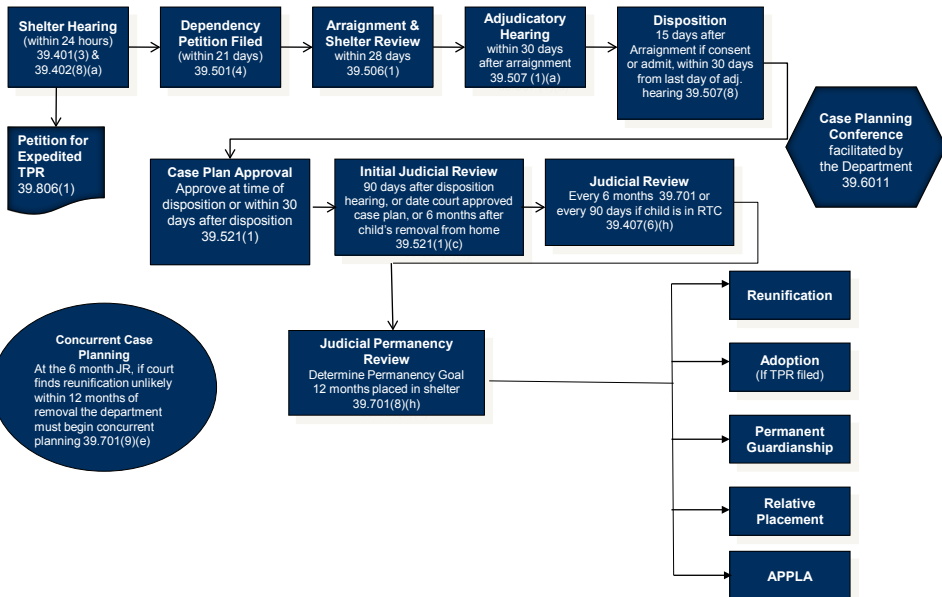


2014

GAL Program Checklists



Path of a Case



TIMEFRAMES MANDATED BY FLORIDA STATUTES

TIME LIMITATIONS ARE THE RIGHT OF THE CHILD - TOTAL TIME ALLOWED FOR CONTINUANCES MAY NOT EXCEED 60 DAYS IN ANY 12 MONTH PERIOD § 39.0136(3)

Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Month 7	Month 8	Month 9	Month 10	Month 11	Month 12
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No child to remain in foster care more than 12 months § 39.001(1)(h)

SHELTER HEARING
24 hours
§39.401(3) &
39.402(8)(a)

DEP. PETITION
within 21
days of Shelter
§39.501(4)

**ARRAIGNMENT –
SHELTER REVIEW**
28 days from Shelter §39.506(1)

DISPOSITION
15 days from Arraign.(Consent/Admit) OR
§39.506(1) Rule 8.315

30 days from last
day of Adj. (Deny)
§ 39.507(8)

ADJUDICATION
30 days from Arraignment
§39.507(1)(a)

CASE PLAN APPROVAL
At or 30 days after Disposition
§39.521(1)

INITIAL JUDICIAL REVIEW
90 days from disposition or case
plan approval not more than 6
months from removal §39.521(1)(c)

JUDICIAL REVIEWS
Every 6 months §39.701(1)(e) and
(9)(e),
or 90 days if RTC § 39.407(6)(h)

PERMANENCY HEARING
12 months after Shelter §39.621
& §39.701(8)(h)

TPR PETITION
Within 60 days of Permanency
Hearing

**Concurrent
Planning**
If the Court Finds
Reunification
Unlikely Must
begin
Concurrent
Planning at 6
Month Review §
39.701(9)(e)

Case plan developed w/in
60 days of removal →

Notice to Parents:
Failure to Substantially Comply = TPR
Material Breach = TPR petition sooner
§ 39.6011(e)(2)

→ Case plan expires 12 months
from removal or court approval
of case plan





FLORIDA GUARDIAN AD LITEM UNIFORM CITATIONS

Except for citations to case reporters, all citations forms should be spelled out in full if used as an integral part of a sentence either in the text or in footnotes. Abbreviated forms as shown in Fla. R. App. P. 9.800 should be used if the citation is intended to stand alone either in the text or footnotes.

FLORIDA STATUTES

- **In a Sentence.** Section 39.01(50), Florida Statutes (2009)
- **Stand Alone.** §39.01(50), Fla. Stat. (2009)
- **Florida Statutes Annotated.** 32 Fla. Stat. Ann. 116 (Supp. 1975)

FLORIDA RULES

- **In a Sentence.** Florida Rule of Juvenile Procedure 8.012
- **Stand Alone.** Fla. R. Juv. P. 8.012

Commonly Used Rule Citation Forms

- Fla. R. Civ. P. 1.180.
- Fla. R. Juv. P. 8.070.
- Fla. R. App. P. 9.100.
- Fla. Admin. Code R. 62D-2.014

CASE CITATIONS - Case names shall be underscored (or italicized) in text and in footnotes

Florida Supreme Court

- *Fenelon v. State*, 594 So. 2d 292 (Fla. 1992).
- For recent opinions not yet published in the Southern Reporter, cite to Florida Law Weekly: *Traylor v. State*, 17 Fla. L. Weekly S42 (Fla. Jan. 16, 1992). If not therein, cite to the slip opinion: *Medina v. State*, No. SC00-280 (Fla. Mar. 14, 2002).

Florida District Courts of Appeal.

- *Sotolongo v. State*, 530 So. 2d 514 (Fla. 2d DCA 1988); *Buncayo v. Dribin*, 533 So. 2d 935 (Fla. 3d DCA 1988).
- For recent opinions not yet published in Southern Reporter, cite to Florida Law Weekly: *Myers v. State*, 16 Fla. L. Weekly D1507 (Fla. 4th DCA June 5, 1991). If not therein, cite to the slip opinion: *Fleming v. State*, No. 1D01-

2734 (Fla. 1st DCA Mar. 6, 2002).

Florida Circuit Courts and County Courts.

- *Whidden v. Francis*, 27 Fla. Supp. 80 (Fla. 11th Cir. Ct. 1966).
- For opinions not published in Florida Supplement, cite to Florida Law Weekly: *State v. Campeau*, 16 Fla. L. Weekly C65 (Fla. 9th Cir. Ct. Nov. 7, 1990). If not therein, cite to the slip opinion: *State v. Campeau*, No. 90-4363 (Fla. 9th Cir. Ct. Nov. 7, 1990).

Florida Attorney General Opinions

- **In a Sentence.** In opinion 96-51, the Attorney General
- **Stand Alone.** Op. Att'y Gen. Fla. 96-51 (1996)

United States Supreme Court.

- *Sansone v. United States*, 380 U.S. 343 (1965).

Federal Courts of Appeals.

- *Gulf Oil Corp. v. Bivins*, 276 F.2d 753 (5th Cir. 1960).
- For opinions not published in the Federal Reporter, cite to Florida Law Weekly Federal: *Cunningham v. Zant*, 13 Fla. L. Weekly Fed. C591 (11th Cir. March 27, 1991).

CONSTITUTION

Florida Constitution. (Year of adoption should be given if necessary to avoid confusion.)

- **In a Sentence.** Article IV, section 3 of the Florida Constitution
- **Stand Alone.** Art. IV, § 3, Fla. Const

United States Constitution.

- Art. IV, § 2, cl. 2, U.S. Const. Amend. V, U.S. Const.

INTERNET CITATIONS - Cite to Internet sources only when those materials are unavailable in printed form or are difficult to obtain in their original form.

- Randall R. Smith, *Jones on the Internet: Confusion and Confabulation*, Citation Debate Forum at <http://www.citations.org>

(last visited Jan. 20, 2001).

CAPITALIZATION

When referring to a court:

- When referring to the United States Supreme Court. The Court concluded in *Roe v. Wade* that there is a constitutional right to privacy
- When referring to the full name of any court. the Florida Supreme Court. **But:** the supreme court.
- In legal documents when referring to the court in which the document will be submitted. This Court accepted jurisdiction based on article V, section 3(b)(3) of the Florida Constitution.

Florida Supreme Court

- the court
- the supreme court
- the Florida Supreme Court
- the Supreme Court of Florida [the official name]

Florida District Courts of Appeal

- the court
- the district court
- the Third District Court
- the Third District Court of Appeal

Florida Circuit Courts

- the court
- the circuit court
- the Sixteenth Circuit Court

FOR MORE INFORMATION

- Florida Style Manual (7th Edition) www.law.fsu.edu/Journals/lawreview
- *Introduction to Basic Legal Citation* (LII 2003 ed.) www.law.cornell.edu/citation
- Florida Guardian ad Litem Website - Resources by Topic - Legal Writing & Research http://guardianadlitem.org/resources_legal_writing_quick_reference.asp

All Pleadings in Florida State Courts Must be Pursuant to Florida Rule of Appellate Procedure 9.800



FLORIDA GUARDIAN AD LITEM

Dependency Issues at a Glance

REPORTS

- GAL Report Received (72 hours) § 39.701(7)(b)-(c)
- JR Report Received (72 hours) § 39.701(7)(b)-(c)
- Report of Agency (if applicable)
- Report of Citizen Review Panel (if applicable)
- Master Trust
 - o Quarterly Accounting Attached to Each JR
- Medical, Psychological, and Educational Records
- Independent Living 13+
 - o Assessment (Pre-IL and IL)
 - o Skills & Services Needed
 - o Education / Career Plan (13+) - Attached to JR
 - o Supervised Independent Living Agreement (16+)
- Transition Plan (Recipient of RTI or Transitional Services)
- Missing Child - Child's Status & Efforts to Locate - Weekly Documentation for the First 3 Months; then Monthly Documentation 65C-30.013(2)(c) F.A.C.

