
SHELTER HEARINGS

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An important consideration for the reader to keep in mind is that each case is unique and therefore, although there are very specific rules regarding the removal/adjudication of children, each case must be considered individually according to its own merits and factors. The following discussion, with examples and hypotheticals, is used for illustration purposes only and certainly are not intended to limit the practitioner or discourage alternative means for handling any particular set of facts.

REPORTING ABUSE, ABANDONMENT OR NEGLECT

When a person has knowledge or reasonable cause to suspect that a child may have been abused, abandoned or neglected, or is in need of supervision and care and has no parent or legal custodian available, that person is required to call the Florida Abuse Hotline to report the concern (800-96-ABUSE). See §§ 39.201(1)(a). 39.201(2)(a). All reporter information is confidential and may not be released except under very limited circumstances. § 39.202(5). A report may be given anonymously to the hotline, however, according to § 39.201(1), certain persons must provide their names (doctors, medical staff, mental health professionals, spiritual practitioners, teachers, school personnel, social workers, day care staff, law enforcement officers and judges).

Once the report is received, the hotline must make an initial determination if the allegations satisfy the statutory definitions of abuse, abandonment or neglect. If so, a protective investigator from the Department of Children and Families (department) is assigned to investigate the allegations. § 39.201(2)(a).

Some situations may result in “no findings” where the case is closed without court intervention. In other cases, the department may determine that voluntary protective services are appropriate to resolve the issues facing the family. The department is obligated in all cases to consider if voluntary services are appropriate, and if not, the department must report to the court why the services will not alleviate the risk to the children. If the risk to the children is deemed to be high, the department must remove the children from the home or find other safeguards to assure their safety. § 39.301.

HYPOTHETICAL: If the call is to the hotline regarding a report of domestic violence in which the parents were engaging in domestic violence and the mother is the victim but, the protective investigator learns that the mother has obtained a restraining order and the alleged perpetrator is in jail, removal of the child may not be necessary. In this situation, a determination must be made as to whether the mother has taken the appropriate steps to protect her child. In the alternative, if there is a history of domestic violence between the parents or a parent and a paramour, where the mother has repeatedly sought restraining orders but later dismissed them or has sought to bail the perpetrator out of jail, removal of the children may be warranted. If there are no additional risk factors, placement of voluntary in-home services may be appropriate to ensure the children’s safety without a removal.

REMOVAL OF CHILDREN

Children may be taken into custody by agents of the department or law enforcement officers. § 39.401(1). Section 39.401, enumerates the specific basis upon which the department is authorized to take a child into custody.

Probable Cause Must Exist:

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

HYPOTHETICAL: If a child has been physically abused and the department wishes to shelter the child and his sibling, the department must show probable cause exists to remove each child individually. The target child falls into the category of having been “abused”, therefore, probable cause may exist (subject to later findings the court must make which will be discussed further). The department may have physical findings of abuse (marks, bruises, welts, etc.) and perhaps a Child Protection Team (CPT) report or other doctor’s findings that the injuries are consistent with abuse or are indicative of non-accidental injury. Or, the department may have the target child’s statements or eyewitnesses to the abuse, or perhaps even hearsay statements of persons who heard the child discuss the abuse (hearsay is permissible at a probable cause hearing; the rules of evidence are not applicable as this is not an adjudicatory hearing). In fact, the department is obligated to provide all relevant law enforcement, medical or other professional reports as well as copies of any abuse hotline reports subject to confidentiality requirements. § 39.402(8)(e).

The department may argue the sibling child, who is not considered the target child, is at risk of “imminent illness or injury” as a result of the abuse perpetrated upon the target child. In doing so, the department must allege and establish a “nexus” of harm between the siblings.

Some Examples May Include:

- the parents have stated that this is their acceptable form of discipline and have stated their refusal to use alternative methods;
- the sibling, although not physically abused, witnessed the incident and suffered emotional trauma; or;
- previous incidents have been reported where the sibling was the target, although not subject of the abuse in this report.

Without establishing a nexus, the court may find probable cause exists as to the target child, but not as to the sibling.

PRACTICE TIP: Abandonment of a child may include situations where a parent has opted to leave his/her infant at a fire station or other safe place. § 383.50. This option under Florida law protects the parent from criminal sanctions for abandoning the child, but does not protect against a dependency action because the child is still in need of a legal placement. The child

can be placed legally with a relative (or non-relative) or if no one is identified, the department must take custody which requires court intervention.

