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# DISPOSITIONS

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The purpose of the disposition hearing is for the court to determine what needs to be done by the parent, department and/or the child to ensure the safety of the child and to move the parties toward the stated goal of the case plan. The court will make determinations about placement and visitation upon considering the Pre-Disposition Study (PDS), reports by the department, and recommendations of guardian ad litem and other professionals. The court may consider any relevant and material evidence helpful in reaching a proper disposition, even if the information would not be competent at an adjudicatory hearing. Rule 8.340(a). The court will determine if the tasks in any existing case plan address the problems that resulted in the dependency. Also, with a child 13 years and older, independent living tasks necessary for the department and the child will be identified. § 409.1451.

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## WHEN A DISPOSITION HEARING IS REQUIRED

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### **A Disposition Hearing Shall Be Conducted By the Court When:**

- court finds that the allegations were proven at an adjudicatory hearing (can be immediate if Pre-Disposition Study (PDS) and case plan available or parties waive PDS. Rule 8.335);
- parent consents;
- parent fails to appear for arraignment after notice; or
- parent not located after an Affidavit of Diligent Search (ADS)

§ 39.521(1).

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## THINGS TO CONSIDER PRIOR TO THE HEARING

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- Has a case plan been developed?
- Are all tasks necessary to remedy the dependency in the case plan?
- Has anything new arisen that was not previously known or considered in developing the case plan?
- Is the child in the most appropriate placement?
- Can the child be safely returned home? What would this involve, i.e., what services need to be in place?
- What has the department done to ascertain the identity and location of any relatives or non-relatives willing to care for the child?
- If there are siblings, are they placed together? If not, what has the department done to locate a placement for all the siblings? If no such placement is available, what contact do the siblings have?
- What is the visitation plan for the child and his parents? Is it sufficient to meet the child's needs and to facilitate the goal of the case plan?
- Are the child's needs being met – medically, developmentally, educationally, etc.?
- What else does the child need – be specific, i.e., developmental screening, eye exam, behavior management therapy?

Prior to the disposition hearing, the court can make any orders necessary for the protection of the child. If there are any such orders, the guardian ad litem should know if the parties are complying with the orders.

**Example:** at a shelter review, the court ordered the child to have a developmental screening – the guardian ad litem should know if the child has had the screening and the results or if not, why not?

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## TIME FRAMES FOR DISPOSITION

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If an admission is entered and no denial is entered by any other parent – the disposition hearing must be held within 15 days. § 39.506(5); Rule 8.315(a).

**NOTE:** If one parent consents and the other enters a denial, it is a denial of due process to proceed to disposition without an adjudicatory hearing. *See Amendments to the Florida Rules of Juvenile Procedure*, 894 So. 2d 875, 884 (Fla. 2005) (citing *Monteiro v. State*, 477 So. 2d 45, 45-46 (Fla. 3d DCA 1985)).

- If a parent fails to appear for arraignment or trial after proper notice, this constitutes a consent and the disposition hearing must be held within 15 days. § 39.506(3) and (5).
- If a parent is not located and an Affidavit of Diligent Search is completed, this has the same effect as failing to appear at arraignment, constitutes consent and the disposition hearing must be held within 15 days. § 39.506(3) and (5); § 39.521(1).
- After a trial, child found to be dependent – the disposition hearing must be held within 30 days. § 39.507(8).

The court may allow the parties to waive PDS and if the case plan is available, proceed immediately to disposition. Rule 8.335.

The court may order a person who has custody or seeks custody to submit to a substance abuse assessment or evaluation. The court may also require that person to obtain necessary treatment and services – including treatment based drug court program. The court may impose appropriate available sanctions for noncompliance. § 39.521(1)(b)1.

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## WHAT PAPERWORK SHOULD YOU EXPECT?

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### **Pre-Disposition Study**

The pre-disposition study is prepared by an authorized representative of the department and furnished to all parties 72 hours prior to the hearing. Under §39.521(2), it must contain, among other relevant evidence:

- The capacity of the parents to provide the child with food, clothing, etc., and other material needs.
- The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity.
- The mental and physical health of the parents.
- Home, school and community record of the child.
- The reasonable preference of the child if child of sufficient intelligence, understanding, and experience, etc.

- Evidence of domestic violence or child abuse.
- An assessment of the risks of returning the child, including a description of any changes in or resolution of the initial risks.
- A description of all unresolved issues.
- A description of the benefits of returning the child to his home.
- An abuse history and criminal background check for all caregivers, family members and others residing in the home from which the child was removed.
- Child protection team report or a statement that none was made.
- All opinions or recommendations of other professionals that provided services to the family.
- A listing of appropriate and available prevention and reunification services and an explanation of the following:
  - if the services were or were not provided.
  - if provided, the outcome.
  - were appropriate services provided? If not, why not? If so, did they meet the family's and/or child's needs?
  - if the services were provided, do they need to continue?
- Whether dependency mediation was provided.
- If there is another parent who could be considered for custody, would placement with that parent be detrimental to the child?
- If the child is placed with a relative or other approved non-relative, a copy of a proper home study must be attached.

