

Guardian ad Litem Program Attorney Training

July 25, 2006

What's changed at Shelter . . .

- The shelter order 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 when such services are expected to become available. If the services are not available, the written determination must also explain why are not available. § 39.402(10).
- New section 39.402(17) - Parent identification of relatives
 - The court must inquire whether the parent has relatives who might be considered a placement for the child.
 - The parent must provide the court and all parties identification and location information regarding the relatives.
 - The court must advise the parent that he or she has a continuing duty to inform DCF of any relative where the child could be placed.
- New section 39.402(18) requires the court to advise the parents 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.
- Section 39.407 is amended to provide that "at any time after a shelter petition or petition for dependency is filed, the court may order a person who has custody or is requesting custody of a child to submit to a substance abuse assessment or evaluation. . . ." Sections 39.507 and 39.521 are amended in similar fashion but go further and allow the court to order the person to be assessed and require treatment, including participation in a treatment-based drug court program. The court can oversee the person's progress and may impose appropriate sanctions for non-compliance.

What's changed for case planning . . .

Provisions are reorganized, though much of the language is the same. New provisions to be aware of:

- Section 39.6011(1) - Participation in development of the plan is not an admission or consent
- Section 39.6011(2) - Case plan must contain: (b) the permanency goal, (c) concurrent planning goals, and (e) written notice to the parent that failure to substantially comply may result in TPR and that material breach of the plan may result in TPR before the compliance period expires.

- Section 39.6011(3) - Signing the case plan is an acknowledgement that case plan has been developed by the parties and agreement with the terms and conditions in the plan (d). Signing is not an admission or consent.
- Section 39.6011(6) - If the parent's substantial compliance with the case plan requires DCF to provide services to the parents or the child and the parents agree to begin compliance with the case plan before the case plan's acceptance by the court, the department shall make appropriate referrals for services that will allow the parents to begin the agreed-upon tasks and services immediately.
- Section 39.6011(6) - After the case plan is agreed upon and signed, all parties get a copy, including the child *and any other person as directed by the court*.
- Section 39.6011(8) - The case plan must describe a process for making available to all physical custodians and family services counselors the information required by section 39.6012(2) and for ensuring that this information follows the child until permanency has been achieved.
- Section 39.6012(2) - To the extent available and accessible, the following health, mental health, and education information and records of the child must be attached to the case plan and updated throughout the judicial review process:
 - the names and addresses of the child's health, mental health, and educational providers
 - the child's grade-level performance
 - the child's school record
 - assurances that the child's placement takes into account proximity to the school in which the child is enrolled at the time of placement
 - a record of the child's immunizations
 - the child's known medical history, including any known problems
 - the child's medications, if any
 - any other relevant health, mental health and education information concerning the child.

Case plan amendments

- The language in 39.701(9)(d) allowing extension of the case plan is deleted.
- Section 39.6013(4) - the need to amend the case plan may be based on information discovered or circumstances arising after approval of the case plan:
 - a previously unaddressed condition
 - the child's need for permanency
 - the failure of a party to substantially comply with a task in the original case plan, including the ineffectiveness of a previously offered service
 - an error or oversight in the case plan
- The plan can be amended by the court or motion of any party with a showing of the preponderance of the evidence to:
 - change the goal
 - use concurrent planning

- add or remove tasks *for the parents*
- The case plan can be amended by the court or upon motion to provide appropriate services *to the child* with competent evidence.
- Concurrent case plan - Section 39.01(18) "establishing a permanency goal in a case plan that uses reasonable efforts to reunify the child with the parent, while at the same time establishing another permanency goal"
- Section 39.701(9)(e) - At the 6 month JR, the court must review the child's permanency goal as identified in the case plan and make findings regarding the likelihood of reunification within 12 months after the removal. If the court makes a written finding that it is not likely that the child will be reunified within 12 months of removal, the department must file with the court, and serve on all parties, a motion to amend the case plan under s. 39.6013 and declare that it will use concurrent planning for the case plan. The department must file the motion no later than 10 business days after receiving the written finding of the court. The department must attach the proposed amended case plan to the motion. If concurrent planning is already being used, the case plan must document the efforts the department is taking to complete the concurrent goal.