2. A parent or legal custodian of the child has materially violated a condition of placement imposed by the court.

This situation may arise where the child has been adjudicated dependent and the child is under the protective supervision of the court. For example, the risk to the children may not have risen to the level requiring the removal, but an adjudication was obtained to ensure the safety of the children in the home; the children may have been returned to the parents upon their substantial compliance with the case plan while remaining under protective supervision for six months following return of the children; or the children may have been placed with a non-offending parent upon removal from the alleged perpetrator of abuse, abandonment or neglect. In all of these examples, the family is still operating under a case plan and their failure to comply, *if it places the child at risk of, or results in, abuse, abandonment or neglect* can be a basis for removal of the child. In addition, once protective supervision is terminated, if the court maintains jurisdiction over the child, a violation of court imposed conditions may result in removal *if it places the child at risk of, or results in, abuse, abandonment or neglect*. For example, if the father has failed to complete his case plan and the children is placed with the mother (or other relative, non-relative) and jurisdiction is maintained upon closing of protective supervision, and the custodian permits contact with the father when a no contact order has been entered, this may be a basis for removal.

3. The child has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care.

Cases typically fall into this category when a parent passes away and leaves underage children. In these situations, a family may have difficulty obtaining a court order placing the child in their custody due to the unavailability of the parent to consent to the placement (which is typically required in family court proceedings when a relative wants to obtain custody). The family needs a court order of placement to permit the family to enroll the child in school, obtain medical care, place the child on the family's medical insurance, etc. Therefore, this portion of the statute is a helpful tool in quickly obtaining a court order to assist the family in these needs. An additional benefit is that the family is entitled to relative caregiver funds once the child is adjudicated dependent.

Alternatives to Shelter

In removing a child from the home, the department must make an initial determination that there are no services or protections which can be placed in the home to alleviate the risk to the children or the risk to the child is so high that removal is the only possibility. Therefore, there are alternatives to removing the child if that standard cannot be established. The Program, at shelter, may recommend any of these (or other possible alternatives) if it appears as though removal of the children is not appropriate.

VOLUNTARY PROTECTIVE SERVICES (VPS): The department is authorized to determine if the family can be offered VPS in the home to prevent the removal of the children. The best practice is for the department to obtain a VPS written agreement which could later be used for proof of noncompliance should judicial intervention be required at a later time. In this situation, the department and parent(s) agree that the family will be offered a case plan to alleviate the concerns facing the family. The parents or legal custodians shall be informed

of the right to refuse services. § 39.301(14)(b). At this time, the department must determine if judicial intervention is warranted based upon the allegations plus the additional risk factor that the parents have refused services.

REMOVAL OF THE ALLEGED PERPETRATOR: Sometimes a possible alternative to removal may be the removal of the alleged perpetrator from the home. For example, if the father is alleged to have committed domestic violence and is removed from the home, the department may determine the children are safe in the home. This permits the department to offer VPS if warranted, or to seek judicial action to protect the children while not removing them from their home. In this fact pattern, the additional protections offered by a restraining order may further support the placement of the children in the home, with or without further dependency action. A similar arrangement may be considered where one parent is alleged to have physically or sexually abused the child(ren).

IN-HOME SERVICES: In-home services may be provided under the VPS agreement or with judicial action. The department may proceed with an adjudication of dependency while leaving the children in the home with appropriate services.

PRIOR TO THE SHELTER HEARING

Prior to the hearing, the department must file an affidavit/petition to place the child in shelter. Copies of the petition must be provided to the parents and parties prior to the hearing. If the children have been removed, they may not be held longer than 24 hours without a shelter order. § 39.402(8)(a).

The department must identify and locate the legal custodians, biological and/or adoptive parents of the children. If they cannot be identified or their whereabouts cannot be ascertained, the department must notify the court of the efforts to locate the parents. The department's efforts must include speaking with any parent who can be located, relatives, and the children if they are age appropriate. The parents must be given actual notice of the shelter hearing. However, the failure to provide notice does not invalidate the shelter order if the court finds the petitioner has made a good faith effort to provide notice. § 39.402(8)(b).

