

FLORIDA'S DEPENDENCY BENCHBOOK

BENCHCARD: SHELTER HEARING

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

Introductory remarks.

- Explain the purpose of the hearing.
- Swear in the parties, participants, and relatives. (*See Parties and Participants, Section 8*)

Representation and appointment of 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.
- **Parents may request that a shelter hearing be continued up to 72 hours to consult legal counsel. § 39.402(5)(b).** (*See Continuances, Section 8*)
- Follow circuit plan (developed by the chief judge) so that orders appointing counsel are entered on an expedited basis.

Petition.

- Ask parents if they understand that an Affidavit and Petition for Shelter have been filed that requests that the state shelter the child. Give the reasons why the child is in custody and why continued placement is requested.
- Ask parents if they were given a copy of the shelter petition.

Parties and notices.

- **Have all parties identify themselves for the record with full name and permanent address. §§ 39.0131, 39.402(8)(g).** (Note: Do not openly identify the address when one or more of the parents is party to an injunction for protection against domestic violence.)
- Advise parties that the court will use the address for notice purposes until notified otherwise in writing.
- Identify those present and their relationship to the case, and conduct a paternity inquiry if paternity has not been established.

- **Determine whether the parents / legal custodians were properly noticed if not in attendance. §§ 39.402(5)(a), 39.502(1).** Require a thorough description of DCF's efforts to locate and advise any absent parent of the hearing and confirm that a diligent search was begun by DCF, if needed. Ask parents if any other individuals should be involved in the court matter, or who else is significant in the child's life.
- **Verify that relatives who requested notice actually received notice to attend the hearing. §§ 39.402(8)(h)(9), 39.301(14)(b), 39.502(19).** The Fostering Connections Act requires DCF to use due diligence to identify and notify all relatives within 30 days of removal. (*See Fostering Connections Act, Section 7, and Service, Section 8*)
- **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*)
- Inquire as to the applicability of the Indian Child Welfare Act. If the child is a member of a tribe or eligible for membership, confirm that DCF/CBC notified the tribe as required. (*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*)

Discussion of complaint allegations/introduction of evidence.

- **What specific reasonable efforts has DCF made to eliminate the need for removal of the child from the home? § 39.402(8)(h)(5).** (Ask what services have been offered.) How do those efforts relate to the allegations?
- Does DCF have any additional evidence to present, other than what is set forth in the Affidavit?
- DCF shall provide the court with copies of any available law enforcement, medical, or other professional reports and abuse hotline reports pursuant to state/federal confidentiality requirements. § 39.402(8)(e). If possible, these reports should be provided in advance of the shelter hearing.
- **Give parents an opportunity to be heard and present evidence. § 39.402(5)(b)(1); Rule 8.305(b)(4).**
- Determine if utilizing a Chapter 39 injunction would allow the child to safely remain with a non-abusing parent.
- Determine what specific safety threat prevents the child from returning home.

Determine from petition and other evidence (if offered) whether there is probable cause to believe that:

- **The child has been abused, neglected, or abandoned, or is suffering from or is in imminent danger of illness or injury as a result of abuse, neglect, or abandonment.**

- The parent or legal custodian of the child has materially violated a condition of placement imposed by the court; or
- The child has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care. AND that the available services will not eliminate the need for placement. §§ 39.402(8)(d)(1), 39.402(2).

Probable cause.

If no probable cause as to all legal parents/guardians is found:

- Dismiss the Shelter Petition, find no probable cause, and order the child to be returned, or
- The court may continue the case for up to 72 hours to obtain and review documents pertaining to the family in order to appropriately determine the risk to the child. § 39.402(8)(d)(2).

If probable cause is found:

- Make specific finding of fact regarding necessity for removal and outline the specific reasonable efforts to prevent removal, or alternatively, that DCF is not required to make such efforts. §§ 39.402(8)(d)(1), 39.402(8)(h)(5), 39.402(10).
- Determine whether remaining in the home is contrary to the welfare of the child; specifying the immediate safety concerns and/or high risk. § 39.402(8)(h)(3).
- Determine whether placement in shelter is in the best interests of the child and that no reasonable options exist that allow the child to remain at home. § 39.402(8)(h)(2).

Determine placement (begin concurrent planning). (See *Concurrent Case Planning, Section 4*)

- Determine if the placement proposed by DCF is the least disruptive and most family-like setting that meets the needs of the child.
- Discuss co-parenting (birth parents, caregivers, and case workers work together for the benefit of the child). (See *Co-Parenting, Section 4*)
- Have parents disclose relative and non-relative placement possibilities and placements of previously adopted siblings, if any. § 39.402(17); Rule 8.305(b)(9). Request parents complete a family tree to help them consider all possible relatives.
- 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).
- Inform the parents that they have a continuing duty to inform DCF of any relative that should be considered for placement throughout the dependency case. § 39.402(17). See § 39.507(7)(c).

- Set a schedule for prompt agency evaluation of possible placements.
- Order DCF/CBC to conduct pre-adoptive homestudies on all (relative and non-relative) placement possibilities identified by the parents.
- Order DCF/CBC to initiate the Interstate Compact on the Placement of Children process on all out-of-state prospective placements within 24 hours of shelter hearing. Also, initiate out of town inquiries on prospective placements within Florida. (*See Interstate Compact on the Placement of Children, Section 7*)
- Ensure that DCF/CBC has arranged for the child to remain in the same school or childcare, if possible. Refer children not in care to an accredited childcare or Early Head Start/Head Start. (*See Educational Considerations, Section 5*)
- Inquire as to the parents' involvement in choosing/developing the recommended placement, when possible, and take cultural considerations into account when assessing the appropriateness of the placement.
- Require placement of pregnant teens in a foster home that will also accept the baby.
- If a custodian is not in court, order that the custodian appear at the next hearing.
- **Order a person who has or is requesting custody to submit to a mental health or substance abuse disorder assessment or evaluation. § 39.507(10), 39.521(1)(b)1; See also § 39.407(16).**

Determine family time (visitation)/contact frequency. (*See Family Time Protocols, Section 4*)

- **If the child is removed from the home, determine visitation rights absent a clear and convincing showing that visitation is not in the best interest of the child. Any order for visitation or other contact must conform to § 39.0139. If visitation is ordered but will not commence within 72 hours of the shelter hearing, the department must provide justification to the court. § 39.402(9)(a).**
- Inquire regarding the frequency and quality of visitations at every hearing and ensure that there is ongoing supporting documentation. Infants and young children require augmented visitations with the parents. At a minimum, several hours a week of visitation is needed for the purposes of bonding. Get input from all parties including the child and caregiver. (*See Family Time Protocols, Section 4*)
- Articulate a clear and objective assessment as to whether or not visitation should be supervised and by whom, or if visitation should be therapeutic or unsupervised. Enter a specific visitation order, including who will transport and where the visitation will occur.
- Even if relatives are not available for placement, determine if relatives are available for facilitating supervised visitation or respite for foster parents.
- **Determine that the department has made reasonable efforts to keep siblings together if they are removed and placed in out-of-home care unless such placement is not in the best interest of each child. It is preferred that siblings be kept together in a foster home, if available. Other reasonable efforts include short-term placement in a group**

home with the ability to accommodate siblings groups if such placement is available. The department is required to report to the court its efforts to place siblings together unless the court finds that such placement is not in the best interest of a child or his or her sibling. § 39.402(8)(h)(6); See also Rule 8.305(c)(3).