JUDICIAL REVIEW PREPARATION

- Permanency Goal Change
- Review Permanency Goal Options § 39.01(51)
- Clarify any Issues or Questions with GAL & Staff
- Recommendations of GAL Program
- Child Presence at Hearing - Encourage
- Clothing Allotment
 - o Initial
 - o Annual
- Understand the Child's Wishes
- Subpoena Witnesses / Gather Documents
- Child Prescribed Psychotropic Medication §39.407(3)(a)
 - o See *Psychotropic Medication Guidelines*
- Child in RTC - Reviews Every 90 Days § 39.407(6)(g)2

CASE PLAN

- Parent's Tasks / Referrals Made/Compliance
 - o No Substantial Compliance - File TPR
 - o Material Breach - File TPR Earlier than 12 Months
- Child's Services - Referrals Made
- Services Provided to Foster Parents / Placement
- Department Compliance
- Case Plan Amendments § 39.6013
 - o Preponderance of the Evidence: Goal Changes, Concurrent Planning, Add or Remove Parent's

- Tasks § 39.6013(4).
 - o Competent Evidence: Amend Services for the Child
- Adoption - Documentation of Steps for Permanent Placement (the Department)
- IL Needs, Tasks & Referrals
- Concurrent Planning - Appropriate Tasks

PSYCHOTROPIC MEDICATION § 39.407(3)(A)

- Prescribing Physicians Signed Medical Report
- Motion for More Frequent Reviews?
 - o See *Psychotropic Medication Guidelines*

NORMALCY § 39.409.1451(3)(A)

Caregivers must use a **reasonable prudent parent** standard to determine if child can participate in **age-appropriate** activity considering the child's:

- Age, maturity and developmental level
- Risks of activity
- Best interest of child
- Importance of child's growth
- Importance most family-like living experience
- Behavior

Caregiver is not liable for harm caused to child, provided decision was reasonable and prudent.

Remove barriers by ensuring:

- CBCs / department not requiring prior approval for age-appropriate activity
- There is an identified caregiver (*a person*) making normalcy decisions (even if child placed in group home or shelter)

VISITATION

- Parents - Frequency, Duration, Results, Recommendations, Agency Report?
- Siblings (Plan for Frequent Visitation) - Grandparents (§ 39.509)

PLACEMENT

- Current Placement, "Family-Like", Stability
- Supervised Independent Living Considered (16+)

CONCURRENT PLANNING § 39.01(18)

- Case Plan May be Amended at any Time to Employ Concurrent Planning § 39.6013(2)

- If Court Finds Reunification Unlikely @ 6 month Review, Then Must Change Goal to Concurrent Planning § 39.701(9)(e)
 - o Department to File Motion 10 Days from Court's Finding

EDUCATION

- Education / Career Plan (13+) § 409.1451(3)(b)
- Placed in Same School / Stability / Efforts Made
- Educational Needs & Services Considered
- Child has Appropriate Clothing & Supplies
- Transportation
- Attendance Issues
- Performance Level (Educational Evaluation, GPA, etc)
- Educational Advocate
- Individual Education Plan (IEP)
- Child has Physical, Mental Health Issues -Services

FINANCIAL

- Master Trust -Quarterly Accounting Attached to JR
 - o Personal Allowance - No Less Than \$15 a Month
 - o Notice of Ability to Request Fee Waiver or Change in Foster Care or Personal Allowance 65C-17.005 F.A.C.
 - o Funds Distributed?
- Plan for Achieving Self-Sufficiency (PASS) Sub-Account for SSI beneficiaries. 65C-17.003(2) F.A.C.
- Foster Care Allowance - Part of Board Rate Sent to Foster Parents

DEVELOPMENTAL DISABILITY

- Disability Services Applied for / Receiving Before 18

MINOR PARENTS

- Access To Services, IL Services, Plan for Future, Child Placed with Minor (Unless at "Significant Risk") 65C-28.010(1) F.A.C.

COURT ORDER

- Review the Court Order / Identify Issues

FOLLOW-UP

- Discuss Follow-Up Issues with GAL Team & Develop Plan
- Appellate Issues

BE SURE THAT ALL COURT FINDINGS ARE WRITTEN IN THE ORDER & GIVEN TO ALL PARTIES

Shelter Hearing

RELEVANT STATUTES & RULES	§§ 39.395 - 39.402. Rules of Juvenile Procedure 8.305.
PURPOSE OF HEARING	<p>A non-adversarial hearing at which the court determines if probable cause exists to remove a child or keep a child in shelter status pending further investigation of the case and whether removal can be avoided through reasonable efforts by DCF. §§ 39.01(69), 39.402(1).</p> <p>The shelter hearing is comparable to a first appearance in criminal court, except that at the shelter hearing the parents have the right to be heard and present evidence. § 39.402(5)(b)(1).</p>
TIME FRAME	<p>Hearing within 24 hours of removal. §§ 39.402(8)(a), 39.401(3). If a judge other than the juvenile judge conducts the hearing, the juvenile judge must review the case within 2 working days. § 39.402(12); Rule 8.305(b)(11).</p> <p>Under certain circumstances, the hearing may be continued for up to 72 hours, but the child remains in shelter. § 39.402(5)(b)(2).</p>
BURDEN OF PROOF	Standard of proof for probable cause is that which is necessary for an arrest warrant. Rule 8.305(b)(3).
RULES OF EVIDENCE	The court may hear all relevant material evidence.
NEXT HEARING	Arrestment Hearing: no more than 28 days from the date the child is placed in shelter. § 39.506(1).



FLORIDA GUARDIAN AD LITEM SHELTER HEARING

Taking Children into Custody § 39.401

Probable cause must exist that:

- Child abused, abandoned or neglected or is suffering from or imminent danger of illness or injury as a result of abuse, neglect or abandonment;
- Material violation of a condition of placement imposed by court; or
- No parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care,

Placement/Continuation in Shelter § 39.402(1),(2)

Child may be placed/continued in shelter only if:

- One of the criteria in § 39.401(1) (above) applies and
- Court made specific finding of fact Regarding the necessity for removal, and
- Provision of services will not eliminate need for removal

Alternatives to Shelter

- Voluntary protective services - the child will remain at home and the department shall assist the family
- Removal of alleged perpetrator
- In-home services

Prior To Shelter Hearing

- Department must file affidavit/petition
 - Copies to parties prior to hearing
- Identify and locate legal custodians, parents of child
- Parents given actual notice - must at least have good faith effort to give notice - § 39.402(8)(b)
- Background check, homestudy on proposed or actual placement (criminal records, abuse registry checks)

Placement

- Placement pending adjudication
- The parent shall notify the court and all parties of possible relative placements

Shelter Hearing

- GAL appointed - § 39.402(8)(c)1
- Parents informed of right to counsel - § 39.402(8)(c)2
- Interpreters provided if necessary
- Parents present evidence - § 39.402(8)(c)3
- Department shall provide the court - § 39.402(8)(e),

- Law enforcement, medical reports and abuse hotline reports
- Current or previous case plans - § 39.402(8)(f)1
- Delinquency adjudications of parents - § 39.402(8)(f)2
- Past or current protection order for domestic violence - § 39.402(8)(f)
- Anywhere the child has lived in the past 12 months
- Parents must provide permanent mailing address - § 39.402(8)(g)
- Identity/whereabouts of any unknown parent, inquiry under - § 39.503, if needed.

Findings Required in Order - § 39.402(8)(h)

- Written findings regarding necessity for placement in shelter. § 39.402(1), (2).
- Removal in best interests of child
- Services will not eliminate need for removal
- Continuation in the home is contrary to the welfare of the child because home situation presents substantial immediate danger to child.
- Probable cause to believe child is dependent or that the court needs additional time – not to exceed 72 hours - § 39.402 (8)(h)4
- Department has made reasonable efforts to prevent the need for removal - § 39.402(10)
 - Written description of services and when available or why services are not available for the child
- Department deemed to have made reasonable efforts - § 39.402(8)(h)5.
- Notified parents of next hearing
- Notified parents of right to counsel

No Probable Cause?