The department must conduct a background check and a home study on any proposed or actual placement. This includes a safety check of the home (the availability of sleeping arrangements, fire alarms, financial ability of the home to support the additional children, etc.) and a background check on every adult and child residing in the home. The background check includes a criminal history and abuse registry check to determine if the proposed custodian has any criminal or abuse registry record which would be a risk to the child. A check on children in the home is conducted to determine whether they have been victims of abuse, abandonment or neglect and the identity of alleged perpetrators. The department is obliged to run these checks on any relatives or non-relatives named by the parents as proposed placements. Relatives or non-relatives are preferred for placement over a shelter placement and all possibilities should be immediately investigated by the department.

SHELTER HEARING

The shelter hearing is the first court appearance after a child has been removed from a home. Within 24 hours of the removal, the department must come before the court to establish probable

cause for the removal. The probable cause standard is the same by which a court determines sufficiency for an arrest warrant.

The Department Must Establish Probable Cause That:

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

§ 39.402(1)(a)-(c).

- All parties should be sworn in to testify and should identify themselves and relationship to the case.
- The court shall appoint a guardian ad litem, unless the court finds such representation is unnecessary. § 39.402(8)(c)1.
- The court shall inform the parents of their right to be represented by counsel and will provide counsel to indigent parents. § 39.402(8)(c)2.

PRACTICE TIP: Interpreters should be provided for non-English speaking parents.

- The court shall give the parents an opportunity to present evidence. § 39.402(8)(c)3.
- The parents must provide the names of all parents, prospective parents and next of kin to the court. § 39.402(8)(b).
- Parents must provide a permanent mailing address where future notice will be provided. § 39.402(8)(g).

The court should inquire into the identity and whereabouts of any unknown parent if any parent, relative or non-relative is present at the hearing. Additionally, the court may inquire of the mother, relative, or non-relative as to whether the mother was married to or cohabitating with a man at the possible time of conception of the child in order to identify an unknown father. § 39.503(1).

The court should inquire as to the identity of any relative or non-relative placements in lieu of shelter with the department. § 39.402(17). The court shall advise the parents that they have a continuing duty to inform the department of any relative who could be a placement for the child. § 39.402(17).

PRACTICE TIP: The Program should obtain the placement information to assure that a guardian ad litem, when assigned, has accurate information to conduct the first visit. Placement may be with a relative, in which case the address will be in the order. However, if the child is placed with the department, the address will not be in the order and the Program should be sure to obtain the address off the record or at least the phone number of a department representative from whom that information may be obtained at a later date.

FINDINGS REQUIRED – ORDER

Under § 39.402(8)(h), the court order must contain an identification of all persons present at the hearing and must include written findings of the following.

- Placement in Shelter is Necessary Because:
 - The child has been abused, abandoned or neglected or the child is suffering from or is in imminent danger of illness or injury as a result of abuse, abandonment or neglect;
 - A 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.
- The removal from the home is necessary and the provision of appropriate and available services will not eliminate the need for placement.
- Continuation 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.
- Based upon the allegations in the shelter petition, there is probable cause to believe that the child is dependent or that the court needs additional time, not to exceed 72 hours, in which to obtain and review documents pertaining to the family in order to appropriately determine the risk to the child.
- The department has made reasonable efforts to prevent or eliminate the need for removal of the child from the home. 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 the services are not available, the written determination must also contain an explanation describing why the services are not available for the child. § 39.402(10)(b).
 - If the department has not made a reasonable effort to prevent or eliminate the need for removal, the court shall order the department 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).

The department is deemed to have made reasonable efforts if:

- the first contact with the department occurred during an emergency;

- 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;
 - the child cannot remain in the home because there are no preventive services that can ensure the child's safety and health, or even with appropriate and available services, the health and safety of the child cannot be assured; or
 - the parent or legal custodian is alleged to have committed any of the grounds listed for expedited termination of parental rights listed in § 39.806(1)(f)-(i).
- The court must notify the parents or legal custodians of the time, date and location of the next dependency hearing and the importance of their active participation in the dependency proceedings. § 39.402(16).
 - The court must notify the parents or legal custodians of their right to be represented by counsel at the shelter hearing and each subsequent hearing.

If the shelter hearing occurs before a judge who is not assigned to dependency court, there must be a shelter review within two working days of the initial shelter hearing, at which time the dependency judge will review the probable cause for the removal. § 39.402(12).

In the event the court finds no probable cause for the removal, the court may dismiss the petition completely or permit the department to have 72 hours to perfect probable cause by providing additional evidence to the court to justify the removal. § 39.402(8)(d)2. If the department is unable to provide additional evidence at the shelter review hearing, the petition is dismissed and the children are returned home.

