

Children's Legal Services

2008 Legislative Update



Prepared by:

Florida Department of Children and Families Children's Legal Services (June, 2008)

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REFERENCE GUIDE TO 2008 LEGISLATIVE CHANGES
(in numerical order according to Statute number)

TOPIC: New Definition of Harm (Amended §39.01(32)(g))

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

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

NOTES from CLS UPDATE PRESENTATION (June, 2008)

These statutory changes do not mandate judicial action such as sheltering or filing of a dependency petition for children who test positive at birth, *BUT* if judicial action is sought, this change makes the burden of proof - continued investigation, Least Intrusive Means of protecting the child (VPS, referrals, etc.), reasonable efforts to avoid dependency – much easier.

RELEVANT CASE LAW

Significantly modifies holdings reversing dependency adjudications in:

- *P.D. v. Dept. of Children and Families*, 866 So.2d 100 (Fla. 1st DCA 2004)
- *J.B., III v. Dept. of Children and Families*, 928 So.2d 392 (Fla. 1st DCA 2006) (rejecting substance exposure dependency based on lack of imminent risk)

Contrast to 39.01(31)(a)4.k.: Corporal discipline considered excessive when it results in significant bruises or welts. CLS must still prove ongoing threat of harm, lack of isolated incident, etc.

Contrast to 39.806(1)(k): Allowing for expedited TPR when a child tests positive for controlled substances at birth **and** the mother has had at least one other child who was adjudicated dependent after a finding of harm to the child related to controlled substances **and** the Mother has had the opportunity to participate in substance abuse treatment).

TOPIC: Chapter 39 Injunctions (including to protect the child from Domestic Violence (Amended §39.504))

- (1) At any time after a protective investigation has been initiated pursuant to part III of this chapter, 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, issue an injunction to prevent any act of child abuse. Reasonable cause for the issuance of an injunction exists if there is evidence of child abuse or if there is a reasonable likelihood of such abuse 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 the court is closed for the transaction of judicial business. If an immediate injunction is issued, the court must hold a hearing on the next day of judicial business to dissolve the injunction or to continue or modify it in accordance with this section.*
- (3) If an injunction is issued under this section, the primary purpose of the injunction must be to protect and promote the best interests of the child, taking the preservation of the child's immediate family into consideration.
 - (a) The injunction shall apply to the alleged or actual offender in a case of child abuse or acts of domestic violence. 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.*
 - 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) 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.***

This paragraph does not preclude the adult victim of domestic violence from seeking protection under s. 41.30.

(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. 41.30. The department shall deliver a copy of any injunction issued pursuant to this section to the protected party or to a parent, caregiver, or individual acting in the place of a parent who is not the respondent. Law enforcement officers may exercise their arrest powers as provided in s. 901.15(6) to enforce the terms of the injunction.

(5) Any person who fails to comply with an injunction issued pursuant to this section commits a misdemeanor of the first degree, punishable as provided in s.54 5.02 or s. 5.03.

NOTES from CLS UPDATE PRESENTATION (June, 2008)

The domestic violence injunction is NOT sought by the victim, but may be requested by Department, Law Enforcement, State Attorney, or other responsible person, or by court. It may be sought and granted any time after a protective investigation is initiated and, unlike the standard DV Injunction, the victim does not have to seek, or even agree with, the need for an injunction.

There is no requirement to shelter or file for dependency.

There is no automatic expiration of injunction at disposition. The terms of injunction remain in effect until modified or dissolved by the court.

The victim of the violence in the home can be an adult; this change covers acts of Domestic Violence even if victim of the actual violence is not child. It is no longer limited to acts of Child Abuse or Child Sexual Abuse. However, the child must be harmed or in imminent danger of harm in order to request this Injunction, which protects the child only. The adult victim must still seek his or her own protection through a Chapter 741, F.S. injunction.

The petition for injunction and the hearing must be noticed by the Department in the same way that a Shelter Petition is noticed, i.e., whatever way you can use to provide actual notice of the hearing on the injunction.

The change provides for arrest without warrant for violations in same manner as in §901.15(6) for violations of domestic violence injunctions. Warrant-less arrest power no longer limited to acts committed in presence of law enforcement.

Finally, this change provides for service in same manner as in cases of Domestic Violence Injunctions (§741.30). Also, the department must deliver a copy of the injunction to the child or to the parent or caregiver who is not the respondent.

