

FLORIDA GUARDIAN AD LITEM CHECKLISTS

Florida Statewide Guardian ad Litem Program
April 2016



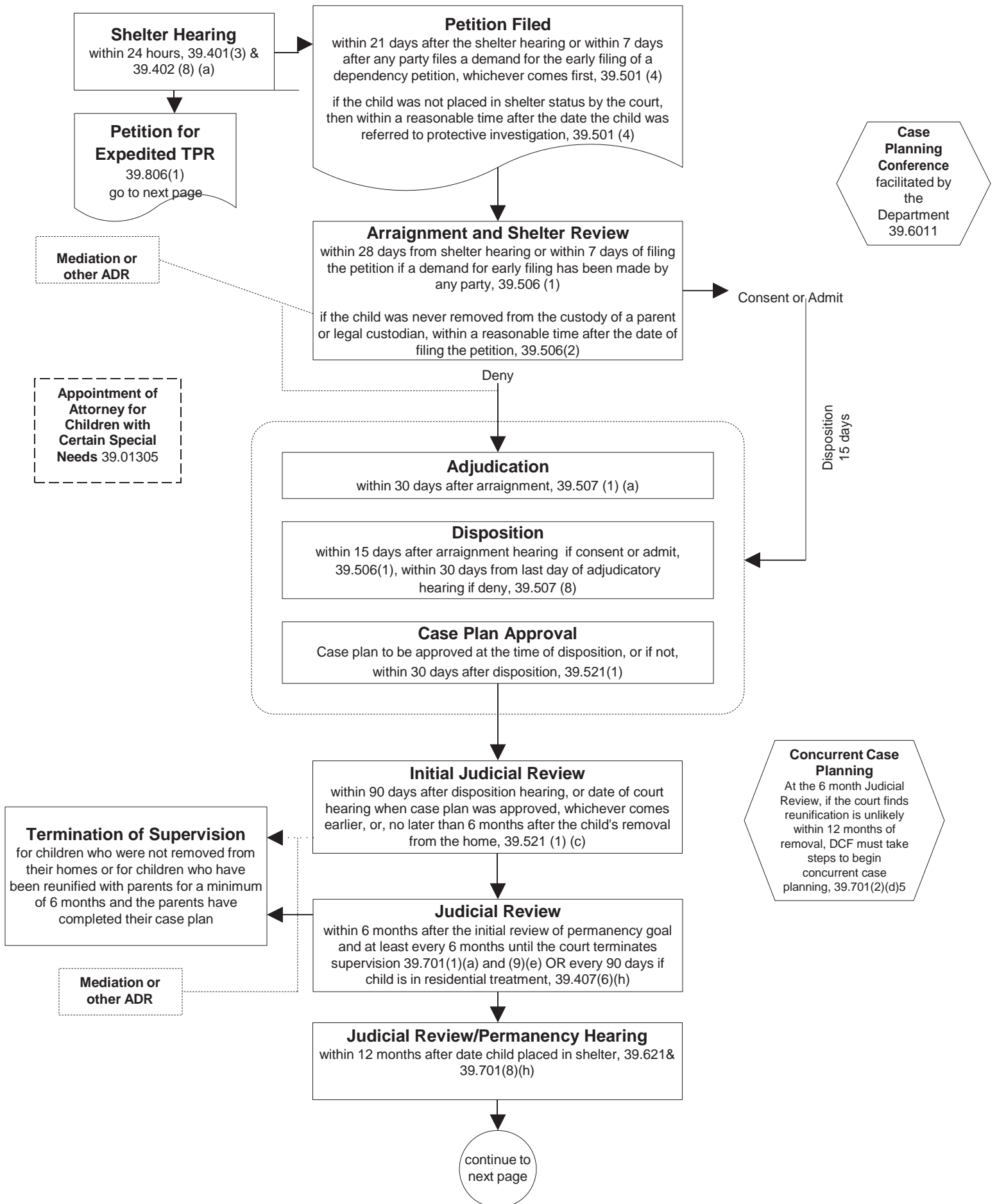
GAL

Guardian ad Litem

**A POWERFUL VOICE FOR
FLORIDA'S CHILDREN**

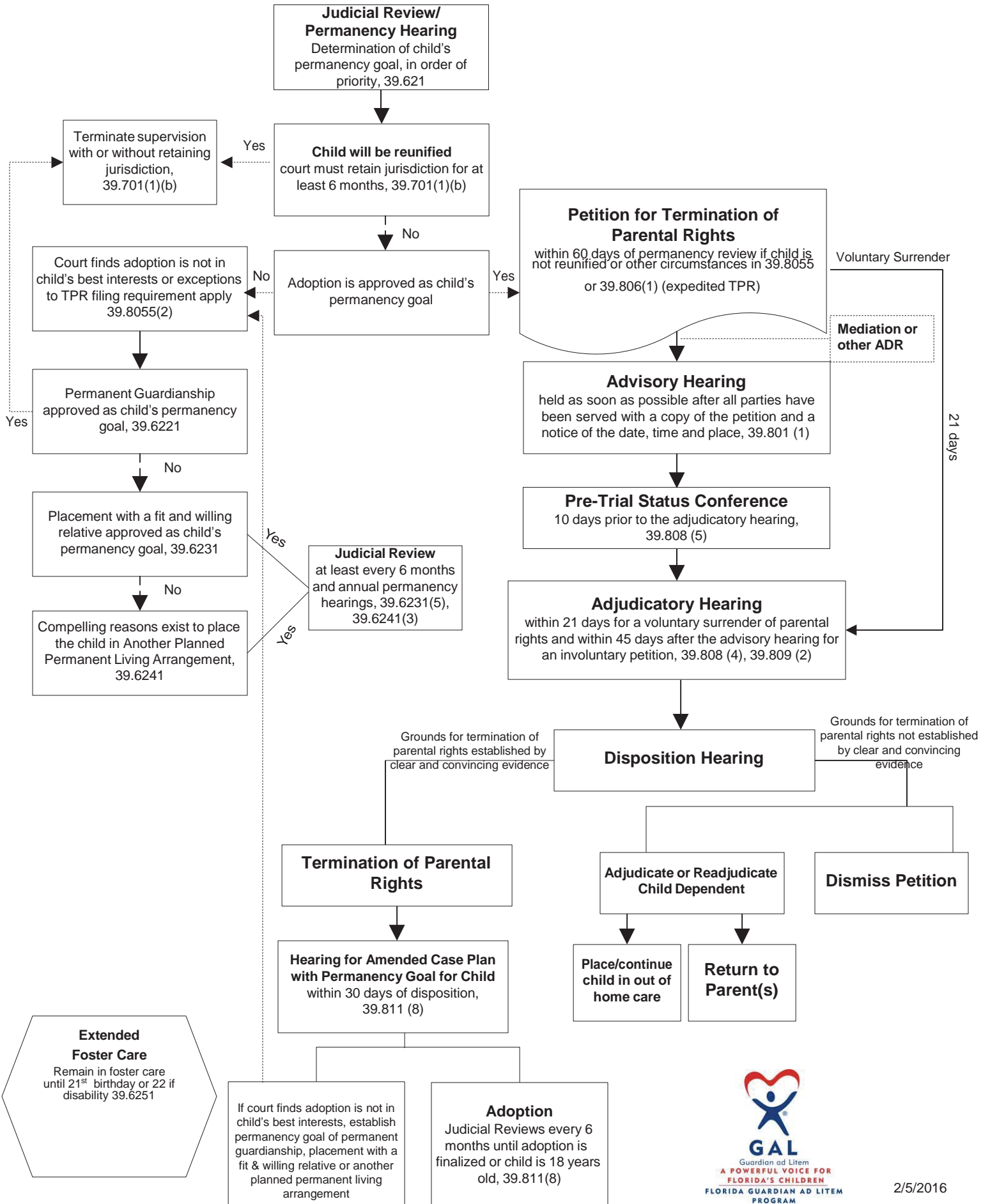
**FLORIDA GUARDIAN AD LITEM
PROGRAM**

Dependency Case Management Flowchart



Dependency Case Management Flowchart

(continued)



FLORIDA UNIFORM CITATIONS

Except for citations to case reporters, all citations forms should be spelled out in full if used as an integral part of a sentence either in the text or in footnotes. Abbreviated forms as shown in Fla. R. App. P. 9.800 should be used if the citation is intended to stand alone either in the text or footnotes.

FLORIDA STATUTES

- **In a Sentence.** Section 39.01(50), Florida Statutes (2009).
- **Stand Alone.** § 39.01(50), Fla. Stat. (2009).
- **Florida Statutes Annotated.** 32 Fla. Stat. Ann. 116 (Supp. 1975)

FLORIDA RULES

- **In a Sentence.** Florida Rule of Juvenile Procedure 8.012
- **Stand Alone.** Fla. R. Juv. P. 8.012

COMMONLY USED RULE CITATION FORMS

- Fla. R. Civ. P. 1.180.
- Fla. R. Juv. P. 8.070.
- Fla. R. App. P. 9.100.
- Fla. Admin. Code R. 62D-2.014

CASE CITATIONS

Case names shall be **underscored** (or **italicized**) in text and in footnotes

FLORIDA SUPREME COURT

- *Fenelon v. State*, 594 So. 2d 292 (Fla. 1992).
- For recent opinions not yet published in the Southern Reporter, cite to Florida Law Weekly: *Traylor v. State*, 17 Fla. L. Weekly S42 (Fla. Jan. 16, 1992). If not therein, cite to the slip opinion: *Medina v. State*, No. SC00-280 (Fla. Mar. 14, 2002).

FLORIDA DISTRICT COURTS OF APPEAL

- *Sotolongo v. State*, 530 So. 2d 514 (Fla. 2d DCA 1988); *Buncayo v. Dribin*, 533 So. 2d 935 (Fla. 3d DCA 1988).
- For recent opinions not yet published in Southern Reporter, cite to Florida Law Weekly: *Myers v. State*, 16 Fla. L. Weekly D1507 (Fla. 4th DCA June 5, 1991). If not therein, cite to the slip opinion: *Fleming v. State*, No. 1D01-2734 (Fla. 1st DCA Mar. 6, 2002).

FLORIDA CIRCUIT COURTS AND COUNTY COURTS

- *Whidden v. Francis*, 27 Fla. Supp. 80 (Fla. 11th Cir. Ct. 1966).
- For opinions not published in Florida Supplement, cite to Florida Law Weekly: *State v. Campeau*, 16 Fla. L. Weekly C65 (Fla. 9th Cir. Ct. Nov. 7, 1990). If not therein, cite to the slip opinion: *State v. Campeau*, No. 90-4363 (Fla. 9th Cir. Ct. Nov. 7, 1990).

FLORIDA ATTORNEY GENERAL OPINIONS

- **In a Sentence.** In opinion 96-51, the Attorney General
- **Stand Alone.** Op. Att'y Gen. Fla. 96-51 (1996)

UNITED STATES SUPREME COURT

- *Sansone v. United States*, 380 U.S. 343 (1965).

FEDERAL COURTS OF APPEALS

- *Gulf Oil Corp. v. Bivins*, 276 F.2d 753 (5th Cir. 1960).
- For opinions not published in the Federal Reporter, cite to Florida Law Weekly Federal: *Cunningham v. Zant*, 13 Fla. L. Weekly Fed. C591 (11th Cir. March 27, 1991).

CONSTITUTION

Florida Constitution. (Year of adoption should be given if necessary to avoid confusion.)

- **In a Sentence.** Article IV, section 3 of the Florida Constitution
- **Stand Alone.** Art. IV, §3, Fla. Const.

United States Constitution.

- Art. IV, § 2, cl. 2, U.S. Const. Amend. V, U.S. Const.

INTERNET CITATIONS

Cite to Internet sources only when those materials are unavailable in printed form or are difficult to obtain in their original form.

- Randall R. Smith, *Jones on the Internet: Confusion and Confabulation*, Citation Debate Forum at <http://www.citations.org> (last visited Jan. 20, 2001).

CAPITALIZATION

When referring to a court:

- When referring to the United States Supreme Court. The Court concluded in *Roe v. Wade* that there is a constitutional right to privacy
- When referring to the full name of any court. The Florida Supreme Court. **But:** the supreme court.
- In legal documents when referring to the court in which the document will be submitted. This Court accepted jurisdiction based on article V, section 3(b)(3) of the Florida Constitution.

Florida Supreme Court

- the court
- the supreme court
- the Florida Supreme Court
- the Supreme Court of Florida [the official name]

Florida District Courts of Appeal

- the court
- the district court
- the Third District Court
- the Third District Court of Appeal

Florida Circuit Courts

- the court
- the circuit court
- the Sixteenth Circuit Court

FOR MORE INFORMATION

- Florida Style Manual (7th Edition) <http://www.law.fsu.edu/docs/default-source/journals/law-review/florida-style-manual.pdf>
- *Introduction to Basic Legal Citation* (LII 2014 ed.) www.law.cornell.edu/citation
- Fla. R. App. P. 9.800 Uniform Citations (updated February 2016) [http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/830A6BC6B90DA05685256B29004BFAC0/\\$FILE/Appellate.pdf?OpenElement](http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/830A6BC6B90DA05685256B29004BFAC0/$FILE/Appellate.pdf?OpenElement)

DEPENDENCY AT A GLANCE CHECKLIST

REPORTS

- GAL Report Received (72 hours) § 39.701(2)(b)-(c)
- JR Report Received (72 hours) § 39.701(2)(b)-(c)
- Report of Agency (if applicable)
- Report of Citizen Review Panel (if applicable)
- Master Trust - Quarterly Accounting Attached to Each JR
- Medical, Psychological, and Educational Records
- Transition Plan
- Missing Child – Child’s Status & Efforts to Locate – Weekly Documentation for the First 3 Months; then Monthly Documentation 65C30.013(2)(c) F.A.C.