**NOTE:** if the results of the home study are not favorable, the department shall not place the child or continue placement of the child in that home, UNLESS the court finds that such placement is in the best interests of the child. § 39.521(2)(r).

- A determination of the amount of child support to be paid.
- A statement regarding a specific length of time before return of the child to the parent will be considered.

### **Guardian ad Litem Report**

The report prepared by the guardian ad litem in consultation with the case coordinator and program attorney should be filed with the court and furnished to all parties 72 hours prior to the hearing. § 39.521(1)(a).

**PRACTICE TIP:** The record at every hearing is much better preserved with written reports. Any additional information can be relayed to the court by oral testimony.

- Since the Program is charged with advocating for the best interests of the child, the report should focus on case planning issues specific to the child. The report should consider the following:
  - Is the child in the best possible placement?

- Is there a possible relative placement and has the department taken prompt steps to evaluate same? Are there any concerns about the relative?
- What services does the child need?
- What services do the parents need to remedy the reason for the dependency?
- What are the terms of the child's visitation with his parents and/or siblings (if not placed together) and are they adequate for the child's best interests?
- Is there anyone else with whom the child should visit?
- Is a no contact order necessary to protect the child?

### **Case Plan**

The case plan is prepared by the department (in conjunction with the guardian ad litem, parent and, if appropriate, child and temporary custodian of the child), filed with the court and served on all parties 72 hours prior to the hearing.

**PRACTICE TIP:** The case plan should be meaningful and designed to address facts and circumstances upon which the court based the findings of dependency. Further, remember that the case plan **MUST BE** developed within 60 days of removal. See 45 CFR § 1356.21(g)(2); § 39.6011(6)(b)2. See *Case Plan chapter* for more detailed information.

### **Any Other Document Filed with the Court.**

The Program should be served with any documents filed for the disposition hearing and should review them prior to the hearing, i.e., comprehensive assessment for the child, psychological evaluation for the parent.

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## **PRIMARY ISSUES AT THE DISPOSITION HEARING**

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### **Reasonable Efforts**

The court must make a determination whether the reasonable efforts have been made by the department to reunify the parent and child, if reasonable efforts are required. § 39.521(1)(f).

When the department is required to exercise reasonable efforts to prevent or eliminate the need for removal and to reunify the child with the parent, the department has the burden of demonstrating that it has made those efforts. See § 39.521(1)(f) for the statutory language, but consider:

- If services could have prevented the removal, were they offered or was the situation an emergency and no services could be provided prior to the removal?
- Are preventive services available, and even if available, will the implementation of the services ensure the safety of the child?
- At the time of disposition, are services in place that would allow the child to go home?

*See also 42 U.S.C. § 671(a)(15)(B)(i), (ii); 45 CFR § 1356.21(b).*

### **Placement**

## In-home

If the court finds that the child can remain safely in the home or be safely returned home, the court shall so order after making a specific finding of fact that the reasons for removal have been remedied to the extent that the child is not endangered. § 39.521(1)(e).

Withhold adjudication – if the court finds the child dependent, but finds that no further action other than supervision is required, it may enter an order withholding adjudication and placing the home under the supervision of the department. § 39.507(5).

Adjudication - If the child can safely remain in the home with the parent with whom he was residing at the time the events arose AND remaining in the home is in the best interests of the child, the court can adjudicate the child dependent and order conditions under which the child may remain in the home under the protective supervision of the department for no less than 6 months. § 39.521(3)(a).

## Out-of-home

The court may place the child out of the home if the child cannot remain safely in the home and removal of the child is necessary to protect the child.

Non-Offending Parent – if there is a parent with whom the child was not residing at the time of the events which resulted in the dependency and that parent desires to obtain custody, the court shall place with that parent upon completion of a home study unless the court finds that such placement would endanger the child. § 39.521(3)(b).

**NOTE:** If a parent prevails at trial and the child did not reside with that parent prior to the dependency, that parent now falls under the provisions of this section and may be entitled to placement.

- The court may order that the non-offending parent assume sole custodial responsibilities, which will result in the termination of supervision and jurisdiction. § 39.521(3)(b) 1.
- The court may retain jurisdiction and order reunification services be provided to either or both parents. If custody of the child is to change at a later date, the standard to change custody from one parent to another shall be the best interests of the child. § 39.521(3)(b) 2.

