

General Overview of Dependency and Criminal Justice Systems

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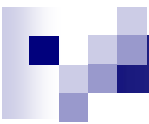
Premise of Chapter 39, F.S.

- The overall theme of Chapter 39 of the Florida Statutes is for the protection, safety and well-being of a child
- Chapter 39 proceedings (civil in nature) are not designed to punish parents but rather to protect children
- Courts have wide discretion in determining best interests of the child (Role of the Guardian Ad Litem)
- Confidential information pursuant to 39.202, F.S.



Criminal Prosecution Overview

- Sex Crimes and Child Abuse criminal cases are primarily investigated by law enforcement agencies not DCF
- Parallel investigation which may overlap but is separate and independent (CPT/CAC)
- Following the criminal investigation, cases are either closed or submitted to the State Attorney for a filing decision
- Arrest versus non-arrest cases



Confidentiality (39.202, F.S.) and Privileged Communications

- Chapter 39 – confidentiality of records in child abuse, neglect and abandonment cases.
 - “All court records required by this part shall not be open to inspection by the public.” 39.814(3)
 - 39.202(2) - Enumerated list of those who have access to records (exceptions to the public record exemption from disclosure) – NO REPORTER INFORMATION DISCLOSED WITH RECORDS!
 - Employees, authorized agents, or contract providers of DCF, Department of Health, other county agencies with specific responsibilities and Department of Juvenile Justice



Legal Standards and Burden of Proof

- Criminal standard versus dependency standard
- Probable Cause required for arrest
- Good faith basis that there is enough evidence to prove case beyond a reasonable doubt required for filing
- Ethical considerations in filing charges
- DCF/CBC input into filing decision



Chapter 39 Exceptions

- 39.202(4) - Missing children exception – DCF may release this information to the public when it believes the release of the information is likely to assist efforts in locating the child:
 - Name and date of birth of the child
 - Physical description of the child AND
 - Photograph of the child
 - Law enforcement and DCF with agreement by law enforcement may also release additional information if it is likely to assist efforts in locating the child



Pre-Filing Decisions and Examples

- SAO additional investigation and interviews
- Victim input per F.S 960, Florida Constitution and morality
- No files
- Plea - (Eighteen year old male and fifteen year old girlfriend)
- Charges filed
- Corporal discipline cases



Chapter 39 Exceptions

- 39.202(6) – Child Protection Team exception - records and reports of the CPT of the Department of Health are confidential and also exempt from the public records law and shall not be disclosed, except, upon request, to the state attorney, law enforcement, DCF, and necessary professionals, in furtherance of the treatment or evaluative needs of the child, by order of the court, or to health plan payors (for insurance reimbursement).
 - Excluded in most Chapter 39 records releases.



Criminal Court Process

- First Appearance at jail
- Arraignment
- Discovery (depositions)
- Docket Sounding (continuance, plea or trial)
- Pre-trial motions
- Victim input and plea negotiations
- Plea of guilty, no contest or open to court



Chapter 39 Exceptions

- 39.202(5) - Reporter information is strictly confidential and cannot be released to any person other than DCF employees (not CBC employees), the hotline, law enforcement, the Child Protection Team, or the appropriate state attorney (unless the reporter consents to the release of their name as the reporter and puts it in writing).
- For those entitled to reporter information, should only release on a need to know basis.
- **NEVER REVEAL REPORTER INFO!**



Defendant and Victim Rights

- Jury Trial
- Burden of Proof on State
- Right to Remain Silent
- Defense Lawyer
- Presumption of Innocence
- Technicalities? Too many rights?
- Victim Rights



Confidentiality and Privileges

- All Chapter 39 cites can be found via MyFlorida.com and searching under Government/Legislative Branch/Florida Statutes.




Penalties and Sanctions

- Penalties and sanctions for releasing Chapter 39 reporter/confidential information
 - Second degree misdemeanor – “Any person who knowingly and willfully makes public or discloses any confidential information contained in the central abuse hotline or in the records of any child abuse, abandonment, or neglect case... is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.”