What's changed for Permanencyeverything!

- Permanency options are listed *in order of priority*:
 - Reunification
 - Adoption, if a petition for TPR has been or will be filed
 - Permanent Guardianship
 - Placement with a Fit and Willing Relative
 - Another Planned Permanent Living Arrangement (APPLA)
- As a less permanent option is chosen, there are more justifications that DCF must present and findings the court must make.
 - Section 39.621(6) - if the court chooses something other than reunification or adoption, the court must make findings as to why this is done without adoption to follow.
 - Section 39.6231(7) - if the child is permanently placed with a fit and willing relative, the court shall continue to conduct permanency hearings to reevaluate the possibility of adoption or permanent guardianship of the child. DCF must continue to supervise the placement. See also § 39.6231(5).
 - Section 39.621(6) - If the court approves an APPLA, the court must document compelling reasons for doing so. The court will also continue to review the placement every 6 months. See also § 39.6241(3).

Permanent Guardianship

- Similar to a Chapter 744 guardianship but, its not a plenary guardianship, and no accounting or bond is required.

- The court can discontinue regular review hearings and terminate supervision. § 39.6221(5).
- A separate order shall be given to the permanent guardian that can be shared with non-parties that outlines the powers of the guardian and does not include all the personal information typical in a dependency case. § 39.6221(3).
- Reference to paragraph (2)(g) - One paragraph was inadvertently amended out of the bill during session. The paragraph which was omitted said the court's order should:

(g) List the powers and duties of the permanent guardian which shall include the rights and duties of a parent, including, but not limited to:

1. The right to physical and legal custody of the child;
2. The right and duty to protect, nurture, guide, and discipline the child;
3. The right and duty to provide the child with food, shelter, and education; and
4. The right and duty to provide the child with ordinary medical, dental, psychiatric, and psychological care, unless these rights and duties are otherwise enlarged or limited by court order.

This language is consistent with the definition of "Permanent guardianship of a dependent child" in section 39.01(54): "a legal relationship that a court creates under s. 39.6221 between a child and a relative or other adult approved by the court which is intended to be permanent and self-sustaining through the transfer of parental rights with respect to the child relating to protection, education, care and control of the person, custody of the person, and decisionmaking on behalf of the child."

- Section 39.5085(1)(c) was amended to ensure that if a relative wants to become a permanent guardian, he or she is still eligible for relative caregiver funds.

Placement with a Fit and Willing Relative

- The court must find that reunification and adoption are not in the child's best interests before making this placement
- Other prerequisites for this placement:
 - Child has been in the placement for at least 6 months
 - Relative has made a commitment to provide for the child until the child reaches the age of majority and to prepare the child for adulthood/independence
 - Relative is suitable/able to provide a safe and permanent home for the child
 - Relative agrees to give notice of change in residence

- DCF and GAL must provide the court with a recommended list and description of services needed to ensure permanency. § 39.6231(2).
- The court's written order shall specify:
 - The circumstances/reasons why reunification is not possible by referring to findings of fact made in the adjudicatory order or by making separate findings of fact.
 - The reasons why the child is being permanently placed with a relative instead of being adopted.
 - The frequency/nature of visitation with parents, grandparents and siblings.
 - The relative shall not return the child to the person from whom the child was removed without a court order.
- A separate order shall be given to the relative that can be shared with non-parties that establishes his or her authority to care for the child and does not include all the personal information typical in a dependency case. § 39.6231(3).