## Relatives and Non-Relatives

- If no relative is located and the child is placed elsewhere – the court shall consider placing with a relative at a later date, but the court is not obligated to place the child with the relative if it is in the child's best interests to remain in his current placement. § 39.521(1)(d)8.b.
- Any adult relative or non-relative interested in placement of the child must submit to background checks and a home study. Generally, if the home study is unfavorable the placement will not be approved. However, the court may approve the placement if it is in the best interests of the child. § 39.521(2)(r).

- Often a relative is not a resident of Florida and an Interstate Compact on the Placement of Children (ICPC) placement will need to be done.
- The department must supervise the relative or non-relative placement until the child reaches permanency. The department's supervision must be for no less than 6 months. § 39.521(3)(c).
- If the court terminates supervision, leaving the child with the relative or non-relative, the court must enter an order setting forth the powers of the custodian of the child and shall include those powers ordinarily granted to a guardian of the person of a minor. § 39.521(1)(b)3.

PRACTICE TIP: The guardian ad litem should be advocating for early identification of relatives, beginning at shelter, but should raise the issue again at disposition, especially if the child is placed in foster care. The parents have a continuing obligation to identify possible relative placements. If an ICPC must be done, the earlier in the case this is done, the better. § 39.402(17); §39.507(7).

- Foster Care should be the last placement option. The child is committed to the temporary legal custody of the department and the department will determine where to place the child.

PRACTICE TIP: The guardian ad litem should know where the child is placed and should be ready to address any issues regarding this placement – does placement require a school change; is the child having any particular difficulty in the foster home?

## Visitation

- The stated goal of the Legislature is that children will “enjoy regular visitation with their parents, at least once a month, unless the court orders otherwise,” § 39.4085(16), and visitation with their siblings once a week. § 39.4085(15).
- The court has likely previously ordered a visitation schedule at the shelter hearing. See § 39.402(9). The court is obligated to order visitation absent clear and convincing evidence that visitation is not in the best interests of the child, though visitation must be consistent with section 39.0139, the "Keeping Children Safe Act". Section 39.0139 provides a rebuttable presumption of detriment to a child if certain offenses related to sexual abuse or sex-related crimes have been committed or alleged. If a person meets the criteria listed, they may visit or have contact with a child only after a hearing and order by the court. §39.0139(3). *See the “Keeping Children Safe Act” Chapter of this manual for more information.*

### PRACTICE TIP:

-Questions for the guardian ad litem to consider regarding visitation:

-If there is a visitation order, is it appropriate and is it in the best interests of the child?

-Should it be modified?

-If so, in what way, i.e., increased frequency, moving to unsupervised, terminating visits?

-If the siblings are separated, the guardian ad litem must consider the needs of each of the children.  
-Also, if for some reason the parents are not visiting, is the department providing sibling visits?  
-Does the best interests of the child require that the child visit with someone other than a parent or sibling, the guardian ad litem should be prepared to present this information to the court?

#### Grandparents

- Grandparents as well as step-grandparents are entitled to reasonable visitation with their grandchild who has been adjudicated a dependent as long as the court does not find it is not in the child's best interests or such visitation would interfere with the case plan goals. § 39.509. Any visitation with grandparents must conform to § 39.0139, the Keeping Children Safe Act. §39.509.

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### THE ORDER OF THE COURT

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#### **The Court Shall, in its Written Order of Disposition, Include All of the Following:**

- Placement or custody determination;
- Any special conditions of placement or visitation;
- Evaluation, counseling, treatment activities, and other actions to be taken by the parties, if ordered (these issues may be addressed in the case plan which the court may approve at the disposition hearing);
- Who is responsible to monitor the services to the child and the parent;
- Continuation or discharge of the guardian ad litem (unless the court is terminating supervision, the guardian ad litem should seek to remain appointed);
- The date, time, and location of the next hearing which must be the earlier of:
  - 90 days from the disposition hearing;
  - 90 days from the case plan acceptance hearing;
  - 6 months from the last review; OR
  - if there has not been a review, 6 months from the date the child was removed;
- Child support to be paid by the parent (NOTE: Counties vary on how this issue is dealt with – some include the child support obligation in this order and some include a child support task in the case plan which usually requires the parent to sign up with the Department of Revenue.);
- If the child is committed to the department with a relative or non-relative, the court must explain why the reasons the child was not placed and include a determination of whether diligent efforts were made by the department to locate relatives;
- Approval of the case plan or set a case plan hearing within 30 days;

- Any other requirements necessary to protect the child, to preserve the stability of the child's educational placement and to promote family preservation or reunification – the court may require the parents, custodian and/or child to participate in necessary treatment. § 39.521(1).

When the disposition hearing is completed and the case plan has been approved, everyone should have a clear picture of how the case should proceed.