JUDICIAL REVIEW PREPARATION

- Permanency goal change
- Review permanency goal options § 39.01(52)
- Clarify any issues or questions with gal & staff
- Recommendations of gal program
- Child presence at hearing - encourage
- Clothing allotment
 - o Initial
 - o Annual
- Understand the child’s wishes
- Subpoena witnesses / gather documents
- Child prescribed psychotropic medication § 39.407(3)(a)

CASE PLAN

- Parent’s Tasks / Referrals Made / Compliance
 - o **No Substantial Compliance** - File TPR
 - o **Material Breach** – File TPR Earlier than 12 Months
- Child’s services ~ referrals made
- Services provided to foster parents / placement
- Department Compliance
- Case Plan Amendments § 39.6013
 - o **Preponderance of the Evidence.** Goal Changes, Concurrent Planning, Add or Remove Parent’s Tasks § 39.6013(4).
 - o **Competent Evidence.** Amend services for the child
- Adoption – Documentation of steps for permanent placement (the department)
- IL Needs, Tasks & Referrals
- Concurrent Planning ~ Appropriate Tasks

Psychotropic Medication § 39.407(3)(a)

- Prescribing physicians signed medical report
- Motion for more frequent reviews?

NORMALCY § 39.4091(3)

Caregivers must use a **reasonable prudent parent** standard to determine if child can participate in **age-appropriate** activity considering the child’s:

- Age, maturity and developmental level
- Risks of activity
- Best interest of child
- Importance of child's growth
- Importance most family-like living experience
- Behavior

Caregiver is **not liable** for harm caused to child, provided decision was reasonable and prudent.

Remove barriers by ensuring:

- CBCs / department prior approval not required
- There is an identified caregiver (a *person*) making normalcy decisions (even if child placed in group home or shelter)

VISITATION

- Parents ~ Frequency, Duration, Results, Recommendations, Agency Report?
- Siblings (Frequency, Kind, Duration) – Grandparents § 39.509

PLACEMENT

- Current placement, family-like, stability; with siblings (reasonable efforts, if not why?) § 39.402(9)(b)?
- Supervised Independent Living Considered (16+)

CONCURRENT PLANNING § 39.01(19)

- Case plan may be amended at any time to employ concurrent planning § 39.6013(2)
 - If court finds reunification unlikely at 6 month review, then must change goal to concurrent planning § 39.701(2)(d)5
- Department to file motion 10 days from court's finding

EDUCATION

- Placed in same school / stability / efforts made
- Educational needs & services considered
- Child has appropriate clothing & supplies
- Transportation
- Attendance issues
- Performance level (educational evaluation, GPA, etc.)
- Educational advocate
- Individual education plan (IEP)
- Child has physical, mental health issues –services

FINANCIAL

- Master trust ~quarterly accounting attached to JR
 - Personal allowance – no less than \$15 a month
 - Notice of ability to request fee waiver or change in foster care or personal allowance 65c-17.005 F.A.C.
 - Funds Distributed?
- Plan for Achieving Self-Sufficiency (PASS) Sub-Account for SSI beneficiaries. 65C-17.003(2) F.A.C.
- Foster care allowance - part of board rate sent to foster parents

DEVELOPMENTAL DISABILITY

- Disability services applied for / receiving before 18
- Guardian advocate in place by 18th birthday if appropriate § 393.12(2)(c)

MINOR PARENTS

- Access To Services, IL Services, Plan for Future, Child Placed with Minor (Unless at “Significant Risk”) 65C-28.010(1) F.A.C.

COURT ORDER

- Review the court order to make sure it is correct / identify issues

FOLLOW-UP

- Discuss follow-up issues with GAL team and develop plan
- Appellate Issues

Shelter Hearing

RELEVANT STATUTES & RULES	§§ 39.395 - 39.402. Rules of Juvenile Procedure 8.305.
PURPOSE OF HEARING	<p>A non-adversarial hearing at which the court determines if probable cause exists to remove a child or keep a child in shelter status pending further investigation of the case and whether removal can be avoided through reasonable efforts by DCF. §§ 39.01(69), 39.402(1).</p> <p>The shelter hearing is comparable to a first appearance in criminal court, except that at the shelter hearing the parents have the right to be heard and present evidence. § 39.402(5)(b)(1).</p>
TIME FRAME	<p>Hearing within 24 hours of removal. §§ 39.402(8)(a), 39.401(3). If a judge other than the juvenile judge conducts the hearing, the juvenile judge must review the case within 2 working days. § 39.402(12); Rule 8.305(b)(11).</p> <p>Under certain circumstances, the hearing may be continued for up to 72 hours, but the child remains in shelter. § 39.402(5)(b)(2).</p>
BURDEN OF PROOF	Standard of proof for probable cause is that which is necessary for an arrest warrant. Rule 8.305(b)(3).
RULES OF EVIDENCE	The court may hear all relevant material evidence.
NEXT HEARING	Arraignment Hearing: no more than 28 days from the date the child is placed in shelter. § 39.506(1).

SHELTER HEARING CHECKLIST

TAKING CHILDREN INTO CUSTODY § 39.401

Probable cause must exist that:

- Child abused, abandoned or neglected or is suffering from or imminent danger of illness or injury as a result of abuse, neglect or abandonment;
- Material violation of a condition of placement imposed by court; or
- No parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care,

PLACEMENT/CONTINUATION IN SHELTER § 39.402(1),(2)

Child may be placed/continued in shelter only if:

- One of the criteria in § 39.401(1) (above) applies and
- Court made specific finding of fact regarding:
 - o necessity for removal; and provision of services will not eliminate need for removal

ALTERNATIVES TO SHELTER

- Voluntary protective services - the child will remain at home and the department shall assist the family
- Removal of alleged perpetrator
- In-home services

PRIOR TO SHELTER HEARING

- Department must file affidavit/petition
 - o Copies to parties prior to hearing
- Identify and locate legal custodians, parents of child
- Parents given actual notice - must at least have good faith effort to give notice - § 39.402(8)(b)
- Background check, home study on proposed or actual placement (criminal records, abuse registry checks)

PLACEMENT

- Placement pending adjudication
- The parent shall notify the court and all parties of possible relative placements (continuing duty of the parents) § 39.402(17)

SHELTER HEARING

- GAL appointed - § 39.402(8)(c)1
- Parents informed of right to counsel - § 39.402(8)(c)2
- Interpreters provided if necessary
- Parents present evidence - § 39.402(8)(c)3
- Parents on going duty to inform court of relative placement.
- Department shall provide the court - § 39.402(8)(e),
 - o Law enforcement, medical reports and abuse hotline reports
 - o Current or previous case plans - § 39.402(8)(f)1
 - o Delinquency adjudications of parents - § 39.402(8)(f)2
 - o Past or current protection order for domestic violence - § 39.402(8)(f)
 - o Anywhere the child has lived in the past 12 months
- Parents must provide permanent mailing address - § 39.402(8)(g)

- Identity/whereabouts of any unknown parent, inquiry under - § 39.503, if needed.

ATTORNEYS FOR CHILDREN WITH CERTAIN SPECIAL NEEDS § 39.01305(3)

- Resides in skilled nursing facility (or considered)
- Psychotropic medication and declines to assent
- Diagnosis of developmental disability as defined in § 393.063
- Placed or considered for placement in RTC
- Victim of human trafficking as defined in §787.06(2)(d)

FINDINGS REQUIRED IN ORDER - § 39.402(8)(H)

- Written findings regarding necessity for placement in shelter. § 39.402(1),(2).
- Removal in best interests of child
- Services will not eliminate need for removal
- Continuation in the home is contrary to the welfare of the child because home situation presents substantial immediate danger to child.
- Probable cause to believe child is dependent or that the court needs additional time – not to exceed 72 hours - § 39.402 (8)(h)4
- Department has made reasonable efforts to prevent the need for removal - § 39.402(10)
 - Written description of services and when available or why services are not available for the child
- Department deemed to have made reasonable efforts - § 39.402(8)(h)5.
- Notified parents of next hearing
- Notified parents of right to counsel

NO PROBABLE CAUSE?

- Dismiss petition
- Permit the department 72 hours to perfect probable cause - § 39.402(8)(d)2
- Non-offending parent given custody

VISITATION

- Recommendation of the department - § 39.402(9)
 - None if clear and convincing that visitation not in the best interests of the child
- Must occur within 72 hours
- Sibling visitation (frequency kind duration)
- Grandparent visitation - § 39.509
- Conform with Keeping Children Safe Act - § 39.0139

OTHER ISSUES

- Establish paternity
- ICPC and/or ICWA - Is the child a member of, or eligible for, membership in an Indian tribe?
- AAL appointed? Special needs attorney appointment
- Other court cases pending – avoid conflicting orders
- Child 3 years to school entry - Rilya Wilson Act - § 39.604
- Developmental disabilities (guardian advocate in place by 18th birthday if appropriate § 393.12(2)(c))

EDUCATION

- If placement requires change in schools review McKinney-Vento
- IEP for child

FINANCIAL

- The court shall order the parents to pay child support - § 39.402(11)

PSYCHOTROPIC MEDICATION - § 39.407(3)(b)

- May continue if the medication is in its original container and it is a current prescription for the child
- The department must seek court approval for the continued administration of the medication

Arraignment

RELEVANT STATUTES & RULES	§§ 39.501- 39.506. Rules of Juvenile Procedure 8.310 - 8.325
PURPOSE OF HEARING	<p>Hearing at which parents/legal custodians enter pleas (admit/consent or deny) in response to the Petition for Dependency. § 39.506(1).</p> <p>Similar to arraignment in criminal court, except the court also reviews issues related to the child such as shelter placement and visitation.</p> <p>No written answer is required.</p>
TIME FRAME	<p>For a child in an out of home placement - within 28 days of shelter hearing. § 39.506(1).</p> <p>For a child not sheltered - within reasonable time after the petition for dependency is filed. § 39.506(2).</p> <p>If a demand for early filing has been made - within 7 days of the filing of the dependency petition. § 39.506(1).</p>
BURDEN OF PROOF	Review Petition for dependency to determine prima facie case of dependency if there has been no shelter hearing.
RULES OF EVIDENCE	No evidence submitted on issue of arraignment; when reviewing shelter placement, court may consider all relevant and material evidence.
NEXT HEARING	<p>If parents/legal custodians deny - adjudicatory hearing within 30 days of arraignment hearing. § 39.506(1),(2).</p> <p>If parents/legal custodians admit/consent - disposition hearing within 15 days of arraignment hearing. § 39.506(5).</p>

DEPENDENCY PETITION CHECKLIST

FORM AND CONTENT: SEE § 39.501; RULE 8.310.

- Petition must be in writing and titled "Petition for Dependency".
- State separate counts for each allegation.
- Identify all parents by name and address, if known.
- If not known, describe all attempts made to obtain the information. (See § 39.503).
- Identify all current legal custodians of the child by name and address, if known.
 - If not known, describe all attempts made to obtain the information.
- Identify the age, sex, and name of the child(ren).
- Specify allegations of a factual basis establishing prima facie abuse, neglect, and/or abandonment.
- Identify the person(s) alleged to have committed the acts or omissions, if known.
 - If not known, describe all attempts made to obtain the information.
 - If the perpetrator is someone other than a parent or legal custodian and the parent or legal custodian is alleged to be culpable, allege those facts.
- State whether:
 - 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.
 - the department determined voluntary services are not appropriate for the parent or legal custodian and the reasons for such determination.
- Petitioner shall sign under oath stating the petitioner's good faith in filing the petition.
- If filed by the department, it shall be signed by an attorney for the department.

SERVICE

- Parents and legal custodians must be served at least 72 hours before the arraignment hearing.

Adjudicatory Hearing

RELEVANT STATUTES & RULES	§§ § 39.507. Rules of Juvenile Procedure 8.330, 8.335.
PURPOSE OF HEARING	The petitioner must prove the allegations of the petition for dependency by a preponderance of the evidence. § 39.507(1)(b).
TIME FRAME	As soon as practicable after the petition for dependency is filed, but no more than 30 days after arraignment. § 39.507(1)(a).
BURDEN OF PROOF	Preponderance of the evidence. § 39.507(1)(b). The court may enter an order stating that the allegations were proved by clear and convincing evidence. Rule 8.330(a).
RULES OF EVIDENCE	Rules of evidence in use in civil cases. § 39.507(1)(b); Rule 8.330(a).
TEST FOR ADJUDICATION OF DEPENDENCY	<ol style="list-style-type: none">1. The child has been abandoned, abused, or neglected by a parent or legal custodian. § 39.01(15)(a).2. There is no parent or legal custodian capable of providing supervision and care of the child or the child has been surrendered or voluntarily placed. §§ 39.01(15)(b)-(e).3. The child is at substantial risk of imminent abuse, abandonment, or neglect by a parent or legal custodian. § 39.01(15)(f).4. The child has been sexually exploited and has no parent, legal custodian, or responsible adult relative currently known and capable of providing the necessary and appropriate supervision and care. § 39.01(15)(g).
NEXT HEARING	<p>Disposition hearing must occur within 30 days of the last day of the adjudicatory hearing. § 39.507(8). If disposition is held at conclusion of the adjudicatory hearing, then the next hearing will be:</p> <ul style="list-style-type: none">• the case plan approval, within 30 days, Rule 8.340(c)(8); or• judicial review, within 90 days of the disposition hearing or case plan, whichever comes first, but no later than 6 months after the child's removal from the home. § 39.521(1)(c).