- If siblings who are removed from the home cannot be placed together, the department shall provide to the court a recommendation for frequent visitation or other ongoing interaction between the siblings unless this interaction would be contrary to a sibling's safety or well-being. § 39.402(9)(b); See also Rule 8.305(c)(4).
- If visitation among siblings is ordered but will not commence within 72 hours after the shelter hearing, the department must provide justification to the court for the delay. § 39.402(9)(b).
- The Florida Legislature established a goal for children in shelter care or foster care to enjoy regular visitation, at least once a week, with their siblings unless the court orders otherwise. § 39.4085(15).
- 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, or 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*)

Discuss service needs for parents. (*See Service and Treatment Considerations for Parents, Section 5*)

- Identify the family's strengths and the family's needs.
- If the case involves mental health, inquire about drug and alcohol usage. If the case involves drug and alcohol usage, inquire about mental health history.
- Order an immediate referral for drug or alcohol treatment, if applicable.
- If there is a mental health or medical history, request that the parent provide the name of the facility, a detailed medication list including psychotherapeutic and pain medications, diagnosis, and permission for the court to obtain all medical records.
- When possible, begin service referrals immediately.

Discuss service needs for the child. (*See Service and Treatment Considerations for Children, Section 5*)

- Request that the parents consent to provide access to the child's medical records and if the parent is unavailable/unable/unwilling to consent and the court determines that access to the records and information is necessary to provide services to the child, issue an order granting access. § 39.402(11)(b).
- Request that the parents consent to provide access to the child's educational records. § 39.402(11)(c).

- All children should be screened for developmental issues (Early Steps program for children 0-3 years, and FDLRS or community services for those over 5 years old).
- Ensure that all children are receiving continued services for mental, developmental, dental, and physical needs as well as substance abuse issues, if needed. Ensure that appropriate evaluations are scheduled, including the Comprehensive Behavioral Health Assessment (CBHA).
- Inquire as to whether the child is taking any medications, including psychotropic medications, and if so, ensure that there is a plan for continuity of treatment.
- If the child has a medical blue book, ensure that the book stays with the child.
- When possible, begin service referrals immediately.

Address child support and government entitlements.

- Verify whether or not child support has already been established.
- **Set the paternity/child support hearing in conjunction with the next dependency hearing and require that parents provide the necessary financial information to the court, prior to the hearing. § 39.402(11)(a).** (Note: Do not openly identify the address/SSN in the financial information when one or more of the parents is party to an injunction for protection against domestic violence.)
- Verify that any payments on behalf of the child or benefit cards are immediately disclosed and redirected.

Issue the order and schedule the next hearing.

- **Set the next hearing –arraignment and child support –28 days from shelter hearing. Advise parents that the court will enter a Consent to Dependency on their behalf if they fail to appear at the arraignment.**
- **Advise parents of the importance of their active participation in all proceedings. Rule 8.305(b)(6)(D).**
- **Inform parents that if they fail to substantially comply with the case plan, their parental rights may be terminated and the child’s out-of-home placement may become permanent. § 39.402(18); Rules 8.305(b)(10) & 8.332(d).**
- Inform parents of the rigorous time frames for dependency cases outlined in state and federal law.
- Provide parents with a copy of the shelter order immediately following the hearing.
- **Order that the child and caregivers receive notice of all proceedings and hearings, unless the age, capacity, or other condition of the child is such that the notice would be meaningless or detrimental to the child. § 39.01(51); See also § 39.502(17).**
- **If the case is heard by the judge not normally assigned to dependency, then the regularly assigned dependency judge should hold a shelter review within 2 working days. § 39.402(12); Rule 8.305(b)(14).**

- Ensure that DCF, parents, attorneys, extended family, guardian ad litem, service providers, and the CBC will staff the case between shelter and disposition.
- **Order mediation if applicable. § 39.4075.**

SHELTER HEARING SUPPLEMENT

Generally.

- **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)(a).

What may I do if parents or legal custodians appear at the hearing without legal counsel and request time to consult with counsel? At the parents or legal custodians' request, you may continue the hearing for up to 72 hours so they can consult with legal counsel. § 39.402(5)(b). The child shall remain in shelter during the period of time granted for the continuance. § 39.402(5)(b). Parents are entitled to a reasonable time within which to request counsel. In the Interest of D.B., 385 So. 2d 83 (Fla. 1980).

What should I do if the parents waive counsel? Waiver of counsel must be on the record. Rule 8.320(b)(2). The court should question the party in sufficient detail to determine whether the waiver is made knowingly, intelligently, and voluntarily. § 39.013(9)(a). Waiver of counsel must not be accepted when it appears that the parent is unable to make an intelligent and understanding choice because of:

- Mental conditions;
- Age;
- Education;
- Experience;
- The nature or complexity of the case; or
- Other factors. See § 39.013(9)(c); Rule 8.320(b)(1).

What should I do if the court accepts the parents' waiver of counsel at a prior hearing? If a waiver is accepted at any stage of the proceedings, the offer of counsel must be renewed by the court at each subsequent proceeding at which the party appears without counsel. § 39.013(9)(a); Rule 8.320(b)(3).

How long is an appointed attorney obligated to represent the parent? Once counsel has entered an appearance or been appointed by the court, the attorney shall continue to represent the parent throughout the proceedings until released by the court. § 39.013(9)(b).

What should I do if an attorney-client relationship is discontinued? The court must advise the parent of the right to have new counsel retained or appointed for the remainder of the proceedings. § 39.013(9)(b).

NOTE: If a parent has voluntarily executed a written surrender and consents to the entry of a court order terminating parental rights, provisions relating to the appointment of counsel do not apply. § 39.013(9)(d).

➤ **Verification that parents understand the petition and have received a copy.**

How do I know whether the parents understand that an Affidavit and Petition for Shelter have been filed, have received a copy, and are involved in any other past or pending family law, paternity, domestic violence, delinquency, or child support cases? Ask the parents directly.

- If there are literacy or language barriers, have the petition read to them.
- Appoint an interpreter if necessary.

➤ **Parties and notices.**

How do I identify the parties and participants present and their relationship to the case? Ask each individual present to state on the record his or her full name, permanent address, and relationship to the case. Advise parents that the court will use the address provided for notice purposes until otherwise notified in writing. Also, require interested persons present to state on the record the names, addresses, and relationships of all parents, prospective parents, and next of kin of the child. § 39.402(8)(b).