- Dismiss petition
- Permit the department 72 hours to perfect probable cause - § 39.402(8)(d)2
- Non-offending parent given custody

Visitation

- Recommendation of the department - § 39.402(9)

- None if clear and convincing that visitation not in the best interests of the child
- Must occur within 72 hours
- Sibling visitation (plan for frequent visitation)
- Grandparent visitation - § 39.509
- Conform with Keeping Children Safe Act - § 39.0139

Other Issues

- Establish paternity
- ICPC
- ICWA - Is the child a member of, or eligible for, membership in an Indian tribe?
- AAL appointed? §561 Attorney appointment
- Other court cases pending – avoid conflicting orders
- Child 3 years to school entry - Rilya Wilson Act - § 39.604
- Developmental disabilities

Education

- If placement requires change in schools review McKinney-Vento
- IEP for child

Financial

- The court shall order the parents to pay child support - § 39.402(11)

Psychotropic Medication - § 39.407(3)(B)(1)

- May continue if the medication is in its original container and it is a current prescription for the child
- The department must seek court approval for the continued administration of the medication
- Review Psychotropic Medication Guidelines*

Arraignment

RELEVANT STATUTES & RULES	§§ 39.501- 39.506. Rules of Juvenile Procedure 8.310 - 8.325.
PURPOSE OF HEARING	<p>Hearing at which parents/legal custodians enter pleas (admit/consent or deny) in response to the Petition for Dependency. § 39.506(1).</p> <p>Similar to arraignment in criminal court, except the court also reviews issues related to the child such as shelter placement and visitation.</p> <p>No written answer is required.</p>
TIME FRAME	<p>For a child in an out of home placement - within 28 days of shelter hearing. § 39.506(1).</p> <p>For a child not sheltered - within reasonable time after the petition for dependency is filed. § 39.506(2).</p> <p>If a demand for early filing has been made - within 7 days of the filing of the dependency petition. § 39.506(1).</p>
BURDEN OF PROOF	Review Petition for dependency to determine prima facie case of dependency if there has been no shelter hearing.
RULES OF EVIDENCE	No evidence submitted on issue of arraignment; when reviewing shelter placement, court may consider all relevant and material evidence.
NEXT HEARING	<p>If parents/legal custodians deny - adjudicatory hearing within 30 days of arraignment hearing. § 39.506(1),(2).</p> <p>If parents/legal custodians admit/consent - disposition hearing within 15 days of arraignment hearing. § 39.506(5).</p>

Adjudicatory Hearing

RELEVANT STATUTES & RULES	§§ § 39.507. Rules of Juvenile Procedure 8.330, 8.335.
PURPOSE OF HEARING	The petitioner must prove the allegations of the petition for dependency by a preponderance of the evidence. § 39.507(1)(b).
TIME FRAME	As soon as practicable after the petition for dependency is filed, but no more than 30 days after arraignment. § 39.507(1)(a).
BURDEN OF PROOF	Preponderance of the evidence. § 39.507(1)(b). The court may enter an order stating that the allegations were proved by clear and convincing evidence. Rule 8.330(a).
RULES OF EVIDENCE	Rules of evidence in use in civil cases. § 39.507(1)(b); Rule 8.330(a).
TEST FOR ADJUDICATION OF DEPENDENCY	<ol style="list-style-type: none">1. The child has been abandoned, abused, or neglected by a parent or legal custodian. § 39.01(15)(a).2. There is no parent or legal custodian capable of providing supervision and care of the child or the child has been surrendered or voluntarily placed. §§ 39.01(15)(b)-(e).3. The child is at substantial risk of imminent abuse, abandonment, or neglect by a parent or legal custodian. § 39.01(15)(f).4. The child has been sexually exploited and has no parent, legal custodian, or responsible adult relative currently known and capable of providing the necessary and appropriate supervision and care. § 39.01(15)(g).
NEXT HEARING	<p>Disposition hearing must occur within 30 days of the last day of the adjudicatory hearing. § 39.507(8). If disposition is held at conclusion of the adjudicatory hearing, then the next hearing will be:</p> <ul style="list-style-type: none">• the case plan approval, within 30 days, Rule 8.340(c)(8); or• judicial review, within 90 days of the disposition hearing or case plan, whichever comes first, but no later than 6 months after the child's removal from the home. § 39.521(1)(c).

Disposition Hearing

RELEVANT STATUTES & RULES	§ 39.521; Rules 8.340
PURPOSE OF HEARING	Hearing at which the judge considers reports, recommendations, and other evidence regarding the child's placement while the parents work to correct the problems that led to dependency. The judge also reviews the case plan developed by the parties to determine if it addresses all of the problems affecting the child.
TIME FRAME	<p>If child has been adjudicated dependent, the disposition hearing should be held no more than 30 days after adjudicatory hearing. § 39.507(8).</p> <p>If parent consents or admits at arraignment, disposition must occur within 15 days "unless a continuance is necessary." § 39.506(5).</p>
RULES OF EVIDENCE	Court may receive any relevant and material evidence helpful in determining the proper disposition to be made . Rule 8.340(a). The court may rely upon such evidence to the extent of its probative value, even though not competent in an adjudicatory hearing.
NEXT HEARING	<p>Judicial review must occur within 90 days of disposition or the date the court approves the case plan, whichever is earlier (but no later than 6 months after removal). § 39.521(1)(c).</p> <p>Case plan approval hearing must occur within 30 days of disposition if the case plan is not approved at disposition. § 39.521(1)(a).</p> <p>Permanency hearing must occur within 30 days of disposition if the court finds reasonable efforts to reunify are not required. 32 U.S.C. § 671(a)(15)(E).</p>

Case Plan Checklist

The department shall prepare a draft of the case plan for each child receiving services under Chapter 39

PARTICIPANTS IN FACE-TO-FACE MEETING

- Department
- Child's parent
 - o If parent(s) unwilling or unable to participate must have documentation § 39.6011(1)(c)
- Guardian ad Litem
- Attorney ad Litem, if appointed
- Child, if appropriate
- Child's temporary custodian

EACH CASE PLAN MUST CONTAIN

- Parent's behavior or acts, resulting in risk to child, to be addressed - the behavior /act must match service § 39.6011(2)(a)
- The Permanency Goal - Permanency Goal is also the Case Plan Goal §§ 39.6011(2)(b), 39.01(52)
 - o Reunification
 - o Adoption when a petition for termination of parental rights has been or will be filed
 - o Permanent guardianship of a dependent child § 39.6221
 - o Permanent placement with a fit and willing relative § 39.6231, or
 - o Placement in another planned permanent living arrangement § 39.6241
- If concurrent planning, then a description of the goal of reunification in addition to a description of one of the remaining permanency goals § 39.6011(2)(c)
- Date the compliance period expires: no later than 12 months after the child initially removed, or date the court accepted the case plan (whichever sooner) § 39.6011(2)(d)
- Description of each of the parent's tasks and services §39.6012(1)(b)
 - o type of services or treatment
 - o date the department will provide each service or referral
 - o date by which the parent must complete each

- task
- o frequency of services or treatment provided (determined by professionals on a case-by-case basis)
- o location of the delivery of the services
- o accountable staff or service provider
- o measurable objectives, timeframes
- Description of the child's identified needs while in care § 39.6012(2)(a)
 - o plan for ensuring that the child receives safe and proper care
- A written notice that:
 - o Failure to substantially comply with case plan may result in TPR
 - o Material breach of case plan may result in filing for TPR sooner than stated compliance period § 39.6011(2)(e)
- For children thirteen and over who are in an out-of-home placement, the case plan shall include a description of the independent living services identified regardless of the goal of the plan
- Description of role of foster parents §39.6011(4)(a)
- The responsibility of the case manager to forward a relative's request to receive notification of all proceedings and hearings submitted pursuant to § 39.301(15)(b) to the attorney for the department. §39.6011(4)(b)
- Minimum number of face-to-face meetings to be held each month; §39.6011(4)(c)
- Parent's financial responsibilities § 39.6011(4)(d). Must list cost associated with services of parent and child, which are the financial responsibility of parent(s)
- If the goal is adoption, then case plan must document steps the department is taking to find adoptive or permanent placement § 39.6011(5)
- If the child is in an out-of-home placement the case plan must contain the following: § 39.6012(3)
 - o description of the type of placement § 39.6012(3)(a)
 - o parent's visitation rights and obligations §

- 39.6012(3)(b)
 - o sibling visitation § 39.6012(3)(b)
 - o if 13 or older must meet Independent Living requirements of § 409.1451, § 39.6012(3)(c)
 - o A discussion of the safety and the appropriateness of the child's placement § 39.6012(3)(d)

CHILD'S RECORDS THAT MUST BE ATTACHED TO CASE PLAN:

- The names and addresses of the child's health, mental health, and educational providers;
- The child's grade level performance;
- The child's school record;
- Assurances that the child's placement takes into account proximity to the school in which the child is enrolled at the time of placement;
- A record of the child's immunizations;
- The child's known medical history, including any known problems;
- The child's medications, if any; and
- Any other relevant health, mental health, and education information concerning the child.

