

# Legal Authority for Including Children in Court

## Introduction:

This model serves as suggested guidelines for how to encourage children of all ages to actively participate in their dependency cases. It provides guidance on issues related to including children in all segments of the dependency proceedings so that Florida's children are able to have a voice in the services that are provided and ultimately in the aspects of the case that impact their lives, and is intended to be used as a reference tool with OSCA/OCI's Dependency Benchbook.

## The Process:

- A. Segment: Initial Hearing. At the shelter hearing, (or the arraignment hearing if there is not a shelter hearing), the court should address the following issues:
1. NOTICE: Section 39.01(51), Florida Statutes, defines the child as a party to the dependency case. Since the child is a party, the child should be notified of all future court proceedings. Florida Rule of Juvenile Procedure 8.225(c)(4). Section 39.01(51), Florida Statutes, further states that, "(t)he presence of the child may be excused by order of the court when presence would not be in the child's best interest. Notice to the child may be excused by order of the court when the age, capacity, or other condition of the child is such that notice would be meaningless or detrimental to the child." If the court excuses the child's presence, the court should enter an order that makes a finding that "(t)he child's presence is being excused pursuant to §39.01(51), Florida Statutes. The court hereby finds that the child's presence at the \_\_\_\_\_ hearing is not in the child's best interest for the following reasons: \_\_\_\_\_." Excusal of attendance should be determined on a hearing by hearing basis.
  2. MENTAL HEALTH: If the child is admitted to a residential mental health treatment program, §39.407(6)(e), Florida Statutes, provides that the child must be involved in the preparation of the treatment plan to the maximum feasible extent consistent with his or her ability to understand and participate. The program director must ensure that a copy of the plan is provided to the child. *Id.* Florida Rule of Juvenile Procedure 8.350(a)(3) also states that when attempting to place a child in a residential treatment center, the child's wishes should be considered, and Rule 8.350(a)(4) states that the motion for placement must state whether or not the child is in agreement with the placement.

3. PLACEMENT: If a child is being assessed for placement in a licensed residential group facility, the assessment shall incorporate the desires of the child. §39.523(1), Florida Statutes.
  4. COMMUNICATION: The court should announce that at all future hearings, the court will be expecting and verifying that the investigator/caseworker is in communication with the child on a regular basis. Section 39.4085(14), Florida Statutes, states that the legislature intends for the caseworker to be in contact with the child alone at least once a month, not just the parents.
- B. Segment: Approving the Pre-Disposition Study (PDS)/Case Plan. When approving the PDS/Case Plan, the court should verify the following things have been completed:
1. The predisposition study must provide the court with the reasonable preference of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference. §39.521(2)(e), Florida Statutes.
  2. A written case plan and a predisposition study were filed with the court and provided to the child not less than 72 hours before the disposition hearing. §39.521(1)(a), Florida Statutes. (Section 39.6011(7), Florida Statutes, states that the case plan must be filed with the court and a copy provided to the child, if appropriate, not less than three business days before the hearing.)
  3. The child was permitted to participate in the development of the case plan, the case plan addresses the specific needs of the child, and the child had the opportunity to object to any of the provisions of the caseplan. §§39.4085(12), 39.6011(1)(a), Florida Statutes.
  4. The provisions of the case plan have been explained to the child. §39.6011(3), Florida Statutes. The signature of the child may be waived if the child is not of an age or capacity to participate in the case-planning process. *Id.*
  5. GUARDIAN AD LITEM: The guardian ad litem included a statement of the wishes of the child in the disposition report to the court and provided the report with the GAL recommendations to the child at least 72 hours before the disposition hearing. §39.807(2)(b)(1), Florida Statutes.
- C. Segment: Judicial Reviews. At judicial reviews the court may address the following issues:
1. The child has a right to be heard by the court, if appropriate, at all review hearings. §39.4085(19), Florida Statutes.
  2. The court may dispense with the child's attendance pursuant to §39.701(2)(a), Florida Statutes. If the court excuses the child's presence, the court should enter an order that

makes a finding that “(t)he child’s presence is being excused pursuant to §39.01(51), Florida Statutes. The court hereby finds that the child’s presence at the \_\_\_\_\_ hearing is not in the child’s best interest for the following reasons:

\_\_\_\_\_.” Excusal of attendance should be determined on a hearing by hearing basis.

