



# Dependency Court Overview



## Learning Objectives

- Participants should understand the origin and role of dependency court.
- Participants should have a basic understanding of Chapter 39.
- Participants should have a working knowledge of the path of a dependency case.
- Participants should be able to identify dependency issues.





## Role of the Court

*“The courts play a central role in making decisions regarding the protection of children who have been maltreated. Understanding this process is crucial for any professional involved in child protection. By having a thorough knowledge of this legal process and by working in partnership with the courts, child protective services (CPS) caseworkers and other professionals can work toward the safety, permanency, and well-being of children more effectively.”*

Hon. William G. Jones, *Working with the Courts in Child Protection, Child Abuse and Neglect User Manual Series*, pg. 5, U.S. Department of Health and Human Services, (2006).



# *What is Dependency Court ?*



## Dependency Court

A court having jurisdiction over matters involving abused and neglected children, foster care, the termination of parental rights, and (sometimes) adoption. *Black's Law Dictionary* (10th ed. 2009).

Dependency court “[j]urisdiction attaches when the initial shelter petition, dependency petition, or termination of parental rights petition, or a petition for an injunction to prevent child abuse issued pursuant to s. 39.504, is filed or when a child is taken into the custody of the department.” §39.013(2), Fla. Stat. (2018).



## State Police Power

Invoking the jurisdiction of dependency court is the state exercising its police power to protect its children under the common law doctrine of *parens patriae* codified by the legislature in Chapter 39, Florida Statutes.

*In Interest of Ivey*, 319 So. 2d 53, 58 (Fla. 1st DCA 1975).



# State Police Power

The inherent and plenary power of a sovereign to make all laws necessary and proper to preserve the public security, order, health, morality, and justice. It is a fundamental power essential to government, and it cannot be surrendered by the legislature or irrevocably transferred away from government. *Black's Law Dictionary* (10th ed. 2009).

## U.S. Constitution, Amendment X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.



## State Police Power

A state's Tenth Amendment right, subject to due-process and other limitations, to establish and enforce laws protecting the public's health, safety, and general welfare, or to delegate this right to local governments. *Black's Law Dictionary* (10th ed. 2009).

## *Parens Patriae* Doctrine

[T]he state has a wide range of power for limiting parental freedom and authority in things affecting the child's welfare...."  
*Prince v. Mass.* 321 U.S. 158, 167 (1944).

Acting to guard the general interest in youth's well being, the state as *parens patriae* may restrict the parent's control by requiring school attendance, regulating or prohibiting the child's labor, and in many other ways.

*Prince* at 166 (1944).

## *Parens Patriae* Doctrine

“The parent's right to custody is subject to the child's interest in his personal health and safety and the state's interest as *parens patriae* in protecting that interest.” *White by White v. Chambliss*, 112 F.3d 731, 735

“The juvenile court operates according to the legal power of *parens patriae*. The *parens patriae* doctrine stipulates that the State has the legal authority to act as the guardian of children whose parents are unable to provide adequate protection or meet their needs sufficiently.” Jones, pg. 8.



## The Court *In Loco Parentis*

When a child is placed in the state's care, the state "acts in the protective and provisional role of *in loco parentis*" for the child. *See Buckner v. Fam. Servs. of Central Fla.*, 876 So. 2d 1285, 1288 (Fla. 5th DCA 2004).

A Latin term meaning "in [the] place of a parent" or "instead of a parent." *Cornell Univ. Law School, Legal Encyclopedia*



## The State *In Loco Parentis* Legislative Intent for Dependency Court

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

**§39.001(1)(i), Fla. Stat. (2018).**

‘It is the dependency court which is charged under Florida law with protecting the rights and interests of dependent children, section 39.001, Fla. Stat. (2003), and it does so through various devices, including periodic judicial reviews and appointments of guardians ad litem and attorneys ad litem.’

*Buckner v. Family Services of Cent. Florida, Inc.*, 876 So. 2d 1285, 1287 (Fla. 5th DCA 2004).



# Dependency Courts

## Exercise Broad Discretion

In proceedings related to children in the custody of the State, the courts are charged with the duty of ensuring that the best interests of the children are advanced; this duty exists during dependency proceedings and continues through adoption proceedings.

*B.Y. v. DCF*, 887 So. 2d 1253 (Fla. 2004).



## Dependency Courts Exercise Broad Discretion

“Once a child has been lawfully declared to be a dependent child, he becomes a ward of the state, and a broad discretion is vested in the juvenile court to do those things that appear to that court to be in the best interest of the child.” *In Interest of Pendarvis*, 133 So. 2d 424, 425 (Fla. 1<sup>st</sup> DCA 1961).





# *Understanding the Basics*





The **Dependency Process** begins when someone reports suspected child abuse or neglect or when a minor is left without support as result of parents' incarceration/institutionalization, or parent unwilling to provide care.

