

# Manifest Best Interest § 39.810 Chart

February 2007

*Court must make specific finding that TPR is in **each child's** Manifest Best Interest*

<b>Manifest Best Interest (MBI)</b> <i>Not a comparison between parents and placement; must consider factors including but not limited to:</i>	<b>Possible Proof – Evidence</b> <i>Examples</i>	<b>What Information GAL has / needs</b>
<p><b>Any suitable permanent custody arrangement with a relative of the child.</b> However, the availability of a nonadoptive placement with a relative may not receive greater consideration than any other factor weighing on the manifest best interest of the child and may not be considered as a factor weighing against termination of parental rights. If a child has been in a stable or preadoptive placement for not less than 6 months, the availability of a different placement, including a placement with a relative, may not be considered as a ground to deny the termination of parental rights. § 39.810(1)</p>	<p>Testimony that DCF and GAL have inquired about and investigated potential relatives</p> <p>Relatives are willing to adopt, thus this element is inapplicable</p> <p>At shelter, the court is required to inquire of the parents whether the parents have any relatives who might be a placement for the child and the parents are required to provide identification and location information regarding these relatives. This is a CONTINUING DUTY of the parents §39.402(17)</p> <p>Distinction between relatives that are willing to adopt verses relatives that only willing to keep the child in a Permanent Guardianship or Long-Term Relative Placement</p>	
<p><b>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.</b> § 39.810(2)</p>	<p>GAL testimony that they talked to providers, described continued troubling behavior (be careful of hearsay)</p> <p>Testimony about parents employment, housing</p> <p>What the GAL has observed</p> <p>Parents unwillingness to assume responsibilities</p>	
<p><b>The capacity of the parent or parents to care for the child</b> to the extent that the child's <b>safety, well-being, and physical, mental, and emotional health</b> will not be endangered upon the child's return home. § 39.810(3)</p>	<p>Testimony of service worker - services offered, services completed, issues that led to dependency been resolved, consistency &amp; concerns re: visitation</p> <p>Expert testimony – psychological evaluations, diagnosis, opinion of parents ability to parent, opinion if child would be at risk if returned</p>	
<p>The present <b>mental and physical health needs of the child</b> 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)</p>	<p>Expert testimony – diagnosis of child, how parent's conduct emotionally affected child</p> <p>GAL testimony that they have observed child's abilities, disabilities and needs</p> <p>Testimony regarding services being provided by the custodian or the department</p> <p>If needs expected to continue</p>	
<p>The <b>love, affection, and other emotional ties existing between the child and the child's parent</b> or parents,</p>	<p>Testimony – GAL observation of visits</p> <p>Behavior before and after placement</p>	

<p>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)</p>	<p>Behavior before and after visitation</p> <p>Statement of child</p>	
<p>The <b>likelihood of an older child remaining in long-term foster care</b> upon termination of parental rights, due to emotional or behavioral problems or any special needs of the child. § 39.810(6)</p>	<p>Child is receiving services</p> <p>Child will continue to receive services</p> <p>Behavioral and emotional issues will or will not continue – expert testimony</p>	
<p>The <b>child's ability to form a significant relationship with a parental substitute</b> 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)</p>	<p>GAL testimony</p> <p>Length of time child been in placement</p> <p>GAL witnessed interaction between the child and the custodians</p> <p>Observation of visitation as to each child (stories of attachment)</p> <p>This is a home that will lead to permanency</p>	
<p>The <b>length of time that the child has</b> lived in a stable, satisfactory environment and the desirability of <b>maintaining continuity</b>. § 39.810(8)</p>	<p>GAL testimony, service worker testimony</p> <p>Length of time on case</p> <p>Length of time child with the present custodian</p> <p>Permanency</p> <p>Therapist testimony</p>	
<p>The <b>depth of the relationship</b> existing between the child and the <b>present custodian</b>. § 39.810(9)</p>	<p>GAL testimony, service worker testimony, expert testimony</p> <p>Length of time on the case</p> <p>Child's adjustment to foster care</p> <p>Observation of the child with the present custodian</p> <p>How child gets along with the present custodian, and other children in the home</p> <p>Length of time child been with the present custodian</p> <p>Child's opinion regarding adoption</p> <p>Harm to child if placement is disrupted</p>	
<p>The reasonable preferences and <b>wishes of the child</b>, if the court deems the child to be of sufficient intelligence, understanding, and experience to express a preference. § 39.810(10)</p>	<p>GAL Testimony</p> <p>Child's wishes</p>	
<p>The <b>recommendations for the child provided by the child's guardian ad litem</b> or legal representative. § 39.810(11)</p>	<p>GAL Testimony (reviewed dependency file, length of time on the case, met with child, discussed with child, discussed the possibility of adoption, how GAL came to their recommendations)</p>	