AMENDING THE CASE PLAN

- The case plan may be amended by the court or upon motion of any party at any hearing in order to change the goal of the plan or to employ the use of concurrent planning § 39.6013(2)(4), Fla.R.Juv.P. 8.420(a)(1)(3)

CASE PLAN MUST BE EXPLAINED, SIGNED AND DELIVERED

- Case plan must be explained to parties including child, if appropriate §39.6011(3)
- Case plan must immediately be given to all parties, including the child, if appropriate § 39.6011(6)(b).
- Signed by all parties -- signature of a child may be waived if the child is not of an age or capacity to participate in the case-planning process § 39.6011(3)

Judicial Review Hearing

RELEVANT STATUTES & RULES	§§ 39.701 - 39.704. Rule of Juvenile Procedure 8.415.
PURPOSE OF HEARING	Evidentiary review by court to determine status of the child and compliance with case plan, to review need for changes to case plan and placement, and to maintain focus on safety of the child and permanent placement. Review is required for both out-of-home and in-home placements.
TIME FRAME	<p>Initial judicial review must occur no later than 90 days after the earlier of disposition or case plan approval hearing, but no more than 6 months after removal. § 39.701(1)(d)1; Rule 8.415(b).</p> <p>Permanency hearing must occur no later than 12 months after the date the child is removed and no later than 30 days after a determination that further reunification efforts are without merit. §§ 39.621(1).</p> <p>Judicial reviews in every case must occur at least every 6 months. § 39.701(1)(a); Rule 8.415(b).</p>
RULES OF EVIDENCE	The court may receive any relevant and material evidence pertinent to the cause . This evidence may be received by the court and relied on to the extent of its probative value, even though not competent in an adjudicatory hearing. § 39.701(2)(c); Rule 8.415(e).
NEXT HEARING	<p>Permanency hearing must occur no later than 12 months after removal of child and no later than 30 days after a determination that further reunification efforts are without merit. §§ 39.621(1).</p> <p>Judicial reviews must occur every 6 months.</p>

Permanency Hearing

RELEVANT STATUTES & RULES	§§ 39.621- 39.6241.
PURPOSE OF HEARING	<p>A hearing at which the court determines whether DCF has made reasonable efforts to finalize the permanency plan in effect for the child. 45 C.F.R. § 1356.21.</p> <p>The court will make a permanency determination for the child which may include reunification, TPR and adoption or other permanency options available to the court and will determine when the child will reach permanency.</p> <p>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.</p> <p>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 DCF or awaits adoption. § 39.621(1).</p>
TIME FRAME	<p>Permanency hearing required within 12 months of removal or within 30 days of a judicial determination that reasonable efforts to reunify are not required.42 U.S.C. § 671(a)(15)(E), § 39.621(1).</p> <p>After the initial permanency hearing, subsequent permanency hearings must be held every 12 months while the child is in care. 45 C.F.R. § 356.21(b)(2)(i).</p>
NEXT HEARING	Judicial Review: within 6 months § 39.701(1)(a)..

Advisory Hearing

RELEVANT STATUTES & RULES	<p>§§ 39.801 - 39.815.</p> <p>Rules of Juvenile Procedure 8.500 - 8.535.</p>
PURPOSE OF HEARING	<p>The court advises parties of their right to counsel, appoints counsel as necessary, takes pleas on the TPR petition and orders parents to the adjudicatory hearing.</p> <p>If a parent or legal custodian is absent, the court will evaluate the sufficiency of service and notice and make a determination as to whether the parent has consented to the TPR for failure to appear or whether another advisory hearing date should be set for that parent.</p>
TIME FRAME	<p>The advisory hearing is held “as soon as possible” after all parties have received notice. § 39.808(1).</p>
NEXT HEARING	<p>The adjudicatory hearing must be held within 45 days after the advisory hearing. § 39.808(3).</p>

Adjudicatory Hearing

RELEVANT STATUTES & RULES	§§ §§ 39.801 - 39.815. Rules of Juvenile Procedure 8.500 - 8.535.
PURPOSE OF HEARING	The court makes findings of fact and conclusions of law regarding the sufficiency of DCF's proof and determines whether TPR is in the manifest best interests of the child.
TIME FRAME	Voluntary surrender: The adjudicatory hearing must be held within 21 days of the filing of the petition. § 39.808(4). For contested petitions: The adjudicatory hearing must be held within 45 days after the advisory hearing. § 39.809(2).
BURDEN OF PROOF	The elements required for TPR must be proved by clear and convincing evidence. § 39.809(1).
RULES OF EVIDENCE	Rules of evidence in use in civil cases apply. § 39.809(3).
NEXT HEARING	If TPR is granted, schedule hearing within 30 days of rendition of the order to amend the case plan and identify a permanency goal for the child. § 39.811(8). If TPR is not granted, but child is adjudicated or re-adjudicated dependent, schedule disposition hearing under § 39.521 or case plan conference under § 39.601.



FLORIDA GUARDIAN AD LITEM

General - Dependency Delinquency Checklist

INITIAL HEARING

- Youth
- Judge (Assigned To Family If Possible)
- Parent Or Legal Custodian
- Child's Caseworker
- Youth's Caretaker
- Youth's Counsel
- DJJ Representative
- Prosecuting Attorney
- Interpreter
- GAL Volunteer

CONSIDERATIONS

- Who is child currently living with?
- Who is child's Legal Custodian?
- Parent/Legal Custodian present? Why or why not?
 - What is the being done to ensure parent/guardian presence at next hearing?
- Names and phone numbers of close relatives; possible placements; temporary placement.
- Legal counsel appointed? GAL appointed?
- Youth competent?
- Educational Plan? IEP? Same School?
 - Assessment for special education services?
 - If the youth has an IEP is parent participating? If not, educational surrogate?
- Any physical, mental health, substance abuse issues? Services ordered?
- Information supporting secure or non-secure placement?
- Does the youth have any medical, physical or mental health issues including trauma history that places the youth's safety in question in a detention setting? Services ordered?
- If the youth is detained have all of the parents or guardian's questions been answered - including visitation?
- Has the Court explained reasons why detention is necessary?
- If not in detention, what restrictions placed on youth until next hearing?
- What evaluations/services are necessary?
 - Who is responsible for referrals? Follow up.
- Next hearing date, time and purpose.

ADJUDICATORY HEARING

- Youth
- Judge assigned to family
- Parent or Legal Custodian
- Child's caseworker
- Youth's Caretaker
- Youth's Counsel
- DJJ Representative
- Prosecuting Attorney
- Interpreter
- GAL volunteer
- Witnesses
- Victim advocate
- Probation officers are not necessary unless a witness

CONSIDERATIONS

- Were the Prosecutor and Counsel prepared?
- Did the prosecutor prove every element of the alleged offense beyond a reasonable doubt?
- Are the immediate needs of the youth being addressed?
- Is there information supporting secure or non-secure placement? or can the youth be released with or without restrictions?
- Does the youth have any medical, physical substance abuse, or mental health issues, including a trauma history, that places the youth's safety in question in a detention setting?
- Is there an environment adequately structured by family, community, school or other support systems to enable the youth to avoid harmful behaviors and associations?
 - Services provided to youth and youth's family if not detained?
- Educational Plan? IEP? Same School?
 - Assessment for special education services?
 - If the youth has an IEP is parent participating? If not, educational surrogate
- If the youth is not in detention, description of any restrictions placed on the youth until the next hearing.
- If the youth is detained have all of the parents or guardian's questions been answered - including visitation.
- What evaluations/services are necessary?
 - Who is responsible for referrals?
- Next hearing date, time and purpose.

DISPOSITION HEARING

- Youth
- Judge assigned to family
- Parent or Legal Custodian
- Child's Caseworker
- Youth's Caretaker
- Youth's Counsel
- DJJ Representative
- Prosecuting Attorney
- Interpreter
- GAL Volunteer
- Victim Advocate

CONSIDERATIONS

- Is plan **specific to this child's needs**?
- What level of intervention required in order to protect community safety while the youth is engaged in services?
 - mental health, substance abuse, sexual offending, physical health.
- Educational Plan? IEP? Same School?
 - Assessment for special education services?
 - If the youth has an IEP is parent participating? If not, educational surrogate.
- Identify youth, family, and community strengths that can assist the youth in making the necessary change.
- Identify family and community issues are likely to impede the youth in implementing necessary behavior change.
- Should the juvenile delinquency court judge consider any orders specific to the parent?
- Can services begin immediately? When will they begin?
- Does the youth have any medical, physical or mental health issues, including a trauma history, that places the youth's safety in question in a detention setting?
- Should a progress hearing or progress conference be set, or a progress report ordered?
The date and time of the progress hearing or conference, or the date a progress report is due, if applicable.
- Appeal rights and process.

BE SURE THAT ALL COURT FINDINGS ARE WRITTEN IN THE ORDER & GIVEN TO ALL PARTIES



Florida Guardian ad Litem Normalcy Checklist

ADVOCATE REMOVING BARRIERS TO NORMALCY

The GAL shall advocate to remove barriers that prevent children from participating in age-appropriate extracurricular, enrichment and social activities (normalcy) as required by § 39.4091, Florida Statutes.