Disposition Hearing

RELEVANT STATUTES & RULES	§ 39.521; Rules 8.340
PURPOSE OF HEARING	Hearing at which the judge considers reports, recommendations, and other evidence regarding the child's placement while the parents work to correct the problems that led to dependency. The judge also reviews the case plan developed by the parties to determine if it addresses all of the problems affecting the child.
TIME FRAME	<p>If child has been adjudicated dependent, the disposition hearing should be held no more than 30 days after adjudicatory hearing. § 39.507(8).</p> <p>If parent consents or admits at arraignment, disposition must occur within 15 days "unless a continuance is necessary." § 39.506(5).</p>
RULES OF EVIDENCE	Court may receive any relevant and material evidence helpful in determining the proper disposition to be made . Rule 8.340(a). The court may rely upon such evidence to the extent of its probative value, even though not competent in an adjudicatory hearing.
NEXT HEARING	<p>Judicial review must occur within 90 days of disposition or the date the court approves the case plan, whichever is earlier (but no later than 6 months after removal). § 39.521(1)(c).</p> <p>Case plan approval hearing must occur within 30 days of disposition if the case plan is not approved at disposition. § 39.521(1)(a).</p> <p>Permanency hearing must occur within 30 days of disposition if the court finds reasonable efforts to reunify are not required. 32 U.S.C. § 671(a)(15)(E).</p>

CASE PLAN CHECKLIST

The department shall prepare a draft of the case plan for each child receiving services under chapter 39

PARTICIPANTS IN FACE-TO-FACE MEETING

- Department
- Child's parent
 - If parent(s) unwilling or unable to participate must have documentation § 39.6011(1)(c)
- Guardian ad Litem
- Attorney ad Litem, if appointed
- Child, if appropriate
- Child's temporary custodian

EACH CASE PLAN MUST CONTAIN

- Parent's behavior or acts, resulting in risk to child, to be addressed – the behavior /act must match service § 39.6011(2)(a)
- The Permanency Goal - Permanency Goal is also the Case Plan Goal §§ 39.6011(2)(b), 39.01(52)
 - Reunification
 - Adoption when a petition for termination of parental rights has been or will be filed
 - Permanent guardianship of a dependent child § 39.6221
 - Permanent placement with a fit and willing relative § 39.6231), or
 - Placement in another planned permanent living arrangement § 39.6241
- If concurrent planning, then a description of the goal of reunification in addition to a description of one of the remaining permanency goals § 39.6011(2)(c)
- Date the compliance period expires: no later than 12 months after the child initially removed, or date the court accepted the case plan (whichever sooner) § 39.6011(2)(d)
- Description of each of the parent's tasks and services §39.6012(1)(b)
 - type of services or treatment
 - date the department will provide each service or referral date by which the parent must complete each task
 - frequency of services or treatment provided (determined by professionals on a case-by-case basis)
 - location of the delivery of the services
 - accountable staff or service provider
 - measurable objectives, timeframes
- Description of the child's identified needs while in care § 39.6012(2)(a)
 - plan for ensuring that the child receives safe and proper care
- A written notice that:
 - Failure to substantially comply with case plan may result in TPR
 - Material breach of case plan may result in filing for TPR sooner than stated compliance period § 39.6011(2)(e)
- For children thirteen and over who are in an out-of-home placement, the case plan shall include a description of the independent living services identified regardless of the goal of the plan
- Description of role of foster parents § 39.6011(4)(a)
- The responsibility of the case manager to forward a relative's request to receive notification of all proceedings and hearings submitted pursuant to § 39.301(15)(b) to the attorney for the department. § 39.6011(4)(b)
- Minimum number of face-to-face meetings to be held each month; § 39.6011(4)(c)

- Parent's financial responsibilities § 39.6011(4)(d). Must list cost associated with services of parent and child, which are the financial responsibility of parent(s)
- If the goal is adoption, then case plan must document steps the department is taking to find adoptive or permanent placement § 39.6011(5)
- If the child is in an out-of-home placement the case plan must contain the following: § 39.6012(3)
 - description of the type of placement § 39.6012(3)(a)
 - parent's visitation rights and obligations § 39.6012(3)(b)
 - sibling visitation § 39.6012(3)(b)
 - if 13 or older must meet Independent Living requirements of § 409.1451, § 39.6012(3)(c)
 - A discussion of the safety and the appropriateness of the child's placement § 39.6012(3)(d)
- Guardian advocate to be appointed by 18th birthday, if appropriate. §§ 393.12(2)(c), 39.6251(8).

CHILD'S RECORDS THAT MUST BE ATTACHED TO CASE PLAN

- 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; and
- Any other relevant health, mental health, and education information concerning the child.

AMENDING THE CASE PLAN

- The case plan may be amended by the court or upon motion of any party at any hearing in order to change the goal of the plan or to employ the use of concurrent planning § 39.6013(2)(4), Rule 8.420(a)(1)(3)

CASE PLAN MUST BE EXPLAINED, SIGNED AND DELIVERED

- Case plan must be explained to parties including child, if appropriate §39.6011(3)
- Case plan must immediately be given to all parties, including the child, if appropriate § 39.6011(6)(b).
- Signed by all parties -- signature of a child may be waived if the child is not of an age or capacity to participate in the case-planning process § 39.6011(3)

TIME LIMITATIONS ARE THE RIGHT OF THE CHILD – TOTAL TIME ALLOWED FOR CONTINUANCES MAY NOT EXCEED 60 DAYS IN ANY 12 MONTH PERIOD § 39.0136(3)

CASE PLAN WORKSHEET

PARENT'S TREATMENT AND SERVICES

Behavior / act that led to risk	Service and Frequency	Date department will provide service or referral	Completion date	Accountable Staff or service provider	Location of service delivery

CHILD'S SERVICES

Issue	Service	Date department will provide service or referral	Accountable Staff or service provider	Location of service

PARTICIPANTS

- Department
- Child, if appropriate
- Child's parent(s)
- Guardian ad Litem
- Attorney ad Litem, if appointed
- Child's temporary custodian

Judicial Review Hearing

RELEVANT STATUTES & RULES	§§ 39.701 - 39.704. Rule of Juvenile Procedure 8.415.
PURPOSE OF HEARING	Evidentiary review by court to determine status of the child and compliance with case plan, to review need for changes to case plan and placement, and to maintain focus on safety of the child and permanent placement. Review is required for both out-of-home and in-home placements.
TIME FRAME	<p>Initial judicial review must occur no later than 90 days after the earlier of disposition or case plan approval hearing, but no more than 6 months after removal. § 39.701(1)(d)1; Rule 8.415(b).</p> <p>Permanency hearing must occur no later than 12 months after the date the child is removed and no later than 30 days after a determination that further reunification efforts are without merit. §§ 39.621(1).</p> <p>Judicial reviews in every case must occur at least every 6 months. § 39.701(1)(a); Rule 8.415(b).</p>
RULES OF EVIDENCE	The court may receive any relevant and material evidence pertinent to the cause . This evidence may be received by the court and relied on to the extent of its probative value, even though not competent in an adjudicatory hearing. § 39.701(2)(c); Rule 8.415(e).
NEXT HEARING	<p>Permanency hearing must occur no later than 12 months after removal of child and no later than 30 days after a determination that further reunification efforts are without merit. §§ 39.621(1).</p> <p>Judicial reviews must occur every 6 months.</p>

JUDICIAL REVIEW CHECKLIST

JUDICIAL REVIEW CHECKLIST REPORTS

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- Transition Plan
- Missing Child – Child’s Status & Efforts to Locate – Weekly Documentation for the First 3 Months; then Monthly Documentation 65C30.013(2)(c) F.A.C.

JUDICIAL REVIEW PREPARATION

- Permanency Goal Change
- Review Permanency Goal Options § 39.01(52)
- Clarify any Issues or Questions with GAL & Staff
- Recommendations of GAL Program
- Encourage Child’s Presence at Hearing
- Clothing Allotment
 - Initial
 - Annual
- Understand the Child’s Wishes
- Subpoena Witnesses / Gather Documents
- Child Prescribed Psychotropic Medication §39.407(3)(a)

CASE PLAN

- Parent’s Tasks / Referrals Made/Compliance
 - No Substantial Compliance – File TPR
 - Material Breach – File TPR Earlier than 12 Months
- Child’s Services ~ Referrals Made
- Services Provided to Foster Parents / Placement
- Department Compliance
- Case Plan Amendments § 39.6013
 - **Preponderance of the Evidence.** Goal Changes, Concurrent Planning, Add or Remove Parent’s Tasks § 39.6013(4).
 - **Competent Evidence.** Amend Services for the Child
- Adoption – Documentation of Steps for Permanent Placement (the department)
- IL Needs, Tasks & Referrals
- Concurrent Planning ~ Appropriate Tasks

PSYCHOTROPIC MEDICATION § 39.407(3)(A)

- Prescribing Physicians Signed Medical Report
- Motion for More Frequent Reviews?

- See *Psychotropic Medication Chapter*

NORMALCY § 39.409.1451(3)(A)

Caregivers must use a **reasonable prudent parent** standard to determine if child can participate in **age-appropriate** activity considering the child's:

- Age, maturity and developmental level
- Risks of activity
- Best interest of child
- Importance of child's growth
- Importance most family-like living experience
- Behavior

Caregiver is not liable for harm caused to child, provided decision was reasonable and prudent.

Remove barriers by ensuring:

- CBCs / department not required to approve age-appropriate activity
- There is an identified caregiver (a *person*) making normalcy decisions (even if child placed in group home or shelter)

VISITATION

- Parents ~ Frequency, Duration, Results, Recommendations, Agency Report?
- Siblings (Frequency kind duration)
- Grandparents § 39.509

PLACEMENT

- Current Placement, "Family-Like", Stability; with Siblings (if not, why?)
- Supervised Independent Living Considered (16+)

CONCURRENT PLANNING § 39.01(19)

- Case Plan May be Amended at any Time to Employ Concurrent Planning § 39.6013(2)
- If Court Finds Reunification Unlikely @ 6 Month Review, Then Must Change Goal to Concurrent Planning § 39.701(9)(e)
 - Department to File Motion 10 Days from Court's Finding

EDUCATION

- Placed in Same School / Stability / Efforts Made
- Educational Needs & Services Considered
- Child has Appropriate Clothing & Supplies
- Transportation
- Attendance Issues
- Performance Level (Educational Evaluation, GPA, etc.)
- Educational Advocate
- Individual Education Plan (IEP)
- Child has Physical, Mental Health Issues -Services

FINANCIAL

- Master Trust ~Quarterly Accounting Attached to JR
 - Personal Allowance – No Less Than \$15 a Month

- Notice of Ability to Request Fee Waiver or Change in Foster Care or Personal Allowance 65C-17.005 F.A.C.
- Funds Distributed?
- Plan for Achieving Self-Sufficiency (PASS) Sub-Account for SSI beneficiaries. 65C-17.003(2) F.A.C.
- Foster Care Allowance - Part of Board Rate Sent to Foster Parents
- Removal of Disability of Non-Age for Banking (16). Requires Financial Literacy Course

DEVELOPMENTAL DISABILITY

- Disability Services Applied for / Receiving Before 18
- Appointment of Guardian Advocate if Appropriate under chapter 744. §§ 39.6251, 39.701(3)

MINOR PARENTS

- Access To Services, IL Services, Plan for Future, Child Placed with Minor (Unless at “Significant Risk”) 65C-28.010(1) F.A.C.

COURT ORDER

- Review the Court Order / Identify Issues

FOLLOW-UP

- Discuss Follow-Up Issues with GAL Team & Develop Plan
- Appellate Issues

ATTORNEYS FOR CHILDREN WITH CERTAIN SPECIAL NEEDS § 39.01305(3)

- Resides in skilled nursing facility (or considered)
- Psychotropic medication and declines to assent
- Diagnosis of developmental disability as defined in § 393.063
- Placed or considered for placement in RTC
- Victim of human trafficking as defined in §787.06(2)(d)
- GAL must recommend within 15 days a pro bono attorney before court assigns registry attorney.

Permanency Hearing

RELEVANT STATUTES & RULES	§§ 39.621- 39.6241.
PURPOSE OF HEARING	<p>A hearing at which the court determines whether DCF has made reasonable efforts to finalize the permanency plan in effect for the child. 45 C.F.R. § 1356.21.</p> <p>The court will make a permanency determination for the child which may include reunification, TPR and adoption or other permanency options available to the court and will determine when the child will reach permanency.</p> <p>Time is of the essence for permanency of children in the dependency system. A permanency hearing must be held no later than 12 months after the date the child was removed from the home or no later than 30 days after a court determines that reasonable efforts to return a child to either parent are not required, whichever occurs first.</p> <p>The purpose of the permanency hearing is to determine when the child will achieve the permanency goal or whether modifying the current goal is in the best interest of the child. A permanency hearing must be held at least every 12 months for any child who continues to receive supervision from DCF or awaits adoption. § 39.621(1).</p>
TIME FRAME	<p>Permanency hearing required within 12 months of removal or within 30 days of a judicial determination that reasonable efforts to reunify are not required.42 U.S.C. § 671(a)(15)(E), § 39.621(1).</p> <p>After the initial permanency hearing, subsequent permanency hearings must be held every 12 months while the child is in care. 45 C.F.R. § 356.21(b)(2)(i).</p>
NEXT HEARING	Judicial Review: within 6 months § 39.701(1)(a)..

Advisory Hearing

RELEVANT STATUTES & RULES	<p>§§ 39.801 - 39.815.</p> <p>Rules of Juvenile Procedure 8.500 - 8.535.</p>
PURPOSE OF HEARING	<p>The court advises parties of their right to counsel, appoints counsel as necessary, takes pleas on the TPR petition and orders parents to the adjudicatory hearing.</p> <p>If a parent or legal custodian is absent, the court will evaluate the sufficiency of service and notice and make a determination as to whether the parent has consented to the TPR for failure to appear or whether another advisory hearing date should be set for that parent.</p>
TIME FRAME	<p>The advisory hearing is held “as soon as possible” after all parties have received notice. § 39.808(1).</p>
NEXT HEARING	<p>The adjudicatory hearing must be held within 45 days after the advisory hearing. § 39.808(3).</p>

Adjudicatory Hearing

RELEVANT STATUTES & RULES	§§ §§ 39.801 - 39.815. Rules of Juvenile Procedure 8.500 - 8.535.
PURPOSE OF HEARING	The court makes findings of fact and conclusions of law regarding the sufficiency of DCF's proof and determines whether TPR is in the manifest best interests of the child.
TIME FRAME	Voluntary surrender: The adjudicatory hearing must be held within 21 days of the filing of the petition. § 39.808(4). For contested petitions: The adjudicatory hearing must be held within 45 days after the advisory hearing. § 39.809(2).
BURDEN OF PROOF	The elements required for TPR must be proved by clear and convincing evidence. § 39.809(1).
RULES OF EVIDENCE	Rules of evidence in use in civil cases apply. § 39.809(3).
NEXT HEARING	If TPR is granted, schedule hearing within 30 days of rendition of the order to amend the case plan and identify a permanency goal for the child. § 39.811(8). If TPR is not granted, but child is adjudicated or re-adjudicated dependent, schedule disposition hearing under § 39.521 or case plan conference under § 39.601.