3. If the child attends the hearing, the child should be given the opportunity to address the court with any information relevant to the child's best interests, particularly as it relates to independent living transition services. The department shall include in its judicial review social study report written verification that the child has been encouraged to attend all judicial review hearings occurring after his or her 17th birthday. §39.701(6)(a), Florida Statutes.
4. If a youth petitions the court at any time before his or her 19th birthday requesting the court's continued jurisdiction, the court may retain jurisdiction for up to a year following the youth's 18th birthday. §39.013(2), Florida Statutes.

D. Segment: Permanency. At permanency hearings the court can address the following issues:

1. Before the permanency hearing, the department shall advise the child and the individuals with whom the child will be placed about the availability of more permanent and legally secure placements and what type of financial assistance is associated with each placement. §39.621 (3)(b), Florida Statutes.
2. The best interest of the child is the primary consideration in determining the permanency goal for the child. The court must consider the reasonable preference of the child if the court has found the child to be of sufficient intelligence, understanding, and experience to express a preference. §39.621(5)(a), Florida Statutes.
3. Section 39.621(10) states that the court shall base its decision concerning any motion by a parent for reunification or increased contact with a child on the effect of the decision on the safety, well-being, and physical and emotional health of the child. When considering the motion, the court must consider the preferences of the child, if the child is of sufficient age and understanding to express a preference. §39.621(10)(d), Florida Statutes.
4. The court may approve Another Planned Permanent Living Arrangement (APPLA) as a permanency placement when a foster child, who is 16 years of age or older, chooses to remain in foster care and the child's foster parents are willing to care for the child until the child reaches 18 years of age. §39.6241(1)(d), Florida Statutes.

5. Section 675(5)(c)(iii) of the Federal Social Security Act requires the court to conduct an age-appropriate consultation with the child during a permanency hearing. Adoption and Safe Families Act, 42 U.S.C. §675(5)(C)(iii)(2008).

E. Segment: Termination of Parental Rights. At termination of parental rights hearings the court has authority to address the following issues:

1. MANIFEST BEST INTERESTS OF CHILD: When determining the manifest best interests of the child in a termination of parental rights hearing, the court shall consider and evaluate the reasonable preferences and wishes of the child, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference. §39.810, Florida Statutes.
2. APPEALS: Any child may appeal to the appropriate district court of appeal within the time and in the manner prescribed by the Florida Rules of Appellate Procedure. §39.815(1), Florida Statutes.

### **Children’s Right to be Involved:**

A. Children have various other rights throughout the dependency process.

1. INSPECTION OF RECORDS: The child may inspect and copy any official record pertaining to the child. §39.0132(3), Florida Statutes.
2. ORGANIZE AS A GROUP: Section 39.4085(22), Florida Statutes, provides that foster children can organize as a group to ensure that they receive the services and living conditions to which they are entitled and to provide support for one another while in the custody of the department.
3. INJUNCTION: If an injunction to protect the child has been issued, the department shall deliver a copy of the injunction to the child. §39.504(4), Florida Statutes.
4. Florida Rule of Juvenile Procedure 8.255(b) states that “(t)he child has a right to be present at the hearing unless the court finds that the child's mental or physical condition or age is such that a court appearance is not in the best interest of the child. “
5. If necessary, the child may be questioned separately from the parents or caregivers, or by in camera examination. Florida Rules of Juvenile Procedure 8.255(c), 8.255(d)(2). In certain cases, the child may be called to testify by means of closed-circuit television or by videotaping as provided by law. Florida Rule of Juvenile Procedure 8.255(d)(2)(D).