How do I know if the parents/legal custodians were properly noticed? Ask the parents/legal custodians present at the hearing whether they were properly noticed. Parents are entitled to notice that best ensures their actual knowledge of the date, time and location of the shelter hearing. §§ 39.402(5)(a), 39.502(1). Require a thorough description of DCF's efforts to locate and advise any absent parent of the hearing and confirm that a diligent search was begun by DCF, if needed. Ask parent who else should be involved in the court matter, or who else is significant in the child's life.

What if the parents/legal custodians are outside the court's jurisdiction; are not known; cannot be located; or refuse/evade service? They shall be given such notice as best ensures their actual knowledge of the date, time, and location of the shelter hearing. § 39.402(5)(a).

NOTE: Good faith effort to provide notice is required. § 39.402(8)(b).

- If no good faith effort to locate parents, consider continuing hearing with child in shelter and requiring such efforts.
- If court finds DCF made good faith effort to locate parents, failure to provide notice does not invalidate the shelter order.

If a parent is in the local jail, arrange to have the parent transported to the hearing.

If the parent is in prison, attempt to arrange for appearance by speaker phone, with consent of the parties. *See Rule 2.530, Rules of Judicial Administration.*

What if a parent is not present at the hearing? The person attempting to provide notice must advise the court (either in person or by sworn affidavit) of the attempts to provide notice. § 39.402(5)(a); Rule 8.305(b)(1).

What must the content of written notices to parents include? Written notice to parents or legal custodians must state that the parents will be given an opportunity to be heard and to present evidence at the shelter hearing; will have the right to be represented by counsel; and, if indigent, will have the right to be represented by appointed counsel at the shelter hearing and at each subsequent hearing or proceeding, pursuant to the procedures set forth in § 39.013.

When must DCF take a child into custody? By statute, DCF shall place a child in shelter (prior to the court hearing) when it has probable cause to believe that:

- The child has been abused, neglected, or abandoned, or is suffering from or is in imminent danger of illness or injury as a result of abuse, neglect, or abandonment
- The parent or legal custodian of the child has materially violated a condition of placement imposed by the court; or
- The child has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care;

AND

- The court makes a determination that the provision of appropriate and available services will not eliminate the need for such placement. §§ 39.402(1) & (2).

What must DCF do when a child is taken into custody? DCF shall immediately notify the parents/legal custodians, provide them with a statement setting forth a summary of procedures in dependency cases, and notify them of their right to obtain their own attorney. § 39.402(3).

A responsible adult relative or the adoptive parent of the child's sibling shall be given priority consideration over a licensed placement. § 39.401(3)(b).

Judicial review and approval is required within 24 hours after placement for all non-relative placements. § 39.401(5). A child may not be held in a shelter (whether with a relative, non-relative or otherwise) longer than 24 hours unless an order so directing is entered by the court after the shelter hearing. § 39.402(8)(a).

➤ **Discussion of complaint allegations/contents of shelter petition/introduction of evidence.**

What must the contents of the Shelter Petition/Information from DCF include? The shelter petition shall:

- Specify the name, address, date of birth, and sex of the child or, if unknown, designate the child by any name or description by which he or she can be identified with reasonable certainty and shall indicate whether the child has a special need requiring appointment of counsel as defined in § 39.01305. Rule 8.305(a)(1).
- Specify the name and address, if known, of the child's parents or legal custodian and a description of DCF's efforts to notify them of the shelter hearing. § 39.402(8)(b); Rule 8.305(a)(2);
- If the child has been removed from the home, state the date and time of the removal. Rule 8.305(a)(3). (*See also* § 39.402(8)(a) – a child may not be held in shelter for more than 24 hours unless an order so directing is entered by the court after a shelter hearing).
- Provide probable cause that reasonable grounds for removal exist and that the provision of appropriate and available services will not eliminate the need for placement. § 39.402(8)(d)(1). DCF may also indicate that additional time is necessary.
- Specify that the child is of an age subject to the jurisdiction of the court. Rule 8.305(a)(4).
- State the reasons why the child needs to be placed in a shelter. Rule 8.305(a)(5).
- List the specific reasonable efforts, if any, that were made by DCF to prevent or eliminate the need for the removal or continued removal of the child from the home or, if no such efforts were made, a description of the emergency which existed that prevented these efforts. § 39.402(8)(h)(5); Rule 8.305(a)(6). Ask about what services have been offered and how DCF's efforts relate to the allegations.
- State that placement in shelter care is necessary based on the criteria in §§ 39.402(1)-(2). § 39.402(8)(h)(1).
- State that placement in shelter care is in the best interest of the child. § 39.402(8)(h)(2).
- State that continuation of the child in the home is contrary to the welfare of the child because the home situation presents a substantial and immediate danger to the child's physical, mental, or emotional health or safety which cannot be mitigated by the provision of preventive services. § 39.402(8)(h)(3).
- State that, based upon the allegations of the petition for placement in shelter care, there is probable cause to believe that the child is dependent. § 39.402(8)(h)(4).
- Recommend where the child is to be placed or whether DCF is to be responsible for placement. Rule 8.305(a)(7).
- If the children are not placed together, specify the reasonable efforts of the department to keep the siblings together after the removal from the home, why a foster home is not available to place the siblings, or why it is not in the best interest of the child that all the siblings be placed together in out-of-home care. § Rule 8.305(a)(8).

- Specify ongoing visitation or interaction between the siblings or if sibling visitation or interaction is not recommended, specify why visitation or interaction would be contrary to the safety or well-being of the child. Rule 8.305(a)(9).

Note: The petition should be signed by the petitioner and, if represented by counsel, by the petitioner's attorney. Rule 8.305(a)(10).

What should I explain to the parents?

- The reason why child is in custody and why DCF requests continued placement. Rule 8.305(b)(6).
- The right to present placement alternatives. Rule 8.305(b)(6)(B).
- The importance of active participation in all hearings. Rule 8.305(b)(6)(D).

What evidence may I hear? The court may hear all relevant and material evidence. Rule 8.305(b)(5).

- The court may base its determination on the sworn complaint, testimony or affidavit, or written and oral reports. Rule 8.305(b)(5).
- Evidence may be considered to the extent of its probative value even though it would not be competent at an adjudicatory hearing. Rule 8.305(b)(5).
- Hearsay is permitted.
- The parents must be afforded the opportunity to present evidence and testimony if they wish. See G.P. v. Family Continuity Program, 875 So. 2d 715 (Fla. 2nd DCA 2004); A.M.T. v. DCF, 890 So. 2d 551 (Fla. 5th DCA 2005); S.M. v. DCF, 890 So. 2d 552 (Fla. 5th DCA 2005).

May I consider evidence and testimony of interested persons? Yes. If probable cause is found, the court may consider evidence and testimony of interested persons. Rule 8.305(b)(4).

What is required of a circuit judge if a "duty" judge conducts the shelter hearing? If a judge other than the juvenile judge conducts the shelter hearing, the juvenile judge must review the case within 2 working days. § 39.402(12); Rule 8.305(b)(14).

- **Determine from the petition and other evidence (if offered) whether probable cause exists.**

How do I determine if probable cause exists? Probable cause shall be determined in a non-adversary manner applying the standard of proof necessary for an arrest warrant. Rule 8.305(b)(3).