The **Department of Children and Families** is charged with investigating all allegations, ensuring the safety of the minor and providing services to the family.

**Chapter 39, Florida Statutes governs the dependency process.**

# First Thing, First. Is the Child...



- › Safe in placement with parent?
- › Safe with parent but voluntary services needed?
- › Not safe, therefore required to be sheltered? Least restrictive means is implicated because termination of parental rights is possible.



Does the parent have “the ability to be a parent to the child with all of the responsibilities that entails?”

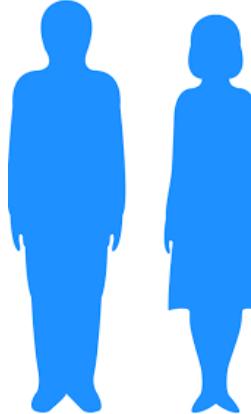


# The Parties

**Parties to dependency proceedings include:**

- The Parents
- The Petitioner
- The Department of Children and Families
- The Child
- The Guardian ad Litem

**§ 39.01(58), Rule 8.210**



# The Parties

## The Child.

Depending upon the child's age and capacity, the child has the right to be present unless the court finds that the child's appearance is not in the best interests of the child.

The child may have an attorney ad litem who is charged with the legal (express) interest of the child. Children with certain special needs are appointed an attorney by the court.



**§39.01(58) §39.4085(20), §39.01305**

# Participants

**Participants** to dependency proceedings include any person who is not a party but should receive notice of hearings involving the child.

Examples of potential participants include:

- Foster Parents.
- Prospective Parents.
- Grandparents.
- Custodians of the child.
- Person whose participation may be in the best interests of the child.