The amendment adds subsection (3)(b) to provide that if the intent of an injunction is to protect a child from domestic violence, the injunction may:

- Remove the offender from the home.
- Award temporary custody of the child to the caregiver

- Establish temporary support for the child.

The change also expands the authority of the court to issue an injunction to protect children separate and apart from the rest of Chapter 39. This means that other remedies in Chapter 39 are not available until (and unless) a Shelter or Dependency Petition is filed.

When the hearing is held, the petitioner must be ready to present competent evidence of child abuse or a “reasonable likelihood” of abuse based on a recent over act or failure to act.

Hearsay is not admissible without an exception.

Although the injunction can be sought and granted on an emergency basis or when the court is closed, in that event, a hearing must be held with notice on the next court business day to review, modify or dissolve the injunction.

Proceed with caution when using this injunction because the statistics are clear in the case of standard domestic violence injunctions: The risk of serious injury or death goes up after an injunction is issued.

Minimize the danger of retaliation by:

- Providing a good plan for services that provides for the safety of the child; the injunction can order the alleged offender to participate in a specialized treatment program, limit contact with the child victim or other children, set visitation, require perpetrator to vacate home and pay temporary support for child or other family members. Violation is first degree misdemeanor (up to 1 year in county jail).
- Stressing the role of the department and not the role of the parent / victim in seeking the injunction;
- Avoiding unnecessarily inflammatory statements in presence of alleged perpetrator;
- Offering the services as a way out;
- And, if possible, seeking the alleged perpetrator’s consent to the injunction.

Safety Considerations must include:

- Will the custodial parent enforce the injunction?
- Is the situation so volatile that the child whereabouts must be hidden from perpetrator.
- Will local law enforcement respond appropriately?
- Is there a plan that safely provides for any residential or property exchange.

- Do all parties understand that no one can give permission for violation of injunction and that an arrest will follow even if the victim gave permission for the violation?
- Injunction must not be a means and end in itself there should be a plan for services and / or further intervention.

TOPIC: New Dependency Adjudication (Amended §39.507(7)(a))

(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.

NOTES from CLS UPDATE PRESENTATION (June, 2008)

§39.507(7)(a) and (b): Provides entirely new language intended to address long-term and pervasive problems arising when a court renders an order adjudicating a “child dependent as to” a specific parent.

The new provision (a) straight-forwardly mandates that there shall be only one dependency-adjudication order rendered for any child over whom the court maintains jurisdiction. Also, significantly, it makes clear that the dependency adjudication relates to the child, (establishing the child’s legal status) not a parent, and it can be based on conduct or omission by one or both parents or a legal custodian.

The new language in provision (b) mandates that an evidentiary hearing be conducted concerning the conduct or omission of the second parent. Ideally, there will still be only one evidentiary hearing – the adjudicatory trial. Therefore, the initial Petition for Dependency should still include the allegations that are known even if the location of the parent is not known. (E.g., parent A abandoned the child because ...)

If a parent is found through diligent search, or served after the adjudicatory trial for any reason, unless the allegations about that parent's acts and/or omissions were proven at trial, and the newly-found parent does not object, there will need to be a second evidentiary hearing.

If that evidentiary hearing results in findings that the second parent's conduct or omissions also contribute to the child's status as a dependent child, the court must "supplement" the adjudication order, the disposition order and the case plan as appropriate.

Provision (b) should eliminate the confusion and problems caused by the practice of some courts in engaging in a second adjudicatory hearing for a child who's already been adjudicated dependent based on conduct or omission by one but not the other parent. Provision (b)'s limiting reference §39.811 has to do with adjudicatory hearings in which the court declines to TPR but "readjudicates" the child dependent. See §39.811(1)(a).

While the new provision (b) does not address the situation in which the evidentiary hearing does not result in supplemental findings of dependency, the procedures established under either 39.521(3)(b), or, possibly, §39.522 become applicable.

See §39.521(3)(b) regarding a child found to be dependent based on conduct or omission by only one parent and the options for placement with the other parent. Then see §39.522 regarding a child found to be dependent based on conduct or omission by only one parent and the options for change of placement, possibly to the other parent.