DCF must establish probable cause that reasonable grounds for removal exist and available services will not eliminate the need for placement. § 39.402(8)(d)(1). However, under certain circumstances, ASFA does not require reasonable efforts, which is codified in § 39.402(8)(h)(5). Florida law deems DCF to have made reasonable efforts as opposed to not requiring such efforts.

See § 39.402(8)(h)(5); 45 C.F.R. § 1356.21(b)(3).

With regard to a child for whom there is also probable cause to believe has been sexually exploited, a law enforcement officer taking the child into custody must deliver the child to the department. § 39.401(2)(b).

➤ **Child removed or remain in home.**

Should the child remain at home? If the provision of appropriate and available services would allow the child to remain safely at home, the child may not be removed from the home or continued out of home pending disposition. § 39.402(7).

If the prevention or reunification efforts of DCF will allow the child to remain safely at home, the court shall allow the child to remain in the home. § 39.402(7).

If the child's safety and well-being are in danger, the child shall be removed and continue to be removed until the danger has passed. § 39.402(7).

If the child has been removed from the home and the reasons for removal have been remedied, the child may be returned to the home. § 39.402(7).

When must the court make a finding that "reasonable efforts have been made to prevent the child's removal from home"? A court finding that "reasonable efforts have been made to prevent the child's removal from home" must be made within 60 days of the child's actual removal from the home.

- If it is not made within this period, the child's entire stay in care is ineligible for Title IV-E funding. 45 C.F.R. § 1356.21(b)(1)(ii).
- The reasonable efforts finding must be included in the court's written order. § 39.402(8)(h)(5).

How do I know if DCF has made reasonable efforts to prevent the child's removal from home? DCF is deemed to have made reasonable efforts under § 39.402(8)(h)(5) when:

- First contact between the family and DCF occurs during an emergency, § 39.402(8)(h)(5)(a);
- Preventive services in the home cannot mitigate substantial and immediate danger to the child's physical, mental, or emotional health or safety;
- Child cannot remain safely in the home (because either there are no preventive services that can ensure the health/safety of the child or even with such services the child's health/safety cannot be ensured); or

- DCF pleads §§ 39.806(1)(f)-(i):
 - (f) Egregious conduct;
 - (g) Aggravated child abuse, sexual abuse, or chronic abuse;
 - (h) Parent has committed murder or felony assault with serious bodily injury to a child; or
 - (i) Parental rights to a sibling have been involuntarily terminated.

How do I determine whether remaining in the home is contrary to the welfare of the child? § 39.402(8)(h)(3). If the home situation presents a substantial and immediate danger to the child’s physical, mental, or emotional health or safety which cannot be mitigated by the provision of preventive services, it is contrary to the child’s welfare to continue in the home. § 39.402(8)(h)(3).

What findings regarding “contrary to welfare” must I detail in my first court order on the child’s removal? Under ASFA, “contrary to welfare” findings must be detailed and must be made in the first court order on the child’s removal. 45 C.F.R. § 1356.21(c). Failure to make the “contrary to welfare” finding in the first court order on removal will make the child’s stay in care ineligible for Title IV-E funding. 45 C.F.R. § 1356.21(c). This cannot be remedied at a later hearing (unless child has returned home and a new placement in foster care is necessary). 45 C.F.R. § 1356.21(c).

- Affidavits, nunc pro tunc orders, or orders simply referring to the statutory requirement for such findings do not meet the ASFA requirement. 45 C.F.R. § 1356.21(d)(2).
- A finding that placement is in the child’s best interest is sufficient.

➤ **Determine placement (begin concurrent planning).**

Should I determine the placement of the child? Yes. If child is removed, determine placement. Safety of the child is the paramount consideration in making placement decisions. 42 U.S.C. § 671(15)(a); 45 C.F.R. § 1356.21(b).

“Shelter” can be placement with a relative or non-relative, or in a licensed home or facility. § 39.01(71). Although the court does have the authority to place a child in DCF’s custody, the court does not have the ability to direct DCF to place the child in a specific home or institution. See State Dept. of Health and Rehabilitative Services v. Brooke, 573 So. 2d 363 (Fla. 1st DCA 1991).

What are my placement options?

- Any person for whom DCF has positive home study.
- Custody to DCF with permission to release without further hearing to court-specified person (including parent from whom the child was not removed) upon positive home study.
- Custody to DCF with permission to release without further hearing to person selected by DCF upon positive home study.

- Custody to DCF with directions for a home study for a specified person. Schedule a shelter review - 1 week to 10 days - which DCF may cancel if child is placed upon that positive home study.

Though there is no requirement at shelter to place the child with a parent from whom the child was not removed, such a placement means that the child is not “out-of-home” as that term is defined in § 39.01(48) and is not in a “shelter,” as that term is defined in § 39.01(71). See § 39.01(66) which defines “relative” to exclude a parent. Therefore, placement with another parent could be an appropriate alternative to shelter and renders inapplicable the ASFA deadlines with regard to “out-of-home” placements.

What factors should I consider when ordering placement?

- Recommendations of DCF, which should be in the petition. Rule 8.305(a)(7).
- Recommendation of parents. Rule 8.305(b)(6)(c).

Are sibling placements preferred?

- The Florida Legislature has codified in statute its goals regarding the importance of placing children with their siblings.
- One of the purposes of Chapter 39, is “to make every possible effort, if two or more children who are in the care or under the supervision of DCF are siblings, to place the siblings in the same home; and in the event of permanent placement of the siblings, to place them in the same adoptive home or, if the siblings are separated while under the care of the department or in a permanent placement, to keep them in contact with each other.” § 39.001(1)(k).
- A responsible adult relative or the adoptive parent of the child’s sibling shall be given priority consideration over a non-relative placement, § 39.401(2)(a)3, or a licensed placement. § 39.401(3)(b).
- The order for placement in shelter must make written findings that the department has made reasonable efforts to keep siblings together if they are removed and placed in out-of-home care unless such placement is not in the best interest of each child. It is preferred that siblings be kept together in a foster home, if available. Other reasonable efforts include short-term placement in a group home with the ability to accommodate siblings groups if such placement is available. The department is required to report to the court its efforts to place siblings together unless the court

As the Fourth District Court of Appeal stated in In Interest of C.G., 612 So. 2d 602, 603-4, (Fla. 4th DCA 1992), “When two or more children in foster care are siblings, every reasonable attempt shall be made to place them in the same foster home; in the event of permanent commitment of the siblings, to place them in the same adoptive home; and, if the siblings are separated, to keep them in contact with each other.”

finds that such placement is not in the best interest of a child or his or her sibling. § 39.402(8)(h)(6).

May DCF release a child from shelter after an order for shelter is entered? No, unless:

- The shelter order authorizes release by DCF; or
- The court enters a subsequent order. See Rule 8.305(d).

