

**PART VII
DISPOSITION; POSTDISPOSITION
CHANGE OF CUSTODY**

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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 removed before the disposition hearing, the order must also include a written determination as to whether, after removal, the department made a reasonable effort to reunify the parent and child. Reasonable efforts to reunify are not required if the court finds that any of the acts listed in s. 39.806(1)(f)-(l) have occurred. The department has the burden of demonstrating that it has made reasonable efforts.

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 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 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 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, 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).

4. A reasonable effort by the department for reunification 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 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; s. 13, ch. 2008-245.
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.