

# FLORIDA'S DEPENDENCY BENCHBOOK

## BENCHCARD: CASE PLAN APPROVAL

Items in **bold font** are required by Florida Statutes.

### Introductory remarks.

- Explain purpose of the hearing. State the number of days the child has been in care and the number of placements to date.
- Swear in the parties, participants, and relatives. (*See Parties and Participants, Section 8*)

### Representation and appointment of counsel.

- **If parents do not have counsel, advise parents of right to legal counsel. This offer of counsel must be renewed at every hearing. § 39.013(9).**
- **Ascertain whether the right to counsel is understood. § 39.013(9)(a).**
- If parents request counsel and claim to be indigent, have parents fill out affidavit for indigence. **If indigent per affidavit and the parents request it, appoint counsel for parents. § 39.013(9)(a).**
- If counsel is waived it must be on the record. Rule 8.320(b)(2). **Determine if waiver is made knowingly, intelligently, and voluntarily. § 39.013(9)(a).**
- If parents are ineligible for the appointment of counsel or knowingly, intelligently and voluntarily waive appointed counsel, ask if they want to proceed pro se or hire a private attorney. Explain “pro se” if necessary.
- **If parents request a continuance to consult with counsel, if the child is in shelter care, the court must follow the requirements of § 39.402(14) in determining whether to grant the continuance. (*See Continuances, Section 8*)**
- Follow circuit plan (developed by the chief judge) so that orders appointing counsel are entered on an expedited basis.

### Parties and notices.

- **Have all parties identify themselves for the record with full name and permanent address. § 39.0131. See also §§ 39.402(8)(g) & 39.506(4).** (Note: Do not openly identify the address when one or more of the parents is party to an injunction for protection against domestic violence.)
- Notify the parents that the address they provide will be used by the court and DCF to provide them with notice of all court hearings and orders.
- **Determine whether parties were properly served. (*See Service, Section 8*)**
- **If child, parents, caregivers, or relatives who requested notice are absent, confirm that they were properly noticed. Rule 8.305(b)(1); §§ 39.301(14)(b), 39.402(5)(a),**

**39.402(8)(h)(9), 39.502(19).** The Fostering Connections Act requires DCF to use due diligence to identify and notify all relatives within 30 days of removal. Verify that DCF used due diligence to notify all relatives within 30 days of removal. If parent is absent and has not been served, inquire about the diligent search conducted by DCF. (See *Fostering Connections Act and Service, Section 7*)

- Conduct a paternity inquiry if still in dispute. If a parent has not legally established paternity, DNA testing should be ordered after proper inquiry, applying Privette principles as appropriate. If necessary, examine birth certificate or inquire as to marriage status. (See *Paternity in Dependency Cases, Section 3*)
- **Appoint Guardian ad Litem Program to represent the best interests of the child if it has not yet been appointed. § 39.402(8)(c); Rule 8.215.** (See *Guardian ad Litem, Section 4*)
- If the child is eligible for membership in a federally recognized tribe, confirm that DCF/CBC notified the tribe pursuant to the Indian Child Welfare Act. (See *Indian Child Welfare Act, Section 7*)
- Ask the parents if they are involved in any other past or pending family law, paternity, domestic violence, delinquency, or child support cases other than those previously disclosed. (See *Dependency in the Context of Unified Family Court, Section 2*)
- Verify timely compliance with all ICPC requirements. (See *Interstate Compact on the Placement of Children, Section 7*)

Conduct the hearing to consider approval of the case plan. (See *Concurrent Case Planning Model, Section 4*)

- Make the determinations required under §§ 39.603(1)(b)-(f).
- Verify that all present received a copy of the case plan not less than 3 days before the hearing and had a chance to review it. If yes, proceed. If no, determine if a continuance or recess is necessary.
- Discuss case plan development. Inquire as to involvement of parent, GAL, and if appropriate, the child and caregiver in face-to-face conferences.
- Verify that the parents had the benefit of counsel during the preparation of the case plan.
- Ask if the parents or attorneys have any objections or corrections to the case plan.
- **The services in the case plan must be designed to achieve permanency. Verify that the case plan contains all statutory requirements pursuant to § 39.6012, (i.e. sibling visitation, concurrent case planning, child support).** Verify that it is meaningful and designed to address the facts and circumstances of the finding of dependency. (See *Service and Treatment Considerations for Children and for Parents, Section 5*)
- Determine if the plan is consistent with previous orders of the court.
- Verify that the parents can complete the tasks within the time frame set forth in the case plan.