➤ **Determine visitation/contact frequency.**

Will DCF provide a recommendation on visitation to the court? Yes. § 39.402(9)(a). And visitation should begin within 72 hours of the shelter hearing; if not, DCF must provide justification to the court. § 39.402(9)(b).

When ordering visitation, the court should establish:

- Frequency and location of visits.
- Minimum length of visits.
- Name of approved supervisors or persons designated to coordinate visits.
- Additional contact allowed between child and parent/legal custodians(s) (i.e., phone calls, letters).
- Contact between child and unsheltered siblings.

➤ **Advise parents.**

Advise the parent or legal guardian that they shall provide all known medical information to DCF. § 39.402(11)(b).

Require submission of permanent address designation form. Explain that court will rely on this address for notice. Parties are required to provide to the court written notice of any change of address. §§ 39.0131, 39.402(8)(g); Rule 8.224.

Advise the parents that, if the parents fail to substantially comply with the case plan, their parental rights may be terminated and the child's out-of-home placement may become permanent. § 39.402(18); Rules 8.305(b)(10) & 8.332(d).

Advise parents that their participation in services shall not be considered an admission to the acknowledgment of allegations in the shelter petition. DCF shall make voluntary services available to parents/legal custodians who request them, including necessary referral information. § 39.402(15).

➤ **Order parents to pay child support if child is placed outside of home. § 39.402(11)(a).**

Should I require parents to provide financial information necessary to calculate child support? Yes. Parents must provide financial information necessary to calculate child support accurately pursuant to § 61.30 to DCF and any other state agency or party

designated by the court, within 28 days after entry of the shelter order.
§ 39.402(11)(a).

The Office of Court Improvement has developed a model procedure for handling child support in dependency cases that was successfully piloted in small, medium, and large circuits. (*See Child Support in Dependency Cases, Section 3*)

➤ **Issue the order and schedule the next hearing: Arraignment § 39.506.**

- If appropriate, order parties to Mediation or Case Plan Conference, setting date, time and location.
- Written notice of the date/time/location of next hearing must be provided.
§ 39.402(8)(h)(7).

➤ **Requirements for written order.**

- Include identification of parties present. § 39.402(8)(h).
- Include information on whether DCF made a good faith effort to locate absent parent.
§ 39.402(5)(a).
- Include findings regarding indigency and appointment or waiver of counsel.
§ 39.013(9).
- Indicate that probable cause for removal exists, based on criteria in § 39.402(8)(h)(1).
- Include written findings that available services will not eliminate need for placement.
§ 39.402(8)(h)(5).
- Include determination that reasonable efforts to prevent/eliminate need for removal or continued removal were made by DCF. § 39.402(8)(h)(5).
 - This determination must include a description of which specific services, if available, could prevent or eliminate the need for removal or continued removal from the home and the date by which the services are expected to become available. § 39.402(10)(a).
- If services are not available to prevent or eliminate the need for removal or continued removal of the child from the home, the written determination must also contain an explanation describing why the services are not available for the child.
§ 39.402(10)(b).
- If DCF has not made an effort to prevent or eliminate the need for removal, the court shall order DCF to provide appropriate and available services to ensure the protection of the child in the home when the services are necessary for the child's health and safety. § 39.402(10)(c).
- Placement in shelter is necessary to protect the child based on criteria in §§ 39.402(1) & (2).
- Placement in shelter is in the child's best interests. § 39.402(8)(h)(2).
- Remaining in the home is contrary to the welfare of the child, because the home situation presents a substantial and immediate danger to the child's physical, mental, or emotional health or safety. § 39.402(8)(h)(3).
- Based on allegations in the petition, there is probable cause that the child is dependent. § 39.402(8)(c)(4); Rule 8.305 (b)(2).

- Require parents to provide financial information necessary to calculate child support. § 39.402(11)(a).
- Find that the department has made reasonable efforts to keep siblings together if they are removed and placed in out-of-home care unless such placement is not in the best interest of each child. It is preferred that siblings be kept together in a foster home, if available. Other reasonable efforts include short-term placement in a group home with the ability to accommodate siblings groups if such placement is available. The department is required to report to the court its efforts to place siblings together unless the court finds that such placement is not in the best interest of a child or his or her sibling. § 39.402(8)(h)(6).
- Parties notified in writing of date/time/location of next hearing and of the importance of their active participation. § 39.402(8)(h)(7).
- Parents or legal custodians notified of their right to counsel to represent them at the shelter hearing and at each subsequent hearing or proceeding, and the right of the parents to appointed counsel. § 39.402(8)(h)(8).
- Relatives who are providing out-of-home care for a child as a result of the shelter petition being granted notified that they have the right to attend all subsequent hearings, to submit reports to the court, and to speak to the court regarding the child, if they so desire. § 39.402(8)(h)(9).

Reflective questions for the decision-making process.

- What assumptions have I made about the cultural identity, genders, and background of this family?
- What is my understanding of this family's unique culture and circumstances?
- How is my decision specific to this child and this family?
- How has the court's past contact and involvement with this family influenced my decision-making process and findings?
- What evidence has supported every conclusion that I have drawn, and have I challenged unsupported assumptions?
- Am I convinced that reasonable efforts (or active efforts if ICWA case) have been made in an individualized way to match the needs of the family?
- Am I considering relatives as preferred placement options as long as they can protect the child and support the permanency plan?
- Have I placed the child in foster care as a last resort?
- How have I integrated the parents, children, and family members in the hearing process in a way that ensures they have had the opportunity to be heard, respected, and valued?
- Is this family receiving the same level and tailoring of services as other families?
- Is the parents' uncooperative or negative behavior rationally related to the involvement of the agency and/or the court?

Source: National Council of Juvenile and Family Court Judges, Right from the Start: [The CCC Preliminary Protective Hearing Benchcard, A Tool for Judicial Decision-Making](#), 2010.

Elements of effective concurrent planning.

- Each case should have an individualized assessment and intensive, time-limited work with birth families that targets the problems that necessitated removal.
- There should be full, documented disclosure with the birth parents of identified problems, changes required, possible consequences, and time frames.
- The case worker should perform early and aggressive research of resources available for the birth family that are necessary to help the family achieve permanency.
- The court should ensure early identification and consideration of all permanency options.
- The case plan should include frequent and constructive use of parent-child visitation as part of reunification efforts.
- The court should require the early use of foster/adoptive or kinship placements, including homes of previously adopted siblings.
- The court should consider the involvement of foster/adoptive and kinship caregivers in teaching and skill-building with birth parents.

Source: National Clearinghouse on Child Abuse and Neglect Information, [Research to Practice in Child Welfare, Concurrent Planning: What the Evidence Shows](#), April, 2005.

SHELTER HEARING SUPPLEMENT

Generally.

➤ **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)(a).

What may I do if parents or legal custodians appear at the hearing without legal counsel and request time to consult with counsel? At the parents or legal custodians' request, you may continue the hearing for up to 72 hours so they can consult with legal counsel. § 39.402(5)(b). The child shall remain in shelter during the period of time granted for the continuance. § 39.402(5)(b). Parents are entitled to a reasonable time within which to request counsel. In the Interest of D.B., 385 So. 2d 83 (Fla. 1980).