TERMINATION OF PARENTAL RIGHTS CHECKLIST

TPR = STATUTORY GROUND (+) MBI (+) LRM

Termination of Parental Rights: Must prove by Clear and Convincing evidence grounds for TPR under § 39.806 and TPR is in the child's Manifest Best Interest (MBI) under § 39.810, and TPR is the Least Restrictive Means (LRM) of protecting the child from harm

CONTENTS OF PETITION

TPR Petition must contain facts supporting the following allegations

- That at least one of the **grounds** for TPR has been met (*See Grounds for TPR*)
- That the parents were informed of their **right to counsel** at all hearings they attended
- That a dispositional order adjudicating the **child dependent** was entered
- That the **manifest best interests** of the child would be served by the granting of the petition; See § 39.802(4); Rule 8.500(b).

The petition shall also contain:

- allegations as to the identity and residence of the parents, if known; and
- the age, sex and child's name; and
- a certified copy of the birth certificate of each child named in the petition; and
- When required by law, a showing that the parents were offered a case plan and have not substantially complied with it; See Rule 8.500(b)

GROUND FOR TERMINATION OF PARENTAL RIGHTS (TPR)

- Voluntary Surrender §39.806 (1)(a)
 - **Written** (2 witnesses & notary), **consented** to order, **department will take custody**, and not under **fraud or duress**
- Abandonment (*Does not include abandoned infants*) § 39.806(1)(b)
 - (While being able) No effort to support + No effort to communicate or "marginal efforts at parenting"= "sufficient to evince a willful rejection of parental obligation" § 39.01(1); OR
 - Location or identity of parent is unknown and cannot be ascertained by diligent search w/in 60 days § 39.806(1)(b)
 - Note: Incarceration does not, as a matter of law, constitute abandonment. However, incarceration is a *factor* to be considered "together with other facts" when determining if abandonment
- When the parent or parents engaged in **conduct** toward the child or toward other children that demonstrates that the continuing involvement of the parent or parents in the parent-child relationship **threatens the life, safety, well-being**, or physical, mental, or emotional health of the child **irrespective of the provision of services** § 39.806(1)(c); often used with § 39.806(1)(e)
 - **Conduct** towards child or other children; AND
 - Provision of services (can be from case plan but doesn't have to be); AND
 - **Harm** to child irrespective of services; AND
 - **No reasonable basis to believe parent would improve**
 - *Do not need dependency adjudication or 12 months*
- Incarceration § 39.806(1)(d)
 - For **significant portion** of child's minority considering child's age and need for stable, permanent home (time starts date of incarceration) § 39.806(1)(d)1; OR
 - Incarcerated for **certain crimes** § 39.806(1)(d)2; OR
 - Court determines the continued parent child **relationship would be harmful to the child** § 39.806(1)(d)3
- A case plan has been filed with the court and approved, and the **child continues to be abused, neglected, or abandoned by the parents** § 39.806(1)(e)

- Adjudicated dependent; AND
- Case plan filed; AND
- 12 or more months (not if material breach); AND
- **Parent failed to substantially comply** (not due to lack of parent's resources or department's failure to make reasonable effort to reunify) Substantial compliance "means circumstances which caused the creation of the case plan have been significantly remedied to the extent that the well-being and safety of the child will not be endangered upon the child's remaining with or being returned to the child" § 39.01(73); **OR**
- **Parent materially breached the case plan** (do not need 12 months) Clear and convincing evidence that parent is unlikely or unable to substantially comply with the case plan before the time expires to comply § 39.806 (1)(e)2
- **The child has been in care for any 12 of the last 22 months** and parents have not substantially complied (failure cannot be due to lack of financial resources of parents or failure of department to make reasonable efforts)
- When a parent engaged in **egregious conduct** or had the opportunity and capability to prevent and knowingly **failed to prevent egregious conduct** that threatens the life, safety, or physical, mental or emotional health of the child **or the child's sibling** § 39.806(1)(f)
 - Egregious conduct – can be an incident if so severe as to endanger the life of the child
 - Harmed child or placed child at imminent risk of harm (proof of nexus not required)
 - Knowingly failed to protect
 - **OR CHILD'S SIBLING –Prospective Risk of Harm** (prior abuse) (proof of nexus not required)
 - No case plan required, can file petition at any time
 - Definitions
 - Sibling means another child who resides with or is cared for by the parent *regardless of whether the child is related.*
 - Egregious conduct means abuse, abandonment, neglect, or any other conduct that is deplorable, flagrant, or outrageous by a normal standard of conduct. Egregious conduct may include an act or omission that occurred only once but was of such intensity, magnitude, or severity as to endanger the life of the child.
- When a parent has subjected the child to **aggravated child abuse** as defined in §827.03, **sexual battery or sexual abuse** as defined in § 39.01, or **chronic abuse** § 39.806(1)(g)
- Committed **murder or voluntary manslaughter** of a child § 39.806(1)(h)
 - Proof of nexus not required
- Involuntary TPR of sibling § 39.806(1)(i)
 - Prior sibling TPR + substantial risk of significant harm + MBI + LRM
- History of substance abuse, parents incapable of caring for child and refused treatment during 3 years prior to TPR § 39.806(1)(j)
- **Child who tests positive at birth for controlled substance/ alcohol** has the **same biological mother** who has had at least one **other child who was adjudicated dependent** after a finding of harm to the child's health or welfare **due to exposure to controlled substance or alcohol** as defined in § 39.01(32)(g). § 39.801(k)
- **On three or more occasions the child or another child of the parent has been placed in out-of-home care**, and the conditions that led to the child's out-of-home placement were caused by the parents. § 39.801(l)
- **Clear and convincing evidence** exists to support a finding that the **child was conceived as the result of a sexual battery**. § 39.801(m)
 - Guilty plea or conviction of unlawful sexual battery is conclusive proof that the child was conceived in this manner
 - The parent is convicted of an offense that requires the **parent to register as a sexual predator** under § 775.21.

SINGLE PARENT TERMINATION REQUIREMENTS

The parental rights of one parent may be severed without severing the parental rights of the other parent only under the following circumstances: § 39.811(6).

- the child has only one surviving parent
- the identity of prospective parent unknown
- the parent whose rights are being terminated became a parent through single-parent adoption
- the protection of the child demands termination of one parent, or
- the parent whose rights are being terminated meet any of the criteria in §§ 39.806(d) and (f)-(m)

MANIFEST BEST INTEREST (MBI)

Court **must** make specific findings that TPR is in child's best interest §§39.810(1)-(11)

- Any suitable permanent custody arrangement short of adoption with a relative of the child. § 39.810(1)
- The ability and disposition of the parent or parents to provide the child with food, clothing, medical care or other remedial care recognized and permitted under state law instead of medical care, and other material needs of the child. §39.810(2)
- The capacity of the parent or parents to care for the child to the extent that the child's safety, well-being, and physical, mental, and emotional health will not be endangered upon the child's return home. § 39.810(3)
- The present mental and physical health needs of the child and such future needs of the child to the extent that such future needs can be ascertained based on the present condition of the child. § 39.810(4)
- The love, affection, and other emotional ties existing between the child and the child's parent or parents, siblings, and other relatives, and the degree of harm to the child that would arise from the termination of parental rights and duties. §39.810(5)
- The likelihood of an older child remaining in long-term foster care upon termination of parental rights, due to emotional or behavioral problems or any special needs of the child. § 39.810(6)
- The child's ability to form a significant relationship with a parental substitute and the likelihood that the child will enter into a more stable and permanent family relationship as a result of permanent termination of parental rights and duties. § 39.810(7)
- The length of time that the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity. § 39.810(8)
- The depth of the relationship existing between the child and the present custodian. § 39.810(9)
- 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(10)
- The recommendations for the child provided by the child's guardian ad litem or legal representative. § 39.810(11)

LEAST RESTRICTIVE MEANS (LRM)

In addition to considering whether termination of parental rights is in the manifest best interest of the child, the court must consider whether termination of parental rights is the least restrictive means of protecting the child from serious harm.

NORMALCY CHECKLIST

ADVOCATE REMOVING BARRIERS TO NORMALCY

The GAL shall advocate to remove barriers that prevent children from participating in age-appropriate extracurricular, enrichment and social activities (normalcy) as required by § 39.4091.

WHAT IS THE LAW?

Caregivers must use a **reasonable prudent parent** standard to determine if child can participate in **age-appropriate** activity considering the child's:

- Age, maturity and developmental level
- Risks of activity
- Best interest of child
- Importance of child's emotional & developmental growth
- Importance most family-like living experience
- Behavioral history of the child & child's ability to safely participate in activity

Caregiver is not liable for harm caused to child, provided decision was **reasonable** and **prudent**

The Reasonable Prudent Parent standard is characterized by careful and sensible parental decisions that maintain the child's health, safety, and best interests while at the same time encouraging the child's emotional and developmental growth that a caregiver shall use when determining whether to allow a child in out-of-home care to participate in extracurricular, enrichment, and social activities.

REMOVE BARRIERS BY ENSURING:

- CBCs / department not requiring prior approval for age-appropriate activity
- There is an identified caregiver (a *person*) making normalcy decisions (even if child placed in group home or shelter)
 - o Group homes & shelters are not exempt from § 39.4091
- Pre-existing court orders do not conflict with statute / normalcy decisions
 - o Request Staffing / File Motion
- Policies and practices of agencies & placements consistent with § 39.4091
- Caregiver making decisions consistent with reasonable prudent parent standard

FREQUENT ISSUES

Social Media

- Child permitted to participate in social media as long as permission has been given by caregiver

Driving

- Caregiver and Services Worker shall assist the child in finding a driver's education program
- Support of the child's efforts to learn to drive a car, obtain learner's permit & driver's license (age, maturity, insurance)
- Efforts shall be made to obtain automobile insurance

Overnight / Planned Outings

- The out-of-home caregiver must determine that it is safe & appropriate
- Background screening is not necessary for a child to participate in normal school or community activities and outings such as school field trips, dating, scout campouts, and activities with friends, families, school and church group

Babysitting

- Can be 14+ (14-15 must have babysitting course)
- Caregiver must ensure:
 - o Babysitter suitable for the age, developmental level and behaviors of child
 - o Babysitter understands how to handle emergencies, has telephone numbers - case manager and physician; and
 - o Discipline and confidentiality policies for the child have been explained
- Babysitting does not have to be in a licensed setting

Vacations

- Caregiver may take child on vacations. Inform department / CBC

SPECIAL CONSIDERATIONS

- Disabled youth shall be provided with an equal opportunity to participate in activities
- Confidentiality requirements for department records shall not restrict the child's participation in customary activities appropriate for the child's age and developmental level

CHILD SHALL BE GIVEN PERMISSION /ENCOURAGEMENT TO:

- obtain employment
- have contact with family members
- have access to phone usage
- have reasonable curfews
- travel with other youth or adults
- have his or her picture taken for publication in a newspaper or yearbook
- receive public recognition for accomplishments
- participate in school or after-school organizations or clubs
- participate in community events

CHILD MUST BE PROVIDED INFORMATION REGARDING:

- drug and alcohol use and abuse
- teen sexuality issues
- runaway prevention
- health services
- community involvement
- knowledge of available resources
- identifying legal issues
- understanding his or her legal rights
- accessing specific legal advice

WORKSHEET

THE GAL SHALL ADVOCATE TO REMOVE BARRIERS THAT PREVENT CHILDREN FROM PARTICIPATING IN AGE-APPROPRIATE EXTRACURRICULAR, ENRICHMENT AND SOCIAL ACTIVITIES (NORMALCY) AS REQUIRED BY §39.4091.

Child's Name: _____
Last First M.I. Date of Birth

Date in Care

Placement: _____
Name of Placement Type of Placement

Identified Caregiver: _____
Phone Number E-mail

Permanency Goal: _____

PRE-EXISTING COURT ORDERS

Court Order Date	Court Order	Is there a potential conflict with normalcy activities?	Request Staffing? File Motion? Other

NORMALCY ACTIVITY

Child would like to participate in the activities listed below. Barriers are listed below with GAL plan to remove barriers.

Normalcy Activity

Possible Barriers

GAL Plan to Remove Barriers
(finding resources, plan staffing, file a motion, inform the department of issues)

DRIVER'S LICENSE

The following steps are being taken to address child's (age appropriate)

Learner's Permit: _____

Driver's _____

Education: _____

Auto Insurance: _____

EXTENDED FOSTER CARE CHECKLIST (EFC)

Automatic extended court jurisdiction allows young adults to remain in foster care until their 21st birthday, or 22nd birthday if they have a documented disability

ELIGIBILITY

- In licensed foster care on their 18th birthday AND
 - Are working at least 80 hours per month OR
 - Are in high school / GED / College, etc. OR
 - Are participating in a job skills program OR
 - Are unable to participate in any of the above activities due to a disability.
- Young Adults Must:
 - Meet with caseworker once a month
 - Continue to participate in activities such as a job, school, job skills program
 - Attend Court reviews every six months
 - Live with foster parents, or in a group home, apartment, dorm or other supervised independent environment
 - Be given expenses (i.e. food, transportation) and allowance

POSTSECONDARY EDUCATION SERVICES AND SUPPORT (PESS) (18 – 23)

- Turned 18 while residing in licensed care and have spent a total of six months in licensed out-of-home care before turning 18; OR
- Adopted after the age of 16 from foster care or placed with a court-approved dependency guardian after spending at least 6 months in licensed care within the 12 months immediately preceding such placement or adoption;
- Have earned a standard high school diploma, or its equivalent; and
- Enrolled in college, a university or vocational school that is Florida Bright Futures eligible for at least 9 hours a semester.
 - If a disability of faced with another challenge or circumstance that would prevent full-time attendance, the student may still receive PESS with a part-time enrollment

LIVING ARRANGEMENTS

- If in EFC, then the young adult must live in an approved living arrangement
- If the young adult is not in EFC, the young adult may live in any place of his or her choosing
- For the young adult who is not in EFC, there is no prohibition against living with a parent or relative, nor does being married or adult-adopted disqualify a young adult from receiving PESS

AFTERCARE SERVICES (18-21)

Aftercare Services are available to young adults 18 years old but not yet 23 years old who are **not** enrolled in EFC or PESS

- Provides for Emergency Services:**
 - Housing
 - Electric bills
 - Transportation
 - Security deposits for rent or utilities
 - Furnishings
 - Household goods
 - Water