- Ask the parents if they understand that if they fail to substantially comply with the terms of their case plan, it may ultimately result in their child being permanently placed outside of their home and their parental rights may be terminated.
- Verify that the parents have signed the case plan. (If YES proceed. If NO, have parent(s) sign it in open court.) If parents refuse to sign, the court can still accept the case plan and order compliance.
- Ask if there is anything that the parent(s), or their counsel, would like to say before the court proceeds to accept the case plan.
- If the parents are unable or unwilling to participate in the development of the case plan, DCF must document the unwillingness and prepare a case plan and provide a copy to the parent, if available. If the parents are unwilling, the court must still advise the parents that each parent has the right to enter into a case plan at any time before the filing of a TPR petition and may request judicial review of any provisions.
- In cases involving domestic violence, consider the victim's safety while reviewing the case plan tasks. (*See Domestic Violence and the Effects on Children, Section 3*)

#### Case plan.

- In the design and delivery of services, the paramount concern should be the health and safety of the child. (*See American Bar Association Safety Guide, Section 6 and Health Considerations, Section 5*)
- Consider the appropriateness of the permanency goal. (*See APPLA at the end of this section and Concurrent Case Planning Model, Section 4*)
- **The case plan must be signed by all parties, except that the 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).**
- The case plan should include tasks for the caregiver.
- **The case plan should address additional requirements for children in an out-of-home placement. § 39.6012(3).**
- For children twelve years and older, the case plan needs to address reproductive health care. (*See Health Considerations, Section 5*)
- **The case plan must be filed with the court and copies provided to all parties, including the child if appropriate, not less than 3 business days before the disposition hearing. § 39.6011(7).**
- **The case plan must be prepared within 60 days of removal. § 39.6011.**
- If the child has a master trust, require the case worker to report the balance in the master trust account. The master trust quarterly accounting reports should be filed with the court as attachments to the case plan. (*See Master Trusts, Section 8*)
- Verify that the provisions of the case plan were explained to the child. Ask the child if he/she understands the case plan.

- Approve the plan, or if it is determined that any of the elements have not been met, require the parties to make necessary amendments and submit it to the court within 30 days.

Review the child's placement.

- Ask what changes, if any, have been made in the child's living arrangement and/or placement since the last hearing. If there has been a change, ask if the change was necessary to achieve the child's permanency goal or meet the child's service needs. (*See Placement Stability Considerations, Section 4*)
- **Advise the parent that the parent has a continuing duty to inform DCF of any relative who should be considered for placement of the child. §§ 39.402(17), 39.507(7)(c).**
- Review/update the availability of relative placements for the child, including out of state relatives and parents of previously adopted siblings. **If no fit parent is willing or available to assume care and custody of the child, place the child in the temporary legal custody of an adult relative, the adoptive parent of the child's sibling, or another adult approved by the court who is willing to care for the child, under the protective supervision of the department. § 39.521(3)(c).**
- If siblings are not placed together determine why not and ask about efforts made (when appropriate) to keep them together. Order continuing contact between/among siblings (when appropriate) when they are not placed together. (*See Family Time Protocols, Section 4*)
- Inquire of the child, caregiver, GAL, and case worker of any issues with the current placement.
- Determine if the safety concerns have been ameliorated so that the child may be reunited with the parent. (*See American Bar Association Safety Guide, Section 6*)
- Verify that the caregiver is willing and able to meet the needs of the child.
- Order the case worker to file a written notification before the child changes placement, when possible. If it is impossible to provide notification before a placement change, DCF and the CBC should file notification promptly following the change. The court should verify that the GAL is involved with the decision.
- Determine if concurrent planning is appropriate based upon the facts of the case. If adoption is a permanency option, verify that adoption home studies have been completed. Also, verify that the case worker has produced necessary adoptions documents. (*See Concurrent Case Planning Model, Section 4*)
- If the case involves domestic violence, ensure adequate safety provisions exist, the placement is appropriate to protect the child, and safely plan compliance. (*See Domestic Violence and the Effects on Children, Section 3*)
- Require placement of pregnant teens in a foster home that will also accept the baby.