What should I do if the parents waive counsel? Waiver of counsel must be on the record. Rule 8.320(b)(2). The court should question the party in sufficient detail to determine whether the waiver is made knowingly, intelligently, and voluntarily. § 39.013(9)(a). Waiver of counsel must not be accepted when it appears that the parent is unable to make an intelligent and understanding choice because of:

- Mental conditions;
- Age;
- Education;
- Experience;
- The nature or complexity of the case; or
- Other factors. See § 39.013(9)(c); Rule 8.320(b)(1).

What should I do if the court accepts the parents' waiver of counsel at a prior hearing? If a waiver is accepted at any stage of the proceedings, the offer of counsel must be renewed by the court at each subsequent proceeding at which the party appears without counsel. § 39.013(9)(a); Rule 8.320(b)(3).

How long is an appointed attorney obligated to represent the parent? Once counsel has entered an appearance or been appointed by the court, the attorney shall continue to represent the parent throughout the proceedings until released by the court. § 39.013(9)(b).

What should I do if an attorney-client relationship is discontinued? The court must advise the parent of the right to have new counsel retained or appointed for the remainder of the proceedings. § 39.013(9)(b).

NOTE: If a parent has voluntarily executed a written surrender and consents to the entry of a court order terminating parental rights, provisions relating to the appointment of counsel do not apply. § 39.013(9)(d).

➤ **Verification that parents understand the petition and have received a copy.**

How do I know whether the parents understand that an Affidavit and Petition for Shelter have been filed, have received a copy, and are involved in any other past or pending family law, paternity, domestic violence, delinquency, or child support cases? Ask the parents directly.

- If there are literacy or language barriers, have the petition read to them.
- Appoint an interpreter if necessary.

➤ **Parties and notices.**

How do I identify the parties and participants present and their relationship to the case?

Ask each individual present to state on the record his or her full name, permanent address, and relationship to the case. Advise parents that the court will use the address provided for notice purposes until otherwise notified in writing. Also, require interested persons present to state on the record the names, addresses, and relationships of all parents, prospective parents, and next of kin of the child. § 39.402(8)(b).

How do I know if the parents/legal custodians were properly noticed? Ask the parents/legal custodians present at the hearing whether they were properly noticed. Parents are entitled to notice that best ensures their actual knowledge of the date, time and location of the shelter hearing. §§ 39.402(5)(a), 39.502(1). Require a thorough description of DCF's efforts to locate and advise any absent parent of the hearing and confirm that a diligent search was begun by DCF, if needed. Ask parent who else should be involved in the court matter, or who else is significant in the child's life.

What if the parents/legal custodians are outside the court's jurisdiction; are not known; cannot be located; or refuse/evade service? They shall be given such notice as best ensures their actual knowledge of the date, time, and location of the shelter hearing. § 39.402(5)(a).

NOTE: Good faith effort to provide notice is required. § 39.402(8)(b).

- If no good faith effort to locate parents, consider continuing hearing with child in shelter and requiring such efforts.
- If court finds DCF made good faith effort to locate parents, failure to provide notice does not invalidate the shelter order.

If a parent is in the local jail, arrange to have the parent transported to the hearing.
If the parent is in prison, attempt to arrange for appearance by speaker phone, with consent of the parties. *See Rule 2.530, Rules of Judicial Administration.*

What if a parent is not present at the hearing? The person attempting to provide notice must advise the court (either in person or by sworn affidavit) of the attempts to provide notice. § 39.402(5)(a); Rule 8.305(b)(1).

What must the content of written notices to parents include? Written notice to parents or legal custodians must state that the parents will be given an opportunity to be heard and to present evidence at the shelter hearing; will have the right to be represented by counsel; and, if indigent, will have the right to be represented by appointed counsel at the shelter hearing and at each subsequent hearing or proceeding, pursuant to the procedures set forth in § 39.013.

When must DCF take a child into custody? By statute, DCF shall place a child in shelter (prior to the court hearing) when it has probable cause to believe that:

- The child has been abused, neglected, or abandoned, or is suffering from or is in imminent danger of illness or injury as a result of abuse, neglect, or abandonment
- The parent or legal custodian of the child has materially violated a condition of placement imposed by the court; or
- The child has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care;

AND

- The court makes a determination that the provision of appropriate and available services will not eliminate the need for such placement. §§ 39.402(1) & (2).

What must DCF do when a child is taken into custody? DCF shall immediately notify the parents/legal custodians, provide them with a statement setting forth a summary of procedures in dependency cases, and notify them of their right to obtain their own attorney. § 39.402(3).

A responsible adult relative or the adoptive parent of the child's sibling shall be given priority consideration over a licensed placement. § 39.401(3)(b).

Judicial review and approval is required within 24 hours after placement for all non-relative placements. § 39.401(5). A child may not be held in a shelter (whether with a relative, non-relative or otherwise) longer than 24 hours unless an order so directing is entered by the court after the shelter hearing. § 39.402(8)(a).

➤ **Discussion of complaint allegations/contents of shelter petition/introduction of evidence.**

What must the contents of the Shelter Petition/Information from DCF include? The shelter petition shall:

- Specify the name, address, date of birth, and sex of the child or, if unknown, designate the child by any name or description by which he or she can be identified with reasonable certainty and shall indicate whether the child has a special need requiring appointment of counsel as defined in § 39.01305. Rule 8.305(a)(1).
- Specify the name and address, if known, of the child's parents or legal custodian and a description of DCF's efforts to notify them of the shelter hearing. § 39.402(8)(b); Rule 8.305(a)(2);
- If the child has been removed from the home, state the date and time of the removal. Rule 8.305(a)(3). (See also § 39.402(8)(a) – a child may not be held in shelter for more

than 24 hours unless an order so directing is entered by the court after a shelter hearing).

- Provide probable cause that reasonable grounds for removal exist and that the provision of appropriate and available services will not eliminate the need for placement. § 39.402(8)(d)(1). DCF may also indicate that additional time is necessary.
- Specify that the child is of an age subject to the jurisdiction of the court. Rule 8.305(a)(4).
- State the reasons why the child needs to be placed in a shelter. Rule 8.305(a)(5).
- List the specific reasonable efforts, if any, that were made by DCF to prevent or eliminate the need for the removal or continued removal of the child from the home or, if no such efforts were made, a description of the emergency which existed that prevented these efforts. § 39.402(8)(h)(5); Rule 8.305(a)(6). Ask about what services have been offered and how DCF's efforts relate to the allegations.
- State that placement in shelter care is necessary based on the criteria in §§ 39.402(1)-(2). § 39.402(8)(h)(1).
- State that placement in shelter care is in the best interest of the child. § 39.402(8)(h)(2).
- State that continuation of the child in the home is contrary to the welfare of the child because the home situation presents a substantial and immediate danger to the child's physical, mental, or emotional health or safety which cannot be mitigated by the provision of preventive services. § 39.402(8)(h)(3).
- State that, based upon the allegations of the petition for placement in shelter care, there is probable cause to believe that the child is dependent. § 39.402(8)(h)(4).
- Recommend where the child is to be placed or whether DCF is to be responsible for placement. Rule 8.305(a)(7).
- If the children are not placed together, specify the reasonable efforts of the department to keep the siblings together after the removal from the home, why a foster home is not available to place the siblings, or why it is not in the best interest of the child that all the siblings be placed together in out-of-home care. § Rule 8.305(a)(8).
- Specify ongoing visitation or interaction between the siblings or if sibling visitation or interaction is not recommended, specify why visitation or interaction would be contrary to the safety or well-being of the child. Rule 8.305(a)(9).