**§ 39.01(51), Rule 8.210**



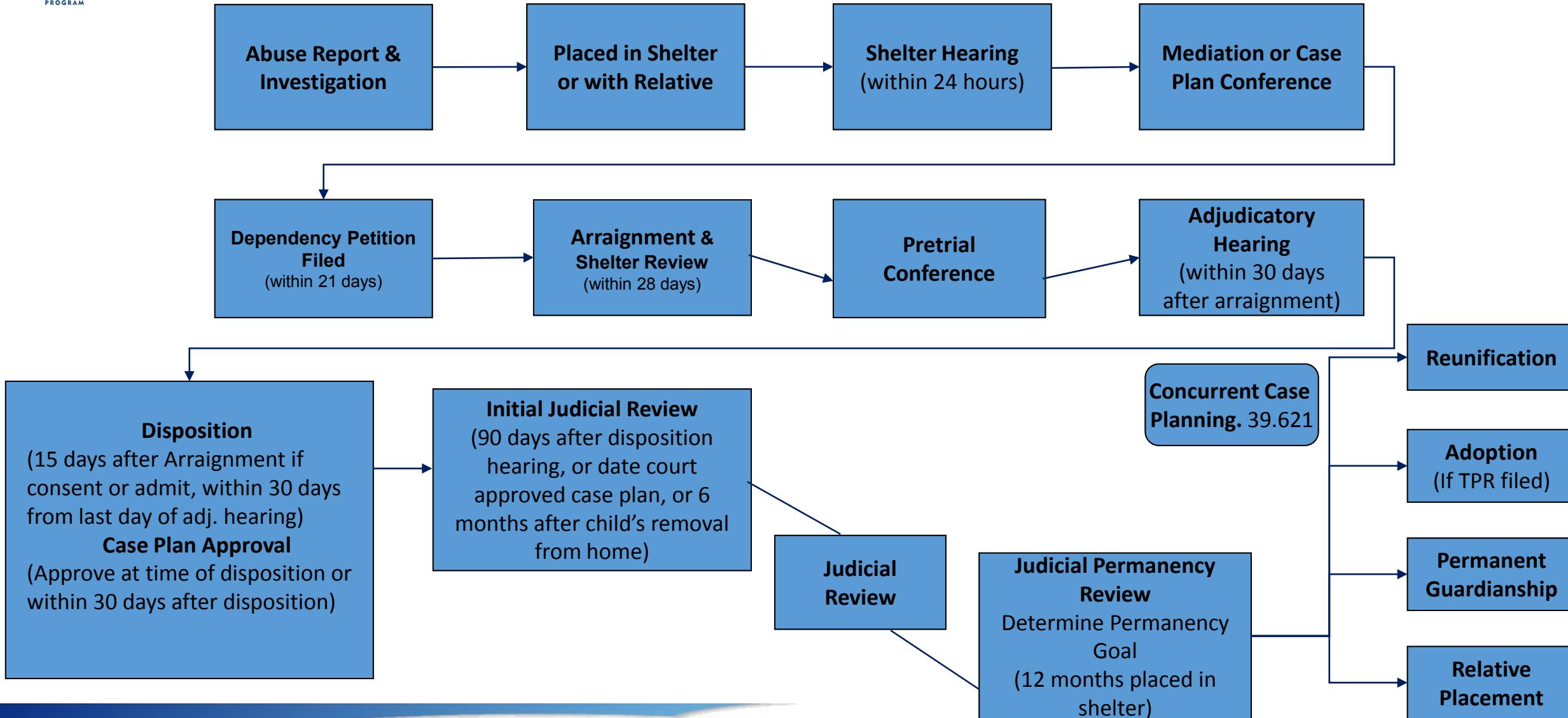
# The Goal of the Dependency Process

## Timely Permanency

- It is recognized by both Federal and Florida statute that it is crucial children have permanency and stability in their living arrangements in a timely manner.
- The department must use reasonable efforts to “place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child.” 42 U.S.C. § 671(a)(15)(C).



# The Path of the Case



# Shelter Hearing

- Must be held within 24 hours of removal.
- The Department must provide evidence that there is cause to remove a child or keep child in sheltered status pending further investigation.

**§ 39.395 – 39.402**

## Arraignment

- Parents enter pleas to dependency petition.
- The court reviews issues such as child placement and visitation.

§ 39.501 – 39.506

# Case Plan

- Outlines services/treatments for the child and parents. Explains what parents must do to be reunified with the child.
- Requires input from all parties, including child if age appropriate.

§ 39.6011

# Case Plan

- Can be amended with approval of the court.
- Goal can change. Post TPR, goal will be adoption.
- Reviewed during Judicial Review Hearings.

**§ 39.6011, 39.6013**

# Judicial Review Hearings

- Occurs at least every six months.
- Reviews status of child and compliance of case plan. Reviews any need of changes to case plan or placement.
- Child's input essential. GAL Program provides report to court that includes child's best interest and child's wishes.

**§ 39.701 – 39.704**

# Possible Permanency Goals

- **Reunification:** Child is safely reunified with parent(s).
- **Adoption:** Goal if termination of parental rights has been or will be filed.
- **Permanent Guardianship:** Child's current custodian becomes legal guardian. Parents' rights may still be intact.
- **Permanent Placement:** Child placed with a fit and willing relative.
- **Planned Permanent Living Arrangement.**

§ 39.621 (3)

## Termination of Parental Rights

- Filed with child cannot be safely reunified with parent/ legal guardian.
- Can be filed by the department, the guardian ad litem, or “any other person who has knowledge of the facts alleged or is informed of them and believes that they are true.” § 39.802(1)
- Mostly commonly filed after one year but can be filed prior to one year period.

**§ 39.801 – 39.815**



# Clear & Concise Evidence of Statutory Ground



Manifest Best Interest



Least Restrictive Means

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Termination of Parental Rights

# Termination of Parental Rights (TPR)

## Examples of TPR Grounds:

- Voluntary Surrender.
- Abandonment.
- Conduct toward child and continued involvement threatens life, safety, well-being despite services.
- Incarceration.
- Failure to substantially comply with case plan.
- Egregious conduct.
- Aggravated child abuse; sexual battery or sexual abuse; or chronic abuse.
- Committed murder or voluntary manslaughter of child.
- Involuntary TPR of sibling.
- Chronic use of alcohol or drugs.
- Mother with prior dependent child gives birth to child who tests positive.
- Child placed 3 or more times in out-of-home care.
- Child conceived as the result of a sexual battery.
- Parent is a registered sexual predator under §775.21.



# Termination of Parental Rights (TPR)

The court must determine the termination is in **Manifest Best Interest** of the child. § 39.810(1)-(11).

**Manifest Best Interest** includes a number of factors, such as determinations regarding:

- Parent's ability, disposition and capacity to provide for child's needs, both present and future.
- Emotional ties and bonds with parents and/ or "parental substitute."
- Time of out-of-home placement.
- Likelihood of remaining in long-term foster care.
- Child's wishes.
- Guardian ad Litem recommendations.

# Termination of Parental Rights (TPR)

The court must determine the termination is the **Least Restrictive Means** of protecting the child.

Were the parents offered a case plan and did they have the opportunity to comply?

- Good faith effort to rehabilitate the parent and reunite the family
- No case plan is required if the case is based on egregious facts

# Post TPR

The goal Post TPR is adoption.

If adoption cannot be achieved,  
youth can age out of licensed  
care.

Youth can remain in licensed care  
until age 21 under **Extended  
Foster Care**. § 39.6251



# Post TPR

Youth in Extended Foster Care are still under court jurisdiction, meet with caseworkers and attend Judicial Reviews every 6 month.

Youth can re-entry Extended Foster Care.



## Post TPR

Youth who age out of license care can take advantage of certain benefits, such as **Medicare, Post Education Services and Support and After Care Services.** § 409.1451



# Post TPR

Youth who age out of foster care can face issues relating to normalcy and other legal issues such as:

- Master Trust
- Criminal Charges
- Immigration





# Questions & Comments