Review family time (visitation). (See *Family Time Protocols, Section 4 and Co-Parenting, Section 4*)

- Reassess the type, frequency, duration, and quality of family time (visitation) (at a minimum, several hours a week of visitation is needed for the purposes of bonding). Get input from all parties/participants including child and caregiver.
- Inquire if transportation has been an issue and determine who has been present and participated in the visits.
- Ensure that there is ongoing supporting documentation regarding the frequency, quality, and progress of the visitation.
- Verify that the visitation is consistent to meet developmental, emotional, and mental needs of the child.
- **If siblings are unable to be placed together, verify sibling visitation is occurring. § 39.4085(15). DCF must make reasonable efforts to provide frequent sibling visitation, even with previously adopted siblings.**
- If visitation is not possible because of the distance of the parent, the court should specify what alternative forms of contact are permitted (such as phone, email, webcam, video conferencing).
- If the case involves domestic violence, ensure visitation practices are adequate to protect the child. (See *Domestic Violence and the Effects on Children, Section 3*)

Address the needs of the child.

- Verify that the child's mental, physical, and dental health care needs have been addressed. Get input from all parties/participants including child and caregiver. (See *Health Considerations, Section 5*)
- Verify that the parents are participating in the child's medical and educational appointments. (See *Co-Parenting, Section 4*)
- Review appropriate school records, including any Individualized Education Plan (IEP). If an educational surrogate has been appointed, the surrogate should report back as appropriate. (See *Educational Considerations, Section 5*)
- Verify that the child is attending the same school as when he/she first entered care. If not, ask what has been done to ease the transition.
- Verify that the child is attending school on a regular basis and has adequate transportation.
- The child's case plan must include an assurance by DCF that the child remains enrolled in the school in which the child was enrolled at placement unless moving is in the child's best interest.
- Ask the child if there are any other individuals who should be present at this hearing or future hearings.

If the child is in an out-of-home placement, inquire regarding the caregiver.

- Ensure that the caregiver understands the dependency court process, his or her role as a placement resource for the child, the specific needs of the child, and how to obtain necessary referrals and appointments for the child.
- Ask if an assessment of the caregiver's needs has been conducted, and if so, if the identified needs and services have been provided.
- Inform the caregiver that he/she has the right to attend all subsequent hearings, to submit reports to the court, and to speak to the court regarding the child if he/she so desires.
- Verify that the caregiver has a long-term commitment to the care of the child in the event that reunification is no longer the preferred permanency goal.
- Ask what services the caregiver needs that he/she is currently not receiving.
- If a relative, ask if he/she is getting relative caregiver funds. If no, instruct the case worker to coordinate with the relative regarding relative caregiver funds.
- Ask if the case worker is regularly visiting the home, including visits alone with the child, and addressing any issues with the placement.
- If any issues arise with the placement, ask the caregiver to notify the court or request a meeting of key parties to work on a resolution.
- If caregiver is not in court, order that the caregiver be provided notice to appear at the next hearing.

Order child support, if not already ordered. If already ordered, review compliance. (See *Child Support in Dependency Cases, Section 3*)

Advise parents of termination of parental rights if they do not substantially comply with the case plan. The notice must be both orally and in writing. §§ 39.6011(2)(e), 39.602(4)(b).

Advise parents of their right to appeal and appellate counsel. (See *Appeals, Section 8*)

- Inform the parents that they have 30 days from the entry of the Disposition Order to file an appeal in their case, and if they cannot afford an attorney, one will be appointed to represent them.

Provide written notice of the right to participate in a private adoption plan.

- **At the arraignment hearing held pursuant to § 39.506, in the order that approves the case plan pursuant to § 39.603, and in the order that changes the permanency goal to adoption pursuant to § 39.621, the court shall provide written notice to the biological parent who is a party to the case of his or her right to participate in a private adoption plan including written notice of the factors provided in § 63.082(6)(e). § 63.082(6)(g).**

Set the next hearing.

- When setting non-TPR hearings, be cognizant of counsels' TPR hearings that are scheduled before other judges and defer to those TPR hearings.