Note: The petition should be signed by the petitioner and, if represented by counsel, by the petitioner's attorney. Rule 8.305(a)(10).

What should I explain to the parents?

- The reason why child is in custody and why DCF requests continued placement. Rule 8.305(b)(6).
- The right to present placement alternatives. Rule 8.305(b)(6)(B).
- The importance of active participation in all hearings. Rule 8.305(b)(6)(D).

What evidence may I hear? The court may hear all relevant and material evidence. Rule 8.305(b)(5).

- The court may base its determination on the sworn complaint, testimony or affidavit, or written and oral reports. Rule 8.305(b)(5).
- Evidence may be considered to the extent of its probative value even though it would not be competent at an adjudicatory hearing. Rule 8.305(b)(5).
- Hearsay is permitted.
- The parents must be afforded the opportunity to present evidence and testimony if they wish. See G.P. v. Family Continuity Program, 875 So. 2d 715 (Fla. 2nd DCA 2004); A.M.T. v. DCF, 890 So. 2d 551 (Fla. 5th DCA 2005); S.M. v. DCF, 890 So. 2d 552 (Fla. 5th DCA 2005).

May I consider evidence and testimony of interested persons? Yes. If probable cause is found, the court may consider evidence and testimony of interested persons. Rule 8.305(b)(4).

What is required of a circuit judge if a “duty” judge conducts the shelter hearing? If a judge other than the juvenile judge conducts the shelter hearing, the juvenile judge must review the case within 2 working days. § 39.402(12); Rule 8.305(b)(14).

- **Determine from the petition and other evidence (if offered) whether probable cause exists.**

How do I determine if probable cause exists? Probable cause shall be determined in a non-adversary manner applying the standard of proof necessary for an arrest warrant. Rule 8.305(b)(3).

DCF must establish probable cause that reasonable grounds for removal exist and available services will not eliminate the need for placement. § 39.402(8)(d)(1). However, under certain circumstances, ASFA does not require reasonable efforts, which is codified in § 39.402(8)(h)(5). Florida law deems DCF to have made reasonable efforts as opposed to not requiring such efforts.

See § 39.402(8)(h)(5); 45 C.F.R. § 1356.21(b)(3).

With regard to a child for whom there is also probable cause to believe has been sexually exploited, a law enforcement officer taking the child into custody must deliver the child to the department. § 39.401(2)(b).

- **Child removed or remain in home.**

Should the child remain at home? If the provision of appropriate and available services would allow the child to remain safely at home, the child may not be removed from the home or continued out of home pending disposition. § 39.402(7).

If the prevention or reunification efforts of DCF will allow the child to remain safely at home, the court shall allow the child to remain in the home. § 39.402(7).

If the child's safety and well-being are in danger, the child shall be removed and continue to be removed until the danger has passed. § 39.402(7).

If the child has been removed from the home and the reasons for removal have been remedied, the child may be returned to the home. § 39.402(7).

When must the court make a finding that "reasonable efforts have been made to prevent the child's removal from home"? A court finding that "reasonable efforts have been made to prevent the child's removal from home" must be made within 60 days of the child's actual removal from the home.

- If it is not made within this period, the child's entire stay in care is ineligible for Title IV-E funding. 45 C.F.R. § 1356.21(b)(1)(ii).
- The reasonable efforts finding must be included in the court's written order. § 39.402(8)(h)(5).

How do I know if DCF has made reasonable efforts to prevent the child's removal from home? DCF is deemed to have made reasonable efforts under § 39.402(8)(h)(5) when:

- First contact between the family and DCF occurs during an emergency, § 39.402(8)(h)(5)(a);
- Preventive services in the home cannot mitigate substantial and immediate danger to the child's physical, mental, or emotional health or safety;
- Child cannot remain safely in the home (because either there are no preventive services that can ensure the health/safety of the child or even with such services the child's health/safety cannot be ensured); or
- DCF pleads §§ 39.806(1)(f)-(i):
 - (f) Egregious conduct;
 - (g) Aggravated child abuse, sexual abuse, or chronic abuse;
 - (h) Parent has committed murder or felony assault with serious bodily injury to a child; or
 - (i) Parental rights to a sibling have been involuntarily terminated.

How do I determine whether remaining in the home is contrary to the welfare of the child? § 39.402(8)(h)(3). If the home situation presents a substantial and immediate danger to the child's physical, mental, or emotional health or safety which cannot be mitigated by the provision of preventive services, it is contrary to the child's welfare to continue in the home. § 39.402(8)(h)(3).

What findings regarding "contrary to welfare" must I detail in my first court order on the child's removal? Under ASFA, "contrary to welfare" findings must be detailed and must be made in the first court order on the child's removal. 45 C.F.R. § 1356.21(c). Failure to make the "contrary to welfare" finding in the first court order on removal will make the child's stay in care ineligible for Title IV-E funding. 45 C.F.R. § 1356.21(c). This cannot be remedied at a later hearing (unless child has returned home and a new placement in foster care is necessary). 45 C.F.R. § 1356.21(c).

- Affidavits, nunc pro tunc orders, or orders simply referring to the statutory requirement for such findings do not meet the ASFA requirement. 45 C.F.R. § 1356.21(d)(2).
- A finding that placement is in the child’s best interest is sufficient.

➤ **Determine placement (begin concurrent planning).**

Should I determine the placement of the child? Yes. If child is removed, determine placement. Safety of the child is the paramount consideration in making placement decisions. 42 U.S.C. § 671(15)(a); 45 C.F.R. § 1356.21(b).

“Shelter” can be placement with a relative or non-relative, or in a licensed home or facility. § 39.01(71). Although the court does have the authority to place a child in DCF’s custody, the court does not have the ability to direct DCF to place the child in a specific home or institution. See State Dept. of Health and Rehabilitative Services v. Brooke, 573 So. 2d 363 (Fla. 1st DCA 1991).

What are my placement options?

- Any person for whom DCF has positive home study.
- Custody to DCF with permission to release without further hearing to court-specified person (including parent from whom the child was not removed) upon positive home study.
- Custody to DCF with permission to release without further hearing to person selected by DCF upon positive home study.
- Custody to DCF with directions for a home study for a specified person. Schedule a shelter review - 1 week to 10 days - which DCF may cancel if child is placed upon that positive home study.