- Gas
- Sewer service
- Food

TRANSITION PLAN DEVELOPMENT

- ❑ Within 180 days of 17th birthday, (JR is still by day 90)
- ❑ In collaboration with department, CBC, caregiver, child/young adult, and anyone the child wishes to include
- ❑ Time, place, and location must be convenient for the child and the persons the child wants to include
- ❑ Meeting must be conducted in child's primary language
- ❑ **If child is leaving care upon age 18, must be approved by the court before the child leaves care**
- ❑ To be reviewed and updated as needed as long as child remains in care
- ❑ Must detail:
 - Housing
 - Health insurance
 - Education
 - Workforce support
 - Employment services
 - Accommodations for those with disabilities
 - Emergency contact person
 - Participation in case planning / JR reports
- ❑ Must consider:
 - Establishing/maintaining naturally occurring mentoring relationships and personal support services
- ❑ Must coordinate with:
 - IL services provided by the department/CBC in the Case Plan; TIEP transition plan

DEPARTMENT / CBC MUST PROVIDE YOUNG ADULT WITH (17 JUDICIAL REVIEW):

- ❑ Medicaid card and Information to apply
- ❑ Certified Copy of Birth certificate
- ❑ State identification card if no Driver's License
- ❑ Social Security Card
- ❑ Information on social security insurance benefits for eligible child
- ❑ Master Trust Accounting and information on accessing the funds held in trust
- ❑ Information on eligibility and applying for RTI
- ❑ Bank account or identification to open bank account
- ❑ Banking skills training
- ❑ Information on how to apply for public assistance
- ❑ Clear understanding of where will be living, what educational program will be enrolled in and how expenses will be paid at age 18
- ❑ Information on ability to remain in care
- ❑ A letter stating the dates that the child has been under court jurisdiction
- ❑ A letter stating child is in compliance with financial aid documentation requirements
- ❑ Educational records
- ❑ Health and mental health records
- ❑ Process for accessing his or her case file
- ❑ Encouragement to attend JRs

JUDICIAL REVIEW & PERMANENCY REVIEW

17 Judicial Review

- Ensure Transition Plan is complete and above is complete
- Guardian Advocate if applicable

18+ Judicial Review

- Every 6 months - can be more often if requested
- Case plan goals progress
- Independent living and Transition Plan progress
- Appropriate services are being provided
- Court may order additional services

PERMANENCY REVIEW

- At least yearly
- Make sure young adult understands
 - Permanency Plan; Case Plan; Individual Education Plan

CLOSING THE CASE

Case Stays Open Unless Court Finds Young Adult:

- Waived their right to attend the hearing (in writing) after being informed of their right to attend;
- Understands all that is available to them before age 21 and has signed a document stating they have been informed; or
- The young adult has voluntarily left the program, has not signed the document, and is unwilling to participate in any further court proceeding.

CROSSOVER YOUTH CHECKLIST

INITIAL HEARING

- Youth
- Judge (Assigned To Family If Possible)
- Parent Or Legal Custodian
- Child's Caseworker
- Youth's Caretaker
- Youth's Counsel
- DJJ Representative
- Prosecuting Attorney
- Interpreter
- GAL Volunteer

Considerations

- Who is child currently living with?
- Who is child's Legal Custodian?
- Parent/Legal Custodian present? Why or why not?
 - What is being done to ensure parent/guardian presence at next hearing?
- Names and phone numbers of close relatives; possible placements; temporary placement.
- Legal counsel appointed? GAL appointed?
- Youth competent?
- Educational Plan? IEP? Same School?
 - Assessment for special education services?
 - If the youth has an IEP, is parent participating? If not, educational surrogate?
- Any physical, mental health, substance abuse issues? Services ordered?
- Information supporting secure or non-secure placement?
- Does the youth have any medical, physical or mental health issues including trauma history that places the youth's safety in question in a detention setting? Services ordered?
- If the youth is detained have all of the parent's or guardian's questions been answered – including visitation?
- Has the Court explained reasons why detention is necessary?
- If not in detention, what restrictions placed on youth until next hearing?
- What evaluations/services are necessary?
 - Who is responsible for referrals? Follow up.
- Next hearing date, time and purpose.

ADJUDICATORY HEARING

- Youth
- Judge assigned to family
- Parent or Legal Custodian
- Child's caseworker
- Youth's Caretaker
- Youth's Counsel
- DJJ Representative
- Prosecuting Attorney
- Interpreter
- GAL volunteer
- Witnesses
- Victim advocate
- Probation officers are not necessary unless a witness

Considerations

- Were the Prosecutor and Counsel prepared?
- Did the prosecutor prove every element of the alleged offense beyond a reasonable doubt?

- Are the immediate needs of the youth being addressed?
- Is there information supporting secure or non-secure placement? Or can the youth be released with or without restrictions?
- Does the youth have any medical, physical substance abuse, or mental health issues, including a trauma history, that places the youth's safety in question in a detention setting?
- Is there an environment adequately structured by family, community, school or other support systems to enable the youth to avoid harmful behaviors and associations?
 - o Services provided to youth and youth's family if not detained?
- Educational Plan? IEP? Same School?
 - o Assessment for special education services?
 - o If the youth has an IEP is parent participating? If not, educational surrogate
- If the youth is not in detention, description of any restrictions placed on the youth until the next hearing.
- If the youth is detained have all of the parents or guardian's questions been answered – including visitation.
- What evaluations/services are necessary?
 - o Who is responsible for referrals?
- Next hearing date, time and purpose.

DISPOSITION HEARING

- Youth
- Judge assigned to family
- Parent or Legal Custodian
- Child's Caseworker
- Youth's Caretaker
- Youth's Counsel
- DJJ Representative
- Prosecuting Attorney
- Interpreter
- GAL Volunteer
- Victim Advocate

Considerations

- Is plan **specific** to **this** child's needs?
- What level of intervention is required in order to protect community safety while the youth is engaged in services?
 - o Mental health, substance abuse, sexual offending and physical health.
- Educational Plan? IEP? Same School?
 - o Assessment for special education services?
 - o If the youth has an IEP is parent participating? If not, educational surrogate?
- Identify youth, family, and community strengths that can assist the youth in making the necessary change.
- Identify family and community issues are likely to impede the youth in implementing necessary behavior change.
- Should the juvenile delinquency court judge consider any orders specific to the parent?
- Can services begin immediately? When will they begin?
- Does the youth have any medical, physical or mental health issues, including a trauma history, which places the youth's safety in question in a detention setting?
- Should a progress hearing or progress conference be set, or a progress report ordered?
- The date and time of the progress hearing or conference, or the date a progress report is due, if applicable.
- Appeal rights and process.

EDUCATION IDEA ALPHABET SOUP

504	Section 504 of the Rehabilitation Act. Federal law that prohibits discrimination against people with disabilities by recipients of federal money, generally state and local governments, schools and colleges. 504 Plans for students with disabilities are different than IEPs.
ADA	Americans with Disabilities Act. Federal law that prohibits discrimination against people with disabilities - no federal money required.
ADHD	Attention Deficit Hyperactive Disorder. This is a medical diagnosis and not a listed disability under IDEA, but could be under 504.
ALJ	Administrative Law Judge. ALJs work for Florida's Division of Administrative Hearings, and are not local judges. They preside over special education due process hearings.
APD	Agency for Persons with Disabilities. A Florida state agency created in 2004 whose responsibilities were previously with DCF's Developmental Services. Serves people with developmental disabilities.
ASD	Autism Spectrum Disorder
BEESS	Bureau of Exceptional Education Student Services. The division of Florida's Department of Education with responsibility for educating students with disabilities.
BIP	Behavioral Intervention Plan.
DCF	Department of Children and Families. The state agency with responsibility for, among other things, foster care and mental health.
DD	Developmental Disability.
DHH	Deaf or Hard of Hearing.
DOH	Department of Health. The state agency with responsibility for, among other things, Children's Medical Services which administers the Early Steps Program.
DSI	Dual Sensory Impairment.
E/BD	Emotional/Behavioral Disability.
ED	U.S. Department of Education. (Note that federal terminology for DOE refers to Dept. of Energy)
EIS	Early Intervention Services.
ESE	Exceptional Student Education. Florida's term for special education. Includes services under the IDEA. Florida also includes Gifted in ESE, which is not a federal category.
ESOL	English as a Second Language.
ESSA	Every Student Succeeds Act. Changes some requirements of NCLB beginning in 2016-17.
ESY	Extended School Year.
FAPE	Free Appropriate Public Education.
FBA	Functional Behavioral Assessment.
FCAT	Florida Comprehensive Assessment Test.

FDOE	Florida Department of Education.
FDLRS	Florida Diagnostic and Learning Resources System. Provides diagnostic and instructional support services to district exceptional student education programs and families of students with exceptionalities statewide.
FSA	Florida Standards Assessment.
HH	Hospital/Homebound.
IAES	Interim Alternative Educational Services.
IDEA	Individuals With Disabilities Education Act.
IEE	Independent Educational Evaluation.
IEP	Individualized Education Program.
IFSP	Individualized Family Service Plan. These are essentially IEPs for infants and toddlers.
InD	Intellectual Disability.
LI	Language Impairment.
LRE	Least Restrictive Environment.
NCLB	No Child Left Behind. Federal law that applies to all schools and all children, not just children with disabilities.
OCR	Office of Civil Rights. Office within U.S. Department of Education which oversees compliance with Section 504.
ODD	Oppositional Defiant Disorder. This is a mental health diagnosis and not a listed disability under IDEA.
OHI	Other Health Impairment.
OI	Orthopedic Impairment.
OSEP	Office of Special Education and Programs. Office within U.S. Department of Education which oversees compliance with IDEA.
OSERS	Office of Special Education and Rehabilitative Services. Office within U.S. Department of Education which oversees OCR and OSEP.
OT	Occupational Therapy.
PLOP	Present Levels of Performance.
PT	Physical Therapy.
SI	Speech Impairment.
SLD	Specific Learning Disability.
TBI	Traumatic Brain Injury.
VI	Visual Impairment.

QUESTIONS TO ENSURE THAT THE EDUCATIONAL NEEDS OF CHILDREN AND YOUTH IN FOSTER CARE ARE BEING ADDRESSED⁹

ENROLLMENT

- Is the child or youth enrolled in school?
- At which school is the child or youth enrolled?
- In what type of school setting is the child or youth enrolled (e.g., specialized school)?
- How long has the child or youth been attending his/her current school?
- Where is this school located in relation to the child's or youth's foster care placement?
- Were efforts made to continue school placement, where feasible?
- If currently not in a school setting, what educational services is the child or youth receiving and from whom?
- Is the child or youth receiving homebound or home-schooled educational services?
 - If Yes: Who is responsible for providing educational materials and what information is available about their quality?
 - If Yes: How frequently are educational sessions taking place?
 - What is the duration of each session? (e.g., how many hours?)

PROVISION OF SUPPLIES

- Does the child or youth have appropriate clothing to attend school?
- Does the child or youth have the necessary supplies and equipment (e.g., pens, notebooks, musical instrument) to be successful in school?

TRANSPORTATION

- How is the child or youth getting to and from school?
- What entity (e.g., school, child welfare agency) is responsible for providing transportation?

ATTENDANCE

- Is the child or youth regularly attending school?
- Has the child or youth been expelled, suspended or excluded from school this year/ever?
 - If Yes: How many times?
- Have proper due process procedures been followed for the expulsions, suspensions or exclusions from school?
- What was the nature/reason for the child's or youth's most recent expulsion, suspension or exclusion from school?
- How many days of school will the child or youth miss as a result of being expelled, suspended or excluded from school?
- If currently not attending school, what educational services is the child or youth receiving and from whom?
- How many days of school have the child or youth missed this year?
 - What is the reason for these absences?
 - What steps have been taken to address these absences?
- Has the child or youth received any truancies, and if so, for how many days?
- Has the child or youth been tardy, and if so, for how many times?

PERFORMANCE LEVEL

- When did the child or youth last receive an educational evaluation or assessment?
- How current is this educational evaluation or assessment?
- How comprehensive is this assessment?
- At which grade level is this child or youth currently performing? [Is the child or youth academically on target?]
- Is this the appropriate grade level at which the child or youth should be functioning?
 - If No: What is the appropriate grade level for this child or youth?
- Is there a specified plan in place to help this child or youth reach that level?

⁹Asking the Right Questions II: Judicial Checklists to Meet the Educational Needs of Children and Youth in Foster Care <http://www.ncfci.org/sites/default/files/education%20checklist%202009.pdf>, last visited February 13, 2016.

- What is this child's or youth's current grade point average?
- If below average, what efforts are being made to address this issue?
- Is the child or youth receiving any tutoring or other academic supportive services?
 - If Yes: In which subjects?

TRACKING EDUCATION INFORMATION

- Does this child or youth have a responsible adult serving as an educational advocate?
 - If Yes: Who is this adult?
- How long has this adult been advocating for the child's or youth's educational needs?
- How often does this adult meet with the child or youth?
- Does this adult attend scheduled meetings on behalf of the child or youth?
- Is this adult effective as an advocate?
- If there is no designated educational advocate, who ensures that the child's or youth's educational needs are being met?
- Who is making sure that the child or youth is attending school?
- Who gathers and communicates information about the child's or youth's educational history and needs?
- Who is responsible for educational decision-making for the child or youth?
- Who monitors the child's or youth's educational progress on an ongoing basis?
- Who is notified by the school if the child or youth is absent (i.e., foster parent, social worker)?
- Who could be appointed to advocate on behalf of the child or youth if his or her educational needs are not met?

CHANGE IN PLACEMENT / CHANGE IN SCHOOL

- Has the child or youth experienced a change in schools as a result of a change in his or her foster care placement?
 - If Yes: How many times has this occurred?
- What information, if any, has been provided to the child's or youth's new school about his or her needs?
- Did this change in foster care placement result in the child or youth missing any school?
 - If Yes: How many days of school did the child or youth miss?
- Have any of these absences resulted in a truancy petition?
- Were efforts made to maintain the child or youth in his or her original school despite foster care placement change?