TOPIC: New Grounds for TPR (Amended §39.806(1)(e))

(1) Grounds for the termination of parental rights may be established under any of the following circumstances:

- (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 parents. The failure of the parents to substantially comply for a period of 9 months after an adjudication of the child 0 as a dependent child or the child's placement into shelter care, 1 whichever occurs first, constitutes evidence of continuing abuse, neglect, or abandonment unless the failure to substantially comply with the case plan was due to the parent's lack of financial resources or to the failure of the department to make reasonable efforts to reunify the parent and child. The 9-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 of a case plan having the goal of reunification with the parent, whichever occurs first;*
 - 2. or parents have materially breached the case plan. Time is of the essence for permanency of children in the dependency system. In order to prove the parent or parents have materially breached the case plan, the court must find by clear and convincing evidence that the parent or parents are unlikely or unable to substantially comply with 0 the case plan before time to comply with the case plan expires.*

NOTES from CLS UPDATE PRESENTATION (June, 2008)

The amended §39.806(1)(e) actually has 2 amended elements. The first clarifies that parental rights of one parent may be terminated for that parent's failure to substantially comply with the reunification case plan. Frankly, the law has always contemplated that one parent's rights may be terminated on one ground while the other's may be terminated on a wholly unrelated ground. However, this new language may be susceptible to misinterpretation.

It is not intended to and should not be read to allow a court to terminate the parental rights of only one parent for failure to substantially comply with the case plan unless, under the factual circumstances of the case, one of the situations enumerated in §39.811(6) justifying one-parent TPR exist. The amended §39.806(1)(e) should be used **ONLY** in conjunction with one of these five situations.

- (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 parents 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)-(l).

The second amended portion of §39.806(1)(e) now specifies that the period within which the parent has to substantially comply with the case plan ends NINE months after the earlier of the child's placement in shelter care or dependency adjudication.

The previous amendment to §39.806(1)(e) merely reiterated what §39.802(8) had already provided. In contrast, this new language, for all practical purposes, envisions creation of case plans with goal dates nine months in the future.

We know that the law has long required that case plans have terms only so long as is reasonably necessary to remedy the problems which brought the child's and family's problems to the attention of the Department and the court. See §39.6011(2)(d) and its predecessor provisions.

QUESTIONS for PRACTICE

What does a "39.811(6) justification for one-parent TPR" refer to?

§39.811(6) authorizes single parent TPR in five situations.

What was the purpose of the old 12-month timeframe for case plans?

To set a MAXIMUM limit on the amount of time given parents to demonstrate a willingness and ability to comply with the case plan. The purpose NEVER was to give every parent 12 months automatically.

So what effect will this new 9-month language have on our practice?

The primary effect will be that permanency hearings will be forced to occur sooner, although they already should have been happening sooner than 12 months in those cases where it was appropriate. (But we know it wasn't happening that way....)

If it becomes apparent that the goal of the current case plan is inappropriate, do we have to wait until 12 months (or, now, 9 months) to change it?

No, a JR hearing for a change of goals can be scheduled ANYTIME the case manager & attorney believe is it appropriate.

TOPIC: New Grounds for TPR (Amended 39.806(1)(f))

(1) Grounds for the termination of parental rights may be established under any of the following circumstances:

(f) 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 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.

NOTES from CLS UPDATE PRESENTATION (June, 2008)

AMENDMENT to §39.806(1)(f) – merely removes the proposition “When” and removes the prepositional phrase “of the parent or parents.”

The amendments have no material impact.

Note, however, that there are two lines of cases with differing interpretations of this provision. One line holds that clear and convincing proof of egregious conduct toward sibling 1 is enough for automatic TPR vis a vis sibling 2. The other line holds that even with clear and convincing evidence of egregious conduct toward sibling 1, a court may not terminate parental rights vis a vis sibling 2 without clear and convincing proof that TPR is the least restrictive means of protecting sibling 2. Of course, while other courts have diverged from the Supreme Court's definition of Least Restrictive Means, *Padgett* remains the only true source of the definition which is, in essence, under ordinary circumstances, a parent must be provided a remedial-task case plan before the Department and the court resort to involuntary TPR to protect the second child. *N.B.*, the Fourth District has been considering for several months a motion for certification to the Supreme Court.

TOPIC: New Grounds for TPR (Amended §39.806(1)(g))

(1) Grounds for the termination of parental rights may be established under any of the following circumstances:

- (g) 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 1001 chronic abuse.