PRACTICE TIP: The order may contain a direction to the department to conduct a home study and background check on potential placements. In addition, there may be a self-executing order permitting placement with a person who passes a home study and background check, without further court order. Without the self-executing order, the child may have to remain in shelter until the arraignment which is the next scheduled hearing (28 days later).

Issues to be Considered at the Shelter Hearing

Placement

If the court grants the shelter petition, the court must determine placement. Health and safety of the child is the paramount consideration in making placement decisions. 42 U.S.C. § 671(a)15(A). Placement Options may include:

- Any person for whom the department has a positive home study; or
- Custody to the department with permission to release without further hearing to court specified person upon positive home study; or
- Custody to the department with permission to release without further hearing to person selected by the department upon positive home study; or
- Custody to the department with directions for a home study for a specified person;

- Non-Offending Parent. If a parent is non-offending, the court must place the child with the parent if the child was not residing with the parent at the time the conditions arose, that parent is currently seeking custody of the child, there is a completed home study, and the placement does not endanger the safety, well-being or physical, mental or emotional health of the child.

§ 39.521(3)(b).

Visitation

- Visitation should be ordered unless there is a clear and convincing showing that visitation is not in the best interests of the child. § 39.402(9).
- Visitation should begin within 72 hours of the shelter hearing. § 39.402(9).
- Visitation with siblings should occur at least once a week and visitation with parents should occur at least once a month unless the court orders otherwise. §§ 39.4085(15); 39.4085(16).
- Visitation with grandparents. § 39.509.
- Review the “Keeping Children Safe Act” regarding limitations regarding visitation for cases involving sexual abuse, certain sex crimes and improper influence of children’s testimony. § 39.0139.

Child Support

- The court shall order the parents to pay child support if the child is placed outside of the home. § 39.402(11).

PRACTICE TIP:

Education

- Consideration should be given to location of child’s previous school and new school if necessary.
- If it appears that the child’s placement out of his or her previous school district will be limited or temporary, the Program may consider asking the court to order the department or other approved person to provide transportation to maintain continuity for the child.
- The department, the Department of Education and local district school boards are required to enter into interagency agreements to keep foster children in their home schools, stabilize their education and improve planning for their educational goals.

Services/Counseling

- The department shall make available to parents or legal custodians seeking voluntary services any referral information necessary to participate in such services. § 39.402(15).
- Counseling may be appropriate and necessary and can begin immediately. § 39.40215.
- Parents must provide all known medical information to DCF. § 39.402(11)(b)

Psychotropic Medication

- May continue if the medication is in its original container and it is a current prescription for the child. § 39.407(3)(a).
- The department must seek court approval for the continued administration of the medication. § 39.407(3); Rule 8.355.

Review Psychotropic Medication Guidelines in the Mental Health Chapter.

Other

- Potential need to impose restrictions (no-contact orders) or consideration of any other orders.
- Substance abuse assessments can be ordered for anyone with custody or anyone requesting custody of the child. § 39.407(16).
- Interstate Compact on the Placement of Children (ICPC).
- Indian Child Welfare Act (ICWA)–inquire if the child a member of, or eligible for, membership in an Indian tribe?
- Review the Rilya Wilson Act if the child is age three (3) years old to school entry. § 39.604.
- The court shall order the parents to pay child support. § 39.402(11)(a).
- Written notice of the next hearing should be provided to the parties. § 39.402(16). An arraignment shall be held no later than 28 days after the shelter hearing. § 39.506(1).
- Developmental Disabilities Issues.
- Diligent Search.
- Paternity.

PRACTICE TIP: To avoid conflicting orders, the program attorney should inquire about any other restrictions/orders arising from other cases involving the family (delinquency, domestic relations, or domestic violence) at the Shelter Hearing.

IF PROBABLE CAUSE IS NOT ESTABLISHED

If probable cause is not established, the child must be returned to the custody of their parents. If the court finds probable cause only as to one parent, the non-offending parent must be given custody of his/her child. The parent has a right to custody of his/her child(ren) and the child(ren) has the right not to be placed in shelter when a fit parent is available to take custody. If that parent refuses or is unable to take custody, that parent may no longer be considered a non-offending parent because the parent is abandoning the child.

- If the allegations rise to the level of a dependency, the department or any other party (including the Program) can file a petition for dependency leaving the children in the home, but assuring judicial oversight of the family and services.
- Request 72 hours additional time for the department to perfect probable cause. § 39.402(8)(h)4.
- Appeal.