- Provide written notices of the next hearing at the conclusion of any hearing and make sure that parties not present at the hearing are noticed.
- Enforce caregivers' rights to address the court.
- **Order the Children's Legal Services attorneys to provide notice to caregivers of the next court hearing if caregivers are not in court. § 39.502(19). See also §§ 39.301(14)(b) & 39.502(17).**
- **If at the disposition hearing the court does not approve the case plan, the court must set a hearing within 30 days after the disposition hearing to review and approve the case plan. § 39.521(1)(a).**
- **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).**
- Ensure that the order clearly sets forth each specific date on which the hearing was held.
- Specify all family time (visitation) details in the order.
- Ask if the child had difficulty attending the hearing. Facilitate telephonic or video conferencing if necessary. (*See Children in Court, Section 4*)
- Complete a written order.

## CASE PLAN APPROVAL SUPPLEMENT

Generally.

➤ **Appointment of counsel.**

What do I need to do with regard to representation and/or appointment of counsel? See section in shelter hearing supplement titled, “Representation and appointment of counsel.”

What should I do after swearing in the parties? The court shall advise parents of the right to counsel, ascertain whether the right to counsel is understood, and appoint counsel for parents who qualify as indigent. §§ 39.013(9), 39.013(9)(a).

➤ **Conduct the hearing to consider approval of the case plan.**

What determinations must the court make at the hearing on the case plan? The following determinations must be made by the court:

- All parties who were notified and are in attendance at the hearing, either in person or through a legal representative. § 39.603(1)(a).
- If the plan is consistent with previous court orders placing the child in care. § 39.603(1)(b).
- If the plan is consistent with the statutory requirements for content of a plan. § 39.603(1)(c).
- In involuntary placements, whether each parent was notified of the right to counsel at each stage of the dependency proceedings. § 39.603(1)(d).
- Whether each parent whose location was known was notified of the right to participate in the preparation of a case plan and of the right to receive assistance in the preparation of the case plan. § 39.603(1)(e).
- In voluntary placements, whether the plan is meaningful and designed to address facts and circumstances upon which the child was placed. § 39.603(1)(f).

If the court determines that any of the elements considered at the hearing related to the plan have not been met, the court shall require the parties to make necessary amendments to the plan. § 39.603(2). The amended plan must be submitted to the court for review and approval within 30 days after the hearing. A copy of the amended plan must also be provided to each party, if the location of the party is known, at least 3 business days prior to filing with the court.  
§ 39.603(2).

Must all case plans and amendments to case plans be approved by the court? Yes.  
§ 39.603(1).

- The services in the case plan must be designed to achieve permanency.
- DCF shall develop a case plan for each child receiving services. § 39.6011(1).

A parent may not be required nor coerced through threat of loss of custody or parental rights to admit in the case plan to abusing, neglecting, or abandoning a child. § 39.6011(1).

How can services be used? Services can be used to:

- Improve conditions in the home and aid in maintaining the child in the home;
- Facilitate the safe return of the child to the home; or
- Facilitate the permanent placement of the child.

Case plan amendments must include service interventions that are the least intrusive possible into the life of the parent and child, must focus on clearly defined objectives, and must provide the most efficient path to quick reunification or permanent placement. §§ 39.6012(1)(a), 39.6013(7).

Must a case plan be prepared if a child will not be in care longer than 30 days? A case plan must be prepared, but need not be submitted to the court, if a child will be in care no longer than 30 days, unless that child is placed in out-of-home care a second time within a 12-month period. § 39.6011(6)(b)(1).

➤ **Review contents of the case plan.**

The case plan must be developed in the following manner:

- It must be developed in conference with the parent and any GAL and, if appropriate, the child. § 39.6011(1)(a).
- It must be written simply and clearly in English and, if English is not the principal language of the child's parent, to the extent possible in the parent's principal language. § 39.6011(2).
- It must describe the minimum number of face-to-face meetings to be held each month between the parents and DCF's case workers to review progress of the plan, to eliminate barriers to progress, and to resolve conflicts or disagreements. § 39.6011(4)(c).
- It must be signed by all parties. § 39.6011(3).
- It must be reasonable, accurate, and in compliance with the requirements of other court orders.
- The parent or parents may receive assistance from any person or DCF in the preparation of the case plan. § 39.6011(1)(b).
- DCF and the court, when applicable, shall inform the parent of the right to receive such assistance, including the right to assistance of counsel. § 39.6011(1)(b).
- Before the signing of the case plan, the authorized agent of DCF must explain it to all persons involved in its implementation, including, when appropriate, the child. § 39.6011(3).
  - After the case plan has been agreed upon and signed by the parties involved, a copy of the plan must be given immediately to the parents, DCF, the foster parents, the legal custodian, the representative of the Guardian ad Litem Program

if the program is appointed, and any other parties identified by the court, including the child, if appropriate. § 39.6011(6)(b).