WHAT IS THE LAW?

Caregivers must use a **reasonable prudent parent standard** to determine if child can participate in **age-appropriate** activity considering the child's:

- Age, maturity and developmental level
- Risks of activity
- Best interest of child
- Importance of child's emotional & developmental growth
- Importance most family-like living experience
- Behavioral history of the child & child's ability to safely participate in activity

Caregiver is not liable for harm caused to child, provided decision was reasonable and prudent

Reasonable Prudent Parent Standard: The standard characterized by careful and sensible parental decisions that maintain the child's health, safety, and best interests while at the same time encouraging the child's emotional and developmental growth, that a caregiver shall use when determining whether to allow a child in out-of-home care to participate in extracurricular, enrichment, and social activities

REMOVE BARRIERS BY ENSURING:

- CBCs / department not requiring prior approval for age-appropriate activity
- There is an identified caregiver (a *person*) making normalcy decisions (even if child placed in group home or shelter)
 - o Group homes & shelters are not exempt from § 39.4091
- Pre-existing court orders do not conflict with statute / normalcy decisions
 - o Request Staffing / File Motion

- Policies and practices of agencies & placements consistent with § 39.4091
- Caregiver making decisions consistent with reasonable prudent parent standard

FREQUENT ISSUES

Social Media

- Child permitted to participate in social media as long as permission has been given by caregiver

Driving

- Caregiver and Services Worker shall assist the child in finding a driver's education program
- Support of the child's efforts to learn to drive a car, obtain learner's permit & driver's license (age, maturity, insurance)
- Efforts shall be made to obtain automobile insurance

Overnight / Planned Outings

- The out-of-home caregiver must determine that it is safe & appropriate
- Background screening is not necessary for a child to participate in normal school or community activities and outings such as school field trips, dating, scout campouts, and activities with friends, families, school and church group

Babysitting

- Can be 14+ (14-15 must have babysitting course)
- Caregiver must ensure:
 - o Babysitter suitable for the age, developmental level and behaviors of child
 - o Babysitter understands how to handle emergencies, has telephone numbers - case manager and physician; and
 - o Discipline and confidentiality policies for the child have been explained
- Babysitting does not have to be in a licensed setting

Vacations

- Caregiver may take child on vacations. Inform department / CBC

Allowance

- Ages 6+ must receive allowance at least once a month

- Cannot be withheld as a form of discipline
- Additional amounts can be given as reward
- Providing toiletries, toys or other tangible items in lieu of money is not permitted. Allowance money should also not include money needed to purchase toiletries. F.A.C. 65C-13.029

SPECIAL CONSIDERATIONS

- Disabled youth shall be provided with an equal opportunity to participate in activities.
- Confidentiality requirements for department records shall not restrict the child's participation in customary activities appropriate for the child's age and developmental level

Child shall be given permission /encouragement to:

- obtain employment
- have contact with family members
- have access to phone usage
- have reasonable curfews
- travel with other youth or adults
- have his or her picture taken for publication in a newspaper or yearbook
- receive public recognition for accomplishments
- participate in school or after-school organizations or clubs
- participate in community events

Child must be provided information regarding:

- drug and alcohol use and abuse
- teen sexuality issues
- runaway prevention
- health services
- community involvement
- knowledge of available resources
- identifying legal issues
- understanding his or her legal rights
- accessing specific legal advice

Always be aware of WHO is making the decisions for children

MASTER TRUST CHECKLIST

BE SURE TO CONTACT YOUR SUPERVISING ATTORNEY REGARDING ANY MASTER TRUST ISSUE

Master Trust Issues	Yes/No	Action Plan <i>Determine who is responsible for each Master Trust Issue – provide completion dates if appropriate</i>		
		Volunteer	Attorney	Case Coordinator
Has the department provided regular accountings?				
Has the department applied for SSI benefits on behalf of the child?				
Is the child eligible for any derivative benefits (parents deceased or disabled)?				
Is there an appropriate adult who can serve as the representative payee for the child rather than the department?				
Has the department filed the required Master Trust accountings?				
Is there a spending plan in place to ensure that funds are used to meet the child's specific needs?				
If the child receives SSI, is the balance of the Master Trust current needs sub account close to the \$2000 limit?				
How has the department spent the child's money?				

Is the child's specific need being met by the expenditures?				
Are there accurate records?				
Does the child actually have the property purchased with his or her money?				
Has the advocate considered a PASS account, Special Needs Trust or Pooled Trust for the child's Master Trust funds?				
Has the department provided notice of the child's right to request a fee waiver with every judicial review?				
Does the child need a lump sum of money to address a specific need? If so, has a waiver request been filed?				
Does the child have an ongoing need for additional funds to be expended? If so, has a request to increase the personal allowance been filed?				
Is the child close to turning 18? If so, has a motion regarding the disbursement of the funds to the child been filed?				

WHAT SHOULD BE IN A QUARTERLY ACCOUNTING?

- Type of benefit payment;
- monthly benefit amount;
- interest earned and any other adjustments;
- monthly cost of care and other withdrawals/adjustments, and
- the current balance in each subaccount

A copy of the most current quarterly accounting record shall ... be filed with the court at the time of each judicial review of the case.

EXAMPLE MASTER TRUST ACCOUNTING

04/12/2007		Transaction Details - Individual Client Report						
Account: 1000		CURRENT Needs Account						
Client: AY		11111111						
<u>Trans Date</u>	<u>Client Acct</u>	<u>Transaction Type</u>	<u>Ref #</u>	<u>Reference</u>	<u>Amount</u>	<u>Balance</u>		
08/01/2001	0075326811	200		Client Account Deposit	70819852	Client Deposit	\$531.00 \$1,605.00	
08/01/2001	0075326811	300		Maintenance Fee	70819852	Maintenance Fee	(\$387.19) \$1,217.81	
08/31/2001		900		Interest		Automatic Interest Allocation	\$2.06 \$1,219.87	
08/31/2001	0075326811	200		Client Account Deposit	395696639	Client Deposit	\$498.45 \$1,718.32	
09/28/2001		900		Interest		Automatic Interest Allocation	\$2.00 \$1,720.32	
09/28/2001		910		Service Charge		Auto Service Charge Allocation	(\$0.21) \$1,720.11	
10/01/2001	0075326811	200		Client Account Deposit	2682982015	Client Deposit	\$531.00 \$2,251.11	
10/01/2001	0075326811	300		Maintenance Fee	2682982015	Maintenance Fee	(\$387.19) \$1,863.92	
10/15/2001	0075326811	300		Maintenance Fee	395696639	Maintenance Fee Sept. 01	(\$374.70) \$1,489.22	
10/31/2001		900		Interest		Automatic Interest Allocation	\$1.22 \$1,490.44	
11/01/2001	0075326811	200		Client Account Deposit	2992461760	Client Deposit	\$531.00 \$2,021.44	
11/01/2001	0075326811	300		Maintenance Fee	2992461760	Maintenance Fee	(\$374.70) \$1,646.74	
11/30/2001	0075326811	200		Client Account Deposit	3307457144	Client Deposit	\$531.00 \$2,177.74	
11/30/2001		900		Interest		Automatic Interest Allocation	\$1.82 \$2,179.56	
12/01/2001	0075326811	300		Maintenance Fee	3307457144	Maintenance Fee	(\$387.19) \$1,792.37	
12/31/2001	0075326811	200		Client Account Deposit	3585242088	Client Deposit	\$545.00 \$2,337.37	
12/31/2001		900		Interest		Automatic Interest Allocation	\$2.18 \$2,339.55	
01/02/2002	0075326811	300		Maintenance Fee	3585242088	Maintenance Fee	(\$387.19) \$1,952.36	
01/09/2002	0075326811	600		Client Check	25333	Dr. Mohan Saoji, dental work	(\$835.00) \$1,117.36	
02/01/2002	0075326811	200		Client Account Deposit	284765140	Client Deposit	\$545.00 \$1,662.36	
02/01/2002	0075326811	300		Maintenance Fee	284765140	Maintenance Fee	(\$349.72) \$1,312.64	
02/28/2002		900		Interest		Automatic Interest Allocation	\$0.30 \$1,312.94	
03/01/2002	0075326811	200		Client Account Deposit	560490495	Client Deposit	\$545.00 \$1,857.94	
03/01/2002	0075326811	300		Maintenance Fee	560490495	Maintenance Fee	(\$387.19) \$1,470.75	
03/29/2002		900		Interest		Automatic Interest Allocation	\$0.50 \$1,471.25	
03/29/2002		910		Service Charge		Auto Service Charge Allocation	(\$0.11) \$1,471.14	
04/01/2002	0075326811	200		Client Account Deposit	857499792	Client Deposit	\$545.00 \$2,016.14	
04/01/2002	0075326811	300		Maintenance Fee	857499792	Maintenance Fee	(\$387.19) \$1,628.95	
04/01/2002		900		Interest		Automatic Interest Allocation	\$2.45 \$1,631.41	
04/10/2002		910		Service Charge		Auto Service Charge Allocation	(\$0.02) \$1,631.39	
04/30/2002		900		Interest		Automatic Interest Allocation	\$0.68 \$1,632.07	
05/01/2002	0075326811	200		Client Account Deposit	56503834	Client Deposit	\$545.00 \$2,177.07	
05/01/2002	0075326811	300		Maintenance Fee	56503834	Maintenance Fee	(\$448.80) \$1,728.27	
05/31/2002		900		Interest		Automatic Interest Allocation	\$1.58 \$1,729.85	