NOTES from CLS UPDATE PRESENTATION (June, 2008)

AMENDMENT to §39.806(1)(g) – includes reference to “another child” as a victim of the parent warranting TPR.

This is a significant change.

It incorporates the sound logic which has long existed in §39.806(1)(c) which, in essence, recognizes that when an adult has engaged in any abusive conduct toward any child, regardless of the relationship the adult has to the child, that abusive conduct towards that child should constitute a ground justifying later termination of the adult's rights to his or her own child even though the previously abused child has no familial relationship to either the abusive adult or to that adult's child.

Caution should be exercised before this provision is relied upon. For reasons similar to those noted in comments above, it is likely that a court, especially an appeal court, will require a showing that the criminal abuse of child 1 by an adult will only justify termination of rights to child 2 if there is clear and convincing evidence that the abuse to child 1 supports a finding that child 2 is also at risk of harm because of that prior conduct.

Authority of §39.806(1)(c) may be challenged by cases from 2nd DCA which has ruled that parent must be proved 'beyond hope' or that services to parent would be 'futile' before using this legislation as grounds for TPR.

TOPIC: New Grounds for TPR (Amended §39.806(1)(h))

(1) Grounds for the termination of parental rights may be established under any of the following circumstances:

(h) 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.

NOTES from CLS UPDATE PRESENTATION (June, 2008)

AMENDMENT to §39.806(1)(h) – deletes “When,” deletes reference to “voluntary” and reorganizes the existing language.

The only material change is the deletion of the modifier “voluntary” so that clear and convincing evidence of the commission of any type of manslaughter (or conspiring or aiding and abetting same) of the other parent or the child or any other child, related or not, is grounds for TPR.

Again, the same caveats noted for other amendments apply: the courts are slow to TPR for conduct towards someone other than the child subject to the petition w/o a showing of “nexus” towards the child her or himself.

TOPIC: New Grounds for TPR (Amended §39.806(1)(i))

(1) Grounds for the termination of parental rights may be established under any of the following circumstances:

(i) The parental rights of the parent to a sibling of the child have been terminated involuntarily.

NOTES from CLS UPDATE PRESENTATION (June, 2008)

AMENDED §39.806(1)(i) Deletes “When” and adds modifying prepositional phrase “of the child.”

This is a clarification making obvious that which was probably clear already.

TOPIC: New Grounds for TPR (New §39.806(1)(j))

(1) *Grounds for the termination of parental rights may be established under any of the following circumstances:*

- (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.*

NOTES from CLS UPDATE PRESENTATION (June, 2008)

Entirely new statutory language stating that use or abuse of drugs or alcohol can be a ground for TPR.

This language codifies the often-seen situation underlying TPRs under either §39.806(1)(c) or §39.806(1)(e). This section should not be relied upon as an exclusive ground in any TPR petition until such time as it is interpreted by the courts of appeal.

Also, caution should be taken by those relying on this statutory ground in that, by its terms, it requires clear and convincing proof that the drug or alcohol using parent is “incapable” of caring for their child as a result of the drugs or alcohol AND that the parent has failed or refused to complete treatment during the three years immediately preceding the filing of the TPR petition.

This section will likely be challenged on constitutional grounds to the extent it contemplates TPR without the provision of remedial services prior to resorting to TPR.

TOPIC: New Grounds for TPR (New §39.806(1)(k))

(1) Grounds for the termination of parental rights may be established under any of the following circumstances:

- (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.839.01(31)(g), after which the biological mother had the opportunity to participate in substance abuse treatment.

NOTES from CLS UPDATE PRESENTATION (June, 2008)

This is entirely new statutory ground stating that a newborn's testing positive for alcohol or drugs or metabolites can be a ground for expedited TPR with no remedial services provided.

This provision must be read in tandem with the new definition of harm in §39.01(32)(g).

Also, use of this provision as a stand-alone ground for TPR is discouraged. Even though this new provision, like those in (f), (g), (h), (i), (j) and (l) are all considered grounds for expedited TPR (*i.e.*, without the requirement of the provision of a remedial-tasks case plan or services), the courts are nonetheless likely to require clear and convincing evidence that at-birth drug-or-alcohol-positive test means that the child will remain at risk even if the mother were to be provided remedial services. In other words, reliance on this provision should be in tandem with and articulated and proven with evidence akin to that which has been required by the courts in TPR cases under §39.806(1)(c).