# Manifest Best Interest Cases

## In re K.A., 880 So. 2d 705 (Fla. 2d DCA 2004)

In cases where the State seeks to terminate parental rights to numerous children, the trial court cannot treat the children as an amorphous group in which the best interests of one will meet the interests of all; rather, the trial court must individually determine whether the termination of parental rights to each child is permitted by the statute, is the least restrictive means to protect that child, and is in that child's manifest best interests..

C.B. v. Department of Children & Families, 879 So. 2d 82 (Fla. 4th DCA 2004) Termination of mother's parental rights, based on prospective abuse, was in child's best interest; mother did not have capacity to safely care for or protect child, child had bonded with his current parental substitute and siblings, there was little likelihood of child remaining in long-term foster care, and even if suitable relatives were available to care for child, in the past other relatives had given little credence to court orders to allow mother only supervised visits with child..

## B.S. v. Department of Children and Families, 860 So. 2d 1038 (Fla. 5th DCA 2003)

Termination of mother's parental rights was in children's manifest best interests, although children had special needs, and although children suffered from severe emotional and behavioral problems; evidence indicated that it was unlikely that children would remain in long-term foster care, children could be adopted, and children had demonstrated ability to form bonds with substitute care givers.

## C.M. v. Department of Children and Family Services, 854 So. 2d 777 (Fla. 4th DCA 2003)

A termination of parental rights proceeding involves a two-step process: (1) the court must find by clear and convincing evidence that one of the statutory grounds has been proven, and (2) the court must determine what outcome is in the manifest best interest of the children Fla. Stat. § 39.806.

## T.P. v. Department of Children and Family Services, 935 So. 2d 621 (Fla. 3d Dist. 2006)

Substantial competent evidence supported trial court's determination that it was in manifest best interest of children to terminate father's parental rights, and that there were no less restrictive means to protect children; daughter was present in home at time father committed egregious abuse on her twin siblings, daughter became hysterical when twins were separated from her to attend supervised family visits, and father's statements regarding how he shook infant twins showed a lack of regard to their well-being, which supported finding that he posed substantial risk of significant harm to daughter.

## R.W. v. Department of Children and Families, 925 So. 2d 424 (Fla. 5th DCA 2006)

Trial court's finding that termination of mother's parental rights was in child's best interests was supported by clear and convincing evidence; child had a multiple serious medical conditions, mother repeatedly was unable to provide the necessary care required by child, and mother was unable to complete the agreed-upon case plans.

## In re A.L.R., 918 So. 2d 395 (Fla.2d DCA 2006)

Trial court's failure to address whether termination of the parental rights of divorced father who was convicted in military court of sexually abusing his stepdaughters was in the manifest best interests of his daughter, or whether termination was the least restrictive means to protect daughter, required reversal of trial court's order terminating father's parental rights; trial court discussed daughter's best interests but did not refer to statute containing the manifest best interests standard or discuss the factors listed in statute, and trial court did not address at all whether termination was the least restrictive means of protecting daughter.

## Department of Children and Family Services v. M.J., 889 So. 2d 986 (Fla. 4th DCA 2004)

There was clear and convincing evidence that termination of mother's parental rights was warranted and in the best interests of the children; evidence indicated that father's sexual deviancy placed children at extreme risk and that mother refused to protect children from father.