Criminal Jury Trial Stages

- Jury Selection
- Opening Statement
- State's Case in Chief – Presentation of evidence
- Cross Examination
- Defense Case
- Closing Arguments
- Jury Instructions
- Deliberation by jury
- Verdict



Release of Information with Petition/Court Order

- 39.2021 – Release of confidential information via petition to the court for such release
 - Any person or organization (DCF included) may petition the court to make records public. Court must determine whether good cause exists for public access to records (balancing best interests of the child(ren) and privacy rights of other persons against the public interest).
 - DCF may petition for immediate public release in case involving “serious bodily injury to a child”.



Trial Outcomes, Sentencing and Appeal

- Mistrial
- Not Guilty Verdict
- Guilty as Charged
- LIO
- Appeal
- Sentence



Open versus Closed Hearings

- All hearings, except as provided, shall be open to the public, and a person may not be excluded except on special order of the judge, who may close any hearing to the public upon determining that the public interest or the welfare of the child is best served by so doing.
 - 39.507(2) – Dependency Adjudicatory Hearing
- All hearings involving termination of parental rights are confidential and closed to the public.
 - 39.809(4) – TPR Adjudicatory Hearing



Sexual Battery

- Florida Statute 794
- Definitions
- Capital and Enhancements
- Unlawful Sexual Activity with Certain Minors, F.S. 794.05
- Familial or Custodial Authority
- Rape Shield Statute F.S. 794.022



General Magistrate Procedures

- Hearings conducted – Judicial Reviews, Arraignments, Disposition Hearings (not Adjudicatory Hearings or Shelter Hearings)
- No authority to enter “orders”, only “recommendations”; no action taken until order signed by judge
- Filing exceptions to recommendations
- Waiving 10 days to file exceptions – when appropriate and coordination with CWLS
- Orders entered by judge accepting recommendations



Lewd or Lascivious Offenses

- Victim must be fifteen or less
- Florida Statute 800.04
- L and L Battery
- L and L Molestation
- L and L Exhibition
- L and L Conduct
- Misdemeanor Exposure and Battery



Role of Guardian ad Litem (GAL)

- Party to all proceedings – see 39.01, F.S.
- Sections 39.810 and 39.812, F.S.
- Participation and role in staffings
- Contact from GAL
- GAL's right to review case file/documents
- Role of GAL Program Attorneys
- Cooperative efforts/partnership



Sexual Abuse Victim Services

- SAO victim advocates for child abuse and sex crimes cases
- Call out program



Child Abuse and Child Neglect

- Florida Statute 827
- Aggravated Child Abuse
- Aggravated Child Neglect
- Caregiver requirement
- Corporal Discipline
- Discretion



Shelter Hearings

- When: Must be done within 24 hours of child(ren) being removed from the home.
- The Court must enter an order finding probable cause to remove the child(ren), among many other required findings which include a finding that return to the home at that time would be contrary to the health, safety and wellbeing of the child(ren).



Additional Sex Crimes

- Sexual Offenders and Predators
- Child Pornography
- Online Solicitation



Arraignment Hearing

- Held within 28 days of Shelter Hearing and usually after case plan conference
- Parents can enter a plea as follows:
 - Admit allegations and agree to dependency
 - Deny allegations and have adjudicatory hearing (trial)
 - Consent (neither admitting nor denying allegations) and agree to dependency – does not acknowledge any wrongdoing but parent agrees to case plan to resolve issues



Adjudicatory Hearing

- Held within 30 days of Arraignment Hearing
- DCF, as petitioner, has burden of proof – must prove case by a preponderance of the evidence (just over 50%)
- DCF presents witnesses and evidence
- GAL may need to testify as a witness
- Child may need to testify as a witness
- After all evidence presented, court can adjudicate child dependent and order the child remain in out-of-home care, withhold an adjudication of dependency and return child home with services in place or can dismiss the petition if the burden of proof is not met – 39.507, F.S.



