS A PARENT TO THE CHILD OR CHILDREN NAMED IN THE PETITION ATTACHED TO THIS NOTICE.”

**(c) Constructive Service.** Parties whose identities are known and on whom personal service of process cannot be effected shall be served by publication as provided by law.

**(d) Waiver of Service.** Service of process may be waived, as provided by law, for persons who have executed a written surrender of the child to the department.

## **RULE 8.510. ADVISORY HEARING AND PRETRIAL STATUS CONFERENCES**

### **(a) Advisory Hearing.**

(1) An advisory hearing on the petition to terminate parental rights must be held as soon as possible after service of process can be effected, but no less than 72 hours following service of process. Personal appearance of any person at the advisory hearing eliminates the time requirement for serving process on that person.

(2) The court must:

(A) advise the parents of their right to counsel and appoint counsel in accordance with legal requirements;

(B) determine whether an admission, consent, or denial to the petition shall be entered; and

(C) appoint a guardian ad litem if one has not already been appointed.

(3) If a parent served with notice fails to personally appear at the advisory hearing, the court shall enter a consent to the termination of parental rights petition for the parent who failed to personally appear.

(4) If an admission or consent is entered by all parents for a named child included in the petition for termination of parental rights and the court finds that termination of parental rights is in the best interest of the child, the court shall proceed to disposition alternatives as provided by law.

(5) If a denial is entered, the court shall set an adjudicatory hearing within the period of time provided by law or grant a continuance until the parties have sufficient time to proceed to an adjudicatory hearing.

**(b) Pretrial Status Conference.** Not less than 10 days before the adjudicatory hearing on a petition for involuntary termination of parental rights, the court shall conduct a pretrial status conference to determine the order in which each party may present witnesses or evidence, the order in which cross-examination and argument shall occur, and any other matters that may aid in the conduct of the adjudicatory hearing.

**(c) Voluntary Terminations.** An advisory hearing may not be held if a petition is filed seeking an adjudication to voluntarily terminate parental rights. Adjudicatory hearings for petitions for voluntary termination must be set within 21 days of the filing of the petition. Notice of intent to rely on this subdivision must be filed with the court as required by law.

## **RULE 8.515. PROVIDING COUNSEL TO PARTIES**

### **(a) Duty of the Court.**

(1) At each hearing, the court shall advise unrepresented parents of their right to have counsel present, unless the parents have voluntarily executed a written surrender of the child and consent to the entry of a court order terminating parental rights.

(2) The court shall appoint counsel for indigent parents as provided by law. The court may appoint counsel for other parties as provided by law.

(3) The court shall ascertain whether the right to counsel is understood. If the right to counsel is waived by any parent the court shall ascertain if the right to counsel is knowingly and intelligently waived.

(4) The court shall enter its findings with respect to the appointment or waiver of counsel of indigent parents or the waiver of the right to have counsel present.

(5) Once counsel has been retained or appointed to represent a parent, the attorney shall continue to represent the parent throughout the proceedings or until the court has approved discontinuing the attorney-client relationship. If the attorney-client relationship is discontinued, the court shall advise the parent of the right to have new counsel retained or appointed for the remainder of the proceedings.

### **(b) Waiver of Counsel.**

(1) No waiver shall be accepted if it appears that the parent is unable to make an intelligent and understanding choice because of mental condition, age, education, experience, the nature or complexity of the case, or other factors.

(2) A waiver of counsel shall be made in court and be of record. The court shall question the parent in sufficient detail to ascertain that the waiver is made knowingly and intelligently.

(3) If a waiver is accepted at any hearing, the offer of assistance of counsel shall be renewed by the court at each subsequent hearing at which the parent appears without counsel.

## **RULE 8.520. ANSWERS AND RESPONSIVE PLEADINGS**

**(a) No Written Answer Required.** No answer to the petition need be filed by the parent. The parent of the child may enter an oral or written answer to the petition or appear and remain silent.

**(b) Plea of Denial.** If the parent denies the allegations of the petition, appears and remains silent, or pleads evasively, the court shall enter a denial and shall set the case for an adjudicatory hearing.

**(c) Plea of Admission or Consent.** If the parent appears and enters a plea of admission or consent to the termination of parental rights, the court shall determine that the admission or consent is made voluntarily and with a full understanding of the nature of the allegations and the possible consequences of the plea and that the parent has been advised of the right to be represented by counsel. The court shall incorporate these findings into its order of disposition, in addition to findings of fact specifying the act or acts causing the termination of parental rights.

## **RULE 8.525. ADJUDICATORY HEARINGS**

**(a) Hearing by Judge.** The adjudicatory hearing shall be conducted by the judge without a jury using the rules of evidence for civil cases. At this hearing the court shall determine whether the elements required by law for termination of parental rights have been established by clear and convincing evidence.