Florida Guardian ad Litem Termination of Parental Rights Checklist

TPR = Statutory Ground (+) MBI (+) LRM

Termination of Parental Rights: Must prove by Clear and Convincing evidence grounds for TPR under §39.806 and TPR is in the child's Manifest Best Interest (MBI) under §39.810, and TPR is the Least Restrictive Means (LRM) of protecting the child from harm

Contents of Petition

TPR Petition must contain facts supporting the following allegations

- That at least one of the **grounds** for TPR has been met (*See Grounds for TPR*)
- That the parents were informed of their **right to counsel** at all hearings they attended
- That a dispositional order adjudicating the **child dependent** was entered
- That the **manifest best interests** of the child would be served by the granting of the petition; See § 39.802(4); Rule 8.500(b).

The petition shall also contain:

- allegations as to the identity and residence of the parents, if known; and
- the age, sex and child's name; and
- a certified copy of the birth certificate of each child named in the petition; and
- When required by law, a showing that the parents were offered a case plan and have not substantially complied with it; See Rule 8.500(b)

Grounds for Termination of Parental Rights (TPR)

- Voluntary Surrender §39.806 (1)(a)
 - **Written** (2 witnesses & notary), **consented** to order, **department will take custody**, and not under **fraud or duress**
- Abandonment (*Does not include abandoned infants*) § 39.806(1)(b)
 - (While being able) No effort to support + No effort to communicate or "marginal efforts at parenting"= "sufficient to evince a willful rejection of parental obligation" §39.01(1); OR
 - Location or identity of parent is unknown and cannot be ascertained by diligent search w/in 60 days § 39.806(1)(b)
 - Note: Incarceration does not, as a matter of law, constitute abandonment. However, incarceration is a *factor* to be considered "together with other facts" when determining if abandonment
- 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** §39.806(1)(c); often used with §39.806(1)(e)
 - **Conduct** towards child or other children; AND
 - Provision of services (can be from case plan but doesn't have to be); AND
 - **Harm** to child irrespective of services; AND
 - **No reasonable basis to believe parent would improve**
 - *Do not need dependency adjudication or 12 months*
- Incarceration §39.806(1)(d)
 - For **significant portion** of child's minority considering child's age and need for stable, permanent home (time starts date of incarceration) §39.806(1)(d)1; OR
 - Incarcerated for **certain crimes** §39.806(1)(d)2; OR
 - Court determines the continued parent child **relationship would be harmful to the child** §39.806(1)(d)3
- A case plan has been filed with the court and approved, and the **child continues to be abused, neglected, or abandoned by the parents** §39.806(1)(e)
 - Adjudicated dependent; AND
 - Case plan filed; AND
 - 12 or more months (not if material breach); AND

- **Parent failed to substantially comply** (not due to lack of parent’s resources or department’s failure to make reasonable effort to reunify) Substantial compliance “means 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” §39.01(73); **OR**
- **Parent materially breached the case plan** (do not need 12 months) Clear and convincing evidence that parent is unlikely or unable to substantially comply with the case plan before the time expires to comply §39.806 (1)(e)2
- When a parent 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** §39.806(1)(f)
 - Egregious conduct – can be on incident if so severe as to endanger the life of the child
 - Harmed child or placed child at imminent risk of harm (must be a nexus between harm and conduct)
 - Knowingly failed to protect
 - OR CHILD’s SIBLING –Prospective Risk of **Harm** (prior abuse) + Nexus
 - No case plan required, can file petition at any time
 - Definitions
 - Sibling means another child who resides with or is cared for by the parent *regardless of whether the child is related*.
 - 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.
- When a parent has subjected the child to **aggravated child abuse** as defined in §827.03, **sexual battery or sexual abuse** as defined in §39.01, or **chronic abuse** §39.806(1)(g)
- Committed **murder** or **voluntary manslaughter** of a child §39.806(1)(h)
- Involuntary TPR of sibling §39.806(1)(i)
 - Prior sibling TPR + substantial risk of significant harm + MBI + LRM
- **Child who tests positive at birth for controlled substance/ alcohol** has the **same biological mother** who has had 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 controlled substance or alcohol** as defined in §39.01(32)(g). §39.801(k)
- **On three or more occasions the child or another child of the parent has been placed in out-of-home care**, and the conditions that led to the child’s out-of-home placement were caused by the parents. §39.801(l)
- **Clear and convincing evidence** exists to support a finding that the **child was conceived as the result of a sexual battery**. §39.801(m)
 - Guilty plea or conviction of unlawful sexual battery is conclusive proof that the child was conceived in this manner

Single Parent Termination Requirements The parental rights of one parent may be severed without severing the parental rights of the other parent only under the following circumstances: §39.811(6), Fla. Stat. (2013)

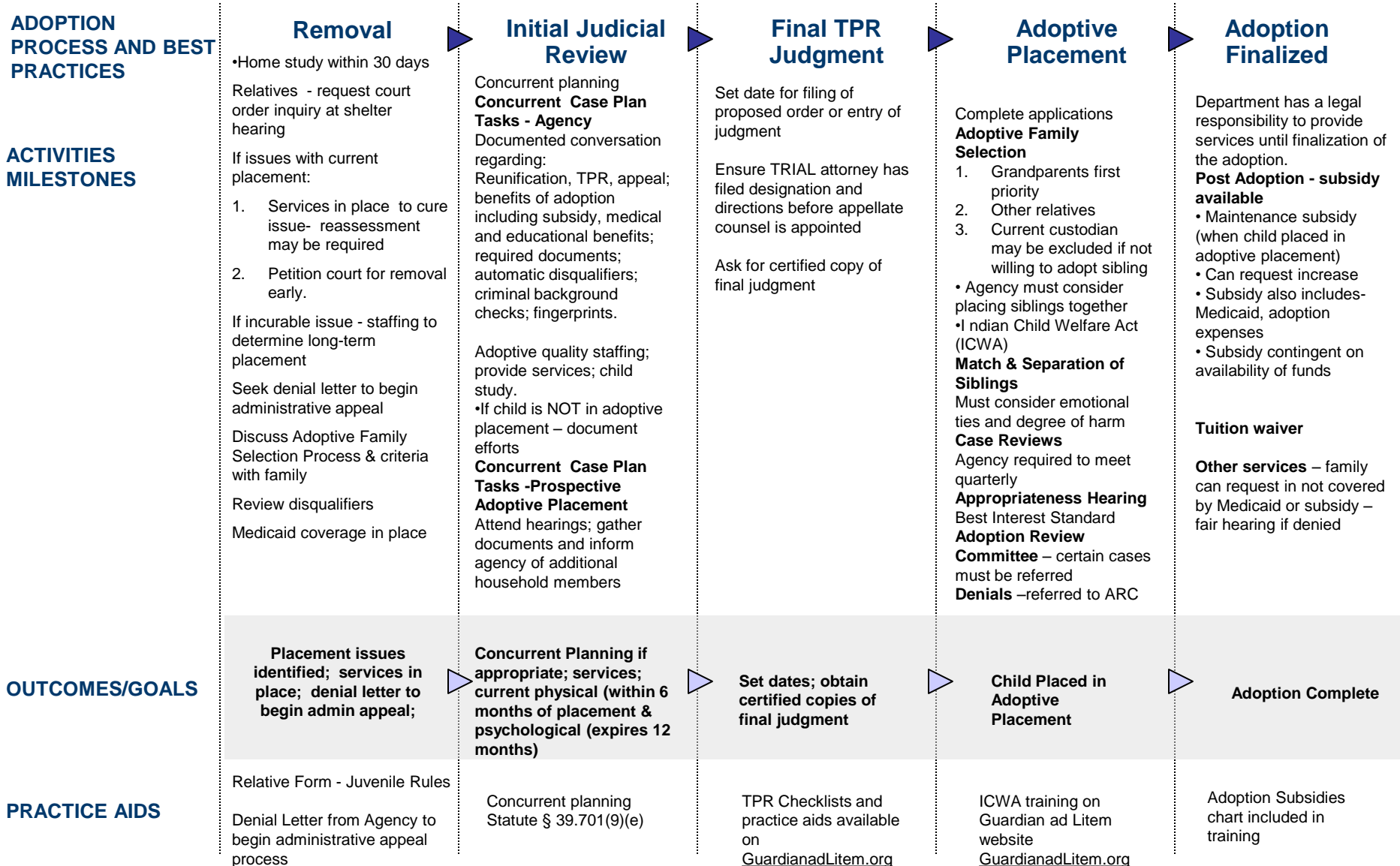
- the child has only one surviving parent
- the identity of prospective parent unknown
- the parent whose rights are being terminated became a parent through single-parent adoption
- the protection of the child demands termination of one parent, or
- the parent whose rights are being terminated meet any of the criteria in §§39.806(d) and (f)-(m), Fla. Stat.