Another Planned Permanent Living Arrangement

- This is the least preferred permanency option.
- Findings must be made that:
 - Reunification is not in the child's best interests
 - A more permanent placement is not in the child's best interests
 - DCF has documented reasons why the APPLA will endure and how the proposed arrangement will be more stable and secure than ordinary foster care
 - AND THEN COMPELLING REASONS
- DCF and the GAL must provide the court with a recommended list and description of services needed to ensure permanency for placement in an APPLAs. § 39.6241(2).
- Court supervision continues. § 39.6241(3).

Other changes regarding permanency:

- Section 39.621(9) - Outlines a procedure for the court to follow if a parent who still has parental rights seeks reunification or increased contact. The court can hold a hearing first to determine whether to reopen the case (applies only to permanent guardianship). The parent must demonstrate that the safety, well-being, and physical, mental and emotional health of the child is not endangered by the modification. Section 39.621(10) lists specific findings of fact the court must make concerning modification of a permanency order.
- Before the permanency hearing, DCF 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.

What's changed for Termination of Parental Rights

- Section 39.701(9)(d) clarifies that the court, on its own motion, may order DCF to file a TPR at the JR hearing if the court finds the parents have failed to substantially comply with the plan.
- New section 39.8055 is created: "Requirement to file a petition to terminate parental rights; exceptions.--" The department shall file a petition to terminate parental rights within 60 days after any of the following if:
 - At the time of the 12-month judicial review hearing, a child is not returned to the physical custody of the parents;
 - A petition for termination of parental rights has not otherwise been filed, and the child has been in out-of-home care under the responsibility of the state for 15 of the most recent 22 months, calculated on a cumulative basis, but not including any trial home visits or time during which the child was a runaway;
 - A parent has been convicted of certain crimes; or
 - A court determines that reasonable efforts to reunify the child and parent are not required.
- Exceptions to the automatic filing rule are specified in 39.8055(2) and examples are provided:
 - The child is being cared for by a relative under section 39.6231; or
 - The department has documented in the report to the court a compelling reason for determining that filing such a petition is not in the best interests of the child. Compelling reasons for not filing or joining a petition to terminate parental rights may include, but are not limited to:
 - Adoption is not the appropriate permanency goal for the child.
 - No grounds to file a petition to terminate parental rights exist.
 - The child is an unaccompanied refugee minor as defined in 45 C.F.R. 400.111.
 - There are international legal obligations or compelling foreign-policy reasons that would preclude terminating parental rights.
 - The department has not provided to the family, consistent with the time period in the case plan, services that the department deems necessary for the safe return of the child to the home.
- Upon good cause shown by any party or on its own motion, the court may review the decision by the department that compelling reasons exist for not filing or joining a petition for termination of parental rights.
- The first sentence in 39.806(1) is deleted (which provides a list of who can file TPR) because it does not concern grounds for TPR and is repetitive of section 39.802(1)
- Section 39.806(1)(e)2. establishes material breach of a case plan as a ground for TPR: clear and convincing evidence that the parent is unlikely or unable to

substantially comply with the case plan before time expires to comply with the case plan.

Some other changes to be aware of:

- Section 39.0132(10) regarding limitations on continuances is moved to new section 39.0136 without substantive changes.
- Section 39.0138 is created regarding criminal history records checks.
- Section 39.507(7) is created which requires the court to ask the parents whether relatives exist who might be a placement for the child. (Similar to new section 39.402(17)).
- New language is added to section 39.522 to provide that when considering post-disposition change of custody, the court shall consider the child's continuity in the same out-of-home placement as a factor in determining best interests.
- Section 39.810 is amended to clarify the weight to be given to potential relative placements in making manifest best interest determinations, specifically: "the availability of a nonadoptive placement with a relative may not receive greater consideration than any other factor weighing on the manifest best interest of the child and may not be considered as a factor weighing against termination of parental rights. If a child has been in a stable or preadoptive placement for not less than 6 months, the availability of a different placement, including a placement with a relative, may not be considered as a ground to deny the termination of parental rights."