Though there is no requirement at shelter to place the child with a parent from whom the child was not removed, such a placement means that the child is not “out-of-home” as that term is defined in § 39.01(48) and is not in a “shelter,” as that term is defined in § 39.01(71). See § 39.01(66) which defines “relative” to exclude a parent. Therefore, placement with another parent could be an appropriate alternative to shelter and renders inapplicable the ASFA deadlines with regard to “out-of-home” placements.

What factors should I consider when ordering placement?

- Recommendations of DCF, which should be in the petition. Rule 8.305(a)(7).
- Recommendation of parents. Rule 8.305(b)(6)(c).

Are sibling placements preferred?

- The Florida Legislature has codified in statute its goals regarding the importance of placing children with their siblings.
- One of the purposes of Chapter 39, is “to make every possible effort, if two or more children who are in the care or under the supervision of DCF are siblings, to place the

siblings in the same home; and in the event of permanent placement of the siblings, to place them in the same adoptive home or, if the siblings are separated while under the care of the department or in a permanent placement, to keep them in contact with each other.” § 39.001(1)(k).

As the Fourth District Court of Appeal stated in In Interest of C.G., 612 So. 2d 602, 603-4, (Fla. 4th DCA 1992), “When two or more children in foster care are siblings, every reasonable attempt shall be made to place them in the same foster home; in the event of permanent commitment of the siblings, to place them in the same adoptive home; and, if the siblings are separated, to keep them in contact with each other.”

- A responsible adult relative or the adoptive parent of the child’s sibling shall be given priority consideration over a non-relative placement, § 39.401(2)(a)3, or a licensed placement. § 39.401(3)(b).
- The order for placement in shelter must make written findings that the department has made reasonable efforts to keep siblings together if they are removed and placed in out-of-home care unless such placement is not in the best interest of each child. It is preferred that siblings be kept together in a foster home, if available. Other reasonable efforts include short-term placement in a group home with the ability to accommodate siblings groups if such placement is available. The department is required to report to the court its efforts to place siblings together unless the court finds that such placement is not in the best interest of a child or his or her sibling. § 39.402(8)(h)(6).

May DCF release a child from shelter after an order for shelter is entered? No, unless:

- The shelter order authorizes release by DCF; or
- The court enters a subsequent order. See Rule 8.305(d).

➤ **Determine visitation/contact frequency.**

Will DCF provide a recommendation on visitation to the court? Yes. § 39.402(9)(a). And visitation should begin within 72 hours of the shelter hearing; if not, DCF must provide justification to the court. § 39.402(9)(b).

When ordering visitation, the court should establish:

- Frequency and location of visits.
- Minimum length of visits.
- Name of approved supervisors or persons designated to coordinate visits.
- Additional contact allowed between child and parent/legal custodians(s) (i.e., phone calls, letters).
- Contact between child and unsheltered siblings.

➤ **Advise parents.**

Advise the parent or legal guardian that they shall provide all known medical information to DCF. § 39.402(11)(b).

Require submission of permanent address designation form. Explain that court will rely on this address for notice. Parties are required to provide to the court written notice of any change of address. §§ 39.0131, 39.402(8)(g); Rule 8.224.

Advise the parents that, if the parents fail to substantially comply with the case plan, their parental rights may be terminated and the child's out-of-home placement may become permanent. § 39.402(18); Rules 8.305(b)(10) & 8.332(d).

Advise parents that their participation in services shall not be considered an admission to the acknowledgment of allegations in the shelter petition. DCF shall make voluntary services available to parents/legal custodians who request them, including necessary referral information. § 39.402(15).

➤ **Order parents to pay child support if child is placed outside of home. § 39.402(11)(a).**

Should I require parents to provide financial information necessary to calculate child support? Yes. Parents must provide financial information necessary to calculate child support accurately pursuant to § 61.30 to DCF and any other state agency or party designated by the court, within 28 days after entry of the shelter order. § 39.402(11)(a).

The Office of Court Improvement has developed a model procedure for handling child support in dependency cases that was successfully piloted in small, medium, and large circuits. (*See Child Support in Dependency Cases, Section 3*)

➤ **Issue the order and schedule the next hearing: Arraignment § 39.506.**

- If appropriate, order parties to Mediation or Case Plan Conference, setting date, time and location.
- Written notice of the date/time/location of next hearing must be provided. § 39.402(8)(h)(7).

➤ **Requirements for written order.**

- Include identification of parties present. § 39.402(8)(h).
- Include information on whether DCF made a good faith effort to locate absent parent. § 39.402(5)(a).
- Include findings regarding indigency and appointment or waiver of counsel. § 39.013(9).
- Indicate that probable cause for removal exists, based on criteria in § 39.402(8)(h)(1).
- Include written findings that available services will not eliminate need for placement. § 39.402(8)(h)(5).
- Include determination that reasonable efforts to prevent/eliminate need for removal or continued removal were made by DCF. § 39.402(8)(h)(5).
 - This determination must include a description of which specific services, if available, could prevent or eliminate the need for removal or continued removal

from the home and the date by which the services are expected to become available. § 39.402(10)(a).

- If services are not available to prevent or eliminate the need for removal or continued removal of the child from the home, the written determination must also contain an explanation describing why the services are not available for the child. § 39.402(10)(b).
- If DCF has not made an effort to prevent or eliminate the need for removal, the court shall order DCF to provide appropriate and available services to ensure the protection of the child in the home when the services are necessary for the child's health and safety. § 39.402(10)(c).
- Placement in shelter is necessary to protect the child based on criteria in §§ 39.402(1) & (2).
- Placement in shelter is in the child's best interests. § 39.402(8)(h)(2).
- Remaining in the home is contrary to the welfare of the child, because the home situation presents a substantial and immediate danger to the child's physical, mental, or emotional health or safety. § 39.402(8)(h)(3).
- Based on allegations in the petition, there is probable cause that the child is dependent. § 39.402(8)(c)(4); Rule 8.305 (b)(2).
- Require parents to provide financial information necessary to calculate child support. § 39.402(11)(a).
- Find that the department has made reasonable efforts to keep siblings together if they are removed and placed in out-of-home care unless such placement is not in the best interest of each child. It is preferred that siblings be kept together in a foster home, if available. Other reasonable efforts include short-term placement in a group home with the ability to accommodate siblings groups if such placement is available. The department is required to report to the court its efforts to place siblings together unless the court finds that such placement is not in the best interest of a child or his or her sibling. § 39.402(8)(h)(6).
- Parties notified in writing of date/time/location of next hearing and of the importance of their active participation. § 39.402(8)(h)(7).
- Parents or legal custodians notified of their right to counsel to represent them at the shelter hearing and at each subsequent hearing or proceeding, and the right of the parents to appointed counsel. § 39.402(8)(h)(8).

Relatives who are providing out-of-home care for a child as a result of the shelter petition being granted notified that they have the right to attend all subsequent hearings, to submit reports to the court, and to speak to the court regarding the child, if they so desire. § 39.402(8)(h)(9).