

home and community based waiver program that was administered by [Agency for Persons with Disabilities \(APD\)](#).

The APD agreed that the child is a danger to herself and others, but argues that she can be served through the services available under [Chapter 409](#) (foster care services) and [Chapter 394](#) (providing for comprehensive child mental health services), and therefore it is not necessary to provide services under [Chapter 393](#) (The Developmental Disabilities Prevention and Community Services Act). The child argues that there is no basis for the argument that the services she needs “should be” available from the Department.

The First DCA held:

“There is no legal or factual basis for the [APD] position that the services she is requesting are available from another source or are actually provided by [the Department]. Therefore, we hold that [the child] qualifies to be placed on the second priority of the crisis tier of the waiting list. We remand for the [APD] to determine her placement within the second priority crisis list. In making that placement, [APD] may *not* rely upon the criterion that “other supports or services are available to assist in addressing [child] behaviors” as a factor in that placement, because neither the facts nor the law support such a determination.” 



[Read the court opinion](#)

Legislative Update

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While there were only a handful of bills which impact dependency court, the bills that passed make major changes to Chapter 39 and will significantly change practice in abuse and neglect proceedings. [Senate Bill 1080](#) (HB 7123) substantially amends Chapter 39 to conform Florida's statutes to the [Adoptions and Safe Families Act \(ASFA\)](#). This is a bill that all practitioners should read and study, as it not only contains language for technical compliance, but is designed to expedite permanency for children. Some of the major changes include:

All sections regarding permanency are rewritten. Permanency goals are redefined and prioritized as: reunification, adoption, permanent guardianship, placement with a fit and willing relative and another planned permanent living arrangement. The statutes provide specific findings required by the court before each permanency option can be finalized. Section 39.5085 is amended to ensure that children placed in permanent guardianships with relatives can receive relative caregiver funds. The revisions provide for regular judicial reviews of children placed with fit and willing relatives to continually evaluate the possibility of adoption or legal guardianship of the child.

DCF is required to adopt rules no later than July 1, 2007 to ensure that the [Indian Child Welfare Act](#) and the [Multi-Ethnic Placement Act](#) are enforced in Florida.

A major rewrite of the case plan section was undertaken to reorganize and streamline the procedure. Concurrent planning is defined and use of this concept is authorized throughout the chapter. New procedures for amendment of case plans are added, including burdens of proof. Emphasis is also placed on providing current health, mental health and education information for the child in both the case planning and judicial review processes.

Language added to § 39.522 provides that when considering post-disposition change of custody, the court shall consider the child's continuity in the same out-of-home placement as a factor in determining best interests.

Section 39.8055 is created to specify when DCF is required to file a termination of parental rights and the federally recognized exceptions to that rule. The court's ability to order a TPR and other party's rights to challenge DCF's decision that compelling reasons exist not to file TPR are clarified. Additionally, material breach of a case plan as a ground for TPR is explained in § 39.806.

Amendments to § 39.810 provide the availability of a nonadoptive placement with a relative

may not receive greater consideration than any other factor weighing on the manifest best interest of the child and may not be considered as a factor weighing against TPR. If a child has been in a stable or preadoptive placement for 6 months, the availability of a different placement, including a placement with a relative, may not be considered as a ground to deny TPR.

[HB 7173/SB 1798](#) creates an Office of Child Abuse Prevention in Chapter 39 to establish a comprehensive statewide approach for the prevention of child abuse, abandonment and neglect. The bill also includes numerous amendments impacting older children in dependency proceedings, some of which are:

Creation of § 743.045 authorizing removal of the disability of nonage for purposes of executing contracts for residential leases and revision of § 39.701 to require entry of such an order at the judicial review that takes place 90 days after the child's 17th birthday.

Eligibility for Independent Living Transition services is expanded to include children placed with a court-approved nonrelative or guardian after reaching 16 and who spent at least 6 months in foster care.

New requirements are included in Chapter 409 for DCF to fully explain any document, report, form or other record presented to the child prior to the child's signature.

The Road to Independence Scholarship is renamed the "Road to Independence Program" to eliminate confusion about whether the money constitutes a taxable scholarship. Eligibility is expanded to include children who are "currently in licensed foster care or subsidized independent living . . . adopted from foster care after reaching 16 years of age, or after spending at least 6 months in the custody of the department after reaching 6 months of age, . . . placed in a guardianship by the court." New language authorizes payment of awards under the RTI Program by direct deposit, unless the recipient makes a different request.

Amendments provide that children eligible for transitional support services or aftercare services who wish to continue to reside with the licensed foster family or group care provider with whom they were placed at their 18th birthday, may continue to reside there or may reside with another such provider arranged by DCF.

Section 409.903 is amended to expand Medicaid coverage to include children formerly in foster care until their 20th birthdays.

[SB 114/HB 175, the "Robert J. Koch Drug Court Intervention Act"](#) incorporates principles of treatment-based drug courts into dependency proceedings.

Goals are established for substance abuse services in dependency court. Intent language is added to encourage use of the drug court program model in § 397.334 to assess and address substance abuse issues.

Section 39.407(16) is created to provide that after a shelter or dependency petition is filed the court can order a person with custody or a person requesting custody of a child to submit to a substance abuse assessment or evaluation.

Sections 39.507 and 39.521 are amended to provide that after adjudication of dependency, withholding of adjudication, or disposition, the court can order a person with custody or a person requesting custody of a child to submit to a substance abuse assessment or evaluation. The court can require the person to participate in treatment, including a treatment-based drug court. The court will oversee the person's progress and compliance and may impose appropriate sanctions for non-compliance. Orders under these subsections may be made only upon good cause shown.

[HB 1503/SB 2012](#) provides technical changes necessary due to the creation of the Agency for Persons with Disabilities (APD), but also includes provisions clarifying a dependency court's jurisdiction with regard to services provided by APD. Specifically, § 39.407(5) is amended to provide "nothing in this section confers jurisdiction on the court with regard to determining eligibility or ordering services under Chapter 393. The bill also gives priority status to dependent children on APD's waiting list.

[HB 5011/SB 1694](#) allows for the transfer of the current community based care lead agency

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oversight responsibilities of the Department of Children and Family Services to independent entities. The bill provides funding for the program through a grant that enhances funding flexibility in Broward, Dade and Monroe Counties. The pilot program expands the responsibilities and services provided by these lead agencies during the three-year pilot.

These bills can be accessed at www.leg.state.fl.us. The Governor must approve all bills before becoming law. ☞

Please visit the Statewide Guardian ad Litem Website at
www.guardianadlitem.org