**(b) Time of Hearing.** The adjudicatory hearing shall be held within 45 days after the advisory hearing, unless all necessary parties stipulate to some other hearing date. Reasonable continuances may be granted for purposes of investigation, discovery, procuring counsel or witnesses, or for other good cause shown.

**(c) Examination of Witnesses.** A party may call any person, including a child, as a witness. A party shall have the right to examine or cross-examine all witnesses.

**(d) Presence of Parties.** All parties have the right to be present at all termination hearings. A party may appear in person or, at the discretion of the court for good cause shown, by an audio or audiovisual device.

No party shall be excluded from any hearing unless so ordered by the court for disruptive behavior or as provided by law. If a parent appears for the advisory hearing and the court orders that parent to personally appear at the adjudicatory hearing for the petition for termination of parental rights, stating the date, time, and location of this hearing, then failure of that parent to personally appear at the adjudicatory hearing shall constitute consent for termination of parental rights.

**(e) Examination of Child.** The court may hear the testimony of the child outside the physical presence of the parties as provided by rule 8.255. Counsel for the parties shall be present during all examinations. The court may limit the manner in which counsel examine the child.

**(f) Previous Testimony Admissible.** To avoid unnecessary duplication of expenses, in-court testimony previously given at any properly noticed hearing may be admitted, without regard to the availability of the witnesses, if the recorded testimony itself is made available. Consideration of previous testimony does not preclude the parties from calling the witness to answer supplemental questions.

**(g) Joint and Separate Hearings.** When 2 or more children are the subject of a petition for termination of parental rights, the hearings may be held simultaneously if the children are related to each other or involved in the same case, unless the court orders separate hearings.

**(h) Motion for Judgment of Dismissal.** In all termination of parental rights proceedings, if at the close of the evidence for the petitioner the parents move for a judgment of dismissal and the court is of the opinion that the evidence is insufficient to sustain the grounds for termination alleged in the petition, it shall enter an order denying the termination and proceed with dispositional alternatives as provided by law.

**(i) Final Judgment.**

**(1) Terminating Parental Rights.** If the court finds after all of the evidence has been presented that the elements and one of the grounds for termination of parental rights have been established by clear and convincing evidence, the court shall enter a final judgment terminating parental rights and proceed with dispositional alternatives as provided by law. The order must contain the findings of fact and conclusions of law on which the decision was based. The parties may stipulate, or the court may order, that parents or relatives of the parent whose rights are terminated be allowed to maintain some contact with the child. If the court orders continued contact, the nature and frequency of this contact must be stated in a written order. The visitation order may be reviewed on motion of any party, including a prospective adoptive parent, and must be reviewed by the court at the time the child is placed for adoption.

**(2) Denying Termination of Parental Rights.** If the court finds after all of the evidence has been presented that the grounds for termination of parental rights have not been established by clear and convincing evidence, but that the grounds for dependency have been established by a preponderance of the evidence, the court shall adjudicate or readjudicate the child dependent and proceed with dispositional alternatives as provided by law.

**(3) Dismissing Petition.** If the court finds after all of the evidence has been presented that the allegations in the petition do not establish grounds for dependency or termination of parental rights, it shall enter an order dismissing the petition.

## **RULE 8.535. POSTDISPOSITION HEARINGS**

**(a) Initial Hearing.** If the court terminates parental rights, a postdisposition hearing must be set within 30 days after the date of disposition. At the hearing, the department or licensed child-placing agency shall provide to the court a plan for permanency for the child.

**(b) Subsequent Hearings.** Following the initial postdisposition hearing, the court shall hold hearings every 6 months to review progress being made toward permanency for the child until the child is adopted or reaches the age of 18, whichever occurs first. Review hearings for alternative forms of permanent placement shall be held as provided by law.

**(c) Continuing Jurisdiction.** The court that terminates the parental rights to a child under chapter 39, Florida Statutes, shall retain exclusive jurisdiction in all matters pertaining to the child's adoption under

chapter 63, Florida Statutes. The petition for adoption must be filed in the division of the circuit court that entered the judgment terminating parental rights, unless a motion for change of venue is granted as provided by law.

**(d) Withholding Consent to Adopt.**

(1) When a petition for adoption and a favorable home study under section 39.812(5), Florida Statutes, have been filed and the department's consent has not been filed, the court shall conduct a hearing to determine if the department has unreasonably withheld consent.

(2) In reviewing whether the department unreasonably withheld its consent to adopt, the court shall determine whether the department abused its discretion by withholding consent to the adoption by the petitioner. In making this determination, the court shall consider all relevant information, including information obtained or otherwise used by the department in selecting the adoptive family, pursuant to Florida Administrative Code Chapter 65C.

(3) If the court determines that the department unreasonably withheld consent to adopt, and the petitioner has filed with the court a favorable home study as required by law, the court shall incorporate its findings into a written order with specific findings of fact as to how the department abused its discretion in withholding its consent to adopt, and the consent of the department shall be waived.