HEALTH FACTORS IMPACTING EDUCATION

- Does the child or youth have any *physical* issues that impair his or her ability to learn, interact appropriately, or attend school regularly (e.g., hearing impairment, visual impairment)?
 - If Yes: What is this physical issue?
- How is this physical issue impacting the child's or youth's education?
- How is this need being addressed?
- Does the child or youth have any *mental health* issues that impair his or her ability to learn, interact appropriately, or attend school regularly?
 - If Yes, what is this mental health issue?
- How is this mental health issue impacting the child's or youth's education?
 - How is this need being addressed?
- Is the child or youth currently being prescribed any psychotropic medications?
 - If Yes: Which medications have been prescribed?
- Has the need for the child or youth to be taking this medication been clearly directly explained to him or her?
- How will this medication effect the child's or youth's educational experience?
- Does the child or youth have any *emotional* issues that impair his or her ability to learn, interact appropriately, or attend school regularly?
 - If Yes: What is this emotional issue?
- How is this emotional issue impacting the child's or youth's education?
 - How is this need being addressed?
- Is the child or youth experiencing any difficulty interacting with other children or youth at school (e.g., Does the child or youth have a network of friends? Has he or she experienced any difficulty with bullying)?
 - If Yes: What is being done to address this issue?

SPECIAL EDUCATION AND RELATED SERVICES UNDER IDEA AND SECTION 504

- If the child or youth has a physical, mental health or emotional disability that impacts learning, has this child or youth (birth through age 21) been evaluated for Special Education/Section 504 eligibility and services?
 - If No: Who will make a referral for evaluation or assessment?
 - If Yes: What are the results of such an assessment?
- Has the child been assessed for trauma experiences?
- Have the assessment results been shared with the appropriate individuals at the school?
- Does the child or youth have an appointed surrogate pursuant to IDEA (e.g., child's or youth's birth parent, someone else meeting the IDEA definition of parent, or an appointed surrogate parent)?
 - If No: Who is the person that can best speak on behalf of the educational needs of the child or youth?
- Has the court used its authority to appoint a surrogate for the child or youth?
- Has the child's or youth's education decision-maker been informed of all information in the assessment and does that individual understand the results?
- Does this child or youth have an Individualized Education Plan (IEP)?
 - If Yes: Is the child's or youth's parent or caretaker cooperating in giving IEP information to the appropriate stakeholders or signing releases?
 - Is this plan meeting the child's or youth's needs?
 - Is the child's or youth's educational decision-maker fully participating in developing the IEP and do they agree with the plan?
- Does this child or youth have a Section 504 Plan?
 - If Yes: Is this plan meeting his or her needs?
 - Is there an advocate for the child or youth participating in meetings and development of this plan?

EXTRACURRICULAR ACTIVITIES AND TALENTS

- What are some identifiable areas in which the child or youth is excelling at school?
- Is this child or youth involved in any extracurricular activities?
 - If Yes: Which activities is the child or youth involved in?
- Are efforts being made to allow this child or youth to continue in his or her extracurricular activities (e.g., provision of transportation, additional equipment, etc.)?
- Have any of the child's or youth's talents been identified?
 - If Yes: What are these talents?
- What efforts are being made to encourage the child or youth to pursue these talents?

TRANSITIONING

- Does the youth have an independent living plan?
 - If Yes: Did the youth participate in developing this plan?
- Does this plan reflect the youth's goals?
 - If Yes: Does the plan include participation in Chafee independent living services?
- Does this plan include vocational or post-secondary educational goals and preparation for the youth?
- Is the youth receiving assistance in applying for post-secondary schooling or vocational training?
- Is the youth being provided with information and assistance in applying for financial aid, including federally-funded Education and Training Vouchers (see Chafee Foster Care Independence Program)?
- If the youth has an IEP, does it address transition issues?
 - If Yes: What does this transition plan entail?
- Did the youth participate in developing the transition plan?
- Is this transition plan coordinated with the youth's independent living plan?

SAMPLE LETTER TO REVIEW RECORDS

Date

Dear Name of Principal:

School Name

Address

Re: Name and birth date of child

I am the [mother, father, legal guardian, foster parent, or some other relation of name of child, or court-appointed guardian ad litem]. In order to be better prepared for [a teacher conference, an IEP meeting, a manifestation hearing, or other event], I would like to review [name of child's] school records. I would like to review the following files: [*pick which ones are needed*]

- cumulative record
- ESE file
- discipline files
- evaluators' files, including tests and protocols from psychologists and others
- therapists' files
- teachers' files
- counselors' files
- nurse's files

Please let me know when they will be available. You can reach me at phone number or address. Thank you for your attention to this matter.

Sincerely,

Your Name & Address

SAMPLE LETTER TO REQUEST EVALUATION

Date

Dear Name of Principal:

School Name

Address

Re: Name and birth date of child

I am the [mother, father, legal guardian, foster parent, or some other relation of name of child, or court-appointed guardian ad litem.] I write to request a comprehensive evaluation of [name of child] to see if he/she is eligible for special education services.

I believe [name of child] needs to be evaluated because [list examples of poor academic performance and discipline problems].

Please let me know what I need to do to help get this process going as soon as possible. You can reach me at phone number or address. Thank you for your attention to this matter.

Sincerely,

Your Name & Address

EDUCATIONAL RIGHTS FOR CHILDREN WITH DISABILITIES CHECKLIST

AT-RISK INFANTS AND TODDLERS (UNDER AGE 3) NEED EARLY INTERVENTION SERVICES.

- Advocate for comprehensive evaluation by Early Steps (Children's Medical Services) or FDLRS if there is suspicion of an unidentified disability.
- Advocate for Individualized Family Service Plan (IFSP)
- Advocate for comprehensive services.
- Advocate for qualified personnel.

PRE-SCHOOL CHILDREN (3 THROUGH 5) WITH DISABILITIES NEED AN APPROPRIATE EDUCATION.

- Advocate for comprehensive evaluation by school district or FDLRS if there is suspicion of an unidentified disability.
- Advocate for Individualized Education Plan (IEP) or IFSP.
- Advocate for comprehensive services.
- Advocate for qualified personnel.

SCHOOL DISTRICTS HAVE DUTY TO IDENTIFY CHILDREN WITH DISABILITIES.

- Determine if school has identified child as having a disability.
- Determine if medical or other professionals have identified or suggested that child has disability.
- Review school records and ask caregivers and teachers if child is having academic or behavioral problems at school.
- Advocate for comprehensive evaluation by school if there is suspicion of a disability that has not been identified.

A SURROGATE PARENT MUST BE APPOINTED FOR ALL FOSTER CHILDREN NEEDING EARLY INTERVENTION OR SPECIAL EDUCATION SERVICES WHO HAVE NO PARENT, FOSTER PARENT, GUARDIAN OR RELATIVE CAREGIVER INVOLVED IN THEIR CHILD'S EDUCATION.

- Determine if parent, foster parent or relative caregiver is involved in child's education.
- Request appointment as surrogate parent by school district or juvenile judge.
- Or advocate for another adult who is independent of school district to be appointed.
- Ensure that consent forms are signed only by parent, foster parent, guardian, relative caregiver, or surrogate parent, and not by case workers or GALs (unless appointed as surrogate parent).

SCHOOL DISTRICTS MUST PROVIDE APPROPRIATE SPECIAL EDUCATION SERVICES TO CHILDREN WITH DISABILITIES.

- Determine unique educational needs of child from caregivers, teachers and professionals involved with child.
- Review IEP and other records to see if needs are being addressed by school.
- Request IEP meeting.
- Advocate for comprehensive assessments, services and placement that child needs.
- Advocate for qualified personnel.

STUDENTS WITH DISABILITIES AGE 16 AND OLDER NEED TO HAVE A TRANSITION PLAN IN IEP.

- Ensure that appropriate measurable postsecondary goals are identified.
- Advocate for appropriate transition assessments related to training, education, employment and independent living skills.
- Advocate for transition services needed to assist child in reaching those goals.

STUDENTS' MISCONDUCT NEEDS TO BE APPROPRIATELY ADDRESSED.

- Ensure that manifestation hearings are properly held.
- Advocate for Functional Behavioral Assessment by qualified personnel.

- Advocate for appropriate Behavioral Intervention Plan.
- Ensure educational services are continued during any discipline period.

RIGHTS FOR STUDENTS REGARDLESS OF DISABILITY.

Infants and toddlers with substantiated cases of abuse or neglect need to be referred for an evaluation by Early Steps.

- Advocate for comprehensive evaluation.
- Advocate for comprehensive services.

THREE AND FOUR YEAR OLDS BENEFIT FROM PRE-KINDERGARTEN.

- Advocate for enrollment in voluntary universal pre-kindergarten education program for all children who could benefit.
- Advocate for enrollment in Head Start and Early Head Start programs.

ALL SCHOOL-AGE CHILDREN NEED TO BE IN SCHOOL.

- Advocate for continued enrollment in same school throughout foster care unless unsafe or otherwise impractical.
- Advocate for transportation to be provided by school district to maintain same school.
- Demand immediate enrollment if not in school.

HOMELESS CHILDREN MUST BE IN SCHOOL. HOMELESS INCLUDES CHILDREN LIVING IN EMERGENCY OR TRANSITIONAL SHELTERS, ABANDONED IN HOSPITALS OR AWAITING FOSTER CARE PLACEMENT.

- Determine whether it is in the child's best interests to remain in home school or new school.
- Advocate for continuation in home school or immediate access to new school based on that determination.
- Ensure elimination of obstacles: no need for residency, record or guardianship requirements; need for transportation.

OLDER FOSTER CARE CHILDREN, NOT LIMITED TO THOSE WITH DISABILITIES, MAY NEED INDEPENDENT LIVING TRANSITION SERVICES.

- Advocate for independent living assessments and educational and vocational assessments.
- Ensure that identified needs are addressed in transition plan, choice of school courses and activities.
- Ensure that youth is included in each step of process.

ALL STUDENTS MUST BE AFFORDED DUE PROCESS IN SCHOOL DISCIPLINE PROCEEDINGS.

- Ensure that students in the expulsion process are provided with notice of the violation and an opportunity to be heard before the School Board.

BASIC MASTER TRUST ISSUE SPOTTING

- Has the department applied for SSI or other available benefits on behalf of the child?
- Is the child eligible for any derivative benefits (parents deceased or disabled)?
- Is there an appropriate adult who can serve as the representative payee for the child rather than the department?
- Has the department filed the required Master Trust accountings?
- Is there a spending plan in place to ensure that funds are used to meet the child's specific needs?
- If the child receives SSI, is the balance of the Master Trust current needs sub account close to the \$2,000 limit?
- How has the department spent the child's money? Is the child's specific need being met by the expenditures? Are there accurate records? Does the child actually have the property purchased with his or her money?
- Has the advocate considered a PASS account, Special Needs Trust or Pooled Trust for the child's Master Trust funds?
- Has the department provided notice of the child's right to request a fee waiver with every judicial review?
- Does the child need a lump-sum of money to address a specific need? If so, has a waiver request been filed?
- Does the child have an ongoing need for additional funds to be expended? If so, has a request to increase the personal allowance been filed?
- Is the child close to turning 18? If so, has a motion regarding the disbursement of the funds to the child been filed?

REMOVAL OF DISABILITY OF NON-AGE – BANKING

IN THE COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA

IN THE INTEREST OF:

D.O.B.: _____

CASE NO: _____

DIVISION: _____

ORDER AUTHORIZING CHILD TO SECURE DEPOSITORY FINANCIAL SERVICES
BEFORE THE CHILD'S 18TH BIRTHDAY

THIS CAUSE came before the court to remove the disabilities of nonage of(name)....., for the purpose of securing depository financial services, and the court being fully advised in the premises FINDS as follows:

.....(Name)..... is at least 16 years of age, meets the requirements of § 743.044, Florida Statutes, and is entitled to the benefits of that statute.

THEREFORE, based on these findings of fact, it is ORDERED AND ADJUDGED that the disabilities of nonage of(name)..... are hereby removed for the purpose of securing depository financial services.(Name)..... is hereby authorized to make and execute contracts, releases, and all other instruments necessary for the purpose of securing depository financial services. The contracts or other instruments made by(name)..... for the purpose of securing depository financial services have the same effect as though they were the obligations of a person who is not a minor.

ORDERED at, Florida, on(date).....

Circuit Judge _____

Copies to:

REMOVAL OF DISABILITY OF NON-AGE – RESIDENTIAL LEASES *

IN THE COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA

IN THE INTEREST OF:

D.O.B.: _____

CASE NO: _____

DIVISION: _____

_____ /

**ORDER AUTHORIZING CHILD TO ENTER INTO RESIDENTIAL
LEASEHOLD BEFORE THE CHILD'S 18TH BIRTHDAY**

Based on the child and Guardian ad Litem request for the court to remove the disabilities of nonage of _____, and the court being fully advised in the premises finds as follows:

1. _____ became 17 years of age on _____, has previously been adjudicated dependent, and is in the legal custody of the Department of Children and Family Services.
2. _____ meets the requirements of §. 743.045 and is entitled to the benefits of that statute.

THEREFORE, based on these findings of fact, it is ORDERED AND ADJUDGED that the disabilities of nonage of _____ are hereby removed for the purpose of entering residential leasehold. _____ is hereby authorized to make and execute contracts, releases, and all other instruments necessary for the purpose of entering into a contract for the lease of residential property. The contracts or other instruments made by _____ for the purposes of entering into a residential lease shall have the same effect as though they were the obligations of a person who is not a minor.

ORDERED on _____, 2006.

Copies to:

* These are just two examples of Motions for the Removal of Disability of Non-Age. Others include Utility Services § 743.046; Motor Vehicle Insurance § 743.047; Borrowing Money for Educational Purposes § 743.05.

INFORMATION SHEET FOR PSYCHOTROPIC MEDICATIONS

This guide reflects different classes of psychotropic medications, common side effects as well as normally prescribed medications. It is for informational purposes only and not intended to be comprehensive. Medication should only be taken under the careful consideration of a physician.¹⁶

STIMULANTS

Commonly used to treat Attention-Deficit Hyperactivity Disorder (ADHD). Symptoms of ADHD may interfere with a child functioning at school and in daily living characterized by short attention span, inability to stay still, and/or being impulsive.