What must the case plan include? The case plan must include, in addition to other requirements:

- A description of the problem being addressed that includes the parent's conduct that resulted in risk to the child and the reason for DCF's intervention. § 39.6011(2)(a).
- The permanency goal. § 39.6011(2)(b).
- If concurrent planning is being used, a description of the permanency goal of reunification with the parent or legal custodian in addition to a description of one of the remaining permanency goals described in § 39.01. § 39.6011(2)(c).
- The date the compliance period expires. The case plan is limited to as short a period as possible to accomplish its provisions and the period expires no later than 12 months after the child's removal from the home or the case plan acceptance date, whichever occurs sooner. § 39.6011(2)(d).
- A written notice to the parent that failure of the parent to substantially comply with the case plan may result in TPR, and that a material breach of the case plan may result in the filing of a TPR petition sooner than the case plan's compliance period. § 39.6011(2)(e).
- A description of the tasks with which the parent must comply and the services to be provided to address the problem, including:
  - Type of services or treatment, § 39.6012(1)(b)(1);
  - The date the department will provide each service or referral for the service if the service is being provided by the department or its agent, § 39.6012(1)(b)(2);
  - The date by which the parent must complete each task, § 39.6012(1)(b)(3);
  - Frequency of services or treatment, § 39.6012(1)(b)(4);
  - Location of the delivery of the services, § 39.6012(1)(b)(5);
  - The accountable DCF staff or service provider, § 39.6012(1)(b)(6); and
  - A description of the measurable objectives, including time frames for achieving objectives, addressing the identified problem. § 39.6012(1)(b)(7).

Are there any additional requirements for children in an out-of-home placement? Yes. § 39.6012(3).

- The type of placement in which the child is to be living. § 39.6012(3)(a).
- The financial support obligation to the child, including health insurance, by the child's parents. § 39.6011(4)(d).
- The visitation rights and obligations of the parents. § 39.6012(3)(b).
- In addition to any other requirement, if the child is in an out-of-home placement, the case plan must include:
  - A description of the type of placement in which the child is to be living, § 39.6012(3)(a);
  - A description of the parent's visitation rights and obligations and the plan for sibling visitation if the child has siblings and is separated from them, § 39.6012(3)(b);

- When appropriate, for a child who is 13 years of age or older, a written description of the programs and services that will help the child prepare for the transition from foster care to independent living, § 39.6012(3)(c); and
- A discussion of the safety and the appropriateness of the child's placement, which placement is intended to be safe, and the least restrictive and the most family-like setting available consistent with the best interest and special needs of the child and in as close proximity as possible to the child's home, § 39.6012(3)(d).

Must the case plan include documentation of the steps taken to find an adoptive family or other permanent living arrangement for the child? If a child's permanency plan is adoption or placement in another permanent home, the case plan should include documentation of the steps taken to find an adoptive family or other permanent living arrangement for the child. At a minimum, documentation shall include child-specific recruitment efforts such as the use of state, regional, and national adoption exchanges, including electronic exchange systems. § 39.6011(5).

When must the case plan be filed with the court? The case plan must be filed with the court, and served on all parties, at least 3 business days prior to the disposition hearing. § 39.6011(7).

- DCF must also file with the court all case plans prepared before jurisdiction of the court attached. § 39.601(6)(b)(3).

At the first judicial review held subsequent to the child's 17th birthday, in addition to other requirements, DCF shall provide the court with an updated case plan that includes specific information related to independent living services that have been provided since the child's 13th birthday, or since the date the child came into foster care, whichever came later. § 39.701(3)(b).