Manifest Best Interest (MBI) Court **must** make specific findings that TPR is in child’s best interest §§39.810(1)-(11)

- | | |
|--|---|
| <ul style="list-style-type: none"> □ Any suitable permanent custody arrangement short of adoption with a relative of the child. §39.810(1) □ 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. §39.810(2) □ 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. §39.810(3) □ 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. §39.810(4) □ 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. §39.810(5) | <ul style="list-style-type: none"> □ 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. §39.810(6) □ 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. §39.810(7) □ The length of time that the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity. §39.810(8) □ The depth of the relationship existing between the child and the present custodian. §39.810(9) □ 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. §39.810(10) □ The recommendations for the child provided by the child’s guardian ad litem or legal representative. §39.810(11) |
|--|---|

Least Restrictive Means (LRM) In addition to considering whether termination of parental rights is in the manifest best interest of the child, the court must consider whether termination of parental rights is the least restrictive means of protecting the child from serious harm.

Planning for adoption begins at removal and continues through adoption





FLORIDA GUARDIAN AD LITEM

IL REDESIGN - EFC, PESS, Aftercare Services, Transition Plans, JRs & Case Closing

EXTENDED FOSTER CARE (EFC) (18-21): *Automatic* extended court jurisdiction allows young adults to remain in foster care until their 21st birthday, or 22nd birthday if they have a documented disability

Eligibility:

- In licensed foster care on their 18th birthday AND
 - o Are working at least 80 hours per month OR
 - o Are in high school / GED/College, etc. OR
 - o Are participating in a job skills program OR
 - o Are unable to participate in any of the above activities due to a disability.

Young Adults Must:

- Meet with caseworker once a month
- Continue to participate in activities such as a job, school, job skills program
- Attend Court reviews every six months
- Live with foster parents, or in a group home, apartment, dorm or other supervised independent environment
- Be given expenses (i.e. food, transportation) and allowance

POSTSECONDARY EDUCATION SERVICES AND SUPPORT (PESS) (18 - 23)

Eligibility:

- Turned 18 while residing in licensed care and have spent a total of six months in licensed out-of-home care before turning 18 OR
- Adopted after the age of 16 from foster care or placed with a court-approved dependency guardian after spending at least 6 months in licensed care within the 12 months immediately preceding such placement or adoption AND
- Have earned a standard high school diploma, or its equivalent.
- Enrolled in college, a university or vocational school that is Florida Bright Futures eligible for at least 9 hours a semester.

Living Arrangements:

- If in EFC, then the young adult must live in an approved living arrangement
- If the Young Adult is not in EFC, the Young Adult may live in any place of his or her choosing
- For the Young Adult who is not in EFC, there is no prohibition against living with a parent or relative, nor does being married or adult-adopted disqualify a Young Adult from receiving PESS

AFTERCARE SERVICES (18-21) Aftercare Services are available to young adults 18 years old but not yet 23 years

old who are *not* enrolled in EFC or PESS

Provides for Emergency Services:

- o Housing
- o Electric bills
- o Transportation
- o Security deposits for rent or utilities
- o Furnishings
- o Household goods
- o Water
- o Gas
- o Sewer service
- o Food

TRANSITION PLAN DEVELOPMENT

- Within 180 days of 17th birthday, (JR is still by day 90)
- In collaboration with DCF, CBC, caregiver, child/young adult, and anyone the child wishes to include
- Time, place, and location must be convenient for the child and the persons the child wants to include
- Meeting must be conducted in child's primary language
- If child is leaving care upon age 18, must be approved by the court before the child leaves care
- To be reviewed and updated as needed as long as child remains in care
- Must detail
 - o Housing
 - o Health insurance
 - o Education
 - o Workforce support
 - o Employment services
 - o Accommodations for those with disabilities
 - o Emergency contact person
 - o Participation in case planning, JR reports
- Must consider:
 - o Establishing/maintaining naturally occurring mentoring relationships & personal support services
- Must coordinate with:
 - o IL services provided by the DCF/CBC in the Case Plan; TIEP transition plan

DCF / CBC MUST PROVIDE YOUNG ADULT WITH (17 JUDICIAL REVIEW):

- Medicaid card & Information to apply
- Certified Copy of Birth certificate
- State identification card if no Driver's License

- Social Security Card
- Information on social security insurance benefits for eligible child
- Master Trust Accounting and information on accessing the funds held in trust
- Information on eligibility and applying for RTI
- Bank account or identification to open bank account
- Banking skills training
- Information on how to apply for public assistance
- Clear understanding of where will be living, what educational program will be enrolled in and how expenses will be paid at age 18
- Information on ability to remain in care
- A letter stating the dates under child has been under court jurisdiction
- A letter stating child is in compliance with financial aid documentation requirements
- Educational records
- Health and mental health records
- Process for accessing his or her case file
- Encouragement to attend JRs

JUDICIAL REVIEW - & PERMANENCY REVIEW

17 Judicial Review

- Ensure Transition Plan is complete and above is complete

18+ Judicial Review

- Every 6 months - can be more often if requested
- Case plan goals progress
- Independent living and Transition Plan progress
- Appropriate services are being provided
- Court may order additional services

Permanency Review

- At Least Yearly
- Make Sure Young Adult Understands
 - o Permanency Plan; Case Plan ; Individual Education Plan

CLOSING THE CASE

Case Stays Open Unless Court Finds Young Adult:

- Waived their right to attend the hearing (in writing) after being informed of their right to attend;
- Understands all that is available to them before age 21 and has signed a document stating they have been informed; or
- The young adult has voluntarily left the program, has not signed the document, and is unwilling to participate in any further court proceeding

BE SURE THAT ALL COURT FINDINGS ARE WRITTEN IN THE ORDER & GIVEN TO ALL PARTIES



FLORIDA GUARDIAN AD LITEM

Education - Crossover

ADVOCATE FOR EDUCATIONAL STABILITY

- Understand Child's Educational Background
- Advise DJJ and Court of Child's School Hours to Minimize School Absences

ENROLLMENT

- Is the child enrolled in school?
 - Demand immediate enrollment if not in school
- Seek out a PACE School (all-girls school) if appropriate
 - www.PaceCenter.org
- Advocate for continued enrollment in **same school** unless unsafe or otherwise impractical
 - Advocate for transportation to be provided by school district to maintain same school
- Eliminate Obstacles Such As:
 - Transportation
 - Supplies
 - Clothing
 - Records
 - Guardianship Requirements
- Homeless Children Must Be In School. Homeless Includes:
 - Children Living In Emergency or Transitional Shelters
 - Abandoned in Hospitals
 - Awaiting Foster Care

INDIVIDUALIZED EDUCATION PLAN (IEP)

- Determine unique educational needs of child from caregivers, teachers and professionals involved with child
- Does the child need an educational evaluation?
 - Advocate for comprehensive assessments, services and placement that child needs
- Special Education? IEP?
 - Parent/Guardian Participating?
 - Educational Surrogate?
 - GAL may serve as an Educational Surrogate
- Review IEP and other records to see if needs are being addressed by school.
 - Request IEP meeting
 - Advocate for qualified personnel.

EDUCATIONAL PLAN

- Does the child (13+) have and Educational/Career Plan?
 - Does the child understand the requirements of that plan?
 - Does the child agree to the plan?
 - Have they changed their mind?
 - Is the Plan Being Reviewed?
- Advocate for independent living assessments and educational and vocational assessments
 - Ensure that youth is included in each step of process

- Has the child (17+) completed the necessary educational applications including, Road to Independence, FASFA, and Pell Grants

NORMALCY

- Age Appropriate and Community Safety Appropriate Activities?
 - Written Plan
- Be Sure to Follow-Up

MENTORING/TUTORING PROGRAMS

- Tutoring Programs?
- Any Possible Mentoring Programs Available?
 - Florida Mentoring Partnership
 - www.flamentorpartnership.org
 - Big Brothers Big Sisters
 - www.bbbsflorida.org
 - Local Programs
- Does Child Have an Adult who They Feel Connected to?
 - Teacher? Coach? Or Family Member?
 - Encourage Child to Work with Probation Officer and Caseworker
- Be Sure to Follow-Up
- Recognize School Achievement
- Be Creative with Possible Solutions!**



FLORIDA GUARDIAN AD LITEM E-Service/ E-Filing Checklist

MANDATORY FOR ALL CASES, EVEN THOSE PENDING AS OF OCTOBER 1, 2013

E-SERVICE

- E-mail Addresses (primary/secondary)
- Uniform circuit E-Service e-mail address set up
- Check Size - 5 MB
 - o If larger send separately/numbered
 - o Compress
- Is attachment in PDF Format?
- Subject Line: SERVICE OF COURT DOCUMENT and Case Number
- Body of the E-Mail Includes
 - o The court in which the proceeding is pending
 - o The case number
 - o The name of the initial party on each side of the case
 - o The title of each document served with that e-mail
 - o The sender's name and telephone number
- Signed
 - o Traditional - signed & scanned OR /s/ /s or s/

E-FILING

Register

- Sign into E-Filing Portal Website at www.myflcourtaccess.com.
 - Click **Register Now**
 - Click Continue to **ePortal Registration** or select county link directly.
 - Fill out the Account Registration.
- You will receive activation instructions via email Problems? Contact support@flclerks.com

Document Submission Standards (when attaching documents to an e-filing)

- PDF Document = 8 ½ x 11 inches up to 25 MB
- Must have a blank 3 x 3 inch space at the top right-hand corner on the first page
 - o 1 x 3 inch space at the top right-hand corner on each subsequent page
- Documents should be electronically signed /s/ /s or s/
- Resolution of 300 DPI (check setting on your scanner)
- Multiple pleadings, motions, etc. should be submitted in separate files (DO NOT COMBINE)
- If documents over 25 MB size limit or over 8 ½ x 11- use CD-ROM, flash drive, or similar storage medium.