- **Positive Effects:** May help improve the ability to concentrate, control impulses, plan ahead, and follow through with tasks.
- **Negative Effects:** May cause decreased appetite, weight loss, headaches, stomach aches, trouble getting to sleep, jitteriness, social withdrawal, tics (sudden repetitive movements or sounds), aggressive behavior or hostility, psychotic or manic symptoms.
- **NOTE:** Along with the medication, it is important for lifestyle changes to occur that includes regular exercise, a healthy diet, and sufficient sleep.
- **Commonly Used Medications (Generic Names):**

Adderall (Amphetamine)

Focalin (Dexmethylphenidate)

Concerta (Methylphenidate)

Dextrostat (Dextroamphetamine)

Methylin (Methylphenidate)

Vyvance (Lisdexamfetamine)

Adderall XR (Amphetamine)

Focalin XR (Dexmethylphenidate)

Dexedrine (Dextroamphetamine)

Metadate (Methylphenidate)

Ritalin (Methylphenidate)

ANTIDEPRESSANTS

Used to treat depression and other symptoms such as school phobias, panic attacks, eating disorders, Autism, ADHD, bedwetting, Disorders such as (Anxiety, Obsessive-Compulsive, Post-traumatic Stress, Personality), and sleeping problems.

- **Positive Effects:** Can help improve mood, help with sleeping better, and increase appetite and concentration.
- **Negative Effects:** Trouble sleeping, irritability, weight changes, headaches, nausea, upset stomach, dry mouth, and/or extreme sweating.
- **NOTE:** Caregivers should monitor children taking these medications for depression that is getting worse and thoughts about suicide. The caregiver should immediately talk to the doctor if this happens.

¹⁶ Guide to Psychiatric Medications for Children and Adolescents by Glenn S. Hirsch, M.D., available at: http://www.dfps.state.tx.us/Training/Psychotropic_Medication, last visited February 11, 2016

Commonly Used Medications (Generic Names):

Celexa (Citalopram)	Lexapro (Escitalopram)
Luvox (Fluvoxamine)	Paxil (Paroxetine)
Prozac (Fluoxetine)	

ANTIPSYCHOTICS

Used to treat a number of conditions in children, such as Psychosis, Bipolar disorder, Schizophrenia, Autism, Tourette's syndrome or severe aggression.

- **Positive Effects:** Antipsychotic medications are not a “cure” for mental illness but can be an effective part of treatment. They help to restore the brain’s natural chemical balance to reduce or get rid of the psychotic symptoms.
- **Negative Effects:** May cause sleepiness or tiredness, dizziness, constipation, dry mouth, blurred vision, difficulty urinating, sensitivity to lights, weight gain, change in menstrual cycle.
- **NOTE:** A person should begin to feel better within six weeks of starting to take antipsychotic medication. However, it can take several months before they feel the full benefits.

Commonly Used Medications (Generic Names):

Abilify (Aripiprazole) *	Seroquel (Quetiapine) *
Zyprexa (Olanzapine)	Risperdal (Risperidone)
Clozaril (Clozapine) *	Fazaclo (Clozapine) *
Geodon (Ziprasidone)	Invega (Paliperidone)
Fanapt (Iloperidone)	Saphris (Asenapine)
Latuda (Lurasidone)	

* Abilify, Seroquel, and Clozapine come with “Black Box Warnings” by the Food and Drug Administration. This means the medication can cause serious undesirable effects (such as a fatal, life-threatening or permanently disabling adverse reaction) to the potential benefit from the drug; or a serious adverse reaction can be prevented, reduced in frequency, or reduced in severity by proper use of the drug.

MOOD STABILIZERS

Used to treat children with mood disorders, such as bipolar disorder. Children with bipolar disorder have extreme mood swings (manic or depressed states). In the "manic" state, they may be very active, talk too much, have a lot of energy, and sleep very little. They may also be angry, irritable, or feel overly self-important. Children in the "depressed" state may feel hopeless or helpless, have a loss of energy, have changes in appetite, gain or lose weight, not enjoy activities they used to enjoy, or have thoughts of suicide.

- **Positive Effects:** Mood stabilizers may be used to treat sudden manic episodes. Continued use can eliminate extreme mood swings of depression and mania and improve a child's quality of life. A physician may prescribe mood stabilizers with other medicines (such as antipsychotics) for more effective reduction of mood swings.
- **Negative Effects:** Lamictal can cause dizziness, problems sleeping, drowsiness, blurred vision, vomiting, constipation or stomach aches. Depakote may cause indigestion, nausea/vomiting,

drowsiness, hair loss, weight changes, changes in menstrual cycles or constipation. Tegretol may cause dizziness, drowsiness, nausea, unsteadiness or vomiting and Lithium may cause fatigue, muscle weakness, nausea, stomach cramps, weight gain, urinating more often, slight hand tremor, thirst, low blood sugar, lower thyroid function, and hair loss.

- **NOTE:** Some medications used to treat mood disorders are also used to treat seizure disorders. If used to treat seizures, it is not considered a psychotropic medication.

Commonly Used Medications (Generic Names):

Carbatrol (Carbamazepine)

Depakote (Divalproex) *

Eskalith or Eskalith CR (Lithium) *

Lamictal (Lamotrigine)

Lithobid (Lithium) *

Tegretol or Tegretol XR (Carbamazepine) *

* Children taking Tegretol, Depakote or Lithium should have routine blood work. Levels are usually checked in the morning before the medication is given to the child.

ANTI-ANXIETY AGENTS (TRANQUILIZERS)

Used to treat people with severe anxiety that interferes with their daily activities.

- **Positive Effects:** Reduces panic anxiety or general anxiety symptoms. They are generally used for short term treatment.
- **Negative Effects:** Can cause dizziness, sedation, or nausea.
- **NOTES:** Ativan, Klonopin, and Xanax (known as Benzodiazepines) are addictive.
- **Commonly Used Medications (Generic Names):**

Ativan (Lorazepam)

Buspar (Buspirone)

Klonopin (Clonazepam)

Xanax (Alprazolam)

BASIC OBJECTIONS

There are more potential objections than those listed below, e.g. in opening statement, you might object to counsel arguing the case, in direct or cross-examination, you might object to the opponent making disparaging remarks, not addressed to the court, while you are questioning a witness.

- **ARGUMENTATIVE** - in content and tone without asking for new information; using his/her question to argue the case.
- **ASSUMING FACTS NOT IN EVIDENCE** - loaded question that prevents the witness from having the opportunity to deny the existence of the assumed fact.
- **BADGERING** - also, quarreling with, arguing with, shouting at, bullying, looming over, and threatening the witness.
- **BEST EVIDENCE RULE** - requirement of original.
- **BEYOND SCOPE** - answer exceeds the scope of question and constitutes a volunteered statement by the witness.
- **BEYOND SCOPE OF DIRECT** – if the subject matter of cross is beyond the testimony of direct examination.
- **CHAIN OF CUSTODY NOT PROPERLY ESTABLISHED** - particularly when item is easily alterable and no single witness can identify the item with personal knowledge (e.g. department case file).
- **COMPOUND QUESTION** - contains two or more questions within a single question.
- **CUMULATIVE** - fails to add to the probity of previously admitted evidence or testimony – also referred to as 'asked and answered' or 'repetitious' or 'duplicious'.
- **DISCOVERY VIOLATION** – e.g. items not disclosed via response to demand for discovery or witness list.
- **DISPLAYING EVIDENCE PRIOR TO ITS INTRODUCTON**
- **EXPERT TESTIMONY INADMISSIBLE** - underlying facts or data insufficient; field of scientific, technological or other specialty of expertise not reliable and/or relevant) factors such as: (1) whether the principle has been tested, (2) the results of published peer review, (3) error rates and (4) general acceptance.
- **FACTS NOT IN EVIDENCE**
- **HEARSAY** – question calls for an out of court statement which goes to the truth of the matter asserted. includes hearsay within hearsay and evidence based upon hearsay.
- **IMMATERIAL** - in that it is of no consequence to any issue in the case (couple with irrelevant).
- **IMPROPER IMPEACHMENT** - improper opinion or reputation character evidence, improper foundation for proof of witness' prior inconsistent statement.
- **IMPROPER AUTHENTICATION/PREDICATE** - for admission of testimony, exhibit, or document (predicate) failure to identify item of evidence (e.g., writing, and show its logical relevance) also referred to as failure to lay proper foundation.
- **INCOMPETENCY OF WITNESS** - lack of perception/memory, inability to understand nature and obligation of oath, inability to communicate in language of court (may apply to child witness).

- **IRRELEVANT** - it does not make a fact of consequence to the case anymore or less likely.
- **LACK OF PERSONAL KNOWLEDGE** - witness, other than expert, does not have first-hand information.
- **LAY WITNESS OPINION IMPROPER** - not helpful to clear understanding of witness' testimony or determination of fact in issue, not rationally based on perception of witness.
- **LEADING** - question suggests or coaxes desired answer.
- **LEGAL CONCLUSION** - questions calls for or answer contains a legal conclusion.
- **MISSTATEMENT** - mischaracterization of evidence by counsel or witness.
- **NON-RESPONSIVE ANSWER** – may also apply to narrative testimony.
- **PRIVILEGED COMMUNICATION** - attorney-client; doctor-patient; clergy; spousal or marital communication.
- **RELIGIOUS BELIEFS** - of witness inadmissible to show witness' credibility impaired or enhanced.
- **SEQUESTRATION OF WITNESSES** – called "the rule" witnesses may not speak to each other about testimony provided to the court until conclusion of proceeding.
- **SPECULATION** - conjecture, guess.
- **UNDUE DELAY** – applies generally to continuances and request for recess.
- **UNFAIRLY PREJUDICIAL** - potential danger of "unfair" prejudice substantially outweighs probative value - objecting party has burden of proof; object that the otherwise arguably relevant evidence unfairly exaggerates the truth and attempts to improperly sway the court even though arguably relevant.
- **VAGUE**

COMMON OBJECTIONS¹⁸

OBJECTIONS TO QUESTIONS	<ul style="list-style-type: none">• calls for irrelevant answer• calls for immaterial answer• witness is incompetent• violates the best evidence rule• calls for a privileged communication• calls for a conclusion• calls for an opinion (by an incompetent witness)• calls for a narrative answer• calls for a hearsay answer• leading• repetitive (asked and answered)• beyond the scope (of the direct, cross or redirect)• assumes facts not in evidence• confusing/misleading/ambiguous/vague/unintelligible• speculative• compound question• argumentative• improper characterization• misstates evidence• cumulative• improper impeachment
OBJECTIONS TO ANSWERS	<ul style="list-style-type: none">• irrelevant• immaterial• privileged• conclusion• opinion• hearsay• narrative• improper characterization• violates parol evidence rule• unresponsive/volunteered
OBJECTIONS TO EXHIBITS	<ul style="list-style-type: none">• irrelevant• immaterial• no foundation• no authentication• violates original documents (best evidence) rule• contains hearsay/double hearsay• prejudice outweighs its probative value

¹⁸ Thomas A. Mauet, *Trial Techniques*, 6th ed. (New York: Aspen Publishers, 2002) 472.

PREPARING FOR AN IMPORTANT HEARING

RESEARCH THE ISSUES

- Review statutes and rules.
- Review related case law – stay on top of latest cases.
 - Case summaries and Legal Briefs Newsletter available at www.GuardianadLitem.org
- Identify factors to be considered.
- Identify the elements that must be established by evidence at the hearing.

MAKE A LIST OF FACTS THAT SUPPORT AND DO NOT SUPPORT YOUR POSITION

- Know timelines and details.
- Look at your position from the opposing side to make sure you have covered all of your bases.
- Think about what evidence you will need and how/who you will bring it in.

PREPARE

- Prepare a list of questions you will ask witnesses – only as a guide.
- Know foundation, objections.
- Use a cheat sheet.
- Have your statute book with you.

SUMMARIZE

- Keep it simple.
- Don't get sidetracked.
- Have a theme.
- Tie in expert's opinion with the issue involved.

OBJECTIONS

WHY OBJECT¹⁹

- Protect the record - Preserve any error on appeal.
- Keep the court from hearing improper evidence.

¹⁹ Thomas A. Mauet, Trial Techniques (Sixth Edition) p.465-470

HOW TO OBJECT

TIMELINESS

- If a question is improper, the objection should be made before the answer to the question is given.
- If the question itself is prejudicial as well as improper, object right away.
- Can't "unring the bell."

LEGAL BASIS

- State legal basis.
 - The question calls for a hearsay answer.
 - The question is unresponsive.
- Insist on a ruling or the error may be waived on appeal "Your honor, may we have a ruling on the objection?"
- Have the answer struck.
- If an objection is sustained against you, see how you can overcome.

PROCEDURE

- Stating a specific ground for your objection.
 - If you state a ground for an objection but it is not proper, the court can overrule even if there is a proper legal basis for objecting.
 - More than one legal ground may exist.

CROSS-EXAMINATION OF AN EXPERT WITNESS

SUMMARY CHECKLIST²⁰

Must I cross-examine this witness?

- Has the witness hurt my case?
- Is the witness important?
- What are my reasonable expectations?
- What risks do I need to take?

What favorable testimony can I elicit?

- What parts of the direct helped me?
- What parts of my case can the witness corroborate?
- What must the witness admit?

²⁰ Thomas A. Mauet, *Trial Techniques*, 6th ed. (New York: Aspen Publishers, 2002) p. 306.

- What should the witness admit?

What discrediting cross-examination can I conduct?

- Can I discredit the testimony? (perception, memory, communication)
- Can I discredit the witness' conduct?

What impeachment can I use?

- Can I show bias, interest and motive? § 90.608(1)(b)
- Can I use prior convictions?
- Can I use prior bad acts?
- Can I use prior inconsistent statements? § 90.608(1)(a)
- Can I show contradictory facts? § 90.608(1)(e)
- Can I show bad character for truthfulness? § 90.608(1)(c)
- Can I use treatises?
- How will I prove up the impeachment if necessary?

PRACTICE TIP: Use your own expert to learn more; read the literature in the field – they are also sources of potential impeachment; read articles the expert has published; review the expert's resume to show weakness in education training and experience and if their area of expertise is the one involved in this case; and review the written report.²¹

POSSIBLE STRATEGIES²²

- Qualifications – expert not qualified in the pertinent area.
- Bias and interest.
- Date relied on.
- Assumptions – would opinion be change if assumptions were different?
- Prior inconsistent statements – commit the witness to the direct examination that you want to attack, credit, or build up the reliability of the prior statement, confront the witness by reading the statement, then stop.
- Treatises – expert can be impeached by treatises.