What if the child meets the requirements for appointment of a chapter 744 guardian or a guardian advocate under § 393.12? For any child who may meet the requirements for appointment of a guardian pursuant to chapter 744 or a guardian advocate pursuant to § 393.12, the updated case plan must be developed in a face-to-face conference with the child, if appropriate; the child's attorney; any court-appointed GAL; the temporary custodian of the child; and the parent, if the parent's rights have not been terminated. § 39.701(3)(b)1.

➤ **Considerations when parents do not participate in the case planning process**

What must be included in documentation that the parents are not participating?

- If a parent is unwilling or unable to participate in the development of a case plan, DCF shall document that unwillingness or inability to participate. § 39.6011(1)(c).
- The documentation must be provided in writing to the parent when available for the court record, and DCF shall prepare a case plan conforming as nearly as possible with the requirements set forth in this section. § 39.6011(1)(c).

- The unwillingness or inability of the parent to participate in developing a case plan does not preclude the filing of a petition for dependency or for termination of parental rights. The parent, if available, must be provided a copy of the case plan and be advised that he or she may, at any time before the filing of a petition for termination of parental rights, enter into a case plan and that he or she may request judicial review of any provision of the case plan with which he or she disagrees at any court hearing set for the child. § 39.6011(1)(c).

If the parents will not or cannot participate in preparation of a case plan must DCF submit an explanation of the circumstances and its efforts to secure participation in preparation of a case plan? Yes. § 39.602(1).

- If the physical, emotional, or mental condition or physical location of the parent is the basis for the parent's nonparticipation, DCF must provide substantial evidence to the court that such condition or location has rendered the parent unable or unwilling to participate in the preparation of a case plan, either pro se or through counsel. The supporting documentation must be submitted to the court at the time the plan is filed. § 39.602(2).
- The plan must include, but need not be limited to, the specific services to be provided by DCF, the goals and plans for the child, and the time for accomplishing the provisions of the plan and for accomplishing permanence for the child. § 39.602(3).

If the location of one or both parents is unknown, must it be documented in writing and included in the plan submitted to the court? Yes. § 39.602(4)(a).

- If an absent parent is located after the plan is filed, that parent must be served with a copy of the plan. § 39.602(4)(a).
- Before filing the plan, DCF shall advise each parent, both orally and in writing, that the failure of the parents to substantially comply with a plan may result in TPR, but only after required notice and hearing. § 39.602(4)(b).
- If an absent parent is located after the plan is filed, DCF shall advise the parent, both orally and in writing, that the failure of the parent to substantially comply with a plan may result in TPR, but only after required notice and hearing. § 39.602(4)(b).
- Proof of written notification must be filed with the court. § 39.602(4)(b).
- The court may appoint a GAL under Rule 1.210, Florida Rules of Civil Procedure, to represent the interests of any parent, if the location of the parent is known but the parent is not present at the hearing and the development of the plan is based upon the physical, emotional, or mental condition or physical location of the parent. § 39.603(1)(a).

A parent who has substantially complied with a reunification case plan is entitled to reunification with the dependent child, absent a determination that reunification would be detrimental to the child. If a party or the court concludes that reunification with the offending parent would no longer be appropriate, the proper procedure is to hold an evidentiary hearing and amend the case plan. K.E. v. Department of Children and Families, 958 So. 2d 968, (Fla. 5th DCA 2007); See also §§ 39.6013(2), (4); Rule 8.410(c), (d).

Note: Once a reunification case plan has been offered, that child goes back to the parent he/she was removed from unless the court holds a hearing and a party shows that it is not in the child's best interests to be reunified.

When must a non-participatory parent be served with a copy of the case plan developed by DCF? A parent who has not participated in the development of a case plan must be served with a copy of the plan developed by DCF, if the parent can be located, at least 72 hours prior to the court hearing. Any parent is entitled to, and may seek, a court review of the plan prior to the initial judicial review and must be informed of this right by DCF at the time DCF serves the parent with a copy of the plan. If the location of an absent parent becomes known to DCF, DCF shall inform the parent of the right to a court review at the time DCF serves the parent with a copy of the case plan. § 39.603(3).

➤ **Requirements for written order.**

- Confirm that parents have been advised of right to counsel.
- Include date, time, and location of next hearing.
- Ensure that the order clearly states the specific date on which the case plan acceptance hearing was held.

Cite the specific provision of § 39.0136 when granting continuances.