In fact, this new provision expressly requires proof that the mother had opportunity to previously participate in drug treatment anyway.

This is another ambiguity in this new language. Clearly, in such a scenario, an argument will be made that TPR vis a vis newborn cannot be supported by several of the eleven manifest best interests factors set forth in 39.810. Be extremely careful with this one.

QUESTIONS for PRACTICE

Can mother's rights to drug- or alcohol-positive infant be terminated if previously-adjudicated sibling was returned to and remains with mother?

TPR vis a vis newborn cannot be supported by several of 'manifest best interests' factors in §39.810. Be extremely careful with this one!

TOPIC: New Grounds for TPR (New §39.806(1)(l))

- (1) Grounds for the termination of parental rights may be established under any of the following circumstances:
 - (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.
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NOTES from CLS UPDATE PRESENTATION (June, 2008)

This is entirely new statutory ground stating that parental rights to the child may be terminated if the child or “another child of the parent” was placed in out-of-home care three or more times.

Reliance on this new ground also requires extreme caution. It too should be used in conjunction with §39.806(1)(c) or another applicable statutory ground.

The language is unclear as to whether the “out-of-home care” referred to in the provision is post-adjudication or merely in shelter.

Again, courts may require clear and convincing evidence that not only has the child (or siblings or half-siblings) been removed three or more times and that the removals were due to conditions caused by the parent but also that the circumstances resulting in the most recent removal could not be eliminated or ameliorated by the provision of remedial services by the Department. As a stand-alone ground, this provision might be challenged on constitutional grounds.

TOPIC: Notice of Judicial Reviews (Amended §39.701(5))

(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) Any preadoptive parent.*
- (h) Such other persons as the court may direct.*

NOTES from CLS UPDATE PRESENTATION (June, 2008)

Explicitly requires service on

- All children 13 or older; **and**
- The child's attorney, if the child is represented.

Service on specified parties "if available to be served" means that service must be made if (and only if) the party's whereabouts are known so that he or she can be served.

"Regardless of whether the person was present at the previous hearing. . ." means what it says, i.e., that it doesn't matter if the party was present at the last JR and was told about the next JR date, or even received written notice at the last JR. This is true because the statutory interpretation is not employed when the language of the statute is plain on its face **AND** because the last sentence of the previous language exempting service on persons who were present at the last JR has been stricken.

If the court order entered after the Judicial Review Hearing includes the date, time and place of the next-scheduled judicial review hearing, this notice meets the statutory requirement, provided this Court Order is served on all specified persons

Provision of Notice

The statute says "the clerk of the court". However, in some Circuits, by pattern and practice, DCF has accepted delegation of this responsibility from the clerk. Therefore, in those circuits, **CLS** will provide this notice. This means that CLS must ensure that all of their support staff are instructed in this new requirement, to ensure that Judicial Review Hearings can legally proceed as scheduled. For all parties,

may provide a copy of the Notice of JR with the copy of the JRSSR *provided* the JRSSR is served no later than 72 hours prior to the JR. Family Safety wants to ensure that the children receive actual notice in sufficient time so that they are able to, and will, attend the JRs.

Helping the child attend the JR by making sure you contact youth about their JRs.

Unless the youth is represented by legal counsel (this does not include the GAL), call the youth a few weeks before the JR to provide additional actual notice, ask if the youth wishes to attend the JR, and find out what's going on generally with the youth. Not only does this inform the youth, but it also furthers one of the goals of our new model of representation. If the youth does have a lawyer, can send a letter to the youth, copy to the lawyer, asking if there are any barriers that need to be resolved for the youth to attend the court hearing, asking if there are any issues that you can work on resolving prior to the next review hearing, etc.

Find other, creative ways to have contact with the youth:

- E.g., help the youth in your caseload create free e-mail accounts (yahoo, google, etc.), then ask them to check e-mail periodically at their school or public libraries;
- E.g. Send out postcards asking the youth to call you one certain days; ensure your staff is able to talk with them if you're not available.

QUESTIONS for PRACTICE

Must foster parents be noticed of Judicial Review Hearings?

Yes, and this is a shared responsibility between CLS and the CBCs. However, CLS must make sure it is being done.

Do foster parents have the right to speak in court, if they wish?

Yes.

Must you wait 6 months for a Judicial Review?

No. Anyone involved in the child's case, including the child, can request a JR anytime they believe it is needed.