²¹ Thomas A. Mauet, *Trial Techniques*, 6th ed. (New York: Aspen Publishers, 2002) p. 379.

²² Thomas A. Mauet, *Trial Techniques*, 6th ed. (New York: Aspen Publishers, 2002) p. 378-395.

DIRECT EXAMINATION OF AN EXPERT § 90.702

DAUBERT QUESTIONS FOR EXPERT WITNESS²³

Expert Qualifications: Name? Address? Occupation? Present employment? Past employment? Educational Background? Current professional involvement? Membership in professional societies? Field of expertise? Purpose and nature of consultation? Research? What scientific testing did you undertake? Findings and opinions? Definitions?

Proposed Testimony is Sufficiently Tied To Facts of Case So That It Will Aid The Finder of Fact in Resolving Factual Dispute: What does your testimony concern? In your opinion, how does that testimony relate to the nature of this suit (or underlying issues)? Do you believe the research you have done could have been done by the average lay-person (without your type of education or experience)? Do you consider the research you have done to be decipherable by the average lay-person? Do you feel your testimony will better aid the finder of fact to understanding the work you will present?

Expertise Based on Experience: In certain fields, experience is the predominant, if not sole, basis for a great deal of reliable expert testimony. If relying on experience, the witness must explain how that experience leads to the conclusion reached, why that experience is a sufficient basis for the opinion, and how that experience is reliably applied to the facts. How long have you had experience in (the underlying issue)? How many cases/children/clients have you worked with? How many of those were court ordered? How many times have you observed (the underlying issue)? How does your experience apply to this situation?

Testing of the Theory or Technique (Falsifiability): What theory/technique did you use in your research? How often do you use this theory/technique? Do you use this theory/technique in other subject areas, or is it unique to the subject matter addressed in this case? How did you test this theory/technique? Did you use the same testing method every time to test for accuracy? Did anyone, other than you, test your theory/technique for accuracy? What test did that person use? When did that person do his/her testing? What were the results?

Extent to Which the Technique Relies Upon the Subjective Interpretation of The Expert: Does the technique you used generally require subjective or objective interpretation among others in the field? Was the technique used in your research interpreted subjectively or objectively? Do you feel another person in your field would have interpreted your technique in the same you have? Is there a way to cross-check the subjective interpretation for accuracy? Did such cross-checking take place? What were the results?

Whether the Theory/Technique Has Been Subjected To Peer Review or Publication: Has your theory/technique been published? Where was it published? When was it published? Were there any criticisms? What were the nature of the criticisms? Has your theory/technique been reviewed by your peers? By whom was it reviewed? When was it reviewed? What was their opinion of your technique after having reviewed it?

The Theory/Technique's Known or Potential Rate of Error: Does your theory/technique have a known or potential rate of error? What is that rate of error? How did you arrive at that rate of error? Is that rate of

²³ Daubert Questions for Expert Witness, National Center on Domestic and Sexual Violence, available at <http://www.ncdsv.org/images/Daubertexpwtwnsquest.pdf>, last visited February 8, 2016

error common for the theory/technique you used? Did you carefully consider alternative causes or theories? What makes yours the best to use or most reliable?

General Acceptance of the Theory/Technique by the Relevant Scientific Community: Have you used this theory/technique outside the purposes of litigation? In what instances? When? Where? Was the theory/technique used, consistent from those instances until now? Was the theory/technique altered this time because of the litigation?

IMPEACHMENT OF A WITNESS § 90.608

IMPEACHMENT – PRIOR INCONSISTENT STATEMENTS²⁴

- Most common method of impeachment.
- The argument is not that the prior statement is true and the testimony in court is false, but that because the witness had made two different statements concerning a material fact, the court should not place great weight on the in-court testimony.
- Examples of types of statements Florida courts have admitted – witnesses own tax returns, letters, sworn extrajudicial statements, depositions, signed medical records, testimony at a previous trial.
- Must be statement of the witness testifying.
- Not “nit-picking” must be a significant fact.
- Inadmissible if probative value is substantially outweighed by the danger of unfair prejudice, confusion of issue, misleading the jury, or needless presentation of cumulative evidence § 90.403.
- Did the witness make the prior statement – time, place occasion and person?
- If written or oral reduced to writing, the court, upon motion of counsel, must order the statement be shown or contents disclosed to the witness.

IMPEACHMENT – PROOF OF BIAS OR INTEREST § 90.608(1)(B)²⁵

- The underlying bias must be relevant.
- The subject need not have been brought up on direct.
- If witness admits facts giving rise to the bias or interest, counsel may not introduce extrinsic evidence to prove the bias or interest. If the witness does not admit, then he or she may be contradicted by introduction of other evidence showing bias or interest.
- No foundation needs to be laid.

IMPEACHMENT – CONTRADICTION § 90.608(1)(E)

- During cross the examiner may point out the facts which are contrary to the witness’s testimony on direct examination – the credibility of the witness’s direct testimony will be in doubt.²⁶

²⁴ Ehrhardt, Florida Evidence, § 608.4 (2002 Edition)

²⁵ Ehrhardt, Florida Evidence, § 608.5 (2002 Edition)

²⁶ Ehrhardt, Florida Evidence, § 608.6 (2002 Edition)

Other grounds of impeachment include: Defects in Mental or Sensory Capacity § 90.608(1)(d), Proof of Character using Reputation Testimony § 90.609, Conviction of Certain Crimes as Impeachment § 90.610. See Florida Evidence Code.

BUSINESS RECORDS § 90.803(6)

HOW TO OFFER A BUSINESS RECORD INTO EVIDENCE

- What is your occupation?
- Does your job involve working with records of your organization or agency?
- **Have the exhibit marked.**
- **Show the exhibit to opposing counsel.**
- **Ask permission to approach the witness.**
- **Show exhibit to witness.**
- **Establish foundation.**

FOUNDATION ELEMENTS²⁷

It is necessary to call a witness that can show that each of the foundation requirements is present – not necessary to have person who actually made entry.

- The report was prepared by a person with a **business relationship** with the company (not necessarily an employee).
- The informant (the source of the report) had a business **duty to report** the information.
- The written report was **prepared “at or near the time”** with the facts or events.
- It was a **routine practice** of the business to prepare such reports.
- The report was reduced to **written form**.
- The report was made in the **regular course of business**.

SAMPLE QUESTIONS:

- I am handing you what has been marked guardian ad litem exhibit 1.
- Can you identify it?
- What kind of record is it?
- Is this report stored at your organization or agency?
- Where is it stored?
- Would this report be prepared by an agent of your organization or agency?
- Does that agent have a duty to prepare this report?

²⁷ Edward J. Imwinkelried, Evidentiary Foundations (2nd ed. 1989) p. 262-263

- Would that agent have personal knowledge of the information contained in the report?
- Would this report have been prepared “at or near the time” of the event described in the report?
- Is the making of the report a regular practice of your organization or agency?
- Would the report have been “kept in the course of a regularly conducted business activity?”
 - Offer the exhibit into evidence.
 - Have exhibit marked in evidence.
 - Have witness mark/explain exhibit.
 - Ask permission to show or read exhibit.
 - Show or read exhibit.

YOU CAN OBJECT TO PORTIONS OF THE RECORD

- Lack of foundation
- Relevance
- Lack of trustworthiness: § 90.803(6) when the sources of information or other circumstances show lack of trustworthiness” business records are not admissible i.e. made in preparation for litigation.
- Double hearsay: Qualifying the business record only eliminates the first level of hearsay (not needing to have the person that made the record on the stand). It does not eliminate the double hearsay of statements made by not employees of the business. For example, if a parent says something during a visitation that is reported in the visitation record. You can object to the parent’s statement as hearsay unless another hearsay exception applies.

Response: “This statement is admissible as a business record pursuant to § 90.803(6). I have shown through the testimony of (the witness) who is a custodian of the record or person who has knowledge of the record keeping system, that the statement is contained in a:

- Memorandum, report, record, or data compilation;
- recording acts, events, conditions, opinions, or diagnoses, made at or near the time the acts or events took place;
- by or from information transmitted by one with personal knowledge of the act or event;
- where such record is kept in the course of a regularly conducted business activity; and
- it was the regular practice of the business to make such a record.”²⁸

²⁸ Anthony Bocchino and David Sonenshein, *Federal Rules of Evidence with Objections*, 6th ed.(NITA 2003)74

HOW TO REFRESH MEMORY ON DIRECT § 90.613

WHEN WITNESS SAYS, “I DON’T REMEMBER”

- Elements:²⁹
 - Witness knows the facts, but has a memory lapse on the stand.
 - Witness knows the report (or other document or exhibit) will jog their memory.
 - Witness is given and reads the pertinent part of their report.
 - Witness states their memory has now been refreshed.
 - Witness now testifies to what he knows, without further aid of the report.

PRACTICE TIPS: Remember to ask “Do you recall or do you remember”; mark the exhibit (it should be marked for identification purposes even though it is not offered into evidence – no need to lay foundation for the document); show to opposing counsel, they are entitled to inspect the writing and cross-examine the witness concerning it § 90.613.

Be sure to get the exhibit back from the witness before you ask the questions (otherwise opposing counsel can object that the witness is just reading from the from the report)

SAMPLE QUESTIONS TO REFRESH MEMORY ON DIRECT

- Do you recall ...?
 - Would anything refresh your memory? What would that be?
 - Your Honor, I ask this _____ be marked as guardian ad litem Exhibit 2
 - I am showing the _____ to opposing counsel _____
 - May I approach the witness?
 - Do you recognize this?
 - What is it?
 - Please read paragraph...
 - Get the exhibit back from the witness.
 - Re-ask the question, which drew the original failure of memory.

Refreshing recollection must be distinguished from past recollection recorded. If the witness has no present memory of the fact after examining the document or notes, the witness will not be permitted to read from the document or notes unless they are admitted into evidence. Since writing are typically hearsay, they will not be admitted unless they qualify as an exception to the hearsay rule.³⁰

²⁹ Thomas A. Mauet, Trial Techniques (Sixth Edition) p.145.

³⁰ Charles W. Ehrhardt, Florida Evidence (2002 Edition) p. 561

OBJECTIONS TO REFRESHING RECOLLECTION UNDER § 90.613³¹

- I object to the attempt to refresh the witness's recollection in the absence of a demonstrated failure of memory (remember to ask: "Do you recall or do you remember").
- I object to the witness's reading from the exhibit used to refresh recollection because it is not in evidence and because it is hearsay (remember to take the exhibit away from witness before you continue to ask questions).

RESPONSES

- The witness has shown a failure of memory and I am attempting to refresh his or her recollection pursuant to § 90.613.

ADMISSIBILITY OF A LEARNED TREATISE CHECKLIST § 90.706

The Florida Evidence Code does not provide for a specific learned treatise exception to the hearsay rule however, permits certain literature to be used during cross-examination of an expert witness regardless of whether the expert relied on the treatise in forming his or her opinion.

This rule applies to the following publications:

- Statements of facts or opinions on a subject of science, art, or specialized knowledge contained in a published treatise, periodical, book, dissertation, pamphlet, or other writing.
- The trial court can allow the learned treatise to be used for cross-examination if:
 - The expert witness recognizes the author or the treatise, periodical, book, dissertation, pamphlet, or other writing to be authoritative; OR
 - Notwithstanding the recognition by the expert witness of the authoritativeness of the writing, the trial court makes a finding that the author or the treatise, periodical, book, dissertation, pamphlet or other writing to be authoritative AND relevant to the subject matter.

ADMISSIBILITY OF LEARNED TREATISE – CROSS-EXAMINATION OF AN EXPERT WITNESS

- Section 90.706 allows cross-examination of an expert witness with statements of fact and opinion in a learned treatise, if the expert witness recognizes either the author or the treatise as being authoritative.
- However, the court has the discretion to find writing authoritative despite an expert's failure to recognize the writing or the author. In such situations, the court must give the party proffering the article an opportunity to establish that the writing is authoritative through the testimony of other witnesses.³²
- The expert need not have relied on the publication in forming their opinion for trial § 90.706(1).
- Section 90.706 does not allow statements in a learned treatise to be used as substantive evidence since the treatise is hearsay if it is offered as substantive evidence.³³

³¹ Anthony Bocchino and David Sonenshein, *Federal Rules of Evidence with Objections*, 6th ed.(NITA 2003) 136-137.

³² *Fravel v. Haughey*, 727 So.2d 1033, 1034 (Fla. 4th DCA 1999)

³³ *Green v. Goldberg*, 630 So.2d 606, 609 (Fla. 4th DCA 1993)

VIDEOTAPES AND MOTION PICTURES § 90.401(3)

FOUNDATION

- The videotape is relevant
- The witness is familiar with the object or scene
- The witness explains the basis for his or her familiarity with the scene.
- The witness recognizes the object or scene in the videotape or motion picture.
- The witness recognizes the voices on the tape, locations and persons seen on the tape.
- The videotape or motion picture is a “fair and accurate representation” of a material fact or issue.

STEPS

- Have the exhibit marked.
- Show exhibit to opposing counsel.
- Ask permission to approach witness.
- Show exhibit to witness.
- Establish foundation.
 - Do you recognize Guardian ad Litem Exhibit #1?
 - What do you recognize it to be?
 - Your Honor, at this time we offer Guardian ad Litem Exhibit #1 into evidence.
 - Establish that the operator replayed the video after recording it and the tape had accurately recorded the sounds and images.
 - May I the witness unseal Guardian ad Litem Exhibit #1 and play it for the court? (establish chain of custody).
 - Play a few moments of the tape.
 - Can you identify who said “Hello”?
 - Can you identify who said “It’s me”?

If there is an audio portion of the videotape, its admissibility will be determined separately from that of the video portion. If it contains statements by a person it is hearsay if it is for the truth of the matter asserted. However, the audio portion of the videotape may be admissible under an exception to the hearsay rule.

PRACTICE TIP: Be sure that the court reporter makes a stenographic record of what is said in the videotape.