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# DEPENDENCY PETITION

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All proceedings seeking adjudication that a child is dependent must be initiated by filing a petition. The petition can be filed by an attorney for the Department of Children and Families (the department), or any other person who has knowledge of the facts alleged, or is informed of the facts and believes them to be true. § 39.501(1). The purpose of filing a dependency petition is not to punish, but to protect the child alleged to be abused. § 39.501(2). There are clear requirements regarding the contents of a dependency petition. Rule 8.310. A petition must be filed within 21 days of a shelter hearing if a child has been placed in shelter status, or within 7 days if a party files a demand for early filing of the petition. § 39.501(4). In all other cases the petition must be filed within a reasonable time after the child was referred to protective investigation. § 39.501(4). No answer to the petition is required. § 39.505.

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## CONTENTS OF DEPENDENCY PETITION

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### **A Dependency Petition Shall:**

- Allege sufficient facts showing the child to be dependent based upon applicable laws. Rule 8.310(a)(1).
- Contain allegations as to the identity and residence of the parents or legal custodians, if known. Rule 8.310(a)(2).
- Identify the age, sex, and name of the child. Two or more children may be the subject of the same petition. Rule 8.310(a)(3).
- Include a statement as to whether, if known:
  - a parent or legal custodian named in the petition has previously unsuccessfully participated in voluntary services offered by the department;
  - a parent or legal custodian named in the petition has participated in mediation and whether a mediation agreement exists;
  - a parent or legal custodian has rejected the voluntary services offered by the department; or
  - the department has determined that voluntary services are not appropriate for the parent or legal custodian and the reasons for such determination.

§ 39.501(3)(d).

- Contain petitioner's signature, stating under oath the signer's good faith in filing the petition. Rule 8.310(b).

No objection to a petition on the grounds that it was not signed or verified, as herein provided, shall be entertained after a plea to the merits. Rule 8.310(b). Two or more allegations of dependency may appear in the same petition, in separate counts. Rule 8.310(a)(4). The petition need not contain allegations of acts or omissions by both parents. Rule 8.310(a)(4).

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## AMENDMENTS TO DEPENDENCY PETITION

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A dependency petition can be amended any time prior to the conclusion of an adjudicatory hearing. Rule 8.310(c). After a written answer or plan has been filed, amendments shall be permitted only

with the permission of the court, unless all parties consent. Rule 8.310(c). Amendments shall be freely permitted in the interest of justice and the welfare of the child. Rule 8.310(c). A continuance may be granted on motion and a showing that the amendment prejudices or materially affects any party. Rule 8.310(c). However, total time allowed for continuances may not exceed 60 days in any 12 month periods. § 39.0136(3).

#### DEFECTS AND VARIANCES IN THE FORM OF THE DEPENDENCY PETITION

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If the court finds that the petition is so vague, indistinct, and indefinite as to mislead the child, parent, or legal custodian and prejudice any of them in the preparation of a defense, the petitioner may be required to furnish a more definite statement. Rule 8.310(d). A petition may not be dismissed, or any judgment vacated, because of a defect in the form or misjoinder of counts. Rule 8.310(d).

#### VOLUNTARY DISMISSAL OF THE DEPENDENCY PETITION

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At any time prior to entry of an order of adjudication, the department may request a voluntary dismissal of the petition by serving a notice requesting dismissal on all parties, or, if during a hearing, by so stating on the record. Rule 8.310(e). The petition shall be dismissed and the court loses jurisdiction unless another party adopts the petition within 72 hours. Rule 8.310(e).

**PRACTICE TIP:** The program attorney may file a dependency petition when necessary. Before filing, the program attorney should thoroughly review Rule 8.310 and § 39.501. Be sure to comply with the Rules of Juvenile Procedure regarding service of the petition and diligent searches.