Disposition Hearing

- If parent consents, Disposition Hearing within 15 days of Arraignment Hearing
- If Adjudicatory Hearing held, disposition hearing within 30 days
- Court “disposes” of the case by accepting parent’s plea, adjudicating child dependent, approving home study, accepting case plan and ordering tasks on case plan be completed by parties. Pre-Disposition Study (PDS) must be received by all parties 72 hours in advance of the hearing.
- 39.521, F.S.



Judicial Review Hearings

- Held at least once every 6 months – 39.701, F.S.
- DCF/CBC prepares Judicial Review Social Study Report (JRSSR) and must be received by all parties 72 hours in advance of the hearing.
- Court reviews the status of the child, status of case plan compliance by the parents and assesses further needs of the family
- Timely reviews are necessary in order to obtain federal funding (Title IV-A and IV-E)



Permanency Hearings

- Statute mandates 12 months to permanency – 12 months is a long time in the life of a child! Permanency plan/report filed with the court.
- Court determines the permanency plan for the child.



Permanency Options for Child

- Reunification (Goal in most cases)
- Adoption (As a result of Termination of Parental Rights)
- Permanent Guardianship of a Dependent Child
- Permanent Placement with a Fit and Willing Relative
- Placement in Another Planned Permanent Living Arrangement (Includes Independent Living Services)
- 39.621 - 39.6241 , F.S.



Termination of Parental Rights (TPR) and Adoption

- Option if Reunification is not possible
- Numerous grounds for TPR (39.806, F.S.)
- Must also prove manifest best interests of the child (39.810, F.S.) and that TPR is the least restrictive means of protecting the child from harm (substantial risk of significant harm if TPR not granted)
- Can have expedited basis for TPR where no case plan is offered to the parents (egregious abuse, for example)
- Will have Advisory Hearing (like an Arraignment)
- At Adjudicatory Hearing, burden of proof is clear and convincing evidence (higher standard)



Appeals

- 30 days to file a notice of appeal with District Court of Appeal (DCA) from date of court order.
- Standards for filing an appeal/seeking review by the appellate court:
 - “SUBSTANTIAL COMPETENT” EVIDENCE (PREPONDERANCE OF THE EVIDENCE AT DEPENDENCY ADJUDICATORY HEARING).
 - “SUBSTANTIAL COMPETENT” EVIDENCE (CLEAR AND CONVINCING EVIDENCE AT TERMINATION OF PARENAL RIGHTS ADJUDICATORY HEARING).
 - “ABUSE OF DISCRETION” FOR ALMOST ALL OTHER MATTERS TRIAL COURT RULES ON such as admission/exclusion of evidence, rulings on motions, probable cause for shelter, etc.)
 - “If reasonable men could differ as to the correctness of the action taken by the trial court, then the action is not unreasonable and there can be no finding of an abuse of discretion. The discretionary ruling of the trial judge should be disturbed only when his decision fails to satisfy this test of reasonableness.”



Appeals (Continued)

■ **WHAT HAPPENS TO THE CIRCUIT COURT CASE WHILE AN ORDER IS BEING APPEALED?**

- With adjudications of dependency and other matters prior to Termination of Parental Rights (TPR), any order that is appealed does not stop the other time-guided activities required in dependency cases such as Case Plans and Judicial Reviews. However, no act of the trial/circuit court can overrule/change the order that is being appealed unless the DCA changes it or the DCA allows the trial/court to change it.
- With TPR's, adoption does not go forward until after the DCA rules. However, matters concerning placement, visitation, etc., may be ruled on by the trial/circuit court pending a decision in the TPR appeal.



Conclusion

- Adequate court preparation and presentation is important. Remember: You never have a second chance to make a first impression!
- Questions/Answers
- For additional questions, contact:
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