New Case

- Choose E-Filing Map or Filing Options tab
- Select New Case
- From the available drop down menus select the following:
 - o Type of Court, County, Division, Case Type, Sub Type, Dependency Options
- Add Documents (from V Drive) and Parties (if applicable)

File Subsequent Document(s) / Parties Into an Existing Case

- Choose E-Filing Map, My Trial Court Filings or Filing Options
- Select Existing Case
- Enter the **case number** and click search
 - o Add parties and documents
 - o Keep file folder (Outlook) of filing confirmations so you can find case numbers

Confirmations of Filing

- Immediate Reference Number
- E-Mail with Reference Number
- In **My Filings** with no Completion Date (completion date populated when clerk reviews documents)
- After the Clerk completes the review of the filing, you will another email verifying that the filing was processed successfully and you receive case number - set up automatic file folder

Payment

- Select Fee Waiver

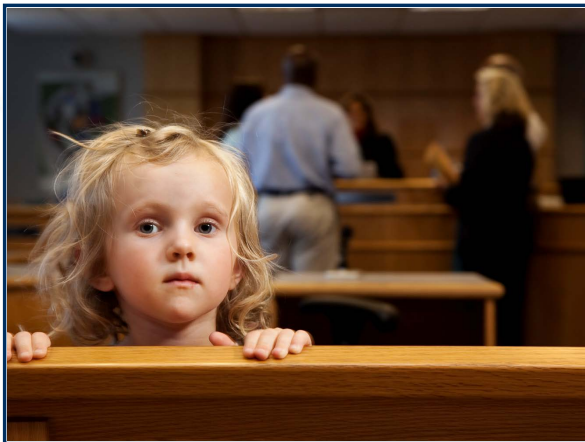
Appellate Process

- If you Receive E-Mail from DCA
- Forward to Debbie.Yarboro@gal.fl.gov
- Results of any appeals are distributed electronically to Appellate Coordinator and Supervising Attorney

Always Check Pending Queue for filings that require correction - must be made within 5 days.

E-Filing Help

Request e-Filing Support for Attorneys & Paralegals by sending an e-mail to support@myflcourtaccess.com or by calling 850-577-4609



Trial Skills





ADMISSIBILITY OF A LEARNED TREATISE CHECKLIST

Fla. Stat. §90.803 (23)

The Florida Evidence Code does not provide for a specific learned treatise exception to the hearsay rule. Section §90.706, Fla. Stat. (2004), however, permits certain literature to be used during cross-examination of an expert witness.

- Does the literature concern statements of facts or opinions on a subject of science, art, or specialized knowledge contained in a published treatise, periodical, book, dissertation, pamphlet, or other writing?

- Does the witness recognize the author as an authority on the subject of art, science, or specialized knowledge at issue?

- Does the witness recognize the treatise, book, periodical, dissertation, pamphlet, or other writing as authoritative?

- If so, put the facts and /or opinions stated in the literature on record by:
 - ___ admitting the document OR
 - ___ reading the helpful portion and citation into the record

- If not, move the trial court to find that the author or the treatise, periodical, book, dissertation, pamphlet or other writing to be authoritative AND relevant to the subject matter.



CHILD HEARSAY CHECKLIST

Fla. Stat. §90.803 (23)

- 1. Child has physical, mental, emotional developmental age of 11 or less
AND
 - 2. The statement concerns (any of the following):
 - a. an act of child abuse or neglect
 - b. any act of sexual abuse against a child
 - c. the offense of child abuse
 - d. the offense of aggravated child abuse
 - e. any offense involving an unlawful sexual act, contact, intrusion, or penetration performed in the presence of, with, by or on the child
 - 3. The court must conduct a hearing and make all of the following findings on the record:
 - a. That the statement does not indicate a lack of trustworthiness
AND
 - b. That the time content and circumstances of the statement provide sufficient safeguards of reliability
Must be based on:
 - The mental and physical age and maturity of the child
 - The nature and duration of the abuse or offense
 - The relationship of the child to the offender
 - The reliability of the assertion
 - The reliability of the child victim
 - Any other factor deemed appropriate
 - AND
 - c. The child either:
 - Testifies OR
 - Is unavailable as a witness, and there is other corroborative evidence of the abuse or offense
- Grounds for Unavailability
- 1. Substantial likelihood of severe emotional or mental harm (requires finding by the court that participation in the trial or proceeding would result in substantial likelihood of severe emotional or mental harm)
OR
 - §90.804(1)
 - 2. The witness is privileged from testifying
 - 3. The witness persists in refusing to testify
 - 4. The witness has suffered a lack of memory on the subject matter of his or her statement
 - 5. The witness is absent from the hearing and the proponent of the statement has been unable to procure the declarant's attendance or testimony
- The court made specific findings of fact on the record as to the basis for its ruling.



FLORIDA GUARDIAN AD LITEM

ADMISSIBILITY OF LAY OPINION TESTIMONY CHECKLIST Fla. Stat. §90.701

Two prerequisites must be for lay witness to testify in the form of an opinion:

- 1. The witness has firsthand knowledge through personal observation of the facts
Must lay a predicate:
 - ___ Voice: The lay witness is familiar with the person who the lay witness is identifying
 - ___ Handwriting: The lay witness is familiar with the person's handwriting
 - ___ Mental Condition: The lay witness has had an adequate opportunity to observe the matter or conduct about which the witness is testifying
 - ___ Physical appearance, impairment, observable intoxication: The lay witness's opinions are based on the perception of the witness. (e.g. Have you ever seen persons when they were under the influence of alcohol before?)

AND
- 2. The witness cannot communicate accurately and adequately what he perceived without testifying in terms of an opinion or inference

AND
- 3. The witness's use of inferences or opinions will not mislead the trier of fact to the prejudice of the objecting party

AND
- 4. The opinions and inferences do not require a special knowledge, skill, experience, or training (e.g., speed, intoxication, handwriting voice)



FLORIDA GUARDIAN AD LITEM

ADMISSIBILITY OF EXPERT TESTIMONY CHECKLIST Fla. Stat. §90.702; Fla. Stat. §90.704

- Is the witness qualified to express an opinion? Fla. Stat. §90.105 and §90.702
- A court may consider the following to determine whether a witness is qualified to offer opinion testimony as to a *specific* subject:
The witness's knowledge, skill, experience, training, education.
Fla. Stat. §90.702
(*sample qualifying questions below*)
AND
- Will the specialized knowledge be helpful to the trier of fact in understanding the evidence or determine a fact at issue
AND
- Is the opinion evidence being applied to evidence offered at trial?
AND
- Will the evidence cannot create a substantial danger of unfair prejudice that outweighs its probative value, even if otherwise relevant? Fla. Stat. §90.403
AND
- The opinion can be based on:
 - ✓ Facts that an expert personally observed Fla. Stat. §90.704
 - ✓ A hypothetical
 - ✓ Data or facts not otherwise admissible if they the type of facts reasonably relied upon by experts in the subject to support the opinions expressed (can include hearsay if that kind of hearsay is normally relied upon during the practice of the experts while not in court). Fla. Stat. §90.704
 - ✓ Must lay a foundation to establish that experts in the subject area reasonably rely on this kind of data in forming their opinion.

Sample Expert Witness Qualifying Questions:

1. State your name and occupation
2. What is your education?
3. What licenses or certifications do you hold?
4. Have you been qualified as an expert in the field of _____ before? How many times?
5. What is your professional experience in this particular field?
6. What is your experience in this particular case?
7. Are you a member of any professional associations in this field?
8. Are you board certified in this field?
9. Approximately how many children have you treated with this condition?
10. Do you have any special knowledge or training in _____?
11. Have you ever published an article or treatise on this subject?



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