## **Independent living:**

A. The Florida Statutes outline certain provisions for children who are exiting foster care and transitioning into adulthood. The court has the authority to address the following in independent living cases:

1. The court should verify that the Department of Children and Families (DCF) is in compliance with §409.1451(3)(a)(6), Florida Statutes, which requires DCF to make a good faith effort to fully explain, prior to execution of any signature, any document, report, form, or other record, whether written or electronic, presented to a child or young adult and allow for the child to ask any appropriate questions necessary to fully understand the document.
2. The court can verify that the child and other applicable persons have set early achievement and career goals for the child's postsecondary educational and work experience. Section 409.1451(3)(a)(6)(b), Florida Statutes, provides that each foster child should, in addition to his or her foster parents, if applicable, and the department and CBC should set early achievement and career goals for the child's postsecondary educational and work experience. For children in foster care who have reached 13 years of age, the department or community-based care provider shall ensure that the child's case plan includes an educational and career path based upon both the abilities and interests of each child. The child, in addition to his or her foster parents and teacher or other school staff member, shall be included to the fullest extent possible in developing the path. §409.1451(3)(b)(1), Florida Statutes. In order to assist the foster child in achieving his or her chosen goal, the department or community-based provider shall help the child identify the core courses necessary to qualify for a chosen goal, any elective courses which would provide additional help in reaching a chosen goal, and the grade point requirement and any additional information necessary to achieve a specific goal. The department or community-based care provider shall also identify a teacher, other school staff member, employee of the department or community-based care provider, or community volunteer, who is willing to work with the child as an academic advocate or mentor, if foster parent involvement is insufficient or unavailable. §409.1451(3)(b)(2)(a-d), Florida Statutes.
3. The court can verify that children receiving life skills services are provided with financial information. Children receiving life skills services should also be provided with information related to social security insurance benefits and public assistance. §409.1451(4)(b)(1), Florida Statutes.
4. The court can verify that the department has provided applicable information about the Road to Independence Program. Specifically, the department must advertise the criteria, application procedures, and availability of the Road to Independence Program to children and young adults in, leaving, or formerly in foster care. §409.1451(5)(b)(6)(a), Florida Statutes.

5. The court can verify that the department has assisted the children with a transitional plan consistent when the young adult's needs assessment indicates such plan is necessary. The department or community-based care provider shall work with the young adult in developing a joint transition plan that is consistent with a needs assessment identifying the specific need for transitional services to support the young adult's own efforts. The young adult must have specific tasks to complete or maintain included in the plan and be accountable for the completion of or making progress towards the completion of these tasks. If the young adult and the department or community-based care provider cannot come to agreement regarding any part of the plan, the young adult may access a grievance process to its full extent in an effort to resolve the disagreement. §409.1451(5)(c)(1), Florida Statutes.

### **Crossover Cases:**

- A. Some cases involve dependency as well as delinquency or other family law issues.
  1. For proceedings involving children and families in need of services, Florida Rule of Juvenile Procedure 8.625(b) provides that the child shall be present unless the child's presence is waived. Rule 8.625(c) also states that in these type of hearings, the child may be examined by the court outside the presence of other parties under certain circumstances.
  2. In juvenile delinquency proceedings, the child must be present unless the court finds that the child's mental or physical condition is such that a court appearance is not in the child's best interests. Florida Rule of Juvenile Procedure 8.100(a).
    - The trial court may order that the testimony of a child under the age of 16 who is a victim or witness be taken outside of the courtroom and shown by means of closed circuit television or by video taping if there is a substantial likelihood that the child will suffer at least moderate emotional or mental harm due to the presence of the defendant if the child is required to testify in open court, or that such victim or witness is unavailable as defined in 90.804(1). §§92.53, 92.54, Florida Statutes.